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Federal Register

Monday
August 26, 1985

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Presidential Documents

Title 3—

The President

Presidential Determination No. 85–19 of August 20, 1985

Memorandum for the Secretary of Defense

Pursuant to Section 205 of the Department of Defense Authorization Act, 1985, as enacted by P.L. 98–525, I hereby determine and certify that:

The United States is endeavoring in good faith to negotiate with the Soviet Union a mutual and verifiable agreement with the strictest possible limitations on anti-satellite weapons consistent with the national security interests of the United States.

Pending agreement on such strict limitations, testing against objects in space of the F–15 launched miniature homing vehicle anti-satellite warhead by the United States is necessary to avert clear and irrevocable harm to the national security.

Such testing would not constitute an irreversible step that would gravely impair prospects for negotiations on anti-satellite weapons.

Such testing is fully consistent with the rights and obligations of the U.S. under the Anti-Ballistic Missile Treaty of 1972 as those rights and obligations exist at the time of such testing.

You are directed on my behalf to report this determination and certification to the Congress.

You or your delegatee are authorized and directed to publish this determination and certification in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE
Washington, August 20, 1985.

MV ASAT Testing Certification

On March 31, 1984 I submitted a Report to the Congress, in classified and unclassified forms, which detailed many of the considerations involved in analyzing possible limitations on anti-satellite weapons. As that report notes, any realistic and balanced consideration of this topic must take into account a number of problems. These problems include: the need for effective verification; the potential for breakout; the risks of disclosing sensitive information; the problems of definition of space weapons; the vulnerability of satellite support systems; and Soviet military space activity. In particular, it should be noted that definitional and monitoring difficulties plus the need to counter such satellites as the space-based, targeting elements of Soviet weapons systems contribute to the conclusion that a comprehensive ban that would seek to eliminate development, testing, deployment, and use of all means of countering satellites is not verifiable and not in our national security interest. Moreover, no arrangements or agreements beyond those already governing military activities in outer space have been found to date that are judged to be

in the overall interest of the United States and its Allies and that meet the Congressionally-mandated requirements of verifiability and consistency with the national security.

The United States is presently involved in negotiations at Geneva on a whole range of nuclear and space issues. At these negotiations, Ambassador Kampelman is, among other things, seeking to explore with the Soviet Union the merits of a strategic relationship characterized by a greater reliance on defenses.

We have been unable, to date, to identify a specific ASAT proposal which meets the requirements identified by the Congress in 1984. We are seriously exploring with the USSR arms control arrangements intended to prevent an arms race in space while—we hope—easing a possible transition to a more reliable and effective deterrent posture for both sides. We will continue to study possible ASAT limitations in good faith to see whether such limitations are consistent with the national security interests of the United States. We are, therefore, acting in conformity with the first certification requirement.

The primary purposes of a United States ASAT capability are to deter threats to space systems of the United States and its Allies and, within such limits imposed by international law, to deny any adversary advantages arising from the offensive use of space-based systems which could undermine deterrence.

The USSR has the world's only operational ASAT system with an effective capability to seek and destroy critical U.S. space systems in near-earth orbit. In 1982, a test of this system was integrated into an exercise of Soviet strategic offensive and defensive forces. Moreover, the USSR maintains a very large directed energy research program, including ground based lasers assessed to be capable of performing some ASAT functions. This program could also result in the launch of the first prototype of a space-based laser ASAT in the late 1980s or very early 1990s. In addition, since space systems are vulnerable to a broad range of threats from direct attack to electronic warfare to nuclear effects, the Soviet Union could have developed—without our knowledge—a variety of other means to attack our satellites.

There is also a growing threat posed by present and prospective Soviet satellites which, while not weapons themselves, are designed to support directly the USSR's terrestrial forces in the event of conflict. These include ocean reconnaissance satellites which use radar and electronic intelligence in efforts to provide targeting data for use in attacking U.S. and allied surface fleets. They also include photographic and electronic intelligence satellites which provide targeting data and other information useful in supporting Soviet land forces. These Soviet space assets constitute a clear threat to our national security and that of our allies.

The United States must take the steps necessary to avert a situation in which the Soviet Union has full freedom to conduct effective attacks on our space systems knowing that their space objects, including those that provide targeting data, are not vulnerable to U.S. attack. The resultant instability from this asymmetry creates a risk of irrevocable harm to the United States. U.S. development of a credible anti-satellite system is a necessary, integral part of the steps needed to avert this situation. Therefore, testing of the MV against objects in space by the United States is necessary to avert clear and irrevocable harm to the national security of the United States and its allies.

The ASAT testing which we intend to undertake follows by twelve years the initiation by the USSR of its testing of a coorbital ASAT system which has for some time been the world's only operational ASAT system. The Soviets, moreover, as noted above, have tested and, in some cases deployed, systems which have inherent ASAT capabilities. The existence of such Soviet capabilities and their testing effectively preclude the possibility that testing by the United States of its MV ASAT will constitute an irreversible step.

In addition, we believe that testing can constitute an incentive to the Soviet Union to reach agreements on a wide range of issues and thus would not

impair prospects for a successful conclusion to the negotiations now underway.

The testing against objects in space of the U.S. F-15 MV ASAT system will not give the system the capability to counter strategic ballistic missiles or their elements in flight trajectory and will not constitute a test in an ABM mode. Therefore, such testing is not prohibited by the ABM Treaty.

Ronald Reagan

[FR Doc. 85-20402
Filed 8-22-85; 12:14 pm]
Billing code 3810-01-M

Presidential Documents

Proclamation 5364 of August 23, 1985

Women's Equality Day, 1985

By the President of the United States of America

A Proclamation

Women's Equality Day is celebrated each year on August 26 because it was on that day in 1920 that the 19th Amendment, guaranteeing women the right to vote, became part of our Constitution. This was an accomplishment of great practical and symbolic importance, since it recognized women as full participants in our democratic system of self-government.

The adoption of the 19th Amendment was a tremendous victory for the ideals of democracy, but its consequences have not been confined to our political system. In every field of endeavor, women have made notable contributions to our national life. Their achievements have shown that America's women are a tremendous human resource for our Nation—an inexhaustible reserve of talent, imagination, and ambition.

Today, women have an unparalleled degree of opportunity to decide what they want to achieve in their lives. Whether they devote themselves to raising families or to pursuing careers, their contributions to America are leaving an indelible mark on our Nation's life. In the years ahead, their accomplishments will continue to shape profoundly our Nation's destiny.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim August 26, 1985, as Women's Equality Day. I call upon all Americans to mark this occasion with appropriate observances.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of August, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 85-20501
Filed 8-23-85; 11:31 am]
Billing code 3195-01-M

Rules and Regulations

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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

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-349]

Imported Fire Ant Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the list of regulated areas under the imported fire ant quarantine and regulations by designating a previously nonregulated area in South Carolina as a generally infested area and by expanding previously designated generally infested areas in South Carolina and Texas. The quarantine and regulations, among other things, impose restrictions on the interstate movement of regulated articles from generally infested areas. This action is necessary as an emergency measure to prevent the artificial spread of the imported fire ant through the interstate movement of regulated articles.

DATES: Effective date of the interim rule: August 26, 1985. Written comments concerning this interim rule must be received on or before October 25, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728 Federal Building, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Charles H. Bare, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663 Federal Building, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this interim rule. Because of the possibility that the imported fire ant could spread artificially to noninfested areas of the United States, a situation exists requiring immediate action to better control the spread of this pest.

Further, pursuant to the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments are being solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Background

The imported fire ant (*Solenopsis* spp.) is an insect that interferes with farming operations, can cause damage to certain crops, and is a pest of livestock and pets, as well as of people, in rural and urban areas.

The imported fire ant quarantine and regulations (7 CFR 301.81 through 301.81-10) quarantine the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Puerto Rico, and Texas because of the imported fire ant; and restrict the interstate movement of regulated articles from regulated areas in these States in order to prevent the artificial spread of the imported fire ant.

Under the quarantine and regulations, an area may be designated as a regulated area if it is an area in which the imported fire ant has been found, or in which there is reason to believe that the imported fire ant is present, or which it is deemed necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Regulated areas are classified as either suppressive areas or generally infested areas. Suppressive areas are regulated areas in which eradication of the imported fire ant is undertaken as an objective. Generally infested areas are regulated areas not designated as suppressive areas. Restrictions are imposed on the interstate movement of regulated articles from both generally infested areas and suppressive areas in order to prevent the artificial movement of the imported fire ant into noninfested areas, and to prevent the reinfestation of suppressive areas after the imported fire ant has been eradicated.

Designation of Areas as Generally Infested Areas

This document designates all of Live Oak County in Texas as an imported fire ant generally infested area. Prior to the effective date of this rule, none of Live Oak County had been designated as a regulated area.

This document also expands previously designated imported fire ant generally infested areas in South Carolina and Texas as set forth below.

Previously, only the following portion of Edgefield County in South Carolina, was included as an imported fire ant generally infested area: "That portion of the county bounded by a line beginning at a point where State Primary Highway 23 intersects the Edgefield-McCormick County line, thence east along said highway to its intersection with State Secondary Highway 10, thence southeast along said highway to its junction with U.S. Highway 25, thence southeast along said highway to its junction with State Primary Highway 19, thence southeast along said highway to its intersection with Edgefield-Aiken County line, thence southwest along said county line to its junction with the Savannah River, thence northwest along said river to its junction with the Edgefield-McCormick County line, thence north along said county line to the point of beginning." This document expands the area designated as an imported fire ant generally infested area by designating all of Edgefield County as an imported fire ant generally infested area.

Previously, only the following portion of Ellis County in Texas, was included

as an imported fire ant generally infested area: "That portion of the county lying north of U.S. Highway 287 including the cities of Midlothian and Ennis, but excluding the city of Waxahachie." This document expands the area designated as an imported fire ant generally infested area by designating all of Ellis County as an imported fire ant generally infested area.

Previously, only the following portion of Hill County in Texas, was included as an imported fire ant generally infested area: "That area within a circle having a radius of 4 miles with the center where State Highway 22 intersects U.S. Highway 77 at the most northern point." This document expands the area designated as an imported fire ant generally infested area by designating all of Hill County as an imported fire ant generally infested area.

Previously, only the following portion of Navarro County in Texas, was included as an imported fire ant generally infested area: "That area within a circle having a radius of 3 miles with the focal point at the intersection of Texas Highway 31 and Farm to Market Road 1129." This document expands the area designated as an imported fire ant generally infested area by designating all of Navarro County as an imported fire ant generally infested area.

Previously, only the following portion of Upshur County in Texas, was included as an imported fire ant generally infested area: "That portion of the county lying south of a line beginning where State Highway 154 intersects the Wood-Upshur County line, thence easterly along said highway to its intersection with State Highway 155, thence northeasterly along said highway to its intersection with the Upshur-Marion County line where the line ends, including the city of Gilmer." This document expands the area designated as an imported fire ant generally infested area by designating all of Upshur County as an imported fire ant generally infested area.

Previously, only the following portion of Wood County in Texas, was included as an imported fire ant generally infested area: "That portion of the county lying south of the city limits of Alba, State Highway 182 and State Highway 154, but excluding the cities of Alba and Quitman." This document expands the area designated as an imported fire ant generally infested area by designating all of Wood County as an imported fire ant generally infested area.

Recent surveys conducted by inspectors of the United States Department of Agriculture and officials of State agencies establish that the imported fire ant has spread to such areas in South Carolina and Texas added to the list of imported fire ant generally infested areas. Also, eradication of the infestation is not undertaken as an objective in these areas. Therefore, as an emergency measure, it is necessary to add areas as imported fire ant generally infested areas and impose restrictions on the interstate movement of regulated articles from these areas in order to prevent the artificial spread of the imported fire ant.

Executive Order 12291 and Regulatory Flexibility Act

This interim rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this interim rule will have an estimated annual effect on the economy of approximately $5,000; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause 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.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from specified areas in the States of South Carolina and Texas. There are thousands of small entities that move such articles interstate from South Carolina and Texas and many more thousands of small entities that move such articles interstate from other States. However, based on information compiled by the Department, it has been determined that approximately 72 small entities move such articles interstate from the specified areas in those States. Further, the overall economic impact from this action is estimated to be approximately $5,000.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and 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; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Imported fire ant, Plant diseases, Plant pests, Plants (Agriculture), Quarantines, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Under the circumstances described above, the "Imported Fire Ant" quarantine and regulations (contained in 7 CFR 301.81 *et seq.*) is amended as follows:

1. The authority citation for Part 301 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162 and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.81–2a, relating to the States of South Carolina and Texas the following descriptions for generally infested areas are amended by revising the entry for Edgefield County in South Carolina, and revising the entries for Ellis, Hill, Navarro, Upshur, and Wood Counties and adding the entire county of Live Oak County in Texas, in alphabetical order to read as follows:

§ 301.81–2a Regulated areas; suppressive and generally infested areas.

* * * * *

South Carolina

(1) *Generally infested areas.*

* * * * *

Edgefield County. The entire county.

* * * * *

Texas

* * * * *

Ellis County. The entire county.

* * * * *

Hill County. The entire county.

* * * * *

Live Oak County. The entire county.

* * * * *

Navarro County. The entire county.

* * * * *

Upshur County. The entire county.

* * * * *

Wood County. The entire county.

* * * * *

Done at Washington, D.C., this 21st day of August 1985.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-20287 Filed 8-23-85; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Stabilization and Conservation Service

7 CFR Part 760

Dairy Indemnity Payment Program

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the Dairy Indemnity Payment Program Regulations to extend the operation of the program through September 30, 1985 and to set forth the final date when applications for assistance under the program must be submitted for fiscal year 1985.

EFFECTIVE DATES: This regulation shall become effective August 26, 1985.

FOR FURTHER INFORMATION CONTACT: Clarence Domire, Agricultural Program Specialist, Emergency Operations and Livestock Programs Division, ASCS, USDA, South Building, Room 4095, Washington, D.C. 20013; (202) 447-7673.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 760) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control No. 0560-0045.

This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified as "not major." This rule has been classified as "not major" since it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or 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 export markets.

The title and number of the Federal assistance program to which this rule applies are: Title—Dairy Indemnity Payments, Number—10.053, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Agricultural Stabilization and Conservation Service is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

The Dairy Indemnity Payment Program was originally authorized by section 331 of the Economic Opportunity Act of 1964 (78 Stat. 508). The statutory authority of the program has been extended several times, most recently by the Agriculture and Food Act of 1981 (95 Stat. 1220) which authorized the program to be carried out through September 30, 1985. The objective of the program is to indemnify dairy farmers and manufacturers of dairy products who, through no fault of their own, suffer income losses on milk or milk products removed from commercial markets because such products contain certain harmful residues. In addition, dairy farmers can also be indemnified for income losses on milk required to be removed from commercial markets due to residues of chemicals of toxic substances or contamination by nuclear radiation or fallout.

The Agriculture and Food Act of 1981 made no substantive changes with respect to the Dairy Indemnity Payment Program but merely extended the time period for conducting the program. The sum of $100,000 was appropriated to cover fiscal year 1984 and 1985 claims under the program. Of this amount, approximately $40,000 will be used to pay fiscal year 1984 claims. This leaves $60,000 remaining for the payment of fiscal year 1985 claims. The regulations currently authorize the operation of the program through September 30, 1984. Accordingly, it is necessary to amend these regulations to provide that the program will be carried out through the end of the fiscal year (i.e., September 30, 1985).

Program funds which are appropriated for a specific fiscal year must be obligated by the end of that fiscal year, or returned to the U.S. Treasury. Since the statute which authorizes the Dairy Indemnity Payment Program expires on September 30, 1985, and no funds are available beyond fiscal year 1985 to pay claims under the program; it has been determined that all applications for payment for fiscal year 1985 claims must be filed no later than October 7, 1985, for losses incurred through September 30, 1985. The regulations have been amended accordingly.

Since the only purpose of this final rule is to make technical amendments to the regulations to extend the operation of the Dairy Indemnity Payment Program, through September 30, 1985 and to set forth the final date (i.e., October 7, 1985) when applications for assistance under the program must be submitted for fiscal year 1985 claims, it has been determined that no further public rulemaking is required. Therefore, these regulations shall become effective upon date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 760

Bees, Dairy Products, Honey, Indemnity payments, Pesticides and Pests.

PART 760—[AMENDED]

Final Rule

Accordingly, the regulations at 7 CFR Part 760 are amended as follows:

1. The authority citation for Part 760 continues to read:

Authority: Secs. 1, 2, and 3, 82 Stat. 750, as amended (7 U.S.C. 450j, k, and l).

§ 760.2 [Amended]

2. In Section 760.2, paragraphs (k) (1) and (2), (l), and (o) are amended by striking out "1984" and inserting in lieu thereof "1985".

§ 760.8 [Amended]

3. Section 760.8 is amended by striking out "December 31, 1984" and inserting in lieu thereof "October 7, 1985".

Signed at Washington, D.C. on August 19, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85-20244 Filed 8-23-85; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-20-AD; Admt. 39-5125]

Airworthiness Directives; Cessna Models U206F, U206G, TU206F, TU206G, 207, T207, 207A, and T207A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) applicable of Cessna Models U206F, U206G, TU206F, TU206G, 207, T207, 207A, and T207A airplanes which requires inspection of the inboard end on replacement wings or rear spars (full spar or inboard end) to determine if a doubler had been installed during manufacture. If the doubler is not installed, corrective action is required to prevent possible failure of the wing rear spars.

DATES: Effective date: September 30, 1985.

Compliance: within the next 100 hours time in service after the effective date of this AD.

ADDRESSES: Cessna Single Engine Service Bulletin SEB 85-9 dated May 3, 1985, applicable to this AD may be obtained from Cessna Aircraft Company, Post Office Box 1521, Wichita, Kansas 67201. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas W. Haig, Aerospace Engineer, FAA, ACE-120W, 1801 Airport Road, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspection of the inboard end of certain Cessna 206 and 207 series airplane replacement wings or rear spars was published in the **Federal Register** on June 18, 1985 (50 FR 25253). The proposal resulted from the manufacture of wing rear spars for spare parts in which the manufacturer inadvertently failed to install a doubler on the inboard end. Static tests revealed that such spars could not hold the required ultimate load. Therefore, it is necessary to inspect and repair as appropriate the rear spar on those affected aircraft that have had the full spar or the inboard end of the spar replaced. Inspection and repair procedures are called out in Cessna Single Engine Service Bulletin SEB85-9 dated May 3, 1985. Since the condition described herein is likely to exist or develop in other Cessna Models U206F, U206G, TU206F, TU206G, 207, T207, 207A, and T207A airplanes of the same design, the proposed AD requires inspection of replacement wings or rear spars (full spar or inboard end) of these airplanes for a missing doubler and repair, as necessary per Cessna Single Engine Service Bulletin SEB85-9.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

There are approximately 3716 airplanes affected by this AD. The FAA estimates that approximately 12 of these airplanes may have to be modified. The cost of accomplishing this AD on these 12 airplanes is estimated to be $630 per airplane. The total cost of inspecting all 3716 airplanes and the modification of approximately 12 airplanes is estimated to be $137,620. The cost is so small that compliance with the proposal will not have a significant financial impact on any small entities owning affected airplanes.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. 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 Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Cessna: Applies to the following Cessna airplanes certificated in any catgegory:

Model and Serial Number

U206F/TU206F—S/N U20601071 thru U20603521
U206G/TU206G—S/N U20603522 thru U20604649
207/T207—S/N 20700001 thru 20700315
207A/T207A—S/N 20700316 thru 20700767

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD unless already accomplished.

To prevent a possible failure in the wing rear spar on airplanes that have had the full spar or inboard end of the spar replaced, accomplish the following:

(a) Visually inspect the airplane in accordance with Cessna Single Engine Service Bulletin SEB85-9 dated May 3, 1985. If the P/N 1222111-1 doubler is missing, prior to further flight repair the spar in accordance with SEB85-9.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent method of compliance with this AD may be used if approved by Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the document referred to herein upon request to Cessna Aircraft Company, Post Office Box 1521, Wichita, Kansas 67201 or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on September 30, 1985.

Issued in Kansas City, Missouri, on August 16, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85-20262 Filed 8-23-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-CE-30-AD; Amt. 39-5126]

Airworthiness Directives; Empresa Brasileria De Aeronautica S.A. (Embraer) Models EMB-110P1 and EMB-110P2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Embraer Models EMB-110P1 and EMB-110P2 airplanes, which requires inspection and replacement of the elevator control rod tubes. There have been two reports of failure of the elevator control rod tube on aircraft with aluminum control rod tubes. The AD is needed to prevent failure of the elevator control rod tube which could result in loss of control of the airplane.

DATES: Effective Date: August 30, 1985.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Embraer Service Bulletin No. 110-27-076, Revision 01, dated July 2, 1985, applicable to the AD, may be obtained from Empresa Brasileira de Aeronautica S.A. (Embraer) Post Office Box 343-CEP 12.200 Sao Jose dos Campos, Sao Paulo, Brazil. Copies of the Service Bulletin are contained in the Rules Docket, FAA, Office of the Regional Counsel, Attention: Rules Docket No. 85-CE-30-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106, and in the Central File Room, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis A. Jackson, ACE-120A, Atlanta Aircraft Certification Office, Central Region, Federal Aviation Administration, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION: There have been two reports of failure of the elevator control rod tube on Embraer Models EMB-110P1 and EMB-110P2 airplanes which could result in loss of control of the airplane. One failure was caused by corrosion and the other by vibration induced by a failed elevator trim tab rod. As a result, Embraer has issued Service Bulletin 110-27-076, Revision 01, which provides instructions for the inspection and replacement of the elevator control rod tubes. The Centro Tecnico Aeroespacial (CTA) who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Brazil has classified this Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Brazilian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CTA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Service Bulletin No. 110-27-076, Revision 01, and the mandatory classification of this Service Bulletin by the CTA. Based on the foregoing, the FAA has determined that the condition described therein is unsafe and may exist on all Embraer Models EMB-110P1 and EMB-110P2 airplanes certificated for operation in the United States.

Therefore, an AD is being issued requiring inspection and replacement of the elevator control rod tubes on these airplanes.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Empresa Brasileria De Aeronautica S.A. (Embraer): Applies to Models EMB-110P1 and EMB-110P2 (all serial numbers) airplanes certificated in any category which have aluminum elevator control rod tubes installed.

Compliance: Required as indicated, unless already accomplished.

To prevent failure of the elevator control rod tube, accomplish the following:

(a) Within the next 50 hours time-in-service after the effective date of this AD, visually inspect the elevator control rod tubes, P/N 4A-500-10-09-01, for evidence of corrosion or cracks. If corrosion or cracks are found, prior to further flight replace the control rod tube in accordance with Embraer Service Bulletin (S/B) No. 110-27-076, Revision 01, dated July 2, 1985.

(b) Within 150 hours time-in-service or 30 (thirty) days, whichever occurs first, after the effective date of this AD, replace both left and right elevator aluminum control rod tubes P/N 4A-500-10-09-01 with steel control rod tubes P/N 110-500-10-00-04-01. Reidentify the elevator control rod assembly with the new P/N 110-500-10-00-09.

(c) Airplanes may be flown in accordance with Federal Aviation Regulation 21.197 to a location where the Ad may be accomplished.

(d) An equivalent method of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, FAA, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7428.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Embraer, Post Office Box 343 CEP 12.200 Sao Jose Dos Campos, Sao Paulo, Brazil, or FAA, Office of Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on August 30, 1985.

Issued in Kansas City, Missouri, on August 16, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85-20263 Filed 8-23-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 76-CE-6-AD; Amdt. 39-5124]

Airworthiness Directives; Cessna Models 210, 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, T210F, T210G, T210H, and T210J Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 76-14-07 Amendment 39-2778 applicable to Cessna Models 210, 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, T210F, T210G, T210H, and T210J airplanes to permit the use of newly designed main landing gear saddles on certain models. This revision will thus provide an alternate means of compliance with AD 76-14-07.

DATE: *Effective Date:* September 27, 1985.

Compliance: As prescribed in the body of the AD.

ADDRESS: Parts availability information may be obtained from the Cessna

Aircraft Corporation Customer Service, P.O. Box 1521, Wichita, Kansas 67201.

FOR FURTHER INFORMATION CONTACT:
Mr. Douglas W. Haig, Aerospace Engineer, FAA, ACE-120W, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone 316-946-4409.

SUPPLEMENTARY INFORMATION:
Airworthiness Directive 76-14-07 Amendment No. 39-2778 applicable to certain Cessna Model 210 series airplanes requires inspection and/or replacement of the mail landing gear saddle. Subsequent to the issuance of this AD, the manufacturer designed new main landing gear saddles identified by part numbers 1294151-1 and 1294151-2 applicable to the Models 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, T210F, T210G, T210H, and T210J airplanes. Therefore, the FAA is revising AD 76-14-07 to allow the use of the new style main landing gear saddles.

This amendment updates the AD by incorporating presently available information or corrective action, providing an equivalent level of safety which was not available to the FAA at the time of original issuance. It imposes no additional burden on any person. Therefore, notice and public procedure hereon are unnecessary and contrary to the public interest.

The FAA has determined that this document involves an amendment which provides an alternative means of compliance consistent with current improved parts replacement. 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). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By revising AD 76-14-07 as follows:

Revise paragraph F. to read as follows:

An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4400.

Add paragraph G. as follows:

Installation of main landing gear saddles part numbers 1294151-1 and 1294151-2 in lieu of part numbers 1241423-1 and 1241423-2 constitutes an equivalent means of compliance for this AD.

This amendment revises AD 76-14-07, Amendment 39-2778.

This amendment becomes effective September 27, 1985.

Issued in Kansas City, Missouri, on August 13, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85-20363 Filed 8-23-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 84F-0040]

Indirect Food Additives: Paper and Paperboard Components

Correction

In FR Doc. 85-18181 appearing on page 31165 in the issue of Thursday, August 1, 1985, make the following correction:

In the third column, in the "**Authority**", first line, "202" should read "201".

BILLING CODE 1505-01-M

VETERANS ADMINISTRATION

38 CFR Parts 1 and 3

Adjudication of Claims Based on Exposure to Dioxin or Ionizing Radiation

AGENCY: Veterans Administration.

ACTION: Final rules.

SUMMARY: The Veterans Administration (VA) has adopted the following regulations to implement the "Veterans' Dioxin and Radiation Exposure Compensation Standards Act," Pub. L. 98-542 (Oct. 24, 1984). The Act required that the VA conduct rulemaking regarding its guidelines for the adjudication of compensation claims based upon disabilities or deaths of certain veterans who, while in military service, were exposed to ionizing radiation or herbicides containing dioxin. The stated purpose of the Act is to ensure compensation for "veterans who were exposed during service in the Armed Forces in the Republic of Vietnam to a herbicide containing dioxin or to ionizing radiation in connection with atmospheric nuclear tests or in connection with the American occupation of Hiroshima or Nagasaki, Japan, for all disabilities arising after that service that are connected, based on sound scientific and medical evidence, to such service."

DATES: These rules are effective September 25, 1985, with the exception of § 3.813 which is effective October 1, 1984, as required by law.

FOR FURTHER INFORMATION CONTACT:
Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits (202) 389-3005.

SUPPLEMENTARY INFORMATION: On pages 15848 through 15855 of the **Federal Register** of April 22, 1985, the VA published proposed amendments to title 38, Code of Federal Regulations, on the adjudication of claims based on exposure to dioxin or ionizing radiation. Included in those proposed amendments were a new § 1.17 on evaluation of studies relating to health effects of dioxin and radiation exposure, a revision of § 3.102 giving the benefit of reasonable doubt to claimants, and new §§ 3.311a, 3.311b and 3.813 dealing with claims based on dioxin exposure, claims based on radiation exposure and claims for interim benefit. Interested persons were given until July 22, 1985, to submit comments, suggestions or objections to the proposed rules.

The VA received a number of comments on these proposed rules from a variety of sources. The commenters included the Chairman and the Ranking Minority Member of the House Veterans' Affairs Committee, the Ranking Minority Member of the Senate Veterans' Affairs Committee, the junior Senator from Massachusetts, the Congressman from the Eighth District of Georgia, the Congressman from the Fourth District of Massachusetts, the U.S. Army and Joint Services Environmental Support Group, the Department of Justice, the Defense Nuclear Agency, the Environmental

Protection Agency, the Federal Emergency Management Agency, the Nuclear Regulatory Commission, the Department of the Navy, The Public Health Service, The Cabinet Council Agent Orange Working Group, Paralyzed Veterans of America, American Veterans of World War II, Korea and Vietnam, Veterans of Foreign Wars of the United States, Disabled American Veterans, The American Legion, National Association of Radiation Survivors, National Association of Atomic Veterans, Vietnam Veterans of America, American Ex-Prisoners of War, Military Order of the Purple Heart, American College of Radiology, American Board of Health Physics, the Advisory Committee on Former Prisoners of War, an epidemiologist from the School of Public Health at the University of California, Berkeley, Office of Commissioner of Veterans Services for Massachusetts, and seven members of the general public.

The VA has also received recommendations from the Veterans' Advisory Committee on Environmental Hazards (and the Scientific Council thereof) with respect to the proposed rules. Because its first meeting could not be held until April 22, 1985, the Environmental Hazards Committee did not participate in development of the proposed rules. The Committee did, however, review the proposed rules after publication and has made recommendations which were considered together with other comments in development of the final rules as required by Pub. L. 98-542.

The comments and recommendations with respect to each proposed rule have been summarized and are set forth below together with the actions and/or responses of the VA.

Comments and Recommendations

Section 1.17 Study evaluations.

One commenter strongly urged that specific standards be established and published to "ensure that all diseases that may be associated with dioxin will be evaluated in a uniform, consistent manner," noting that "other federal agencies have been using specific standards to evaluate scientific evidence concerning the health risks associated with chemicals like dioxin." The commenter further recommended that the VA use such "risk assessment principles" rather than establishment of cause and effect in determining the relation between exposure to dioxin and diseases.

The concept of risk assessment does not intrinsically differ from a cause-and-effect analysis. Risk assessment allows for a quantification of the possibility or probability that a given effect is attributable to a past event, or that a present event will give rise to a future consequence. Hence we do not regard this comment as setting forth a useful distinction.

The proposed VA regulations are intended to be workable guidelines that fulfill the intent of Pub. L. 98-542, which deals with determining the connection between present disabilities and past exposures rather than regulation of future exposures. It is possible to be much more consistent in applying principles of risk assessment where the possible future consequences of current exposure are estimated, usually in order to appropriately reduce or eliminate the exposure and thereby to control its consequences. The two situations are roughly analogous to the court procedure that determines the relation between present consequences and past acts on the one hand and, on the other, the evaluation of a hazardous condition in order to eliminate it by law or regulation and so to avoid future harm.

The Environmental Hazards Committee recommended that the words "statistically and epidemiologically valid" be substituted for the words "statistically significant" in proposed § 1.17(b)(1). The Committee noted that a study may present statistically significant findings and still not be a valid study. In this regard the Committee believed that statistical and epidemiological validity provided a better guideline for use in evaluating scientific studies.

The VA understands the rationale of the Committee in making this recommendation but notes the language of section 5(b)(1)(A) of Pub. L. 98-542 which requires the Administrator, in evaluating scientific studies, to take into account whether study results are statistically significant. Because statistical and epidemiological validity is not synonymous with statistical significance, the VA cannot adopt the recommended substitution. However, the statistical and epidemiological validity of a study's findings can be included in the views of the appropriate panel of the Committee's Scientific Council and, in that way, receive consideration under § 1.17 as proposed.

The Committee noted that the words "statistically significant" were also contained in the definitions of "sound scientific evidence" in proposed §§ 3.311a(a)(3) and 3.311b(c)(3) and recommended the same substitution of the words "statistically and epidemiologically valid." Since the content of these definitions is not mandated by law, we have appropriately amended the affected sections to implement the Committee's recommendation.

One commenter suggested that the term "statistical significance" should be defined in this rule while others suggested that the terms "statistical significance" and "peer review" should not be used to evaluate adjudication procedures and that they were simply additional methods for denying claims. These terms apply to the evaluation of scientific and medical studies and not to the adjudication of individual claims. The terms are well-understood by the scientific and medical communities as well as by those charged with the responsibility for evaluating the results of studies. The meaning of these terms was discussed in the preamble of the proposed rule and need not be repeated here nor included in the final rule.

One comment was to the effect that the rules should set "specific standards for evaluating studies," and specify a formula against which results of studies can be measured in order to determine if evidence is sufficient to justify findings of service-connection. It was suggested this would lend credibility to the process, and that the law requires no less.

The new law requires that, in general, these regulations include "guidelines and (where appropriate) standards and criteria." More specifically, with respect to study evaluations, the law requires issuance of "guidelines." Specific standards are not required, and would be inappropriate.

The proposed rule lists 5 factors to be considered in evaluating studies. To convert these to hard standards would require assignment of both rigid tolerance limits and specific relative weights to each factor. Such an all-purpose formula would not permit the necessary flexibility that reasoned policy-making requires. For example, in certain cases it may be extremely important that the differences between study and control groups are "statistically significant," but in others less so if, for example, the findings are not particularly "applicable to the veteran population of interest." Also, creating a hard formula in an informational vacuum would be extremely unwise. If, for example, a decision were now made to recognize as service-connected any diseases which studies show appear with a 10 percent greater frequency among veterans exposed to certain herbicides, should a decision to award benefits be foreclosed if evidence eventually shows only an 8 or 9 percent greater incidence? Certainly

other factors, including the severity of the resulting disablement, must come into play in making those sorts of policy choices.

It was recommended that VA apply its "reasonable doubt" policy to the evaluation of studies. The reasonable doubt policy, discussed in the next section, has always been a rule of claims adjudication. While we consider that sound scientific findings should be applied in the manner most beneficial to claimants, it would not be appropriate to assess the soundness of data in the manner proposed.

Section 3.102 Reasonable doubt policy.

We also received several comments on the proposed reformulation of the "reasonable doubt" rule, 38 CFR 3.102. One comment expressed concern that the revision would tend to shift the burden of proof to the claimant, especially in view of certain deletions. Another requested retention of the current characterization of the term "reasonable doubt." Several objected to the deletion of a reference to the rule's applicability in cases where official records cannot be located. Most of these commenters urge complete retention of the rule's current text so as not to impair the "working understanding" of the reasonable doubt rule that has developed over time. With one minor clarifying modification, we have decided to retain the current text of § 3.102 as urged by these commenters.

As observed in the Notice of Proposed Rulemaking, restatement of the "reasonable doubt" policy was proposed in keeping with the congressional reformulation of section 2(13) of Pub. L. 98–542. Review of the regulatory history of the "reasonable doubt" policy confirms our view that section 2(13) is a precise and coherent statement of this policy. The "reasonable doubt" policy goes back to the post-Civil War era when determining the extent of a veteran's disability—today called "rating"—was done on a case-by-case basis by Bureau of Pension physicians without reference to uniform guidelines such as now appear in the Rating Schedule (38 CFR Part 4). For example, in an 1899 Bureau of Pension report, this statement appears: "[s]o far as it was permissible under the laws as they exist and the established practice of the Bureau, the benefit of any doubt has been resolved in favor of the claimant." Report of Medicine Division, Bureau of Pensions, July 26, 1899.

Following World War I, rating schedules were promulgated. The earliest schedule of which we have record is dated September 22, 1921, and its preface contains this statement: "The law must be administered by its broadest interpretation and ratings of disability should be made as generous as possible in consistency with the facts. Wherever a question of doubt arises the benefit of such doubt must be given to the claimant." The preface goes on to explain the policy's application in two situations, rating and determining service connection. In rating, if the medical evidence points to two possible ratings, the higher should be assigned until it is clearly shown not to be justified. (We continue this rule today, *see* 38 CFR 4.7.) In determining service-connection, even though a disability is not clearly established as of service origin, it should be so considered if this would be reasonable in the light of medical experience and judgment.

In 1924, the foundation for the present text of § 3.102 was laid in a Veterans Bureau General Counsel opinion involving a World War I veteran who has applied for compensation for a psychoneurotic disability. There was credible evidence for and against the claim. The General Counsel outlined the "benefit of the doubt" policy and explained it was not to be applied if the truth could be established by a preponderance of the evidence; on the other hand, proof "beyond a reasonable doubt" was never required. In 1930, the policy statement appearing in the schedule for Rating Disabilities for that year was revised to reflect the General Counsel opinion. As so revised, it was the predecessor of 38 CFR 3.102.

These commenters suggest that, because Congress did not specifically mandate this revision, it should not be made. Section 5(a)(2) of Pub. L. 98–542 requires these new regulations to include provisions that ensure, with respect to exposure claims, that "the policy of the United States described in section 2(13) (of Pub. L. 98–542) is carried out." This is an express directive to include in the new regulations assurance that this policy applies to these claims. This could be accomplished either by restating the policy in the new regulations or providing a cross-reference to 38 CFR 3.102. The latter means, being simpler, was selected. To avoid two separate formulas for the same policy, revision of § 3.102 was proposed. No substantive change in the policy was intended. Rather, we hoped that simplifying the rule's text would help to avoid misconception and misuse. Among other matters, § 3.102 states that information in support of a claim must be sufficient to persuade an impartial person of its validity. This is a common-sense rule of thumb that differs sharply from the degree of evidence required for a criminal conviction. When claims are denied, however, the Agency is sometimes wrongly charged with requiring proof "beyond a reasonable doubt." Other times the claimant, on appeal, urges application of the reasonable doubt policy to his or her claim even though the claim was denied for a clear lack of sufficient evidence to support it.

As indicated above, we have determined to retain § 3.102's present text with one clarification. This clarification provides a guideline as to when the reasonable doubt policy is to be followed. In situations where the evidence for or against the claim is clearly preponderant, this policy does not apply. It should be carefully adhered to, however, when there is credible evidence on both sides of a material issue.

This modification should not be interpreted as "shifting the burden of proof" to the claimant.

The adjudication process at the VA is a truth-finding process in which both the claimant and the Agency have responsibility for locating and developing evidence pertinent to the claim, *see* 38 CFR 3.103(a). The concept of "burden of proof" in the courtroom sense is inconsistent with the nonadversarial, *ex parte* nature of VA adjudicatory proceedings.

One commenter objected to the revised rule and also proposed certain additions to the current text. First, it was suggested adjudicators should be required to accept a veteran's testimony as evidence. Second, it was contended that a veteran's unsupported testimony, if credible, should be accepted as dispositive if there is no "credible, contradictory, authenticated documentary" evidence in opposition. Neither suggestion requires changes in current regulations. Under VA rules, claimants' testimony is considered evidence and is part of the evidentiary record under 38 CFR 3.103(c). Second, nothing in current VA rules precludes the awarding of benefits based upon credible testimonial evidence.

Section 3.311a Dioxin rule

One commenter stated that "sufficient data exists for the identification of veterans exposed to dioxin" and that requests for certification of dioxin exposure should be forwarded to the Department of Defense in a manner similar to the procedures for requesting radiation dose information. The VA's longstanding policy of presuming dioxin exposure in the cases of veterans who served in the Republic of Vietnam

during the Vietnam era is based on the many uncertainties associated with herbicide spraying during that period which are further confounded by lack of precise data on troop movements at the time. While it may be possible to approximate areas where herbicides were sprayed, it would be extremely difficult to determine with an acceptable degree of precision whether an individual veteran was exposed to dioxin. Accordingly, the policy of presumed exposure as stated in § 3.311a(b) will remain unchanged.

Other commenters suggested that, in order to avoid misinterpretation by rating boards, the term "sound medical and scientific evidence" should be clarified relative to the term "sound medical principles" because the latter was a cornerstone of claims adjudication. While the term "sound medical principles" may have been used in other VA publications on claims adjudication, we have been unable to identify that precise term elsewhere in 38 CFR Part 3 (except in the limited context of tuberculosis cases). For that reason, and because the terms "sound medical evidence" and "sound scientific evidence" are clearly defined in §§ 3.311a and 3.311b, we do not believe that rating boards will misinterpret them.

One suggestion was made that a paragraph be added to make clear that service-connection is a temporal, rather than causal, relationship. However, there are both temporal and causal components of any finding of service-connection.

The temporal relationship which must be shown is that injury or disease was incurred or aggravated coincident in time with a veteran's military service. (Statutory presumptions make this literally unnecessary in certain cases.) There must, however, also be a showing that disability or death resulted from—was caused by—such an injury or disease. Strictly speaking, it is not injuries or diseases which are service-connected, but the disabilities or deaths resulting therefrom.

Thus, where it is shown that a veteran was exposed to potentially injurious radiation in service, and it is contended cellular injury sustained at that time gave rise to development of cancer after a latent period of perhaps 10 years, the question of causation of the disease and resulting disability or death by the insult or injury becomes the central issue. Accordingly, this suggestion has not been adopted.

Additional comments indicated a preference for affirmative wording in §§ 3.311a(c) and (d) with regard to diseases which may or may not result from dioxin exposure in order to avoid confusion and to eliminate the necessity for § 3.311a(g). While we endeavor to couch our regulatory amendments in positive terms, where appropriate, there are instances when negative language is more desirable. For example, sound medical and scientific evidence has not established a relationship between porphyria cutanea tarda (PCT) and dioxin exposure. That is a negative fact and should be stated in the negative. This does not mean that service connection cannot be established for PCT on other grounds, and it is precisely for that reason that § 3.311a(g) was proposed. The thrust of this comment was that rating boards should be alert to other rules by which service-connection can be established. We are in complete agreement and will include a cross-reference to paragraph (g) at the end of paragraph (c). For additional emphasis we will include a specific paragraph on this subject in the transmittal sheet that will accompany these regulations when they are sent to adjudication personnel.

In this same vein three commenters and the Veteran's Advisory Committee on Environmental Hazards were concerned that some claims of service-connection for chloracne may be prejudiced by an initial misdiagnosis within the applicable three-month period. This situation is already covered by 38 CFR 3.307(c) which provides authority to reconsider earlier manifestations of a disease once a definite diagnosis is established. To further emphasize this point, however, a cross-reference to § 3.307(c) will be included in § 3.311a(c), and details will be provided in the regulations transmittal sheet to alert adjudication personnel to the existing regulatory provisions that permit a skin condition, initially misdiagnosed, to be considered as a *manifestation* of a later diagnosed case of confirmed chloracne.

One commenter suggested the three-month period should be extended to one year because of the in-service diagnostic uncertainties. A veteran incurring chloracne within one year of departure from Vietnam would be eligible for interim benefits under new § 3.813, if disabled. We will take this comment under advisement pending a review of our claims experience under § 3.813.

A commenter who is a scientist, and others who are not, objected that the **Federal Register** notice of proposed rulemaking did not report fully all information and scientific investigations of the possible relationship between phenoxy herbicide exposure and soft tissue sarcomas. They imply that a cause-and-effect relationship has been demonstrated. In addition, these commenters would add malignant lymphoma to the list of conditions they believe can result from phenoxy herbicide exposure, as well as soft-tissue sarcomas developing within 20 years of exposure.

Although not all the investigations mentioned by these commenters were discussed in the Preamble to the notice of proposed rulemaking, all published studies bearing on the issues of concern and other information were carefully considered in the development of the proposed regulations. In addition, the Environmental Hazards Advisory Committee agrees with the Administration's conclusion that the "jury is still out" concerning a causal association between dioxin exposure and cancer such as soft tissue sarcomas and malignant lymphoma.

Review by the Advisory Committee and the Administration of studies like those referred to by the commenters will continue. If, at a later time, sound medical and scientific evidence supports inclusion of soft tissue sarcomas and/or malignant lymphoma, amendment of these regulations will promptly follow.

Four commenters also recommended that porphyria cutanea tarda be included among diseases caused by dioxin, but advert to no evidence not previously considered. Review of the available information does not now disclose sound medical and scientific evidence sufficient to justify that inclusion. As with the malignancies, later information will be carefully evaluated and these regulations amended as warranted.

Section 3.311b Radiation rule.

Comments were received indicating that the VA was proposing a more restrictive rule with regard to radiation dose estimates than that previously in effect. Whereas the prior rule specified a policy of conceding the highest exposure level reported by the Department of Defense when a range of doses was supplied or estimated for the veteran's unit or when the overall estimated exposure level of the veteran's unit exceeded the documented reading for the veteran, proposed § 3.311b(a) provides simply that dose data will be obtained from the Department of Defense.

VA's proposed rule was published before it was known how the Defense Nuclear Agency (DNA) would modify its procedures for reporting exposure and dose information to the VA. Pub. L. 98-542 required DNA to issue regulations containing requirements for the uniform reporting of dose estimates to the VA. Under regulations proposed on May 9,

1984 (50 FR 19538–39), DNA will report to the VA upon request a veteran's recorded radiation exposure or, if recorded dosimetry data is unavailable or incomplete, the dose reconstruction for the most probable dose, with error limits, if available. In most cases, therefore, under DNA's proposal a single value for a veteran's radiation exposure level will be reported. There will, however, be situations where information sufficient for dose reconstruction cannot be obtained and DNA will furnish the VA a range of doses to which the veteran may have been exposed given the circumstances of the exposure which can be ascertained. In such cases the VA will maintain its present policy of presuming exposure at the highest level of any dose range reported by DNA. Accordingly, we have amended proposed § 3.311b(a) to incorporate this policy.

Objections were also raised with regard to the provisions of proposed § 3.311b(b) which call for review, by the Chief Medical Director of radiation claims meeting the initial review criteria. This referral was said to be tantamount to a transfer of rating jurisdiction from the Department of Veterans Benefits to the Department of Medicine and Surgery.

While no such transfer of jurisdiction was contemplated, we recognize a need to prevent any such misunderstanding. Accordingly, paragraphs (b), (c), (d) and (f) of § 3.311b have been appropriately amended to provide for referral of all claims meeting the initial review criteria to the Chief Benefits Director for further consideration with the option of requesting an advisory medical opinion from the Chief Medical Director. These changes will leave no doubt as to the jurisidiction of the Department of Veterans Benefits over service-connection determinations.

Two commenters pointed out that it cannot be assumed a veteran was not exposed in service just because a DD Form 1141 does not exist. We agree, and have revised § 3.311b(a)(2)(iii) to make clear that a search should be made for any records that may evidence exposure.

Comments were also received which questioned the periods of time in § 3.311b(b)(4) (i) and (ii) during which certain cancers must have become manifest in order to be further considered as having resulted from prior exposure to ionizing radiation. It was noted that under 38 U.S.C. 301 and 312, service-connection may be established for cancers which become manifest within one year of discharge from active duty and that under the proposed rule service-connection for leukemias and bone cancer could be denied if a veteran were discharged immediately following radiation exposure and developed one of those cancers more than one but less than two year later.

In addition, the Environmental Hazards Committee reviewed the epidemiologic basis for these time periods and, while it generally agreed they were adequate for most cases, recommended that further consideration of service-connection be accorded to leukemias (other than chronic lymphatic leukemia) and bone cancer which become manifest more than one year but less than thirty years after exposure, and that further consideration of service-connection be accorded to other radiogenic cancers (as defined in § 3.311b(b)(2)) which became manifest more than five years after exposure. Based on these comments and recommendations we have amended § 3.311b(b)(4) (i) and (ii) to provide further consideration of service-connection for leukemias (except chronic lymphatic leukemia) and bone cancer which become manifest within 30 years after radiation exposure and for other forms of radiogenic cancer which become manifest 5 years or more after exposure.

The period of 30 years after exposure within which leukemias must become manifest in order to be considered due to that exposure has been questioned. Data on the Japanese survivors indicate a pronounced decrease in the excess deaths from leukemia among the Japanese survivors by the end of the first decade after the nuclear bomb exposures. The rate fell further during the next decade, and thereafter the death rate was less than one per million person-year rad above that in the comparable Japanese population. The 30-year limit, therefore, seems reasonable, but the Advisory Committee will be asked to review this information.

Several commenters questioned the omission of polycythemia vera from the list of radiogenic diseases. Review of the reports from test "Smokey" and from Japan has been judged not to present sufficient evidence to warrant a conclusion that exposure to radiation encountered by American veterans resulted in the later development of polycythemia vera. The preliminary "letter" regarding the condition in British veterans contains incomplete information in a form that does not provide grounds for a sound decision. A second letter (E.G. Knox et al. Lancet, Oct. 8, 1983, pp. 856–857) by the same authors cautions, in the light of further data, "There is no longer an excess of reported deaths of RES neoplasms." Further information about these observations or other studies will be reviewed by the Advisory Committee and the Administration. These regulations will be amended promptly if the review establishes that this can be done on the basis of sound medical and scientific evidence.

Several recommendations were made to include other cancers as well as some non-cancerous diseases. On recommendation of the Advisory Committee, the Administrator has expanded the list of radiogenic cancers in the proposed regulation of April 22 (§ 3.311b(b)(2)) to include cancers of the esophagus, stomach, colon, pancreas, kidney, urinary bladder and salivary gland. The Committee did not advise expanding further the list of "radiogenic diseases" at present.

In light of the continuing study of nuclear blast survivors in Japan, however, multiple myeloma has also been included. The Advisory Committee will be asked to consider the addition of non-malignant thyroid nodular disease, posterior subcapsular cataracts and premature aging as radiogenic.

The Committee and the Administration will consider new information and the Administrator will amend the regulations to include additional diseases when sound medical and scientific evidence to do so is available.

A total of eight commenters urged the VA to consider individuals certified in the field of health physics as "credible sources" from whom claimants could obtain independent radiation dose estimates in support of their claims. One commenter also suggested that certifying groups would not describe themselves as "governing bodies." We concur with these comments and have appropriately amended § 3.311b(a)(3)(ii) to define "credible sources" as persons certified by an appropriate professional body in the field of health physics, nuclear medicine or radiology.

One commenter indicated that some individuals who are highly qualified to calculate dose estimates may not be certified by any group but should not be excluded from consideration as a "credible source." It was suggested that certification could be a qualifying factor but not a necessary one. Because the law requires independent dose estimates to be calculated by credible individuals, there is clearly a requirement that some restrictions be placed on the acceptability of the evidence that would automatically trigger referral to an independent expert selected by the Director of the National Institutes of Health. Nothing in the proposed rule precludes VA from

referring other estimates for reconciliation if that appears to be warranted, and we believe the definition, as amended, provides a wide variety of sources which claimants may employ to challenge official dose estimates.

Two comments were received which recommended that provision be made for permitting DoD to comment on the dose estimate from a claimant's "credible source" before the matter is submitted to NIH to reconcile material differences. The proposed rule also does not preclude that, and we believe it is unnecessary to make it a routine requirement. If it is clear from the two estimates that significantly different data or assumptions were employed, VA may request clarification from the estimator (either DoD or the unofficial source) of the underlying information. These differences are then to be reviewed by an independent expert. While the DoD estimate is always available to a claimant, and VA may request DoD's appraisal of the estimate supplied by the claimant's source, we believe it is unnecessary to routinely require review of either estimate.

The Scientific Council of the Veterans' Advisory Committee on Environmental Hazards recommended that the radioepidemiological tables developed by the Department of Health and Human Services be used as a starting point in considering claims but, in view of the uncertainties associated with the tables, should not be the final determinative in granting or denying service-connection. Use of the tables was supported by one other commenter.

The VA has formally requested the Committee on Interagency Radiation Research and Policy Coordination (CIRRPC) of the Federal Coordinating Council for Science, Engineering and Technology (FCCSET) to assess the utility of employing the tables in some fashion to adjudicate compensation claims. That assessment is expected to take several months. In addition, comments were received from veterans' groups and others expressing serious reservations about the formal adoption of the tables by VA, and some advocates for individuals exposed to ionizing radiation have recently testified strongly before Congress against use of the tables in adjudicating claims. We have decided to withhold final judgment on use of the tables until CIRRPC has made its assessment.

Several comments were received which were critical of the radiation dose data supplied to VA by the military services. Some even suggested it was so unreliable, in terms of underestimating the doses sustained, that it should not be used at all.

As the official repository for Government records concerning the military's participation in the atmospheric tests and occupation of postwar Japan, the Department of Defense (DoD) is in possession of invaluable dosimetry data of direct relevance to the issue of exposure. For several years, the Defense Nuclear Agency has been DoD's executive agent for the Nuclear Test Personnel Review program, a major function of which is to assist VA in verifying claimants' participation in the tests and supplying either film badge readings for them or estimates of doses when the former do not exist. The "NTPR" effort has also included a detailed research program to recover all data pertaining to possible exposure of the occupation forces.

VA would certainly be remiss if it did not routinely draw upon this storehouse of data in weighing the merits of claims filed by former participants. The Congress has tacitly acknowledged the propriety of this practice, and has specified in Pub. L. 98-542 what form the reported dose estimates from DoD should assume. The VA's proposed rule specifies that "known limitations in the dosimetry devices employed or the methodologies employed" in the dose estimation shall be taken into account, as will be dose estimates from other, credible sources. Thus, VA has not revised its proposed rule in response to these particular comments.

One commenter suggested that specific weights should be assigned to the factors for consideration in evaluating claims, and that the officials responsible for the initial review of the claims should be indentified. The former is not possible to do in any way that would be scientifically valid and afford VA the flexibility necessary to take into account facts unique to each claim. Also, because adjudication personnel at VA regional offices have responsibility for all initial reviews of claims for veterans' or survivors' compensation benefits, it is not necessary to specify that fact in this context.

Another commenter asked that VA refer claims to outside consultants for opinions even if it determines there is no reasonable possibility of a relationship between disability and exposure. This is unnecessary and would only tend to delay the disposition of clearly undeserving claims.

Another suggestion was made that more guidance is required with respect to the "willful misconduct" and "supervening cause" provisos in paragraph (g) of this rule. The former is already defined at 38 CFR 3.1(n), and the latter concept is also one with which adjudication personnel are already familiar (see 38 CFR 3.307(d)). Finally, the same commenter suggested that strict guidelines be established regarding claims-processing time. Because no two claims are alike, and the needs for evidentiary development and analysis vary so widely, this simply is not feasible for this or any other class of disability claims.

Another suggestion was made that VA require all claimants to be on a "radiation registry." VA has for some time maintained statistics with respect to all claims decided in which it has been contended that radiation exposure in service resulted in disability or death.

Two commenters suggested the rules should make clear that a claimant can appeal an adverse determination. The appeals process is already addressed elsewhere in VA regulations (see 38 CFR Part 19) which specify that all claimants are to be advised of their appellate rights.

Finally, with regard to the provisions for referral to outside consultants for additional medical opinions in some cases, it was suggested that the regulations be specific as to who shall pay such consultants, out of which appropriations payments will be made and how much the payments shall be. In addition, one agency expressed concern as to how the experts were to be compensated. These administrative details are covered by current budgetary procedures and are not appropriate for inclusion in adjudication regulations.

Section 3.813 Special interim benefits.

No comments, suggestions or objections were received with regard to this proposed rule.

Other Comments

One commenter expressed the opinion that some benefits should be available to the women and children who have suffered because of a veteran's exposure to dioxin or ionizing radiation. Public Law 98-542 does not, however, authorize direct benefits to the classes of persons about which the commenter was concerned. While there are no programs for compensating spouses and children directly because of a living veteran's service-connected disability, there is a program of dependency and indemnity compensation for surviving spouses and children of veterans who die as a result of service-connected disabilities, and there are additional allowances payable to living disabled veterans with eligible dependents.

All comments will be shared with the Veterans Advisory Committee on Environmental Hazards, including one relating to concerns about the committee's duties and functions.

We appreciate the comments and the suggestions of those concerned individuals and organizations that responded to publication of the proposed rules, and we acknowledge the significant contributions of the Veterans' Advisory Committee on Environmental Hazards in developing these final rules. The proposed rules are, therefore, adopted with the amendments noted above and minor conforming amendments of a technical nature. The final rules are set forth below.

Regulatory Evaluations

The Administrator hereby certifies that these regulations do not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulations impose no regulatory burdens on small entities, and only claimants for VA benefits will be directly affected.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these proposed regulations are non-major for the following reasons:

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

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

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

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans, Veterans Administration.

(The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110)

Approved: August 20, 1985.

Harry N. Walters,

Administrator.

PART 1—[AMENDED]

1. Part 1 is amended by adding a new § 1.17 to read as follows:

§ 1.17 Evaluation of studies relating to health effects of dioxin and radiation exposure.

(a) From time to time, the Administrator shall publish evaluations of scientific or medical studies relating to the adverse health effects of exposure to 2,3,7,8 tetrachlorodibenzo-p-dioxin or ionizing radiation in the "Notices" section of the **Federal Register.**

(b) Factors to be considered in evaluating scientific studies include:

(1) Whether the study's findings are statistically significant and replicable.

(2) Whether the study and its findings have withstood peer review.

(3) Whether the study methodology has been sufficiently described to permit replication of the study.

(4) Whether the study's findings are applicable to the veteran population of interest.

(5) The views of the appropriate panel of the Scientific Council of the Veterans' Advisory Committee on Environmental Hazards.

(Pub. L. 98–542)

PART 3—[AMENDED]

2. Part 3 is amended by revising § 3.102, by removing and reserving § 3.311 and by adding new §§ 3.311a, 3.311b and 3.813 so that the new and revised material reads as follows:

§ 3.102 Reasonable doubt.

It is the defined and consistently applied policy of the Veterans Administration to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant. By reasonable doubt is meant one which exists because of an approximate balance of positive and negative evidence which does not satisfactorily prove or disprove the claim. It is a substantial doubt and one within the range of probability as distinguished from pure speculation or remote possibility. It is not a means of reconciling actual conflict or a contradiction in the evidence; the claimant is required to submit evidence sufficient to justify a belief in a fair and impartial mind that the claim is well grounded. Mere suspicion or doubt as to the truth of any statements submitted, as distinguished from impeachment or contradiction by evidence or known facts, is not justifiable basis for denying the application of the reasonable doubt doctrine if the entire, complete record otherwise warrants invoking this doctrine. The reasonable doubt doctrine is also applicable even in the absence of official records, particularly if the basic incident allegedly arose under combat, or similarly strenuous conditions, and is consistent with the probable results of such known hardships. (38 U.S.C. 210(c))

§ 3.311a Claims based on exposure to herbicides containing dioxin during service in the Republic of Vietnam.

(a) *Definitions.* For purposes of this section:

(1) "Service in the Republic of Vietnam" includes service in the waters offshore and service in other locations, if the conditions of service involved duty or visitation in the Republic of Vietnam.

(2) "Dioxin" means 2, 3, 7, 8 tetrachlorodibenzo-p-dioxin.

(3) "Sound scientific evidence" means observations, findings, or conclusions which are statistically and epidemiologically valid, are statistically significant, are capable of replication, and withstand peer review.

(4) "Sound medical evidence" means observations, findings, or conclusions which are consistent with current medical knowledge and are so reasonable and logical as to serve as the basis for management of a medical condition.

(b) *Presumption of exposure.* A veteran who served in the Republic of Vietnam during the Vietnam era shall be presumed to have been exposed to a herbicide containing dioxin while in Vietnam. The commencement date of any period specified in paragraph (c) of this section shall be the day of the veteran's latest departure from the Republic of Vietnam during such service.

(c) *Service-connection based on dioxin exposure.* Except as provided in paragraph (e) of this section, exposure to dioxin together with the development of the following disease within the period specified is sufficient to establish service-connection for resulting disability: Chloracne manifested not later than three months from the date of exposure. (See paragraph (g) of this section with regard to service-connection on other grounds and § 3.307(c) in cases where chloracne is initially misdiagnosed.)

(d) *Diseases not associated with dioxin exposure.* Sound scientific and medical evidence does not establish a cause and effect relationship between dioxin exposure and the following diseases:

(1) Porphyria cutanea tarda.

(2) Soft tissue sarcomas.

(3) Any other disease not specified in paragraph (c) of this section.

(e) *Exceptions.* Service-connection will not be established if the claimed disease is due to the veteran's own willful misconduct or there is affirmative evidence that establishes a nonservice-related supervening condition or event as the cause of the disease.

(f) *Study evaluations.* In the adjudication of individual claims, due consideration shall be given to the evaluations of study findings published pursuant to § 1.17 of this title.

(g) *Service-connection under other provisions.* Nothing in this section will be construed to prevent the establishment of service-connection for any disease or disorder shown by sound scientific or medical evidence to have been incurred or aggravated during active service.

(h) *Reasonable doubt doctrine.* With regard to any issue material to the determination of an individual claim, the provisions of § 3.102 of this title shall apply.

(Sec. 5(a)(2) of Pub. L. 98-542)

§ 3.311b Claims based on exposure to ionizing radiation.

(a) *Determinations of exposure and dose*—(1) *Dose assessment.* In all claims in which it is established that a radiogenic disease, listed in paragraph (b)(2) of this section, first became manifest after service and was not manifest to a compensable degree within any applicable presumptive period as specified in § 3.307, and it is contended the disease is a result of exposure to ionizing radiation in service, an assessment will be made as to the size and nature of the radiation dose or doses. When dose estimates provided pursuant to paragraph (a)(2) of this section are reported as a range of doses to which a veteran may have been exposed, exposure at the highest level of the dose range reported will be presumed.

(2) *Request for dose information.* Where necessary pursuant to paragraph (a)(1) of this section, dose information will be requested as follows:

(i) *Atmospheric nuclear weapons test participation claims.* In claims based upon participation in atmospheric nuclear testing, dose data will in all cases be requested from the appropriate office of the Department of Defense.

(ii) *Hiroshima and Nagasaki occupation claims.* In all claims based on participation in the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946, dose data will be requested from the Department of Defense.

(iii) *Other exposure claims.* In all other claims involving radiation exposure, a request will be made for any available records concerning the veteran's exposure to radiation. These records normally include but may not be limited to the veteran's Record of Occupational Exposure to Ionizing Radiation (DD Form 1141), if maintained, service medical records, and other records which may contain information pertaining to the veteran's radiation dose in service. All such records will be forwarded to the Chief Medical Director, who will be responsible for preparation of a dose estimate, to the extent feasible, based on available methodologies.

(3) *Referral to independent expert.* When necessary to reconcile a material difference between an estimate of dose, from a credible source, submitted by or on behalf of a claimant, and dose data derived from official military records, the estimates and supporting documentation shall be referred to an independent expert, selected by the Director of the National Institutes of Health, who shall prepare a separate radiation dose estimate for consideration in adjudication of the claim. For purposes of this paragraph:

(i) The difference between the claimant's estimate and dose data derived from official military records shall ordinarily be considered material if one estimate is at least double the other estimate.

(ii) A dose estimate shall be considered from a "credible source" if prepared by a person or persons certified by an appropriate professional body in the field of health physics, nuclear medicine or radiology and if based on analysis of the facts and circumstances of the particular claim.

(4) *Exposure.* In cases described in paragraph (a)(2) (i) and (ii) of this section:

(i) If military records do not establish presence at or absence from a site at which exposure to radiation is claimed to have occurred, the veteran's presence at the site will be conceded.

(ii) Neither the veteran nor the veteran's survivors may be required to produce evidence substantiating exposure if the information in the veteran's service records or other records maintained by the Department of Defense is consistent with the claim that the veteran was present where and when the claimed exposure occurred.

(b) *Initial review of claims.* (1) When it is determined:

(i) A veteran was exposed to ionizing radiation as a result of participation in the atmospheric testing of nuclear weapons, the occupation of Hiroshima or Nagasaki, Japan, from September 1945 until July 1946, or other activities as claimed:

(ii) The veteran subsequently developed a radiogenic disease specified in paragraph (b)(2) of this section; and

(iii) Such disease first became manifest within the period specified in paragraph (b)(4) of this section; before its adjudication the claim will be referred to the Chief Benefits Director for further consideration in accordance with paragraph (c) of this section. If any of the foregoing 3 requirements has not been met, it shall not be determined that a disease has resulted from exposure to ionizing radiation under such circumstances. (But see paragraph (h) of this section.)

(2) For purposes of paragraphs (a)(1) and (b)(1) of this section, "radiogenic disease" shall include only the following:

(i) All forms of leukemia except chronic lymphatic leukemia;
(ii) Thyroid cancer;
(iii) Female breast cancer;
(iv) Lung cancer;
(v) Bone cancer;
(vi) Liver cancer;
(vii) Skin cancer;
(viii) Esophageal cancer;
(ix) Stomach cancer;
(x) Colon cancer;
(xi) Pancreatic cancer;
(xii) Kidney cancer;
(xiii) Urinary bladder cancer;
(xiv) Salivary gland cancer; and
(xv) Multiple myeloma.

(3) For purposes of paragraphs (a)(1) and (b)(1) of this section, "radiogenic disease" shall not include polycythemia vera.

(4) For purposes of paragraph (b)(1) of this section:

(i) Leukemias and bone cancer must become manifest within 30 years after exposure;

(ii) Other forms of cancer specified in paragraph (b)(2) of this section must become manifest 5 years or more after exposure.

(c) *Review by Chief Benefits Director.* (1) When a claim is forwarded for review pursuant to paragraph (b)(1) of this section, the Chief Benefits Director shall consider the claim with reference to the factors specified in paragraph (e) of this section and may request an advisory medical opinion from the Chief Medical Director.

(i) If after such consideration the Chief Benefits Director is convinced sound scientific and medical evidence supports the conclusion it is at least as likely as not the veteran's disease resulted from exposure to radiation in

service, the Chief Benefits Director shall so inform the regional office of jurisdiction in writing. The Chief Benefits Director shall set forth the rationale for this conclusion, including an evaluation of the claim under the applicable factors specified in paragraph (e) of this section.

(ii) If the Chief Benefits Director determines there is no reasonable possibility that the veteran's disease resulted from radiation exposure in service, the Chief Benefits Director shall so inform the regional office of jurisidiction in writing, setting forth the rationale for this conclusion.

(2) If the Chief Benefits Director, after considering any opinion of the Chief Medical Director, is unable to conclude whether it is at least as likely as not, or that there is no reasonable possibility, the veteran's disease resulted from radiation exposure in service, the Chief Benefits Director shall refer the matter to an outside consultant in accordance with paragraph (d) of this section.

(3) For purposes of paragraph (c)(1) of this section, "sound scientific evidence" means observations, findings, or conclusions which are statistically and epidemiologically valid, are statistically significant, are capable of replication, and withstand peer review, and "sound medical evidence" means observations, findings, or conclusions which are consistent with current medical knowledge and are so reasonable and logical as to serve as the basis of management of a medical condition.

(d) *Referral outside consultants.* (1) Referrals pursuant to paragraph (c) of this section shall be to consultants selected by the Chief Medical Director from outside the VA, upon the recommendation of the Director of the National Cancer Institute. The consultant will be asked to evaluate the claim and provide an opinion as to the likelihood the disease is a result of exposure as claimed.

(2) The request for opinion shall be in writing and shall include a description of:

(i) The disease, including the specific cell type and stage, if known, and when the disease first became manifest;

(ii) The circumstances, including date, of the veteran's exposure;

(iii) The veteran's age, gender, and pertinent family history;

(iv) The veteran's history of exposure to known carcinogens, occupationally or otherwise;

(v) Evidence of any other effects radiation exposure may have had on the veteran; and

(vi) Any other information relevant to determination of causation of the veteran's disease.

The Chief Benefits Director shall forward, with the request, copies of pertinent medical records and, where available, dose assessments from official sources, from credible sources as defined in paragraph (a)(3)(ii) of this section, and from an independent expert pursuant to paragraph (a)(3) of this section.

(3) The consultant shall evaluate the claim under the factors specified in paragraph (e) of this section and respond in writing, stating whether it is either likely, unlikely, or approximately as likely as not the veteran's disease resulted from exposure to ionizing radiation in service. The response shall set forth the rationale for the consultant's conclusion, including the consultant's evaluation under the applicable factors specified in paragraph (e) of this section. The Chief Benefits Director shall review the consultant's response and transmit it with any comments to the regional office of jurisdiction for use in adjudication of the claim.

(e) *Factors for consideration.* Factors to be considered in determining whether a veteran's disease resulted from exposure to ionizing radiation in service include:

(1) The probable dose, in terms of dose type, rate and duration as a factor in inducing the disease, taking into account any known limitations in the dosimetry devices employed in its measurement or the methodologies employed in its estimation;

(2) The relative sensitivity of the involved tissue to induction, by ionizing radiation, of the specific pathology;

(3) The veteran's gender and pertinent family history;

(4) The veteran's age at time of exposure;

(5) The time-lapse between exposure and onset of the disease; and

(6) The extent to which exposure to radiation, or other carcinogens, outside of service may have contributed to development of the disease.

(f) *Adjudication of claim.* The determination of service connection will be made under the generally applicable provisions of this part, giving due consideration to all evidence of record, including any opinion provided by the Chief Medical Director or an outside consultant, and to the evaluations published pursuant to § 1.17 of this title. With regard to any issue material to consideration of a claim, the provisions of § 3.102 of this title apply.

(g) *Willful misconduct and supervening cause.* In no case will service connection be established if the disease is due to the veteran's own willful misconduct, or if there is affirmative evidence to establish that a supervening, nonservice-related condition or event is more likely the cause of the disease.

(h) *Service connection otherwise established.* Nothing in this section will be construed to prevent the establishment of service connection for any injury or disease otherwise shown by sound scientific or medical evidence to have been incurred or aggravated during active service.

(Pub. L. 98-542)

§ 3.813 Interim benefits for disability or death due to chloracne or porphyria cutanea tarda.

(a) *Disability benefits.* Except as provided in paragraph (c) of this section, a veteran who served in the active military, naval or air service in the Republic of Vietnam during the Vietnam era, and who suffers from chloracne or porphyria cutanea tarda which became manifest within one year after the date of the veteran's most recent departure from the Republic of Vietnam during such service, shall be paid interim disability benefits under this section in the same manner and to the same extent that compensation would be payable if such disabilities were service-connected.

(b) *Death benefits.* Except as provided in paragraph (c) of this section, if a veteran described in paragraph (a) of this section dies as a result of chloracne or porphyria cutanea tarda, the veteran's survivors shall be paid interim death benefits under this section based upon the same elgibility requirements and at the same rates that dependency and indemnity compensation would be payable if the death were service-connected.

(c) *Exceptions.* Benefits under this section are not payable for any month for which compensation or dependency and indemnity compensation is payable for the same disability or death, nor are benefits payable under this section (1) when there is affirmative evidence that the disease was not incurred by the veteran during service in the Republic of Vietnam during the Vietnam era, (2) when there is affirmative evidence to establish that an intercurrent injury or disease, which is a recognized cause of the disease for which benefits are being claimed, was suffered by the veteran between the date of the veteran's most recent departure from the Republic of Vietnam during active military, naval or air service and the onset of the claimed disease, or (3) if it is determined, based on evidence in the veteran's service records and other records provided by the Secretary of Defense, that the

veteran was not exposed to dioxin during active military, naval or air service in the Republic of Vietnam during the Vietnam era.

(d) *Similarity to service-connected benefits.* For purposes of all laws administered by the VA (except chapters 11 and 13 of Title 38, United States Code), a disease establishing eligibility for disability or death benefits under this section shall be treated as if it were service-connected, and the receipt of disability or death benefits shall be treated as if such benefits were compensation or dependency and indemnity compensation, respectively.

(e) *Effective dates.* Benefits under this section may not be paid for any period prior to October 1, 1984, nor for any period after September 30, 1986.

(Pub. L. 98-542) (Oct. 1, 1984)

[FR Doc. 85-20381 Filed 8-22-85; 10:55 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2887-6]

Review of Standards of Performance for New Stationary Sources; Sulfuric Acid Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Review of standards.

SUMMARY: The EPA is required to review standards of performance for new, modified, or reconstructed stationary sources every 4 years by the Clean Air Act. A review of the existing new source performance standards (NSPS) for sulfuric acid plants (40 CFR Part 60, Subpart H) has been completed to determine if changes are needed. The review indicates that no revision to the standards is necessary.

DATE: Comments must be received on or before October 25, 1985.

ADDRESSES: Send comments (in duplicate if possible) to: Central Docket Section (LE-131), Attention: Docket Number A-85-20, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Review Document: The document summarizing information gathered during the review may be obtained from the EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Review of New Source Performance Standards for Sulfuric Acid Plants," EPA-450/3-85-012, March 1985.

Docket. Docket No. A-85-20, containing supporting information gathered during the review is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, DC, 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. James Crowder, Industrial Studies Branch, Emission Standards and Engineering Division (MD-13) U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5601.

SUPPLEMENTARY INFORMATION:

Background

Emissions from sulfuric acid plants were among the first pollutants to be regulated by EPA under the Clean Air Act. The NSPS were promulgated for sulfuric acid plants on December 23, 1971 (40 CFR 60.80, Subpart H). The standards limit emissions of sulfur dioxide (SO_2), sulfuric acid mist, and opacity from new or modified sulfuric acid production units that have been constructed, modified, or reconstructed after the date of proposal (August 17, 1971). The promulgated standard limits SO_2 to 2 kg per metric ton of sulfuric acid (H_2SO_4) produced (4 lb/ton), sulfuric acid mist to 0.075 kg per metric ton of acid produced (0.15 lb per ton), and opacity to less than 10 percent. The acid produced is always expressed as 100 percent H_2SO_4, even though the acid is usually produced and marketed at lower concentrations.

Requirements were also included in the promulgated standards for continuous monitoring of SO_2 in the stack gas. Excess SO_2 emissions are required to be reported to the EPA (or the appropriate State regulatory agency) for all 3-hour periods of such emissions (or the arithmetic average of three consecutive 1-hour periods). Periods of excess emission are considered to occur when the average plant stack SO_2 emission exceeds the standard of 4 lb/ton of 100 percent H_2SO_4 produced.

Each sulfuric acid production unit (or "train") is the affected facility. The standards of performance apply to contact-process sulfuric acid and oleum facilities that burn elemental sulfur, alkylation acid, hydrogen sulfide, metallic sulfides, organic sulfides, mercaptans, or acid sludge. The NSPS does not apply to metallurgical plants that use acid plants as control systems, or to chamber process plants or acid concentrators.

The Clean Air Act Amendments of 1977 require that the Administrator review and, if appropriate, revise established standards of performance for new stationary sources at least every 4 years [Section 111(b)(1)(B)]. A review of the sulfuric acid plant standard was previously conducted in 1979 (44 FR 15742). However, no revisions to the NSPS were made as a result of the 1979 review. A second review has been conducted by contacting EPA regional offices, other Federal agencies, State agencies, and companies with plants subject to the NSPS. Information was collected on the number and location of all facilities subject to the NSPS, on control equipment performance and costs, and on the results of performance tests and continuous stack gas monitoring. From these sources, a background document (EPA-450/3-85-012) was prepared covering the current status of control technology, compliance test data, monitoring systems employed, cost, and cost effectiveness for representative control systems on different sizes of acid plants. This notice announces that the EPA has completed the review and invites comments on its results.

Findings

Industry Growth Rate

U.S. sulfuric acid production in 1971 was 29.0 million tons, and approximately 36.6 million tons in 1983. Production is expected to increase to 48.0 million tons by the year 1995. Over 77 percent of the sulfuric acid design capacity is located in the South, and over half of the NSPS plants are located in Florida.

In 1971, the EPA projected two new units to be coming on-line each year for the next several years. On the average, three to four new units have been completed each year since 1971, representing an annual growth in production averaging 2 percent.

Control Technology

Sulfur dioxide and acid mist are present in the tail gas from all contact process sulfuric acid production units. In modern four-stage contact process plants burning sulfur with approximately 8 percent SO_2 in the converter feed and producing 98 percent acid, SO_2 and acid mist emissions are generated at the rate of 26 to 56 lb/ton of 100 percent acid and 0.4 to 4 lb/ton of 100 percent acid, respectively. The dual absorption process is the best demonstrated control technology for SO_2 emissions from sulfuric acid plants, while the high efficiency acid mist

eliminator is the best demonstrated control technology for acid mist emissions. These two emission control systems have become the predominant control strategy chosen for sulfuric acid plants built or modified since promulgation of the NSPS. Forty of the 46 new or modified sulfuric acid production plants built since 1971 and subject to NSPS incorporate the dual absorption process, and all 46 plants use the high efficiency acid mist eliminator.

The six plants which do not use dual absorption to control SO_2 emissions use single absorption followed by scrubbing. The scrubbers use either sodium sulfite or ammonium hydroxide to absorb SO_2. Molecular sieves were used by one plant, but abandoned after operational difficulties.

The review did not find any other demonstrated technologies for controlling emissions other than the technologies described here. Therefore, the EPA concluded that there are now three technologies capable of achieving the NSPS for SO_2 (dual absorption, sodium sulfite-bisulfite scrubbing, and ammonia scrubbing). Only high efficiency mist eliminators have been used to achieve the NSPS for acid mist and opacity. Due to cost considerations, dual absorption followed by high efficiency mist eliminators is expected to remain the technology of choice for attaining the NSPS for SO_2, acid mist, and opacity.

Levels Achievable With Demonstrated Control Technology

The NSPS limits emissions of SO_2 to 4 lb/ton of acid produced. Results of compliance tests (Method 8) on the 46 sulfuric acid units indicate that all have achieved the NSPS for SO_2. Also, continuous monitoring data indicate that the plants generally comply with the NSPS on a continuing basis, except during startup (e.g. after annual maintenance turnarounds). Most of the plants have demonstrated compliance with SO_2 emissions between 2 and 4 lb/ton, but about one-fourth of the plants have exceeded 3 lb/ton during performance tests. The available information is insufficient to determine whether the plants with the highest emissions could achieve lower emissions through changes in maintenance or operation.

Performance test results indicate that all plants have also complied with the NSPS for acid mist, and no violation of the opacity regulation was measured at 30 plants. Similar to the SO_2 emissions, many plants were found to be operating close the NSPS limit for acid mist and opacity. Opacity data are not available for 16 plants.

The current performance levels for SO_2 (0.12 to 3.8 lb/ton) span a wider range than the performance levels (1.2 to 2.9 lb/ton) on which the standard was originally based. This is also true for the performance levels for acid mist (0.04 to 0.15 lb/ton previously vs. 0.004 to 0.15 lb/ton now).

Since all plants have demonstrated compliance with the NSPS levels of control, the EPA has concluded that less stringent emission limits are not justified. A more stringent standard was considered, but was rejected on the basis that the technology on which the NSPS regulation was based (dual absorption followed by high efficiency mist eliminators) has not changed and no new, more effective control technology is available. Also, considering current performance levels of existing plants, there are insufficient data to determine whether new plants could operate continuously at levels more restrictive than the existing NSPS.

Cost Effectiveness of the NSPS

The cost effectiveness of control was estimated for four types of SO_2 control systems: dual absorption, ammonia scrubbing, sodium sulfite scrubbing, and molecular sieve adsorption. The cost effectiveness ranged from $245 to $625 per ton of SO_2 removed for the large (1,500 TPD) model plant size, and from $282 to $751 per ton for the small (750 TPD) model plant size. For both plant sizes, dual absorption was estimated to be the most cost effective control option.

The cost analysis for acid mist control showed essentially no difference in cost effectiveness ($47–50 per ton of acid mist removed) for the vertical tube and the horizontal dual pad mist eliminators for the two model plant sizes.

Monitoring, Recordkeeping, and Reporting

SO_2 emissions in the tail gas from sulfuric acid plants are required to be continuously monitored. Continuous SO_2 monitoring instrumentation should be able to: (1) Provide a record of performance, and (2) provide intelligence to plant operating personnel such that suitable corrections can be made when the system is shown to be out of adjustment. Plant operators are required to maintain the monitoring equipment in calibration and to furnish records of SO_2 excess emission values to the Administrator of EPA or to the responsible State agency.

Measurement principles used in the gas analysis instruments are:

1. Infrared absorption.
2. Colorimetric titration of iodine.
3. Selective permeation of SO_2 through a membrane.
4. Flame photometric measurement.
5. Chromatographic measurement.
6. Ultraviolet absorption.

The ultraviolet absorption system and the iodine titration method have received widespread application for SO_2 measurement in sulfuric acid plants subject to NSPS.

The continuous monitoring system is calibrated using a gas mixture of known SO_2 concentration. Performance evaluation of the monitoring system is conducted using the SO_2 portion of EPA Method 8.

Excess SO_2 emissions are required to be reported to the EPA (or appropriate State regulatory agencies) for all 3-hour periods of such emissions (or the arithmetic average of three consecutive 1-hour periods). Periods of excess emissions are considered to occur when the integrated (or arithmetic average) plant stack SO_2 emission exceeds the standard of 4 lb/ton of 100 percent H_2SO_4 produced.

A separate study by the EPA (NSPS Triennial Review, EPA Contract No. 68-01-6826) reported that the monitoring, reporting and recordkeeping aspects of the NSPS for sulfuric acid plants are generally accepted by the industry and serve their intended purposes to the Agency. No changes in the existing monitoring, recordkeeping, and reporting requirements ae being proposed.

Conclusions

Based on the above findings, the EPA concludes that the level of control required by the NSPS for sulfuric acid plants reflects best demonstrated control technology considering cost, energy, and non-air environmental impacts. A review of the cost effectiveness of the NSPS found that the costs relative to the emissions controlled are reasonable. Also, the monitoring, recordkeeping and reporting requirements are serving their intended purposes. Therefore, the EPA has concluded that the emission limits for SO_2, acid mist and opacity from sulfuric acid manufacturing plants should not be changed, and that the existing monitoring, recordkeeping, and reporting requirements should not be changed.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt cement industry, Can surface coating, Coal, Copper, Electric power plants, Glass and glass products, Grains, Incorporation by references, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum,

Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Tires, Waste treatment and disposal, Zinc.

Authority: 42 U.S.C. 7411, section 111 of the Clean Air Act.

Dated: August 15, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85-20314 Filed 8-23-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 721

[OPTS-50521A; FRL-2846-3]

Disubstituted Diamino Anisole; Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance which was the subject of premanufacture notice (PMN) P-83-822 and a TSCA section 5(e) consent order issued by EPA. The Agency believes that this substance may be hazardous to human health and that the uses described in this rule may result in significant human exposure.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern "daylight" time on September 9, 1985. This rule shall become effective November 8, 1985.

FOR FURTHER INFORMATION CONTACT:

Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Toll free: (800-424-9065).
In Washington, D.C.: (554-1404).
Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2070-0012.

I. Authority

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B) of TSCA, submit a notice to EPA at least 90 days before they manufacture, import, or process substance for that use. Such a notice is subject generally to the same requirements and procedures as a PMN submitted under section 5(a)(1)(A) of TSCA which are interpreted at 40 CFR Part 720 published in the **Federal Register** of May 13, 1983 (48 FR 21722). In particular, these include the information submission requirements of section 5(b) and (d)(1) of TSCA. In addition, such notices are subject to the regulatory authorities of section 5 (e) and (f) of TSCA. If EPA does not take regulatory action under section 5, 6, or 7 to control activities on which it has received a SNUR notice, section 5(g) requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements which are codified at 19 CFR 12.118 through 12.127 and 127.28. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

II. Applicability of General Provisions

EPA has promulgated general provisions applicable to SNURs under 40 CFR Part 721, Subpart A published in the **Federal Register** of September 5, 1984 (49 FR 35011). Interested persons should refer to that document for a detailed discussion of the general provisions. These general provisions will apply to this SNUR without change except as discussed in this preamble and as set forth in § 721.120.

III. Summary of This Rule

The chemical substance which is the subject of this rule is identified generically as disubstituted diamino anisole. It was the subject of PMN P-83-822. EPA is designating the following as significant new uses of the substance: (1) Use other than as an intermediate and (2) manufacturing, importing, or processing for use as an intermediate without establishing a program whereby (a) persons who may be exposed to the substance wear protective gloves and (b) packages of the substance are appropriately labeled.

IV. Background

The chemical substance which is the subject of this rule was the subject of a PMN designated P-83-822. The notice submitter claimed the following as confidential business information (CBI): The submitter's identity, the specific chemical identity, and the estimated production volume. For purposes of clarity, the substance is referred to in this preamble and § 721.120 by its generic chemical name and PMN number.

The Agency proposed a SNUR for this substance which was published in the **Federal Register** of December 7, 1984 (49 FR 47874). The background of the PMN and the reasons for proposing the SNUR are set forth in the preamble to the proposed rule. EPA received no comments during the public comment period for this SNUR.

V. Designation of Significant New Uses

To determine what would constitute significant new uses of this chemical substance, EPA considered relevant information about the toxicity of the substance, likely exposures associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA is defining the significant new uses of P-83-822 as set forth in paragraph (a)(2) of § 721.120.

Based on analogy to related compounds demonstrated to be animal carcinogens, the Agency believes that any significant exposure to P-83-822 would present a health risk to workers. The Agency believes that the data described in this preamble and in the preamble to the proposed rule are sufficient to substantiate the contention that the significant new uses of P-83-822 present a potentially significant increase in the magnitude and type of exposure. Section 5(a)(2) of TSCA does not require the Agency to make either a "may present" or a "will present" risk finding with regard to satisfying the requirements for a significant new use. The statute imposes the requirement that the Agency provide for a "consideration of all relevant factors." The Agency believes that a reasonable qualitative assessment of these factors was incorporated in the preamble of the proposed rule published in the **Federal Register** of December 7, 1984 (49 FR 47874).

VI. Alternatives

In the proposed SNUR, EPA considered other possible approaches. These alternatives included the promulgation of a section 8(a) reporting rule and/or regulation under section 6. In the absence of comments and for the reasons discussed in the preamble to the proposed rule, the Agency has elected to proceed with the promulgation of a SNUR covering significant new uses of P-83-822.

VII. Recordkeeping

To ensure compliance with this rule, and to assist enforcement efforts, EPA is requiring, under its authority in sections 5 and 8(a) of TSCA, that, in addition to meeting the requirements of § 721.17, persons who manufacture, import, or process P-83-822 maintain the following records for 5 years from their creation: records of the results of determinations that gloves are impervious, the names of persons required to wear gloves, and copies of the labels. These recordkeeping requirements apply to small manufacturers, importers, and processors as well because the small business exemption of section 8 of TSCA is not applicable when the chemical substance which is the subject of the rule is also the subject of a section 5(e) order.

The Agency considered omitting recordkeeping requirements, but believes compliance monitoring for this SNUR would be made more difficult without them.

VIII. Exemptions to Reporting Requirements

The Agency has promulgated exemptions to SNUR reporting requirements under § 721.19. In the case of P-83-822, the terms of § 721.19 apply without change.

EPA issued its final premanufacture notification rules under 40 CFR Part 720, published in the Federal Register of May 13, 1983 (48 FR 21722), including § 720.36 which contained detailed rules for the section 5(h)(3) exemption for chemical substances manufactured or imported in small quantities solely for research and development. On September 13, 1983 (48 FR 41132), EPA stayed the effectiveness of § 720.36, among other provisions of the PMN rule, pending further rulemaking to revise the provisions. Revisions of § 720.36 and other provisions were proposed on December 27, 1984 (49 FR 50201). Because § 720.36 was not in effect when EPA condified § 721.19, the Agency relied on the general definition of "small quantities solely for research and development" in § 720.3(cc) and section 5(h)(3) of TSCA to determine whether activities qualify under this exemption. Upon promulgation of a revised § 720.36, EPA intends to amend § 721.19 to adopt the provisions of the revised § 720.36.

Section 721.19(g) of the general SNUR provisions exempts persons from SNUR reporting when they manufacture (the term manufacture includes import) or process the substance solely for export and label the substance in accordance with section 12(a)(1)(B) of TSCA. While EPA is concerned about worker exposure during manufacture and processing of the substance, section 12(a) of TSCA prohibits EPA from requiring reporting of such manufacture or processing for a significant new use. However, such persons would be required to notify EPA of such export under section 12(b) of TSCA (see § 721.7 of the general SNUR provisions). Such notification will allow EPA to monitor manufacture and processing activities which are not subject to significant new use reporting. The term "manufacture solely for export" is defined in the PMN rule (40 CFR 720.3(s)); an amendment clarifying this definition was proposed on December 27, 1984 (49 FR 50208). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus, persons would be exempt from reporting under this SNUR if they manufacture or process the substance solely for export from the U.S. under the following restrictions: (1) There is no use of the substance in the U.S.; (2) processing is restricted to sites under the control of the manufacturer or processor, respectively; and (3) distribution in commerce is limited to purposes of export. If a person manufactured or processed the substance both for export and for use in the U.S., such manufacture and processing would not be "solely for export" because manufacture and processing would be for use in the U.S. regardless of whether any quantity of the substance was later exported.

IX. Applicability to Uses Which May Have Occurred Before Promulgation of Final Rule

To establish a significant new use rule, the Agency must, among other things, determine that the use is not ongoing. In this case, the chemical substance in question had just undergone premanufacture review. The Agency received no information that the significant new uses are ongoing. Therefore, at this time, the Agency believes that these uses are significant new uses.

As indicated in the proposal, EPA has found that the intent of section 5(a)(1)(B) is best served by determining whether a use is a significant new use as of the proposal date of the SNUR. If uses begun during the proposal period were not considered to be significant new uses, it would be almost impossible for the Agency to establish SNUR notice requirements, since any person could defeat the SNUR by initiating the proposed significant new uses before the rule became final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, even if the substance was manufactured, imported, or processed for the significant new uses between proposal and promulgation of this rule, such activities may not continue after the effective date of this rule. Any such person must cease such activity until it has complied with all SNUR notice requirements.

X. Test Data and Other Information

EPA recognizes that, under TSCA section 5, persons are not required to develop any particular test data before submitting a notice. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential health risk that may be posed by a significant new use of P-83-822, EPA encourages possible SNUR notice submitters to test the substance's potential for carcinogenic effects. The Agency believes that the results of a 2-year rodent bioassay would adequately characterize possible carcinogenic effects of the substance. If a SNUR notice is submitted for a use involving significant exposure without adequate test data, EPA is likely to take action under section 5(e). As an alternative to testing the substance, potential notice submitters may want to consider the use of personal protective equipment to reduce exposure to the substance.

EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. As part of this prenotice consultation, EPA will discuss the test data it believes necessary to evaluate significant new uses of the substance. Data should be developed and submitted in accordance with the TSCA good laboratory practices regulations at 40 CFR Part 792.

EPA urges SNUR notice submitters to provide detailed information on human exposure that will result from the significant new uses. In addition, EPA urges persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by substitutes.

XI. Economic Analysis

The agency has evaluated the potential costs of establishing significant new use reporting requirements for P-83-822. This evaluation is summarized in the preamble to the proposed rule (49 FR 47874).

The Agency's complete economic analysis is available in the public file.

XII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50521A). A public version of this record from which CBI has been deleted is available to the public from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OTS Reading Room, Rm. E-107, 401 M St. SW., Washington, DC.

The record includes basic information considered by the Agency in developing this rule. The record now includes the following:

1. The PMN for the substance.
2. The **Federal Register** notice of receipt of the PMN.
3. The proposed SNUR.
4. The section 5(e) consent order.
5. The economic analysis of this SNUR.
6. The economic support document for the section 5(e) consent order.
7. The toxicity support document for the section 5(e) order.

XIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major rule" because it will not have an effect on the economy of $100 million or more and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this rule, for the reason explained in Unit XI of the preamble to the proposal for this rule, EPA believes that the cost will be low. In addition, because of the nature of the rule and the substance subject to it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice and the suggested testing and the uncertainty of possible EPA regulation may discourage certain innovation, that impact may be limited because such factors are unlikely to discourage an innovation which has high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial uses.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this rule are likely to be small businesses. However, EPA believes that the number of small businesses affected by this rule would not be substantial even if all the potential new uses were developed by small companies. EPA expects to receive few SNUR notices for the substance.

C. Paperwork Reduction Act

Information collection requirements contained in this rule have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980, U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070-0012.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: August 16, 1985.

Marcia E. Williams,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for Part 721 is revised to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding a new § 721.120 to read as follows:

§ 721.120 Disubstituted diamino anisole.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The following chemical substance referred to by its premanufacture notice number and generic chemical name is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section: P-83-822, disubstituted diamino anisole.

(2) The significant new uses are:

(i) Use other than as an intermediate.

(ii) Manufacture, import, or processing for use as an intermediate without establishing a program whereby:

(A) Persons employed by or under the control of the manufacturer, importer, or processor who may be exposed to the substance (including those persons involved in maintenance, packaging, and storage operations) wear protective gloves determined to be impervious to the substance by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves, and

(B) Packages containing the substance (including those storing the substance between manufacturing or importing and processing stages) are labeled to indicate that the substance should be handled only while using gloves determined to be impervious to the substance.

(b) *Specific requirements.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* In addition to the requirements of § 721.17, manufacturers, importers, and processors of the chemical substance identified in paragraph (a)(1) of this section must maintain the following records for 5 years from their creation:

(i) The results of any determination that gloves are impervious.

(ii) The names of persons required to wear gloves.

(iii) Copies of labels described in paragraph (a)(ii)(B) of this section.

(2) [Reserved]

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

[FR Doc. 85-20305 Filed 8-23-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-508; RM-4676]

FM Broadcast Station in Shawnee, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots Channel 236 to Shawnee, Oklahoma, in response to an expression of interest filed by Carl Corrick. The allotment could provide a first local service to the community.

EFFECTIVE DATE: September 26, 1985.

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

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting, Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions

authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Shawnee, Oklahoma) MM Docket No. 84-508; RM-4676.

Adopted: August 13, 1985.
Released: August 20, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 24401, published June 13, 1984, in response to a petition filed by Linda K. Allen ("petitioner"). The *Notice* proposed the allotment of FM Channel 236 to Shawnee, Oklahoma, as that community's first FM service. Petitioner failed to file comments of interest as required in the Appendix to the *Notice*. However, Carl D. Corrick did file comments supporting the allotment and expressed his intention to apply for the channel.

2. Channel 236 can be allotted to Shawnee in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules provided there is a site restriction of approximately 31.4 miles southeast of the community. The site restriction will prevent short spacing to FM Station KICT, Channel 236, Wichita, Kansas, FM Station KEBC, Channel 234, Oklahoma City, Oklahoma, and FM Station KMGZ, Channel 237A, Lawton, Oklahoma.[1]

3. In view of the above considerations, we believe the public interest would be served by a grant of the petitioner's request, since it could provide for the first local service to Shawnee.

PART 73—[AMENDED]

§ 73.202 [Amended]

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective September 26, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules is amended with respect to the community listed below:

City	Channel No.
Shawnee, Oklahoma	236

5. The window period for filing applications will open on September 27, 1985 and close on October 28, 1985.

6. It is further ordered, that this proceeding is terminated.

7. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-20277 Filed 8-23-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-1043; RM-4730]

FM Broadcast Stations in Cambridge and Salisbury, MD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action allocates Channel 232A to Cambridge, Maryland, as that community's second FM allocation, in response to a petition filed by Philip G. D'Adamo. The allocation requires Channel 248A be substituted for Channel 232A at Salisbury, Maryland, and modification of the license at Salisbury, to accommodate the allocation at Cambridge.

EFFECTIVE DATE: September 26, 1985.

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

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Cambridge and Salisbury, Maryland); MM Docket No. 84-1043, RM-4730.

Adopted: August 13, 1985.
Released: August 20, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission is the *Notice of Proposed Rule Making and Order to Show Cause*, 49 FR 46444, published November 26, 1984, issued in response to a petition for rule making filed by Philip D'Adamo ("petitioner") proposing to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules by allotting Channel 232A to Cambridge, Maryland, by deleting that channel from Salisbury, Maryland and by allocating Channel 248A to Salisbury. The *Notice* also ordered that the license of Prettyman Broadcasting Company ("Prettyman") for Station WICO-FM, Salisbury, Maryland, be modified to specify operation on Channel 248A in lieu of 232A. Petitioner and Prettyman filed comments supporting the proposal.

2. Prettyman Broadcasting Company, licensee of Station WICO-FM, Channel 232A, Salisbury, Maryland, agrees to change its channel in order to accommodate allotment of Channel 232A to Cambridge provided it is reimbursed for all legitimate expenses. It is Prettyman's understanding that despite the change in channel, WICO-FM's coverage will remain essentially the same and that operation can continue from the same transmitter location. As set forth in the *Notice*, Prettyman will be reimbursed for all legitimate expenses incurred in this modification by Philip D'Adamo or the ultimate permittee of FM Channel 232A, Cambridge, Maryland.

3. The allotment of FM Channel 232A to Cambridge could provide that community with its second broadcast service. Channels 232A and 248A can be allocated in compliance with the Commission's mileage separation requirements.

PART 73—[AMENDED]

§ 73.202 [Amended]

4. Accordingly, pursuant to authority contained in sections 4(i), 5(c)(1), 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 ordered, that effective September 26, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended for the following communities:

[1] Existing Class C stations operating with less than a 300 meter antenna height are now permitted a buffer zone. However, this requirement does not apply to petitions such as the instant one which were filed before March 1, 1984. See BC Docket 80-90, *recons.* 97 FCC 2d 279 (1984). Therefore, Channel 236 Wichita, Kansas and Channel 234, Oklahoma City, Oklahoma, are not entitled to the buffer zone in the direction of Shawnee. Nevertheless interested applicants should attempt to select a transmitter location which would protect these buffer zones to the extent possible.

City	Channel No.
Cambridge, Maryland	232A, 282A
Salisbury, Maryland	248A, 255A, and 288A

5. The window period for filing applications will open on September 27, 1985, and close on October 28, 1985.

6. It is further ordered, pursuant to the authority contained in section 316(a) of the Communications Act of 1934, as amended, that the license for Station WICO, Salisbury, Maryland, is modified effective September 27, 1985, to specify operation on 248A in lieu of Channel 232A, with the condition that it will be reimbursed for the reasonable costs incurred in changing frequencies, from the ultimate permittee of Channel 232A, Cambridge. Station WICO may continue to operate on Channel 232A for one year from the effective date of this action or may commence operations on Channel 248A at an earlier date subject to the following conditions:

(a) The licensee shall file with the Commission a minor change application for a construction permit (Form 301), specifying the new facilities.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

7. It is further ordered that the Secretary shall send a copy of this *Report and Order* by certified mail, Return Receipt Requested, to: Prettyman Broadcasting Co., Box 909, Salisbury, Maryland 21801.

8. It is further ordered, That this proceeding is terminated.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-20284 Filed 8-23-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-787; RM-4725]

FM Broadcast Station in Palm Desert, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots FM Channel 219A to Palm Desert, California, as that community's first local noncommercial education channel, in response to a petition filed by the University of Southern California.

EFFECTIVE DATE: September 26, 1985.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.504(a) Table of Allotments Noncommercial Educational FM Broadcast Stations (Palm Desert, California); MM Docket No. 84-787, RM-4725.

Adopted: August 13, 1985.
Released: August 20, 1985.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 49 FR 33459, published August 23, 1984, issued in response to a petition filed by the University of Southern California ("petitioner"), proposing the allotment of FM Channel 219A to Palm Desert, California, as that community's first local noncommercial educational channel. Supporting comments were filed by petitioner reaffirming its intention to apply for the channel. No oppositions to the proposal were received.

2. We believe the public interest would be served by allotting Channel 219A to Palm Desert since it could provide the community with its first local noncommercial educational service.

3. Channel 219A can be allotted consistent with the minimum distance separation requirements of §§ 73.207 and 73.507 of the Commission's Rules provided the transmitter is located 8.7 kilometers (5.4 miles) southeast of the community to avoid short-spacing to Station KVCR (Channel 220), San Bernardino, California. Additionally, since the proposed allotment is within 320 kilometers (199 miles) of the common U.S.-Mexico border, the concurrence of the Mexican Government was obtained.

PART 73—[AMENDED]

§ 73.504 [Amended]

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 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 ordered, That effective September 26, 1985, the Noncommercial Educational FM Table of Allotments, § 73.504(a) of the Commission's Rules is amended to include the community listed below, as follows:

City	Channel No.
Palm Desert, California	219A

5. The window for filing applications on this channel will open on September 27, 1985 and close on October 28, 1985.

6. It is further ordered, that this proceeding is terminated.

7. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-20281 Filed 8-23-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-488; RM-4425]

TV Broadcast Station in Gainesville, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action imposes a site restriction on UHF television Channel 61, at Gainesville, Florida, in response to a Petition for Reconsideration, filed by Christian Channel/Ro-Mar Communications, Inc. in order to avoid a short spacing to an application for Channel 53, High Springs, Florida.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Memorandum Opinion and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Gainesville, Florida); MM Docket 83-488, RM-4425.

Adopted: August 12, 1985.
Released: August 20, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it two petitions for reconsideration of the *Report and Order*, 49 FR 11638, published March 27, 1984, wherein the Commission assigned UHF television Channel 61 to Gainesville, Florida, in response to a petition filed by Holt Robinson Communications ("Holt"). Reconsideration of that decision is sought by Christian Channel/Ro-Mar Communications, Inc. ("CCR"), and by High Springs Television, Inc. ("HST").[1] Both petitioners have applied for Channel 53 at High Springs, Florida. Holt filed comments in response to the request for reconsideration.

2. CCR argues that the *Notice of proposed Rule Making*, which proposed to assign Channel 61 to Gainesville, failed to inform the applicants for Channel 53 at High Springs of a potential short spacing at their proposed sites. In the *Report and Order*, CCR notes that the Commission directed applicants for Channel 53 at High Springs, to rectify any short spacing caused by the Channel 61 reference point to their proposed site. According to its calculations, the Channel 61 reference point is only 0.7 miles short-spaced to its proposed site. Petitioner argues that the applicants for Channel 61 at Gainesville should be ordered to select a restricted site.

3. Holt responds that it does not object to the location proposed by the Channel 53 applicant, since an adequate area is available to the south of Gainesville where a tower can be located for use by a Channel 61 station.

4. We believe that the petition for reconsideration should be granted. While petitioner has stated that it was not aware of the *Notice* and therefore it could not comment on a possible short spacing to its application for Channel 53, the self-imposed limits set by the six applicants for Channel 61 now meet the spacing requirements to Channel 53. Since there is currently no short spacing between the sites proposed by the Gainesville applicants and that proposed by the High Springs applicants, the Commission believes that it would be in the public interest to grant the petition for reconsideration. The imposition of this site restriction at Gainesville will enable the High Springs applications to be processed without having to waive the short spacing violation to the city reference point.

5. Accordingly, it is ordered, that the petition for reconsideration, filed by Christian Channel/Ro-Mar Communications, Inc. is granted to the degree stated herein: a site restriction of approximately 3.2 km (2 miles) southeast is imposed on UHF television Channel 61 at Gainesville, Florida.

6. It is further ordered, that this proceeding is terminated.

7. For further information, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-20282 Filed 8-23-85; 8:45 am]

BILLING CODE 6712-01-M

[1] On September 17, 1984, HST submitted a "Motion to Dismiss Petition for Partial Reconsideration," indicating that it has since amended its application for construction permit to cure any potential short spacing to Channel 61 at Gainesville.

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47 CFR Part 90

[PR Docket No. 85-102]

Radio Services, Special; To Make Additional Channels Available for Private Carrier Paging Operations in the 929-930 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts rules reapportioning the number of channels available for private non-commercial paging and private carrier paging operations and allowing inter-pool sharing. This action is taken to ensure the maximum utilization of available spectrum.

EFFECTIVE DATE: September 23, 1985.

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

FOR FURTHER INFORMATION CONTACT: Herb Zeiler, Private Radio Bureau, Rules Branch, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Radio.

Report and Order

In the matter of amendment of Part 90 of the Commission's Rules to make additional channels available for private carrier paging operations in the 929-930 MHz band.

[PR Docket No. 85-102]

Adopted: August 12, 1985.
Released: August 16, 1985.

By the Commission.

Introduction

1. On April 1, 1985 the Commission adopted a *Notice of Proposed Rule Making* (NPRM) proposing a modification in the number of channels available for private non-commercial paging and private carrier paging (PCP) operations in the 929-930 MHz band.[1] More specifically, the Commission proposed to take ten channels from the non-commercial pool and redistribute them to the private carrier pool. The Commission also proposed to allow inter-pool sharing starting January 1, 1987. The proposals were intended to promote more efficient use of the frequencies in the 929-930 MHz band by reducing the chances of frequencies in one pool would remain unused while frequencies in the other pool were heavily utilized.

Background

2. In July of 1982, the Commission adopted a *Second Report and Order* in Docket No. 80-183 establishing rules and policies to govern the operations of private paging stations in the 929-930 MHz band.[2] The Commission provided private land mobile users two alternatives to satisfy their paging requirements: (1) Non-commercial private systems (including shared paging facilities with multiple licensing or cooperative sharing arrangements) and (2) private carrier (commercial) paging systems. In order to ensure that an adequate pool of frequencies would be available for non-commercial applicants, the Commission established separate frequency pools. Based on projected user demand, the Commission allocated thirty channels for private non-commercial systems and ten

[1] *Notice of Proposed Rule Making*, PR Docket 85-102, 50 FR 13997 (April 9, 1985).

[2] *Second Report and Order*, Docket No. 80-183, 47 FR 39502 (September 8, 1982).

channels for private carrier paging systems. The Commission stated, however, that should a significant number of channels in either category remain unused it would review the allocation of channels in each pool.

Comments

3. Comments on the Commission's proposals were received from two parties—Motorola and the National Association of Business and Educational Radio, Inc. (NABER). Motorola filed reply comments.

4. Motorola supported the underlying objective of the Commission's proposal, i.e., to ensure more effective utilization of the spectrum in the 929–930 MHz band. It was concerned, however, about the potential impact of the proposals on slower developing non-commercial operations. It was particularly concerned over the Commission's inter-pool sharing proposal. Motorola contended that under inter-pool sharing private carrier entrepreneurs could file applications and secure authorizations for all the 900 MHz private carrier paging channels without fully utilizing their systems and then be eligible to "invade" the non-commercial pool. It recommended the Commission establish loading standards and enforce construction dates for PCP systems prior to permitting any inter-pool sharing. Motorola also raised the issue of the number of frequencies available for non-commercial operations above Line A.[3] Under the Commission's proposal the available channels would be divided equally between the two pools. Motorola pointed out, however, that because of an agreement with Canada, frequencies between 929–929.5 MHz are not assigned in the United States north of Line A. Consequently, the Commission's proposal actual results in a 75/25 channel distribution ratio above Line A in favor of commercial use.[4] In order maintain the 50/50 channel ratio everywhere Motorola recommended the Commission redistribute only 5 channels to the private carrier pool above Line A.

5. NABER, in its comments, also supported the Commission's efforts to use the 929–930 MHz band more effectively. According to NABER, "it is vital that the Commission take necessary steps in order to assure that the greatest number of users may be accommodated and that spectrum is effectively utilized with no degradation of service." However, like Motorola, NABER voiced concern that license activity may not be a true indicator of use. It conditioned its support of more channels for PCP operations on the finding that there is sufficient loading on the current PCP frequencies to warrant a redistribution.

Decision

6. We have considered all the comments carefully and have decided for the reasons discussed below, to adopt the rules as proposed.

7. The original allocation of 30 channels for private non-commercial systems and 10 channels for private carrier operations reflected what the Commission considered to be a reasonable approximation of likely user demand. We specifically reserved 30 channels for non-commercial systems ". . . to assure that all private service eligibles . . . have an opportunity to apply for channels and implement systems in a manner best suited to their needs."[5] In so doing, we recognized that ". . . private users generally do not apply for channels until they need them, unlike commercial applicants who have an immediate need for channels as part of a business venture."[6] Nonetheless, we also stated at the time the original allocation was made that if there is a significant difference in use between the two pools we would modify the distribution. As stated in the *Notice*, we have authorized over 600 PCP stations and less than 30 non-commercial stations. We believe this constitutes a significant difference. The interest shown to date in establishing private carrier systems versus that for establishing non-commercial systems, in our opinion, supports a more equitable distribution of channels. However, the concerns articulated earlier in the allocation proceeding about ensuring adequate spectrum to accommodate the future needs of non-commercial operations remain valid. Therefore, we are reallocating ten channels from the non-commercial paging pool to the private carrier paging pool.[7]

8. In addition to the redistribution we proposed to allow inter-pool sharing. Dividing the forty channels equally into two pools should, in most cases, provide sufficient frequencies for each type of use. However, it is difficult to accurately predict what will happen in the future. There may be certain situations, for instance, where more than twenty channels are needed for private carrier operation and less than twenty for non-commercial systems, or vice versa. In order to provide for these situations we proposed to allow inter-pool sharing. Motorola, however, was concerned that if private carrier applicants are allowed access to the non-commercial pool they would speculate by applying for all the private carrier frequencies without fully utilizing their systems and then start on the non-commercial pool. They recommend the Commission establish loading standards and enforce construction dates for PCP systems prior to permitting inter-pool sharing.

9. In Docket No. 80–183, the Commission considered the use of a minimum loading standard to determine whether a particular channel is reasonably loaded. Such use of a standard was rejected as being inconsistent with our spectrum efficiency goals. The Commission believes that loading standards are impractical because paging technology is progressing so rapidly that the number of pagers possible on a channel is likely to change often, thereby requiring constant reexamination and modification of any given loading standard. Morever, we have previously found that the likelihood of frequency warehousing in the paging services is comparatively small and, thus, that loading requirements are unnecessary.[8] For these reasons and in view of the provisions that we will apply to inter-pool sharing, we believe loading standards are not necessary.

10. Moreover, the purpose of inter-pool sharing is to provide additional flexibility in our allocation scheme and thereby increase the use of these channels. While it is true that allowing private carrier applicants access to frequencies in the non-commercial pool without safeguards could lead to speculation and to the 900 MHz paging frequencies being exhausted more quickly or being under-utilized, we do not believe this will happen. The inter-pool sharing criteria we are adopting provide adequate protection against such speculation. For example, in order to allow non-commercial eligible sample opportunity to apply for channels, inter-pool sharing would not be permitted until January 1, 1987. Further, under

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[3] Line A is an imaginary line within the U.S. approximately paralleling the U.S.-Canadian border, north of which Commission coordination with Canadian authorities in the assignment of frequencies is generally required.

[4] Since the agreement with Canada permits U.S. licensees to use only those frequencies between 929.5 MHz and and 930 MHz, there is a total of only 20 channels to be allocated among the non-commercial users and private carriers above Line A. Under the proposal, fifteen of these channels would be in the private carrier pool and five channels in the non-commercial pool.

[5] *Second Report and Order, supra.*

[6] *Id.*

[7] There are currently no licensees on these ten channels.

[8] *Fourth Report and Order*, Docket No. 20870, 56 RR 2nd 645, 648 (1984). Loading studies for the common carrier paging services will not be required after January 1, 1986.

inter-pool sharing, an applicant could use channels in the other pool only if there are no satisfactory frequencies available in the pool in which the applicant is actually eligible as determined by the frequency coordinator and if no in-pool user is on the requested frequency(ies). Coordinators should be thoroughly familiar with radio systems already in operation. Therefore they, rather than the Commission, should be in the best position to decide whether a channel is not being efficiently utilized and recommend additional compatible users be licensed on the frequency or if there are no satisfactory channels available and inter-pool sharing is in order.[9] Accordingly, we are adopting the inter-pool sharing rules as proposed.

11. The other issue raised in the comments concerned the channel ratio in the two pools for operations above Line A. The *Notice* proposed a 50/50 ratio of channels between non-commercial and commercial channels. Motorola supported this ratio but stated that for operations above Line A an adjustment in the proposed allocation is needed to maintain that ratio nationwide. To correct the imbalance Motorola recommended that above Line A ten channels be made available in each pool. We believe this suggestion has merit. Accordingly, we have adjusted the allocation so that there are ten channels available in each pool for operations above Line A.

Final Regulatory Flexibility Act Analysis

12. As stated in the Notice, the Commission certifies that sections 603 and 604 of the Regulatory Flexibility Act of 1980 do not apply to the rule changes in this Report and Order because these changes will not have a significant economic impact on a substantial number of small entities. The Secretary shall cause a copy of this Report and Order, including the above certification, to be published in the **Federal Register**, and to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 605(b) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Paperwork Reduction Act Statement

13. The action taken herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

14. Accordingly, it is ordered, that pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Part 90 of the Commission's Rules is amended effective September 23, 1985 as set forth in the attached Appendix. It is further ordered that this proceeding is terminated.

15. Further information on this matter may be obtained by contacting Herbert Zeiler (202) 634-2443, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—[AMENDED]

The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

1. Section 90.494 is amended by revising the table in paragraph (a) and adding a new paragraph (g).

§ 90.494 One-way paging operations in the 929-930 MHz band.

(a) * * *

TABLE

Pool 1 (MHz)	Pool 2 (MHz)
929.0125	929.3625
929.0375	929.3875
929.0625	929.4125
929.0875	929.4375
929.1125	929.4625
929.1375	[1] 929.6375
929.1625	[1] 929.6625
929.1875	[1] 929.6875
929.2125	[1] 929.7125
929.2375	[1] 929.7375
929.2625	929.7625
929.2875	929.7875
929.3125	929.8125
929.3375	929.8375
929.4875	929.8625
929.5125	929.8875
929.5375	929.9125
929.5625	929.9375
929.5875	929.9625
929.6125	929.9875

[1] Above Line A this frequency is available only to eligibles in Pool 1.

Frequencies listed in Pool 1 are available for shared use by all eligible Part 90 users except those eligible as private carrier paging (PCP) licensees.

Frequencies listed in Pool 2 are available only for shared use by private carrier paging (PCP) licensees.

Frequencies 929.7625 and 929.9875 are available for shared use in multi-area paging systems by private carrier paging (PCP) licensees.

Frequencies 929.2625 and 929.4875 are available only for shared use in multi-area paging systems for all Part 90 users except private carrier paging (PCP) licensees.

* * * * *

(g) Except for the channels available for multi-area operation, the channels listed in the Table in paragraph (a) of this section are available as of January 1, 1987, on a shared basis to all persons eligible in both pools under the following conditions:

(1) Channels will be available for inter-pool sharing only if there are no satisfactory frequencies available in the pool in which the applicant is actually eligible.

(2) There are no in-pool users authorized on the frequency in the proposed area of operation.

* * * * *

[FR Doc. 85-20275 Filed 8-23-85; 8:45 am]

BILLING CODE 6712-01-M

[9] The National Association of Business and Educational Radio (NABER) is presently the recognized coordinator for this band.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS-82, Amdt. 195-34]

Transportation of Hazardous Liquids by Pipeline; Recordkeeping and Accident Reporting

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Final rule.

SUMMARY: This final rule (1) reduces the overall recordkeeping requirements and simplifies and modifies the accident reporting requirements for operators of interstate pipelines that transport petroleum, petroleum products, or anhydrous ammonia, and (2) makes these requirements applicable to operators of intrastate pipelines that transport those commodities. This action will reduce the paperwork burden on interstate pipeline operators without reducing pipeline safety, impose a minimum paperwork burden on intrastate operators, and will provide more meaningful data to assess compliance and analyze pipeline accidents.

EFFECTIVE DATE: The effective date of this final rule is October 21, 1985. This date coincides with the date Part 195 becomes effective for intrastate pipelines (Amendment 195-33, Docket PS-80, 50 FR 15895) and allows time for interstate pipelines to prepare for compliance.

FOR FURTHER INFORMATION CONTACT: Frank Robinson, (202) 426-2392

regarding the content of this final rule or the Docket Branch (202) 426–3148 regarding copies of this final rule or other information in the docket. Copies of the revised accident report form (DOT Form 7000–1) and instructions are available by writing the Information Systems Manager, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 1984, the MTB published a notice of proposed rulemaking (NPRM) proposing to amend the accident reporting requirements of Subpart B of Part 195 and the recordkeeping requirements of §§ 195.266, 195.310, and 195.404 and to apply these requirements to intrastate pipelines. The NPRM resulted from a review of all the accident reporting and recordkeeping requirements in an effort to reduce unnecessary paperwork for operators of intrastate pipelines and to propose simplified requirements for operators of intrastate pipelines.

Ten commenters responded to the notice; the American Petroleum Institute (API), the Oil, Chemical and Atomic Workers International Union, AFL–CIO, the State Fire Marshal of California, and seven pipeline operators. In addition, the NPRM was presented in draft to the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) on November 1, 1984, for informal consideration. The recommendations of the committee and the commenters together with the actions taken as a result of the recommendations follow.

General

No commenters objected to the proposed application of Subpart B accident reporting requirements and the recordkeeping requirements of §§ 195.266, 195.310, and 195.404 (with proposed amendments) to operators of intrastate pipelines to which Part 195 applies. To accomplish this objective, § 195.1(c), which was adopted by Amendment 195–33, Docket PS–80 (50 FR 15895, April 23, 1985), and excepts intrastate pipelines from the aforementioned requirements, is deleted.

Recordkeeping

Section 195.266

The NPRM proposed the deletion of the requirement to maintain a record of the location of "weighted pipe" or "other item connected to the pipe" when a new pipeline is constructed or an existing pipeline is relocated, replaced, or otherwise changed. The rationale was that the records are superfluous because they are not needed to assure compliance with any related regulation in Part 195, to facilitate required inspections or tests, or for other safety reasons.

All but one of the commenters endorsed the proposed deletion by commending MTB's efforts to reduce recordkeeping or by specifically agreeing with the proposal.

One commenter disagreed, arguing that recording the location of weighted pipe and other items connected to the pipe does not impose a burden on the operator, and that a prudent operator would maintain these records for maintenance purposes.

While recording the location of weighted pipe and other items connected to pipe might not be a burden for operators who make such recordings during their normal course of business, for others the work of recordation is a burden imposed by Federal regulation. MTB believes that any regulatory burden that is not supported by a regulatory need should be removed. The commenter noted that the records at issue are used by some operators for maintenance. However, such records are not needed to perform or enforce the performance of maintenance activites that are required by Part 195 standards. In the absence of such need or any other clear need for the records, the better choice is to delete the requirement to keep these records. Consequently, § 195.266 is amended as proposed.

Section 195.310(a)

The notice proposed to amend § 195.310(a) to permit operators to discard all but the latest hydrostatic test records.

Most of the commenters who addressed the issue agreed with the proposal to keep only the latest hydrostatic test records. One commenter recommended that the rule be changed to require only the retention of records of the latest test by which the operator establishes the pipeline's maximum operating pressure. This commenter argued that it is possible for an operator to establish a pipeline's maximum operating pressure under an initial test and at some time later test to a lower pressure that is not used to qualify the pipeline's maximum operating pressure. According to the commenter, records of the latest test are not appropriate under these circumstances.

MTB believes this commenter misunderstands the recordkeeping requirement of § 195.310(a). Under this rule, records must be kept for tests performed as required by Subpart E, but not for other hydrostatic tests an operator does voluntarily. In addition, Subpart E only requires tests to qualify a pipeline's maximum operating pressure. However, to avoid future confusion the final rule is changed to clarify the intent that only those tests required by Subpart E must be recorded and then, as proposed, only the record of the latest test must be kept.

Section 195.310(b)

The notice proposed to amend this section to permit operators to retain test information on documents other than the recording chart. It was also proposed to change the term "dead weight tester data" to "test instrument calibration data" to comport with modern instrumentation.

Most of the commenters agreed with the proposal.

One of the commenters recommended that the proposal be amended to require that the pipe tested be identified in the records and that the recording chart be cross referenced with other test records. The MTB believes, however, that the proposed § 195.310(b)(7), which requires a description of the facility tested, and the proposed § 195.310(b)(1), which requires retention of the pressure recording charts, will provide adequate identification and cross referencing. In view of the above, § 195.310(b) is adopted as proposed.

Section 195.404(a)(1)

The NPRM proposed an amended § 195.404(a)(1) which would substitute a list of specific facilities for "major facilities". This amendment was proposed to assist operators and enforcement personnel to determine compliance with other operation and maintenance rules in Subpart F that directly pertain to the specific facilities. None of the commenters disagreed with the proposed amendment. The final rule is adopted as proposed.

Section 195.404(b)

The NPRM discussed MTB's decision not to grant API's petition that the 3-year retention period for daily operating records be reduced to one year.

One State agency and three pipeline operators addressed this issue. The State agency agreed with MTB. Three pipeline operators recommended a 1-year retention period, arguing that many equipment and operating changes occur over a 3-year period and, as a result, no valid conclusions could be drawn regarding operational problems by reviewing three years of daily operating records. These records are also used to assess the adequacy of normal, abnormal and emergency procedures

prescribed by § 195.402 and one-year records are sufficient for that purpose according to these commenters.

Although MTB recognizes that in some cases one-year records may prove sufficient, as a general rule MTB still believes that 3 years of daily operating records are needed to exhibit problems that are difficult to spot. At this time, therefore, no change to the 3-year period is being considered.

The NPRM also proposed to change in § 195.404(b) the term, "any unusual operations of a facility", to "any emergency or abnormal operation to which the procedures under § 195.402 apply". This change in terms was proposed because MTB felt the term, "any unusual operations of a facility", is indefinite whereas the term, "any emergency or abnormal operation to which the procedures under § 195.402 apply", comports with the use of terms in § 195.402 (d) and (e) and would aid enforcement personnel in investigating the operators' use of their procedures to respond to abnormal operations and emergencies.

Three pipeline operators supported the proposed change of terms in the proposed § 195.404(b). None of the commenters opposed the change. Consequently, the change in terms in § 195.404(b) is adopted as proposed.

Section 195.404(c)

The NPRM proposed to distinguish between records of repairs made to pipe and records of repairs made to parts of the pipeline system other than pipe. Records of repairs made to pipe were proposed to be retained for the useful life of the pipe—no change from the existing rule. The retention period for records of repairs to parts of the pipeline system other than pipe was proposed to be reduced from "the useful life of that part of the pipeline system to which they relate" to 1-year. The period for records of Subpart F inspections and tests was proposed to be reduced from "the life of the facility" to at least 5 years.

In general, the proposal to reduce record retention periods was well supported by the commenters. One commenter argued against relaxation of the record retention period for parts of the pipeline system other than pipe. This commenter argued that allowing operators to dispose of component repair records after one year would remove a source of information which might indicate defective components.

MTB recognizes that adopting a requirement to retain component repair records for only 1 year might occasionally have this effect. However, variations among operators in the form of the records themselves might also have this effect. Furthermore, the purpose of keeping these records is to tell whether component malfunctions are due to faulty repairs rather than possible defects in component design or manufacture. Problems associated with repair usually show up within a short time after repair, so that a 1-year record retention requirement is adequate. At the same time, serious design or manufacturing defects which cause accidents would be discovered through accident investigation procedures. Therefore, the proposed 1-year retention period for records of repairs on components other than pipe is adopted as final.

One pipeline operator recommended retention of Subpart F inspection and test records for two years, except those inspections and tests done on 5-year intervals. This commenter argued that records of previous inspections are not a useful indication of a pipeline's status and, therefore, retention of these previous records does not enhance safety. MTB agrees. There are a variety of less-than-5-year inspection and test intervals in Subpart F, for example, 3 weeks in § 195.412(a), 2½ months in § 195.416(c), 7½ months in § 195.428(a), and 15 months in § 195.432. Keeping these records for 5 years does not appear needed for safety or enforcement purposes. Therefore, this comment is adopted and the final rule changed to require retention for the longer of 2 years or the required inspection or test interval.

Another commenter recommended a 10-year retention period for Subpart F inspection and test records on the basis that 10 years would provide a good history of performance but yet be much less burdensome that the existing "life of the facility" requirement. In the absence of an adequate rationale, this comment did not persuade MTB that 10-year records are needed for safety. Thus, it was not adopted.

Accident Reporting

The NPRM proposed to amend the accident reporting form (DOT Form 7000–1) to delete unnecessary information items and to gather more meaningful data. The specific changes proposed, the comments received concerning the proposed changes, and the reasons for the final rules follow:

Section 195.54

The NPRM proposed to increase the 15-day period for reporting accidents to 30 days to provide more time for gathering data. This proposal was well supported by the commenters, with only one industry commenter recommending a 45-day period to provide more time for damage estimates. The 30-day period is maintained in the final rule, however, because MTB believes that this period is sufficient time to gather data for most accidents and, in those cases where additional time is needed, an interim report can be filed and a change or addition to the report can be filed under § 195.58 as more data become available. Further, the 30-day period is consistent with the filing period for leak reports on gas transmission and gas gathering lines under 49 CFR 191.15 and for leak reports on gas distribution systems under 49 CFR 191.9.

Section 195.56

The NPRM proposed to delete § 195.56 and publish the instructions contained in § 195.56 on the accident report form (DOT Form 7000–1). This amendment was proposed in order to make the accident report form easier to complete. Also, it was stated that deleting § 195.56 would allow the instructions to be modified more easily as the MTB and the industry gain experience with the new form.

While all of the commenters agreed with placing the instructions on the accident report form, four commenters argued against deleting § 195.56 on the basis that if the instructions are not published in the Code of Federal Regulations (CFR), they could be too easily changed without regard for the notice requirements of the Administrative Procedure Act (APA) (5 U.S.C. 551–553).

In proposing to delete § 195.56, MTB was not preparing to skirt APA requirements. The APA requires prior notice and comment for substantive rules, regardless of whether those rules are published in the CFR. Thus, any future changes MTB makes to the accident report form or its instructions that have the effect of creating or amending substantive reporting rules will be subject to the APA requirements for notice and comment, even though the form and instructions are not published in the CFR. Other types of changes, which might be explanatory, editorial, or procedural, are excepted from the APA notice and comment requirements. MTB expects that most future changes to the instructions will fall into these latter categories, and they can be made more readily with less cost if a change to the CFR is not involved. Separate publication has long been the practice for instructions to the gas pipeline reporting forms required by 49 CFR Part 191. Therefore, § 195.56 is deleted as proposed.

One commenter recommended that the instructions describe the accidents

to be reported and define the term "highly volatile liquid" or "HVL". Describing in the instructions the accidents to which the form applies would involve reproducing §§ 195.50 and 195.52. This would not be consistent with the purpose of the instructions which is to assist operators in filling out the form, not to display substantive requirements. The introductory paragraph to the instructions directs the reader to Subpart B for a description of accidents to which the form applies. Therefore, this comment was not adopted.

The NPRM proposed language in the instructions for Part G, item 2, referring the reader to § 195.2 for a definition of "highly volatile liquid". As a result of the above comment, MTB now believes these directions may not give the reader adequate guidance, and has incorporated the § 195.2 definition of "HVL" into the instructions.

Accident Report Form

No substantive comments were filed concerning the proposed Parts A thru D of the accident report form. Therefore these parts are adopted substantially as proposed. However, one data item, "Malfunction of Control or Relief Equipment", has been added to Part D. In view of increasing automation of pipelines, this item has been added to indicate the reliability of this equipment.

Part E

The NPRM proposed deletion of the distinction between employee and nonemployees when reporting deaths and injuries. The THLPSSC and two commenters recommended retaining this distinction on the basis that employee and nonemployee death and injury statistics gathered by MTB are used by private companies and safety associations in evaluations of exposure risks. In view of this information, the distinction between employee and non-employee deaths and injuries is retained in the final rule.

Part F

One member of the THLPSSC recommended that Part F clearly state that the costs of clean up and commodity lost are to be included in the estimated total property damage. The instructions for Part F make this clear in the final rule.

Part G

Item 3 of Part G of the proposed form included only an entry for the estimated amount of commodity spilled. Five commenters recommended that an additional information item be included to indicate the amount of commodity recovered. These commenters argued that this information is necessary in order to distinguish between the amount of commodity not recovered (which is to be included in the estimated total property damage in Part F) and the amount of the commodity spilled. MTB agrees and has added an entry under item 3 to indicate the amount of commodity recovered.

Part H

The notice proposed deletion of data entries for condition when installed, pipe configuration, amount of cover, and test medium on the basis that these items are not usually associated with the cause of an accident. One commenter recommended against deleting these items but did not give information supporting the recommendation. Consequently, deletion of those items in the final rule is adopted as proposed.

Part I

The notice proposed a new entry to indicate whether corrosion was galvanic or some other type. One commenter argued that, in one way or another, all corrosion is galvanic and that few field personnel would be able to distinguish between the various types of galvanic corrosion. This commenter recommended that the entry be changed to indicate whether the leak site was underground or atmospheric but did not explain how this information would be used.

The MTB does not believe that an indication of whether the leak site is underground or atmospheric will provide the information sought. The purpose of the entry is to categorize corrosion leaks to determine whether leaks are due to inadequate cathodic protection or to some other cause, and the proposed data entry will provide that information. While only a few field personnel might have the expertise to properly categorize corrosion, it is expected that personnel able to make that determination will be utilized in gathering the important information needed to complete an accident report. Consequently, the entry for indicating the type of corrosion is adopted as proposed.

Part J

The notice proposed deletion of entries for distance to the closest permanent line marker, information on the marker, and the length of time between patrols because standards in Part 195 govern those topics. Only one commenter argued against deletion of these items. This commenter argued that the information might be useful to urge legislation concerning third party damage. The MTB does not believe, however, that a widespread need exists for this information and has deleted these items in the final rule as proposed in the notice.

Paperwork Reduction Act

This final rule contains information collection requirements in the following sections: Subpart B of Part 195 and §§ 195.266, 195.310 and 195.404. These requirements have been approved for use by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). A new § 195.63 is added to the final rule to comply with the OMB requirement (5 CFR Part 1320) to display the information collection control number assigned by OMB. This new number is also printed on the upper right hand corner of the accident report form.

Cost Impact

This final rule does not propose a "major rule" under Executive Order 12291, and it does not propose a "significant rule" as defined by the Department of Transportation Policies and Procedures (DOT Order 2100.5). With respect to interstate pipelines, the final rule will reduce the number of records to be kept, reduce the overall retention time for records, and simplify accident reporting. However, the reduced paperwork burden and lowered costs to interstate pipeline operators and the government are not considered substantial enough to warrant further evaluation of the economic impact. With respect to intrastate pipelines, the Final Evaluation prepared for Docket PS-80 covers the existing recordkeeping and accident reporting requirements of Part 195. That evaluation shows that net benefits would result if Part 195 were extended in its present form to intrastate operators. The changes to the paperwork requirements of Part 195 resulting from this final rule will increase those benefits by reducing the paperwork burden projected by the evaluation.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires a review of certain rules proposed after January 1, 1981, for their effects on small businesses, organizations, and governmental bodies. I certify that the final rules will not have a significant economic impact on a substantial number of small entities. Few, if any, small entities operate interstate pipelines. Also, the Final Evaluation in Docket PS-80 shows that small entities that operate intrastate pipelines will not be affected by the final rules.

List of Subjects in 49 CFR Part 195

Anhydrous ammonia, Hazardous liquids, Petroleum, Petroleum products, Pipeline safety, Accident reporting and recordkeeping requirements.

Therefore, in view of the foregoing, MTB amends 49 CFR Part 195 and DOT Form 7000–1 and its instructions as follows:

PART 195—[AMENDED]

1. The authority citation for Part 195 is revised to read as set forth below, and the authority citations following any sections in Part 195 are removed.

Authority: 49 U.S.C. 2002; Subpart B and §§ 195.266, 195.310, and 195.404 also issued under 49 U.S.C. 2010(b); 49 CFR 1.53 and Appendix A to Part 1.

§ 195.1 [Amended]

2. Section 195.1(c) is removed.

3. Section 195.54 is revised to read as follows:

§ 195.54 Accident reporting.

Each operator that experiences an accident that is required to be reported under this subpart shall as soon as practicable but not later than 30 days after discovery of the accident, prepare and file an accident report on DOT Form 7000–1, or a facsimile, with the Information Systems Manager, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590. The operator shall file two copies of each report and shall retain one copy at its principal place of business. However, reports for intrastate pipelines subject to the jurisdiction of a State agency pursuant to certification under section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2004) may be submitted in duplicate to that State agency if the regulations of that agency require submission of these reports and provide for further transmittal of one copy within 10 days of receipt to the Information Systems Manager.

§ 195.56 [Removed]

4. Section 195.56 is removed.

5. Section 195.58 is revised to read as follows:

§ 195.58 Changes in or additions to accident report.

Whenever an operator receives any changes in the information reported or additions to the original report on DOT Form 7000–1, it shall file a supplemental report within 30 days with the Information Systems Manager, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590. However, reports for intrastate pipelines subject to the jurisdiction of a State agency pursuant to certification under section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2004) may be submitted in duplicate to that State agency if the regulations of that agency require submission of these reports and provide for further transmittal of one copy within 10 days of receipt to the Information Systems Manager.

6. A new § 195.63 is added to read as follows:

§ 195.63 OMB control number assigned to information collection.

The control number assigned by the Office of Management and Budget to the hazardous liquid pipeline information collection requirements of this part pursuant to the Paperwork Reduction Act of 1980 is 2137–0047.

7. Section 195.266(f) is revised as follows:

§ 195.266 Construction records.

* * * * *

(f) The location of each valve and corrosion test station.

8. Section 195.310 is revised as follows:

§ 195.310 Records.

(a) A record must be made of each hydrostatic test required by this subpart, and the record of the latest test must be retained as long as the facility tested is in use.

(b) The record required by paragraph (a) of this section must include:

(1) The pressure recording charts;

(2) Test instrument calibration data;

(3) The name of the operator, the name of the person responsible for making the test, and the name of the test company used, if any;

(4) The date and time of the test;

(5) The minimum test pressure;

(6) The test medium;

(7) A description of the facility tested and the test apparatus;

(8) An explanation of any pressure discontinuities, including test failures, that appear on the pressure recording charts; and

(9) Where elevation differences in the section under test exceed 100 feet, a profile of the pipeline that shows the elevation and test sites over the entire length of the test section.

9. In § 195.404, paragraphs (a)(1), (b), and (c) are revised to read as follows:

§ 195.404 Maps and records.

(a) * * *

(1) Location and identification of the following pipeline facilities:

(i) Breakout tanks;

(ii) Pump stations;

(iii) Scraper and sphere facilities;

(iv) Pipeline valves;

(v) Cathodically protected facilities;

(vi) Facilities to which § 195.402(c)(9) applies;

(vii) Rights-of-way; and

(viii) Safety devices to which § 195.428 applies.

* * * * *

(b) Each operator shall maintain for at least 3 years daily operating records that indicate—

(1) The discharge pressure at each pump station; and

(2) Any emergency or abnormal operation to which the procedures under § 195.402 apply.

(c) Each operator shall maintain the following records for the periods specified:

(1) The date, location, and description of each repair made to pipe shall be maintained for the useful life of the pipe.

(2) The date, location, and description of each repair made to parts of the pipeline system other than pipe shall be maintained for at least 1 year.

(3) A record of each inspection and test required by this subpart shall be maintained for at least 2 years or until the next inspection or test is performed, whichever is longer.

DOT Form 7000–1 [Revised]

The accident report form (DOT Form 7000–1) and instructions for completing it are revised to read as set forth in this issue of the **Federal Register** immediately following this rulemaking document.

Note.—DOT Form 7000–1 and instructions will not be shown in the Code of Federal Regulations.

Issued in Washington, D.C. on August 20, 1985.

M. Cynthia Douglass,

Acting Director, Materials Transportation Bureau.

Department of Transportation

Liquid Pipeline Accident Report

Instructions: Submit in duplicate for each accident reportable under Code of Federal Regulations, Title 49, Part 195, Subpart B. If the space provided for any question is not adequate, attach an additional sheet. File both copies of this report within 30 days after discovery of the accident with the Information Systems Manager (DMT–63), Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. However, reports for intrastate pipelines subject to the jurisdiction of a State agency pursuant to certification under Section 205 of the Hazardous Liquid Pipelines Safety Act of 1979 may be submitted in duplicate to the State agency if the regulations of that agency require

submission of these reports and provide for further transmittal of one copy within 10 days of receipt to the Information Systems Manager.

Please write or call the Information Systems Manager (202–472–1024) concerning questions about this report or these instructions, or to obtain copies of DOT Form 7000–1.

Each operator shall prepare each report of an accident on Form DOT 7000–1 or a facsimile as follows:

(1) General. Each applicable item must be marked or filled in as fully and as accurately as information accessible to the operator at the time of filing the report will permit. More than one item may apply.

(2) Part A. Enter the complete corporate name of the operator. Enter the address of the operator's principal place of business, including zip code.

(3) Part B, Item 1. Enter the date the accident occurred or was discovered. If the accident was not discovered on the date it occurred, state this under Part K. Indicate whether the accident occurred on Federal lands. For purposes of this report "Federal lands" means all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf.

Item 2. Enter the time the accident occurred according to a 24 hour clock (e.g., 1945). If the time of occurrence is not known, enter the time the accident was discovered and state this fact under Part K.

(4) Part E. Give the number of deaths and injuries known at the time of filing this report even if they were previously reported telephonically to the Department of Transportation. If none, state none.

(5) Part F. Indicate the total estimated property damage in present day costs including the cost of the commodity not recovered, damage to other parties, and cost of clean up. If none, state none.

(6) Part G, Item 1. State the commonly used name of the commodity spilled such as #2 fuel oil, regular gasoline, propane, etc.

Item 2. Give the classification of the commodity spilled and if it is a petroleum product, indicate whether it is a highly volatile liquid (HVL) or non-HVL. "HVL" means a hazardous liquid which will form a vapor cloud when released to the atmosphere and which has a vapor pressure exceeding 276kPa (40 psia) at 37.8°c (100°F). If the commodity spilled is not anhydrous ammonia, petroleum, or a petroleum product, it is not necessary to file this report.

(7) Part K. Give an account of the accident sufficiently complete and detailed to convey an understanding of the cause of the accident. Continue on an extra sheet of paper if more space is needed.

BILLING CODE 4910-60-M

OMB No. 2137-0047

Report Date

ACCIDENT REPORT-HAZARDOUS LIQUID PIPELINE

No. 7000-1 (DOT)

PART A—OPERATOR INFORMATION

1.) Name of operator _____

2.) Principal business address _____

_____

(city) (state) (zip code)

3.) Is pipeline interstate? ☐ yes ☐ no

PART B—TIME AND LOCATION OF ACCIDENT

1.) Date: (month) _____ (day) _____ (year) _____

2.) Hour (24 hour clock) _____

3.) If onshore give state (*including Puerto Rico and Washington, D.C.*), and county or city. _____

4.) If offshore, give offshore coordinates _____

5.) Did accident occur on Federal Land? ☐ yes ☐ no
(*See instructions for definition of Federal Land.*)

6.) Specific location (*If location is near offshore platforms, buildings, or other landmarks, such as highways, waterways, or railroads, attach a sketch or drawing showing relationship of accident location to these landmarks*)

_____

_____

_____

PART C—ORIGIN OF RELEASE OF LIQUID OR VAPOR. (*Check all applicable items*)

1.) Part of system involved:
☐ line pipe ☐ tank farm ☐ pump station

2.) Item Involved: ☐ pipe ☐ valve ☐ scraper trap ☐ pump
☐ welded fitting ☐ girth weld ☐ tank
☐ bolted fitting ☐ longitudial weld

Other (*specify*) _____

3.) Year item installed _____

PART D—CAUSE OF ACCIDENT

☐ corrosion ☐ failed weld ☐ incorrect operation by operator personnel
☐ failed pipe ☐ outside force damage
☐ malfunction of control or relief equipment.
☐ other(*specify*) _____

PART E—DEATH OR INJURY

1.) Number of persons killed. _____
_____ Operator employees _____ Non-employees

2.) Number of persons injured. _____
_____ Operator employees _____ Non-employees

PART F—ESTIMATED TOTAL PROPERTY DAMAGE:

$ _____

PART G—COMMODITY SPILLED

1.) Name of commodity spilled _____

2.) Classification of commodity spilled:
☐ Petroleum Petroleum product: ☐ HVL or ☐ Non-HVL
☐ Anhydrous ammonia

3.) Estimated amount of commodity involved
____ Barrels spilled ____ Barrels recovered

4.) Was there an explosion?
☐ yes ☐ no

5.) Was there a Fire?
☐ yes ☐ no

INSTRUCTIONS: Answer sections H, I, or J only if it applies to the particular accident being reported.

PART H—OCCURRED IN LINE PIPE

1.) Nominal diameter (*inches*) ____ 2.) Wall thickness (*inches*) ____
3.) SMYS (*psi*) ____ 4.) Type of joint: ☐ welded ☐ flanged ☐ threaded ☐ coupled ☐ other
5.) Pipe was ☐ Below ground ☐ Above ground
6.) Maximum operating pressure (*psig*) _____
7.) Pressure at time and location of accident (*psig*) _____
8.) Had there been a pressure test on system?
☐ yes ☐ no
9.) Duration of test (*hrs*) _____
10.) Maximum test pressure (*psig*) _____
11.) Date of latest test _____

PART I—CAUSED BY CORROSION

1. Location of corrosion
☐ internal ☐ external
2. Facility coated?
☐ yes ☐ no
3. Facility under cathodic protection?
☐ yes ☐ no
4. Type of corrosion
☐ galvanic ☐ other (*Specify*)
_____

PART J—CAUSED BY OUTSIDE FORCE

1. ☐ Damage by operator or its contractor
☐ Damage by others
☐ Damage by natural forces
☐ Landslide
☐ Subsidence
☐ Washout
☐ Frostheave
☐ Earthquake
☐ Ship anchor
☐ Mudslide
☐ Fishing operations

Other _____

2. Was a damage prevention program in effect?
☐ yes ☐ no
3. If yes, was the program
☐ "one-call" ☐ other _____
4. Did excavator call?
☐ yes ☐ no
5. Was pipeline location temporarily marked for the excavator?
☐ yes ☐ no

PART K—ACCOUNT OF ACCIDENT

NAME AND TITLE OF OPERATOR OFFICIAL FILING THIS REPORT.

_____

_____ _____

Telephone no. (*Including area code*) Date

DOT Form 7000-1 (4-85)

[FR Doc. 85-20319 Filed 8-23-85; 8:45 am]
BILLING CODE 4910-60-C

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1048

[Ex Parte No. MC-37 (Sub-37)]

Motor Carriers; Commercial Zone; New York, NY

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission instituted this proceeding in response to a petition filed by the International Trade Center of Mt. Olive Township, Morris County, NJ. (49 FR 28572, July 13, 1984). Comments were invited on its proposal to amend the existing regulations set forth at 49 CFR Part 1048 to expand the New York, NY, commercial zone to include the portion of Morris County adjacent to the present zone in which the International Trade Center is located or, alternatively, all points in Morris County. No comments in opposition to the proposals were filed. Petitioner filed statements in support of its proposals. The Commission will amend its regulations by adopting a new section, 49 CFR 1048.20, that individually describes the New York, NY, commercial zone to include all points previously included in the zone and all points in Morris County, NJ.

EFFECTIVE DATE: The new rule will be effective on September 25, 1985.

FOR FURTHER INFORMATION CONTACT:
Barbara Reideler, (202) 275-7982;
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 2229, Interstate Commerce Commission Building, 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 redefinition of the New York, NY, commercial zone to include Morris County, NJ, will not have a significant economic impact on a substantial number of small entities. To the extent that the redefinition would expand the present zone, the expansion is slight and would have no measurable impact on small entities.

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

Part 1048 of Chapter X of Title 49 of the Code of Federal Regulations is amended in the manner specified in the appendix.

Index

List of Subjects in 49 CFR Part 1048

Motor carriers, Commercial zones.

Dated: August 15, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Chairman Taylor was absent and did not participate in the disposition of this proceeding.

James H. Bayne,
Secretary.

Appendix

Title 49 of the Code of Federal Regulations, Part 1048, is amended as follows:

PART 1048—[AMENDED]

(1) The authority citation for Part 1048 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10526 and 5 U.S.C. 553.

(2) A new § 1048.20 is added to read as follows:

§ 1048.20 New York, NY.

The zone adjacent to, and commercially a part of, New York, NY, within which transportation by motor vehicle, in interstate or foreign commerce, not under common control, management, or arrangement for shipment to or from points beyond such zone is partially exempt from regulation under section 49 U.S.C. 10526(b)(1) of the Interstate Commerce Act (49 U.S.C. 10526(b)(1)), includes and is comprised of all points as follows:

(a) The municipality of New York, NY, itself;

(b) All points within a line drawn 20 miles beyond the municipal limits of New York, NY;

(c) All points in Morris County, NJ;

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c); and

(e) All of any municipality wholly surrounded, or so surrounded except by a water boundary, by the municipality of New York or by any other municipality included under the terms of paragraph (d) of this section.

[FR Doc. 85-20291 Filed 8-23-85; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 32 and 33

Addition of Twenty National Wildlife Refuges to the Lists of Open Areas for Migratory Game Bird Hunting, Upland Game Hunting, Big Game Hunting, and/or Sport Fishing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is adding twenty national wildlife refuges to the lists of open areas for migratory game bird hunting, upland game hunting, big game hunting, and/or sport fishing. The Secretary of the Interior has determined that this action is in accordance with the provisions of all applicable laws, is consistent with the principles of sound wildlife management, and is otherwise in the public interest. The Secretary has further determined that such uses will be compatible with, and in some cases enhance, the major purposes for which each refuge was established. The hunting of migratory game birds, upland game and big game, and/or sport fishing will provide additional public recreational opportunities.

EFFECTIVE DATE: September 25, 1985.

FOR FURTHER INFORMATION CONTACT: James F. Gillett, Division of Refuge Management, U.S. Fish and Wildlife Service, Main Interior Building, 18th and C Streets, NW, Room 2343, Washington, DC 20240; Telephone (202) 343-4311.

SUPPLEMENTARY INFORMATION: National wildlife refuges are closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the major purposes for which the refuge areas were established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action also must be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest.

On May 16, 1985, at 50 FR 20462, the Service published a proposed rule to open twenty refuges to hunting and/or sport fishing. Some of the hunting and fishing programs require refuge-specific hunting or fishing regulations, and these regulations were also included in the rulemaking. The policy of the

Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, written comments received on the proposed rule are addressed in the following section.

Responses to Comments Received

Written comments on the proposed rule were received from 14 organizations, agencies, and individuals. Substantive comments on issues not already addressed in hunting and fishing plans, environmental assessments, and section 7 endangered species analyses (all of which were available for public review during the comment period for the proposed rule) are responded to below:

Issue: Hunting on national wildlife refuges is illegal under the Refuge Administration Act and Refuge Recreation Act because it is incompatible with the legal responsibilities of the Refuge System to preserve, protect, and enhance wildlife.

Service Response: The Refuge Recreation Act states that the Secretary of the Interior is authorized to administer refuges for public recreation. The Refuge Administration Act authorizes the Secretary to permit the use of any area within the Refuge System for any purpose, including hunting. Thus, the Service believes that Congress clearly intended that recreation be an important part of a refuge management program to the extent that it can be made compatible with the primary purposes of a refuge. This was affirmed in the decision in Humane Society of the United States v. Morton, Civil Action No. 3627 (D. D.C. 1973), where the court found that hunting on Great Swamp, Eastern Neck, and Chincoteague NWRs was a valid and legal form of public recreation on these refuges. The compatibility provision applies to the purposes of individual refuges, not to the purposes of the entire Refuge System. The proposed rule contained a compatibility statement for each refuge where hunting was proposed. The purpose for which each refuge was established, and a brief description of how each hunting program is compatible with these purposes, was discussed. (These statements are also contained in the preamble of this final rule.) The hunting plans, environmental assessments, and section 7 endangered species determinations for each refuge were also available to the public during the 30-day comment period for the proposed rule. The Service believes that these documents contain the necessary data to substantiate the compatibility of the proposed hunting programs, and that the statement that hunting on refuges is illegal is without statutory foundation.

Issue: Issuing refuge-specific regulations as a one-time publication illegally prejudges compatibility and violates the Service's duty to make compatibility determination annually.

Service Response: Refuge hunting programs and regulations are reviewed annually to ensure their continued compatibility and consistency with refuge purposes. Refuge-specific regulations can be and are amended through the rulemaking process whenever necessary.

Issue: The proposed refuge hunting programs violate the Refuge Recreation Act if their projected costs have not been specifically allocated within refuge budgets because they will take funds away from other refuge programs.

Service Response: The Service has determined that sufficient funds are available to manage the proposed refuge hunts without detracting from other refuge programs; the hunts will only use a small percentage of the annual budgets of the refuges in question. The Refuge Recreation Act does not state that hunting programs cannot use funds that could have been used for other refuge programs. It merely requires that sufficient funding be available for refuge recreation. The allocation of a refuge's budget is made according to an annual work plan, which includes hunting as well as other refuge programs.

Issue: The proposed hunting programs are a violation of the Endangered Species Act.

Service Response: When the hunting plans and environmental assessments for the hunting programs were developed, consideration was given to the potential impact upon any endangered or threatened species that might use the refuges involved. Where necessary, the Service prepared section 7 analyses, thereby complying with the Endangered Species Act. None of the proposed hunts is likely to jeopardize endangered or threatened species or to interfere with their recovery plans or their conservation. The hunting programs were developed to minimize any potential adverse impacts on endangered and threatened species and, when needed, refuge-specific regulations were proposed to ensure that the hunting programs would not affect threatened or endangered species. The programs will be administered by wildlife professionals who have the responsibility to conserve endangered and threatened species. In the case of Columbian White-tailed Deer NWR, elk hunting will benefit the endangered deer species. Not all Service programs are required to benefit endangered species, however; the Endangered Species Act was not meant to repeal all other program authorizations and goals. Service studies of the impact of migratory bird hunting nationwide on endangered species suggest losses of such species are infinitesimal. Since refuge hunting is but a small fraction of total migratory game bird hunting, no impact is likely.

Issue: The Service did not comply with the National Environmental Policy Act (NEPA) because environmental impact statements (EISs) were not prepared for the individual refuge hunting programs.

Service Response: Environmental assessments were prepared for each proposed hunting program. These assessments, which were available for public review during the comment period, demonstrated that the proposed hunting programs do not constitute major Federal actions significantly affecting the quality of the human environment. Therefore, following the Council on Environmental Quality's regulations for implementing NEPA, EISs were not required. The Service has, moreover, prepared EISs on the operation of the Refuge System and on migratory bird hunting, which were reviewed in combination with the environmental assessments.

Issue: The surplus determinations required under 50 CFR 31.1 and 31.2 have not been made.

Service Response: 50 CFR Part 31 is limited to recognizing general authority to dispose of surplus wildlife and lists hunting as one method of control and disposition. The Service's procedure for permitting hunting on refuges is set forth in 50 CFR Part 32. This rule involves the policy and regulations in Part 32 which essentially require that hunting be consistent with the principles of sound wildlife management and otherwise be in the public interest.

Issue: The proposed hunting programs, because they will be governed principally by State regulations, will transfer authority to the States, which is illegal under the Refuge Administration Act.

Service Response: The regulations governing the proposed hunting programs will not transfer Service authority for managing national wildlife refuges. National wildlife refuges are opened to hunting and hunting is managed in accordance with the Secretary's authority under the Refuge Administration Act and the Refuge Recreation Act. Once the Secretary has made the mandated determinations

under these authorities, it is Department policy to conduct hunting within the framework of State laws and regulations and to impose additional requirements, where necessary, as refuge-specific regulations. This policy is clearly stated in 50 CFR 32.2(d): "Each person shall comply with the applicable provisions of the laws and regulations of the State wherein any area is located unless further restricted by Federal law or regulations." Under the regulations that will govern these hunts, the Service maintains it authority to enforce all State and Federal game regulations on national wildlife refuges.

Issue: Hunting on refuges violates the recommendations of the 1979 National Wildlife Refuge System Task Force.

Service Response: The Task Force recommendations state that hunting is "consistent with the concept of providing habitat in refuges for healthy populations of wildlife and [is] compatible with sound wildlife management principles and practices." The Service feels that its hunting proposals are consistent with this viewpoint.

Issue: Hunting will disturb non-target species and displace non-consumptive refuge uses.

Service Response: Hunting will only occur on designated areas of each refuge, and only for short periods of time. Disturbance and displacement will be, in the Service's experience, minor, temporary, and localized. Hunters generally seek to minimize their visibility, and thus any disturbance, to wildlife

Issue: By putting the phrase "safe haven" in quotations in the statement in the proposed rule that wildlife refuges are not intended to be "safe havens" for individual animals, the Service inferred that the phrase was a legal term and thus not subject to comment.

Service Response: The phrase "safe haven" was put in quotes because it is considered by some to be a definition of refuge. The phrase was, along with the rest of the rule, open to public comment.

Issue: What are the primary purposes for which each of the refuges listed in the proposed rule was established and in which cases will the proposed hunting or fishing programs enhance these purposes?

Service Response: The purposes for which each refuge listed in the rule was established are contained in the preamble of the proposed rule and this rule. The preamble also indicates those refuges on which hunting and/or fishing will enhance refuge purposes.

Issue: The information given in the proposed rule was inadequate to evaluate the proposals.

Service Response: The proposed rule sets forth its bases and purposes and stated clearly that hunting and fishing plans, environmental assessments, and (where appropriate) section 7 documents were available for public review during the 30-day comment period.

Issue: Some reviewers felt the biological data reported for some of the refuges in question are outdated, insufficient, or lacking, and do not justify the need for hunting.

Service Response: The Service recognizes hunting as an acceptable, traditional form of wildlife-oriented recreation that can be, and is sometimes used as, a management tool to effectively manipulate wildlife population levels. The primary objective of refuge hunting programs is to provide the general public with a quality recreational experience and an opportunity to utilize a renewable resource. A less often seen need is to maintain wildlife populations at levels compatible with refuge habitat. The Service feels that the hunting plans and environmental assessments available for public review during the comment period contain adequate biological information. However, the Service endorses the generally held principle that hunting need not be allowed only when wildlife populations are so high that harvest is necessary to protect a species from the impacts of its own excessive numbers. To delay harvesing until populations reach maximum carrying capacity risks habitat damage, disease, and population crashes. Game species in suitable habitat will generate harvestable surpluses which can be taken regularly without impairing desired population trends. This avoids the development of excessive numbers. The Service believes that consumptive uses of wildlife, when managed properly, have no adverse effects on the long-term well-being wildlife populations or their habitats. Refuge hunting progams are monitored and, if necessary, adjusted over time to ensure no detriment to desired population trends.

Issue: Hunters at Back Bay NWR will be allowed to use vehicles in areas normally closed to vehicular traffic.

Service Response: The Service has reconsidered the effects of private vehicular access for big game hunting at Back Bay NWR. We have now determined that private vehicular access to the areas south of the maintenance compound for the purpose of big game hunting is not appropriate. Instead, hunters will be transported to hunting areas and game transported from such areas in refuge vehicles. Efforts will be made to recover the costs of transporting hunters to and from the hunting area. The associated environmental effects of shuttling hunters should be considerably less than those which could occur through the use of private vehicles. The refuge hunting plan and environmental assessment have been revised to incorporate this change.

Issue: The proposed deer hunt at Bogue Chitto NWR should not be allowed because the hunting plan states that the deer herd has been "negatively impacted by many years of excessive pressure."

Service Response: The hunting program will shortern seasons, prohibit the use of dogs and take other restrictive measures that the Service believes will restore deer sex ratios and populations to proper levels.

Issue: Because hunting at Buenos Aires NWR may result in the accidental taking or stressing of some individual masked bobwhite quail, it is incompatible with the refuge's purpose and, therefore, violates the Refuge Administration Act and the Refuge Recreation Act. It also violates the Endangered Species Act.

Service Response: The Service believes that by closing to all quail hunting the approximately 50,000-acre area in which masked bobwhites will be reintroduced, the probability of adverse effects on the species will be minimized. The closed area comprises about 42% of the refuge and contains the masked bobwhite's preferred habitat on the refuge. Hunter education, posting of closed area, law enforcement, and population monitoring will also reduce the likelihood of adverse impacts. Hunting pressure has traditionally been light in the area. According to the Masked Bobwhite Quail Recovery Plan, the species is characterized by a high natural mortality rate (probably 70% annually) which is more than offset by a high reproductive rate (5–15 birds per brood). The species' endangerment is not a consequence of takings, but rather of habitat loss caused by overgrazing. The refuge's establishment will permit the habitat to recover and support the masked bobwhite. Even were a few individuals to be taken accidentally—a risk the Service will minimize as set out above—the impact on the species would be infinitesimal in light of its natural reproductive and mortality rates.

Issue: To ensure the protection of the masked bobwhite quail at Buenos Aires NWR, no hunting should be permitted in the 50,000-acre bottomlands habitat where these quail will be released and

no quail hunting should be permitted on the remainder of the refuge.

Service Response: This alternative is not possible because the Service lacks authority to regulate hunting on State-owned land within the refuge boundary. Enforcement of the resulting patchwork of jurisdictions and rules would be virtually impossible. For reasons given in the above response, however, the Service feels that the proposed hunting program will offer the masked bobwhite quail adequate protection to ensure its continued existence.

Issue: Use of dogs for rabbit hunting on the bottomlands masked bobwhite quail habitat at Buenos Aires NWR should be prohibited to protect the quail.

Service Response: Fewer rabbit hunters in Arizona use dogs for hunting. Rabbits are most often taken incidental to other hunting activities. The Service feels that if any dogs are used on the refuge, no more than one or two will be present at any one time. These hunts will be for short periods and will be widely dispersed throughout the refuge. The total disturbance caused by all hunting dogs will be negligible and much less than that caused by a single coyote or bobcat. Refuge personnel monitoring the hunt will, however, be alert to the remote possibility of disturbance and, if necessary, contact rabbit hunters using dogs within the masked bobwhite hunting closure to request their cooperation in minimizing disturbance.

Issue: Observers should be required in the bottomlands masked bobwhite quail habitat at Buenos Airs NWR during quail and dove hunting to ensure the safety of the masked bobwhite quail.

Service Response: Appropriate State and Federal law enforcement personnel will patrol the hunt to ensure the masked bobwhite's safety in the bottomlands area. Quail hunting will not be permitted in the bottomlands.

Issue: Deposition of lead shotgun pellets from dove, quail, and waterfowl hunting at Buenos Aires NWR will degrade refuge habitat and may cause lead poisoning in the endangered masked bobwhite quail.

Service Response: The Service considered the possibility of lead shot ingestion when the section 7 consultation was done for the proposed hunting program at Buenos Aires NWR. Several factors make it unlikely that lead shot ingestion will be a problem for masked bobwhite quail or other wildlife species. Among these factors are the fact that hunters will be widely dispersed throughout the refuge; that "firing line" situations, which would concentrate lead shot deposition, are highly unlikely to develop; that the terrain provides copious amounts of natural grit; and that shotgun hunting pressure within the quail hunting closure is expected to be very light. In addition, since the refuge was only acquired in late February, 1985, there was inadequate time for the Service to request that the State incorporate lead shot prohibitions into Arizona regulations (approximately 90,000 acres within the refuge are State lands). Further, imposition of steel shot requires adequate notification to ammunition dealers. No steel shot ammunition distribution is established in Arizona due to the lack of steel shot hunting zone designations. For these reasons and since the hunting plan is for an interim period only, the Service feels that imposition of a lead shot prohibition at Buenos Aires NWR would be premature at this time. The Service will evaluate hunter use patterns during the upcoming season to determine whether lead shot is likely to become a problem in the future. If hunter concentrations or wildlife use patterns are suspected to be a potential problem, appropriate restrictions will be proposed. In any event, the patchwork jurisdictions on the refuge will require unanimous State/Federal support for the final decision, be it for or against steel shot. Adequate notification time must also be allowed to establish a steel shot distribution system if steel shot were to be required.

Issue: At Buffalo Lake NWR, why are restrictions necessary on the number of hunters on the refuge and why will only pheasants be hunted there?

Service Response: It is necessary to restrict the number of hunters at Buffalo Lake NWR because of the small areas of open huntable habitat available. Pheasants are the only species available in huntable numbers.

Issue: Hunter densities at Harbor Island NWR should be controlled by a quota system.

Service Response: The Service feels that the relative inaccessibility of this refuge will limit the number of hunters using it. If hunter density is found to be too high, a permit system can be established to control numbers.

Issue: What provisions will be made to protect marine turtles from fishing activity at Hobe Sound NWR?

Service Response: As stated in the rule and section 7 evaluation available for public review, fishing at Hobe Sound NWR will only be permitted during daylight hours, so will not adversely impact nesting marine turtles, which use refuge beaches only at night.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the Refuge Administration Act authorizes the Secretary to permit the use of any area within the Refuge System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the major purposes for which areas were established. The compatibility determination for each refuge affected by this rulemaking is discussed below.

The Refuge Recreation Act gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the areas were established. In addition, opening refuges to hunting or fishing under the Refuge Recreation Act requires that the Secretary determine that funds be made available for the development, operation, and maintenance of these permitted forms of recreation prior to initiating such uses of refuge areas.

Executive Orders 1014 and 5316 and Proclamation 2416 recognized that on a number of refuges, including Back Bay National Wildlife Refuge (NWR), Cedar Keys NWR, Pelican Island NWR, Tybee NWR, Union Slough NWR, and Wolf Island NWR, public taking of game was not allowed "except as permitted" by the Secretary through regulations. Thus, authority to open these refuges by regulation predates the Refuge Recreation Act.

The Secretary of the Interior has determined that the hunting and fishing openings described below are appropriate under applicable Executive Orders and, in accordance with the Refuge Administration Act and Refuge Recreation Act, are compatible and consistent with the primary purposes for which each of the refuges listed was established. The hunting and fishing programs are consistent with State and Federal (migratory game bird) regulatory frameworks which are developed specifically to ensure conservation of fish and wildlife populations. A discussion of the compatibility of the hunting and fishing programs with the

purposes for which each refuge was established and the availability of funding for each program follows:

Back Bay NWR was established in 1938 by Executive Order 7907 as "a refuge and breeding ground for migratory birds and other wildlife." The Service will open the refuge to big game hunting. Currently, white-tailed deer populations exceed the carrying capacity of the refuge's habitat. This has led to habitat damage and a documented parasite problem within the refuge deer herd. In addition, feral hogs are present in sufficient numbers on the refuge that they also are destroying valuable wildlife habitat. Refuge hunting will be regulated to allow only the taking of white-tailed deer and feral hogs, and a refuge permit will be required to limit the number of hunters on the refuge. Time and space zoning will be implemented to ensure that the hunting program will not interfere with the management of other refuge wildlife. Since national wildlife refuges are established primarily to safeguard wildlife populations and their habitats, and are not intended to be "safe havens" for individual animals, the use of hunting as a management tool is in keeping with refuge purposes to conserve wildlife populations and habitats. Controlling refuge deer and hog populations will ensure the preservation and enhancement of habitat for breeding birds and other wildlife, and will occur at a time of year so as not to disturb nesting birds. For these reasons, the opening of Back Bay NWR to big game hunting is an appropriate exercise of Secretarial power under Proclamation 2416, furthers the purposes for which the refuge was established, and is in compliance with the Refuge Administration Act. The estimated annual cost to administer the hunting program is approximately $8,900. Within the annual refuge budget of approximately $422,000, the necessary funds are available for the administration of the hunting program. Therefore, the opening of Back Bay NWR to big game hunting is in compliance with the Refuge Recreation Act.

Bogue Chitto NWR was established in 1980 by Pub. L. 96–288 to preserve bottomland hardwood habitat and its associated wildlife, and for wildlife-oriented recreation and education. The Service will open the recently-acquired Mississippi portion of the refuge to migratory game bird, upland game, and big game hunting. The Louisiana portion of the refuge is currently open to these activities. Time and space zoning and other refuge-specific regulations will be implemented to ensure that hunting will not interfere with other refuge wildlife programs; these measures have proven effective on the Louisiana portion of the refuge. In addition, opening the Mississippi portion of the refuge to hunting will contribute toward accomplishment of one of the refuge's primary purposes by making the area available to hunting, an important form of outdoor recreation. For these reasons, the opening of Bogue Chitto NWR to migratory game bird, upland game, and big game hunting will enhance the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The estimated annual cost to administer the hunting program is less than $16,000. Within the annual refuge budget of approximately $170,000, the necessary funds are available for the administration of the hunting program. Therefore, the opening of Bogue Chitto NWR to migratory game bird, upland game, and big game hunting is in compliance with the Refuge Recreation Act.

Bon Secour NWR was established in 1980 by Pub. L. 96–267 to preserve coastal barrier island habitat for migratory birds and threatened and endangered wildlife, and to provide wildlife-oriented recreation. The Service will open the refuge to sport fishing. The fishing activity will permit continuation of recreational uses which have occurred, with no adverse impacts, since long before the refuge was established. This activity will involve fishing in two small freshwater lakes on the refuge. Boats with gasoline-powered motors will be prohibited from these waters. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. A Section 7 evaluation indicated that threatened and endangered wildlife species will not be adversely impacted by the fishing program. Accomplishment of one of the refuge's primary purposes will be enhanced by making the area available to an important form of outdoor recreation. For these reasons, the opening of Bon Secour NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost to administer the fishing program is approximately $500. Within the annual refuge budget of approximately $50,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Bon Secour NWR to sport fishing is in compliance with the Refuge Recreation Act.

Buenos Aires NWR was established in 1985 under authority of the Endangered Species Act, as amended (16 U.S.C. 1531), to provide protected and managed habitat for the endangered masked bobwhite quail. The Service owns 21,258 acres of the 118,694-acre refuge. Eventually, cooperative agreements, leases, and easements will allow the Service to consolidate management authority over the remainder of the refuge, which is owned by the State of Arizona (90,191 acres), the U.S. Forest Service (6,662 acres), and the Bureau of Land Management (583 acres). The Service will open the refuge to migratory game bird, upland game, and big game hunting. Hunting has traditionally occurred on portions of the Buenos Aires Ranch by permission of the landowner on private lands and by open hunting on State and Federal lands within the Ranch boundaries. Bottomland grassland habitats preferred by masked bobwhite quail, which comprise about 50,000 acres of the refuge, have been closed to all quail hunting by the State of Arizona for several years. (Gambel's, Montezuma, and scaled quail also occur on the refuge.) The Service will continue traditional hunting uses on an interim basis until a master plan is completed for the refuge. All quail hunting will continue to be prohibited on the 50,000 acres of bottomland masked bobwhite quail habitats closed in the past by the State. Opening limited areas of the refuge to hunting will result in only minor and temporary disturbances to refuge habitat. In the experience of the Service, such minor distubances will have no measurable adverse effects on wildlife populations. In addition, hunting on the bottomlands may aid in reestablishing masked bobwhite quail populations by reducing predation. A section 7 consultation determined that the continued existence of the endangered masked bobwhite quail will not be jeopardized by the hunting program. The possibility of accidental taking of masked bobwhites will be minimized through hunter education, posting of the closed quail hunting area, law enforcement, and population monitoring. Also, the preferred habitat of the masked bobwhite, and potential release sites for reintroduced birds, are located within the area closed to all quail hunting. For these reasons, the opening of Buenos Aires NWR to migratory game bird, upland game, and big game hunting will not interfere with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The estimated annual cost to administer the hunting program is approximately $8,820. Within the projected annual

refuge budget of $300,000, the necessary funds are available for the administration of the hunting program. Therefore, the opening of Buenos Aires NWR to migratory game bird, upland game, and big game hunting is in compliance with the Refuge Recreation Act.

Buffalo Lake NWR was established in 1958 by Executive Order 10787 for the conservation of migratory birds. The Service will open the refuge to upland game hunting. Refuge hunting will be regulated to allow only the taking of pheasants, and a refuge permit will be required to limit the number of hunters on the refuge. The area that will be hunted in dry lake bed and grassland habitat used primarily by resident wildlife species. During periods of increased runoff, when the lake bed holds standing water, upland game habitat is inundated and upland game populations disperse. Under such conditions, the hunting program will be modified or suspended. Because only a nonmigratory species will be hunted, and only on a portion of the refuge used primarily by resident wildlife species, migratory birds will not be adversely affected by the hunting activity. Therefore, the opening of Buffalo Lake NWR to upland game hunting is in compliance with the Refuge Administration Act. The estimated annual cost to administer the hunting program is approximately $5,600. Within the annual refuge budget of approximately $99,000, the necessary funds are available for the administration of the hunting program. Therefore, the opening of Buffalo Lake NWR to upland game hunting is in compliance with the Refuge Recreation Act.

Cedar Keys NWR was established in 1929 by Executive Order 5158 as "a refuge and breeding ground for birds." The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters surrounding the refuge, with no adverse impacts. The fishing program will only permit fishing from refuge beaches into the surrounding waters, and only during daylight hours. Most fishing will occur in conjunction with other refuge activities such as picnicking and beachcombing. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. In the experience of the Service, the fishing activity will not adversely affect bird populations or habitats. Therefore, the opening of Cedar Keys NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost to administer the fishing program is approximately $100. Within the annual refuge budget of approximately $5,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Cedar Keys NWR to sport fishing is in compliance with the Refuge Recreation Act.

Columbian White-tailed Deer NWR was established in 1972 under authority of the Endangered Species Act, as amended, to preserve and manage critical habitat for the endangered Columbian white-tailed deer. It is currently administered as part of the Lower Columbia River Refuge Complex. The Service will open the refuge to big game hunting. In 1983, the Columbian White-tailed Deer Recovery Team determined that the presence of large numbers of Roosevelt elk on the refuge is jeopardizing the continued survival of the deer. Hunting will help to maintain the elk population at a level that will minimize adverse impacts on the Columbian White-tailed deer. The elk control program is intended to reduce competition between elk and the endangered deer for the available habitat. The hunt will be implemented only when other methods of population reduction, such as trapping and transplanting, fencing, and off-refuge hunting, fail to achieve the desired elk herd size. Elk hunting will be regulated to ensure that it will not jeopardize the endangered deer, adversely modify its habitat, or interfere with or distract from the conservation of fish and other wildlife and their habitats. Since reduction of the refuge elk herd will contribute materially to the accomplishment of the refuge purpose of conserving Columbian white-tailed deer habitat, the opening of Columbian White-tailed Deer NWR to big game hunting is in compliance with the Refuge Administration Act. The estimated annual cost to administer the hunting program is approximately $14,000. Within the annual Lower Columbia River Refuge Complex budget of approximately $800,000, the necessary funds are available for the administration of the hunting program. Therefore, the opening of Columbian White-tailed Deer NWR to big game hunting is in compliance with the Refuge Recreation Act.

The Service will also open Columbian White-tailed Deer NWR to sport fishing. The fishing activity will permit continuation of recreational uses which have occurred, with no adverse impacts, since long before the refuge was established. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. The activity will involve fishing from a refuge dike to take fish from non-refuge waters and fishing in a refuge pond.

The locations where fishing will occur are such that they will not jeopardize the endangered deer or adversely modify its habitat. Therefore, the opening of Columbian White-tailed Deer NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program is less than $100 since no special services or facilities will be required to administer it and public access will be via a county road open to all refuge visitors. Within the annual Lower Columbia River Refuge Complex budget of approximately $800,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Columbian White-tailed Deer NWR to sport fishing is in compliance with the Refuge Recreation Act.

Egmont Key NWR was established in 1974 by Pub. L. 93–341 to preserve habitat for shore and colonial birds. The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters surrounding the refuge, with no adverse impacts. The fishing program will only permit fishing from refuge beaches into the surrounding waters, and only during daylight hours. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. No bird nesting occurs on the island. In the experience of the Service, the fishing activity will not adversely affect bird habitat. Therefore, the opening of Egmont Key NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program is less than $100 since no special services or facilities will be required to administer it. Within the annual refuge budget of approximately $8,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Egmont Key NWR to sport fishing is in compliance with the Refuge Recreation Act.

Harbor Island NWR was established in 1984 under authority of the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742), to preserve and enhance the island's unique ecosystem. It is currently administered by Seney NWR. The Service will open the refuge to migratory game bird, upland game, and big game hunting. Hunting occurred regularly on the island prior to its purchase from The Nature Conservancy, with no adverse impacts. Access to Harbor Island is by boat only, which will limit hunter use of

the refuge and result in only minor and temporary disturbances to refuge wildlife and habitat. Hunting will help to preserve the island's habitat by maintaining wildlife populations at acceptable levels. Therefore, the opening of Harbor Island NWR to migratory game bird, upland game, and big game hunting is in compliance with the Refuge Administration Act. The estimated annual cost to administer the hunting program is approximately $1,000. Within the annual Seney NWR budget of approximately $275,000, the necessary funds are available for the administration of the hunting program. Therefore, the opening of Harbor Island NWR to migratory game bird, upland game, and big game hunting is in compliance with the Refuge Recreation Act.

Harris Neck NWR was established in 1962 under authority of Pub. L. 80–537 to provide winter feeding and resting habitat for migratory birds. It is currently administered as part of the Savannah Coastal Refuge Complex. The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters near the refuge, with no adverse impacts. The fishing program will only permit bank fishing from refuge lands into the surrounding waters, and only during daylight hours. Fishing will not be permitted during the refuge hunting season. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. In the experience of the Service, the fishing activity will not adversely affect migratory bird habitat. Therefore, the opening of Harris Neck NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program is less than $100 since no special services or facilities will be required to administer it. Within the annual Savannah Coastal Refuge Complex budget of approximately $590,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Harris Neck NWR to sport fishing is in compliance with the Refuge Recreation Act.

Hobe Sound NWR was established in 1968 under authority of the Fish and Wildlife Act of 1956 to provide nesting habitat for threatened and endangered marine turtles. The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters near the refuge, with no adverse impacts. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. The fishing program will permit a limited number of individuals to fish from designated beach areas on the refuge. A Section 7 evaluation indicated that because fishing will only be permitted during daylight hours, it will not interfere with turtle nesting, which occurs at night. Therefore, the opening of Hobe Sound NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost to administer the fishing program is approximately $750. Within the annual refuge budget of approximately $60,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Hobe Sound NWR to sport fishing is in compliance with the Refuge Recreation Act.

Lower Suwannee NWR was established in 1979 under authority of the Fish and Wildlife Act of 1956 to protect and manage a unique ecosystem used by wintering waterfowl and threatened and endangered species, and to provide essential feeding habitat for the West Indian Manatee. The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters near the refuge, with no adverse impacts. The fishing program will only permit bank fishing into interior refuge waters. Fishing will not be permitted during the refuge hunting season. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. In the experience of the Service, the fishing activity will not adversely affect waterfowl or Manatee habitat. A section 7 evaluation indicated that threatened and endangered wildlife species, including the Manatee, will not be adversely impacted by the fishing activity either. For these reasons, the opening of Lower Suwannee NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost to administer the fishing program is approximately $1,000. Within the annual refuge budget of approximately $70,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Lower Suwannee NWR to sport fishing is in compliance with the Refuge Recreation Act.

Pelican Island NWR was established in 1903 by an unnumbered Executive Order as "a preserve and breeding ground for native birds", and redesignated by Proclamation 2416 in 1940. The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters near the refuge, with no adverse impacts. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. The fishing program will only permit fishing during daylight hours from designated areas of the refuge into the surrounding waters. The public will continue to be prohibited from using these portions of the refuge that are sanctuary for colonial nesting birds. Therefore, the opening of Pelican Island NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program is less than $100 since no special services or facilities will be required to administer it. Within the annual refuge budget of approximately $12,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Pelican Island NWR to sport fishing is in compliance with the Refuge Recreation Act.

Pinckney Island NWR was established in 1975 under authority of the Fish and Wildlife Act of 1956 to provide feeding and nesting habitat for migratory birds. It is currently administered as part of the Savannah Coastal Refuge Complex. The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the waters near the refuge, with no adverse impacts. The fishing program will only permit fishing from boats into tidal creeks. A lease with the State of South Carolina conveys jurisdiction of these waters to the Service. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. In the experience of the Service, the fishing activity will not adversely affect migratory bird habitat. Therefore, the opening of Pinckney Island NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program is less than $100 since no special services or facilities will be required to administer it. Within the annual Savannah Coastal Refuge Complex budget of approximately $590,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Pinckney Island NWR to sport fishing is in compliance with the Refuge Recreation Act.

Pinellas NWR was established in 1906 by an unnumbered Executive Order as "a preserve and breeding ground for native birds." The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the waters surrounding the refuge, with no adverse

impacts. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. The fishing activity will only permit fishing from boats into the waters surrounding the Tarpon Key portion of the refuge. A lease with the State of Florida conveys jurisdiction of these waters to the Service. No fishing will be permitted from refuge shores to protect colonial nesting birds. Therefore, the opening of Pinellas NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program is less than $100 since no special services or facilities will be required to administer it. Within the annual refuge budget of approximately $2,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Pinellas NWR to sport fishing is in compliance with the Refuge Recreation Act.

Tybee NWR was established in 1938 by Executive Order 7882 as "a refuge and breeding ground for migratory birds and other wildlife." It is currently administered as part of the Savannah Coastal Refuge Complex. The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters near the refuge, with no adverse impacts. The fishing program will only permit bank fishing from refuge lands into the surrounding waters, and only during daylight hours. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. In the experience of the Service, the fishing activity will not adversely affect wildlife populations or habitats. Therefore, the opening of Tybee NWR to sport fishing is in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program is less than $100 since no special services or facilities will be required to administer it. Within the annual Savannah Coastal Refuge Complex budget of approximately $590,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Tybee NWR to sport fishing is in compliance with the Refuge Recreation Act.

Union Slough NWR was established in 1938 by Executive Order 7976 as "a refuge and breeding ground for migratory birds and other wildlife", and redesignated by Proclamation 2416 in 1940. The Service will open the refuge to migratory game bird, upland game, and big game hunting. Hunting will be limited to the Buffalo Creek and Schwob Units, which will soon be transferred to the Service from the Iowa Conservation Commission. The State has permitted hunting on these areas, with no adverse impacts. The units lie adjacent to those portions of the refuge devoted to intensive management for migratory bird production and maintenance. Hunting will be regulated to assure that disturbances to refuge wildlife and habitat will be minor and temporary; it will occur at a time of year so as not to disturb nesting birds. Since national wildlife refuges are established primarily to safeguard wildlife populations and their habitats, and not intended to be "safe havens" for individual animals, the use of hunting as a management tool is in keeping with refuge purposes to conserve wildlife populations and habitats. For these reasons, the opening of Union Slough NWR to migratory game bird, upland game, and big game hunting is an appropriate use of the discretion given in Proclamation 2416 to allow taking of game and would be in compliance with the Refuge Administration Act. The estimated annual cost to administer the hunting program is approximately $2,500. Within the annual refuge budget of approximately $130,000, the necessary funds are available for the administration of the hunting program. Therefore, the opening of Union Slough NWR to migratory game bird, upland game, and big game hunting is in compliance with the Refuge Recreation Act.

Wassaw NWR was established in 1969 under authority of the Fish and Wildlife Act of 1956 to protect wintering habitat for migratory birds. It is currently administered as part of the Savannah Coastal Refuge Complex. The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters near the refuge, with no adverse impacts. The fishing program will only permit bank fishing from refuge lands into the surrounding waters, and only during daylight hours. Fishing will not be permitted during the refuge hunting season. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. In the experience of the Service, the fishing activity will not adversely affect migratory bird habitat. Therefore, the opening of Wassaw NWR to sport fishing is in compliance with the Refuge Administration Act. The annual cost of the fishing program is less than $100 since no special services or facilities will be required to administer it. Within the annual Savannah Coastal Refuge Complex budget of approximately $590,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Wassaw NWR to sport fishing is in compliance with the Refuge Recreation Act.

Wheeler NWR was established in 1938 by Executive Order 7926 as "a refuge and breeding ground for migratory birds and other wild life." The Service will open the refuge to sport fishing. The fishing activity will permit continuation of recreational uses which have occurred, with no adverse impacts, since before the refuge was established. Refuge fishing will be in accordance with State regulations which ensure the conservaton of the fishery resource. The primary use of the refuge by migratory birds is during the fall and winter, whereas the peak periods of fishing activity will be during spring and summer. In the experience of the Service, the fishing activity will not adversely affect wildlife populations or habitats. For these reasons, the opening of Wheeler NWR to sport fishing will not interfere with the purposes for which the refuge was established and is in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program is less than $100 since no special services or facilities will be required to administer it. Within the annual refuge budget of approximately $420,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Wheeler NWR to sport fishing is in compliance with the Refuge Recreation Act.

Wolf Island NWR was established in 1930 by Executive Order 5316 as "a refuge and breeding ground for wild animals and birds", and redesignated by Proclamation 2416 in 1940. It is currently administered as part of the Savannah Coastal Refuge Complex. The Service will open the refuge to sport fishing. Sport fishing has traditionally occurred in the State-controlled waters near the refuge, with no adverse impacts. The fishing program will permit bank fishing from refuge lands into the surrounding waters, and fishing from boats into the refuge-controlled waters of two creeks. Refuge fishing will be in accordance with State regulations which ensure the conservation of the fishery resource. In the experience of the Service, the fishing activity will not adversely affect wildlife populations or habitats. Therefore, the opening of Wolf Island NWR to sport fishing is appropriate under Proclamation 2416 and is in compliance with the Refuge Administration Act. The estimated annual cost of the fishing program is less than $100 since no special services or facilities will be

required to administer it. Within the annual Savannah Coastal Refuge Complex budget of approximately $590,000, the necessary funds are available for the administration of the fishing program. Therefore, the opening of Wolf Island NWR to sport fishing is in compliance with the Refuge Recreation Act.

In summary, the Service has determined that these hunting and fishing programs will be appropriate incidental or secondary uses of these refuges; will be compatible with, will not interfere with, and in some cases will enhance, the primary purposes for which these refuges were established; will be biologically sound and compatible with the principles of sound wildlife management; and will not be inconsistent with any other previously authorized Federal programs or with the primary objectives of these refuges. The Service has further determined that funds are available for administration of these programs, and that these programs are otherwise in the public interest in that they will provide needed recreational opportunities without impairment of the resource. Hunting and fishing plans are developed for each hunting and fishing program on a refuge prior to the opening of the refuge to hunting and/or fishing. In some cases, refuge-specific hunting and/or fishing regulations are included as a part of the hunting or fishing plan to ensure the compatibility of the programs with refuge purposes. For this reason, refuge-specific regulations necessary for the hunting and fishing programs outlined above are also included in this rulemaking. Refuge-specific regulations for refuges open to migratory game bird, upland game, and big game hunting are codified in 50 CFR Part 32, §§ 32.12, 32.22, and 32.32, respectively (see 49 FR 36736, 49 FR 38642, 49 FR 37093, 49 FR 43549, and 49 FR 50049). On July 23, 1985, at 50 FR 29972, a final rule was published which codified refuge-specific fishing regulations for refuges open to sport fishing in 50 CFR Part 33, §§ 33.5 through 33.54.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

It is estimated that the opening of these refuges to hunting and fishing will generate approximately 130,000 annual visits. Using data from the 1980 National Survey of Hunting, Fishing, and Wildlife-Associated Recreation, total annual receipts generated from purchases of food, transportation, hunting equipment, fishing gear, fees, and licenses associated with these programs are expected to be approximately $2.6 million, or substantially less than $100 million. In addition, since these estimated receipts will be spread over 11 states, the implementation of this rule should not have a significant economic impact on the overall economy of a particular region, industry or group of industries, or level of government.

With respect to small entities, this rule will have a positive aggregate economic effect on small businesses, organizations, and governmental jurisdictions. The refuge openings will provide recreational opportunities and generate economic benefits that will not otherwise exist, and will impose no new cost on small entities. While the number of small entities likely to be affected is not known, the number is judged to be small. Moreover, the added costs to the Federal government of law enforcement, posting, etc., needed to implement activities under this rule will be less than the income generated from the implementation of these hunting and/or sport fishing programs. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB as cited below:

Type of Information Collection	OMB Approval No.
Hunter Surveys	1018-0044
Special Use Permits	1018-0046
Hunter Reservation/Permit Application/Blind Assignment	1018-0047

These regulations impose no new reporting or recordkeeping requirements that must be cleared by OMB.

Environmental Considerations

The "Final Environmental Statement for the Operation of the National Wildlife Refuge System" [FES 76-59] was filed with the Council on Environmental Quality on November 12, 1976; a notice of availability was published in the **Federal Register** on November 19, 1976 (41 FR 51131). Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), environmental assessments were prepared for these refuge openings. Section 7 evaluations were prepared, where appropriate, pursuant to the Endangered Species Act.

Stephen J. Lewis, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this rulemaking document.

List of Subjects

50 CFR Part 32

Hunting, National Wildlife Refuge System, Wildlife, Wildlife refuges.

50 CFR Part 33

Fishing, National Wildlife Refuge System, Wildlife refuges.

Accordingly, Parts 32 and 33, Subchapter C, Chapter I of Title 50 of the Code of Federal Regulations are amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for Part 32 is revised to read as follows:

Authority: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, sec. 5, 45 Stat. 449, sec. 10, 45 Stat. 1224, sec. 4, 48 Stat. 402, as amended, sec. 4, 48 Stat. 451, as amended, sec. 2, 48 Stat. 1270, sec. 4, 76 Stat. 654, as amended, sec. 4, 80 Stat. 927; 5 U.S.C. 301, 16 U.S.C. 685, 725, 690d, 715i, 664, 718d, 43 U.S.C. 315a, 16 U.S.C. 460k, 668dd; sec. 2, 80 Stat. 926; 16 U.S.C. 668bb; Proclamation 2416, 5 FR 2677, 3 CFR, 1938-1943 Comp., p. 167; E.O. 1014 (January 26, 1909).

2. Section 32.11 is amended by adding Buenos Aires NWR, AZ, Union Slough NWR, IA, Harbor Island NWR, MI, and Bogue Chitto NWR, MS, alphabetically by State as follows:

§ 32.11 List of open areas; migratory game birds.

* * * * *

Arizona

Buenos Aires National Wildlife Refuge

* * * * *

Iowa

Union Slough National Wildlife Refuge

* * * * *

Michigan

Harbor Island National Wildlife Refuge

* * * * *

Mississippi

Bogue Chitto National Wildlife Refuge

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3. Section 32.12 is amended by redesignating paragraphs (c) through (rr) as (d) through (ss), respectively; adding a new paragraph (c); redesignating newly designated paragraphs (v)(1) through (v)(6) as paragraphs (v)(2) through (v)(7), respectively; and by adding a new paragraph (v)(1) as follows:

§ 32.12 Refuge-specific regulations; migratory game birds.

* * * * *

(c) *Arizona—Buenos Aires National Wildlife Refuge.* Hunting of mourning doves, white-winged doves, ducks, geese, and coots is permitted on designated areas of the refuge.

* * * * *

(v) *Mississippi*—(1) *Bogue Chitto National Wildlife Refuge.* Hunting of ducks, geese, coots, and woodcock is permitted on designated areas of the refuge subject to the following conditions:

(i) Duck hunting is not permitted during the special teal season.

(ii) Hunting is permitted until noon each day.

(iii) Only temporary blinds are permitted.

* * * * *

4. Section 32.21 is amended by adding Buenos Aires NWR, AZ, Union Slough NWR, IA, Harbor Island NWR, MI, Bogue Chitto NWR, MS, and Buffalo Lake NWR, TX, alphabetically by State as follows:

§ 32.21 List of open areas; upland game.

* * * * *

Arizona

Buenos Aires National Wildlife Refuge

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Iowa

Union Slough National Wildlife Refuge

* * * * *

Michigan

Harbor Island National Wildlife Refuge

* * * * *

Mississippi

Bogue Chitto National Wildlife Refuge

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Texas

Buffalo Lake National Wildlife Refuge

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5. Section 32.22 is amended by redesignating paragraph (b) introductory text and paragraphs (b)(1), (b)(2), and (b)(3) as paragraphs (b)(2), (b)(2)(i), (b)(2)(ii), and (b)(2)(iii), respectively; adding a new paragraph (b)(1); redesignating paragraphs (v)(1) through (v)(6) as paragraphs (v)(2) through (v)(7), respectively; by adding a new paragraph (v)(1); by redesignating paragraph (kk) introductory text and paragraphs (kk)(1) and (kk)(2) as paragraphs (kk)(2), (kk)(2)(i), and (kk)(2)(ii), respectively; and by adding a new paragraph (kk)(1) as follows:

§ 32.22 Refuge-specific regulations; upland game.

* * * * *

(b) *Arizona*—(1) *Buenos Aires National Wildlife Refuge.* Hunting of quail (except masked bobwhite quail), cottontail rabbit, jackrabbit, coyote, fox, and bobcat is permitted on designated ares of the refuge.

(2) *Kofa National Wildlife Refuge.*

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* * * * *

(v) *Mississippi*—(1) *Bogue Chitto National Wildlife Refuge.* Hunting of squirrel, rabbit, and opossum is permitted on designated areas of the refuge subject to the following conditions:

(i) Dogs are permitted for rabbit hunting following the last day of the State deer season.

(ii) Hunting of raccoon and opossum is permitted from the opening day of the State season through the month of November.

* * * * *

(kk) *Texas*—(1) *Buffalo Lake National Wildlife Refuge.* Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition: A refuge hunting permit is required.

(2) *Hagerman National Wildlife Refuge.* * * *

* * * * *

6. Section 32.31 is amended by adding Buenos Aires NWR, AZ, Union Slough NWR, IA, Harbor Island NWR, MI, Bogue Chitto NWR, MS, Back Bay NWR, VA, and Columbian White-tailed Deer NWR, WA, alphabetically by State as follows:

§ 32.31 List of open areas; big game.

* * * * *

Arizona

Buenos Aires National Wildlife Refuge

* * * * *

Iowa

Union Slough National Wildlife Refuge

* * * * *

Michigan

Harbor Island National Wildlife Refuge

* * * * *

Mississippi

Bogue Chitto National Wildlife Refuge

* * * * *

Virginia

Back Bay National Wildlife Refuge

* * * * *

Washington

Columbian White-tailed Deer National Wildlife Refuge

* * * * *

7. Section 32.32 is amended by redesignating paragraphs (b)(1) through (b)(3) as paragraphs (b)(2) through (b)(4), respectively; adding a new paragraph (b)(1); redesignating paragraph (p) introductory text and paragraphs (p)(1) through (p)(4) as paragraphs (p)(1) and (p)(1)(i) through (p)(1)(iv), respectively; by adding a new paragraph (p)(2); by redesignating paragraphs (v)(1) and (v)(2) as paragraphs (v)(2) and (v)(3), respectively; by adding a new paragraph (v)(1); by redesignating paragraphs (x)(1) through (x)(6) as paragraphs (x)(2) through (x)(7), respectively; by adding a new paragraph (x)(1); by redesignating paragraphs (qq)(1) through (qq)(3) as paragraphs (qq)(2) through (qq)(4), respectively; and by adding a new paragraph (qq)(1) as follows:

§ 32.32 Refuge-specific regulations; big game.

* * * * *

(b) *Arizona*—(1) *Buenos Aires National Wildlife Refuge.* Hunting of mule deer, white-tailed deer, and javelina is permitted on designated areas of the refuge.

* * * * *

(p) *Iowa*—(1) *De Soto National Wildlife Refuge.* * * *

(2) *Union Slough National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge.

* * * * *

(v) *Michigan*—(1) *Harbor Island National Wildlife.* Hunting of white-tailed deer and black bear is permitted on designated areas of the refuge.

(x) *Mississippi*—(1) *Bogue Chitto National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

(i) Archery hunting is permitted.

(ii) A 14-day primitive weapon deer hunt is permitted beginning December 2. During this hunt, one deer of either sex may be taken.

(iii) An 8-day gun deer hunt is permitted beginning December 16. During this hunt, only male deer may be taken.

* * * * *

(qq) *Virginia*—(1) *Back Bay National Wildlife Refuge.* Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Only shotguns 20 gauge or larger, loaded with buckshot and/or rifled slugs, and bow and arrow, are permitted.

(iii) Dogs are not permitted.

(iv) Possession of loaded firearms or nocked arrows is not permitted on refuge roads or proclamation waters.

(v) Hunters must wear in a conspicuous manner on head, chest, and back, a minimum of 400 square inches of "hunter orange" clothing or material.

* * * * *

PART 33—[AMENDED]

8. The authority citation for Part 33 is revised to read as follows:

Authority: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, secs. 5, 10, 45 Stat. 449, 1224, secs. 4, 2, 48 Stat. 402, as amended, 451, 1270, sec. 4, 76 Stat. 654; 5 U.S.C. 301, 16 U.S.C. 685, 725, 690d, 715i, 664, 718d, 43 U.S.C. 315a, 16 U.S.C. 460k; sec. 2, 80 Stat. 926; 16 U.S.C. 668bb; Proclamation 2416, 5 FR 2677, 3 CFR, 1938–1943 Comp., p. 167; E. O. 1014 (January 28, 1909).

9. Section 33.4 is amended by adding Bon Secour NWR, AL, Wheeler NWR, AL, Cedar Keys NWR, FL, Egmont Key NWR, FL, Hobe Sound NWR, FL, Lower Suwannee NWR, FL, Pelican Island NWR, FL, Pinellas NWR, FL, Harris Neck NWR, GA, Tybee NWR, GA, Wassaw NWR, GA, Wolf Island NWR, GA, Pinckney Island NWR, SC, and Columbian White-tailed Deer NWR, WA, alphabetically by State as follows:

§ 33.4 List of open areas; sport fishing.

* * * * *

Alabama

Bon Secour National Wildlife Refuge

* * * * *

Wheeler National Wildlife Refuge

* * * * *

Florida

Cedar Keys National Wildlife Refuge

* * * * *

Egmont Key National Wildlife Refuge

* * * * *

Hobe Sound National Wildlife Refuge

* * * * *

Lower Suwannee National Wildlife Refuge

* * * * *

Pelican Island National Wildlife Refuge

* * * * *

Pinellas National Wildlife Refuge

* * * * *

Georgia

Harris Neck National Wildlife Refuge

* * * * *

Tybee National Wildlife Refuge
Wassaw National Wildlife Refuge
Wolf Island National Wildlife Refuge

* * * * *

South Carolina

Pinckney Island National Wildlife Refuge

* * * * *

Washington

Columbian White-tailed Deer National Wildlife Refuge

* * * * *

10. Section 35.5 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively; and by adding new paragraphs (a) and (d), to read as follows:

§ 33.5 Refuge-specific fishing regulations—Alabama.

(a) *Bon Secour National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted during daylight hours only.

(2) Only nonmotorized boats and boats with electric motors are permitted on Gator and Little Gator Lakes.

* * * * *

(d) *Wheeler National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition: Bank fishing is not permitted around the shoreline of the refuge headquarters and in the display pool.

11. Section 33.13 is amended by redesignating paragraphs (a), (b), (c), (d), (e), and (f) as paragraphs (d), (e), (g), (h), (k), and (l), respectively; and by adding new paragraphs (a), (b), (c), (f), (i), and (j) as follows:

§ 33.13 Refuge-specific fishing regulations—Florida.

(a) *Cedar Keys National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted during daylight hours only.

(2) Fishing is permitted year-round, from refuge beaches only.

(b) *Egmont Key National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted during daylight hours only.

(2) Fishing is permitted year-round, from refuge beaches only.

(c) *Hobe Sound National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted year-round, during daylight hours only.

* * * * *

(f) *Lower Suwannee National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition: Bank fishing is permitted into interior refuge creeks, borrow pits, and canals from March 15 to September 30 only.

* * * * *

(i) *Pelican Island National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted year-round.

(2) Bank fishing from spoil islands is permitted, during daylight hours only.

(j) *Pinellas National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is only permitted from boats, into the waters surrounding Tarpon Key.

* * * * *

12. Section 33.14 is amended by redesignating paragraphs (c) through (e) as paragraphs (d) through (f), respectively; and by adding new paragraphs (c), (g), and (h) as follows:

§ 33.14 Refuge-specific fishing regulations—Georgia.

(c) *Harris Neck National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted year-round, except during refuge hunts.

(2) Bank fishing into estuarine waters is permitted, during daylight hours only.

* * * * *

(g) *Wassaw National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted year-round except during refuge hunts.

(2) Bank fishing into estuarine waters is permitted, during daylight hours only.

(h) *Wolf Island National Wildlife Refuge.* Fishing is permitted on

designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted year-round.

(2) Fishing from boats is only permitted on Beacon and Wolf Creeks.

(3) Bank fishing into estuarine waters is permitted, during daylight hours only.

13. Section 33.44 is amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively; and by adding a new paragraph (c) as follows:

§ 33.44 Refuge-specific fishing regulations—South Carolina.

* * * * *

(c) *Pinckney Island National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing is permitted year-round.

(2) Fishing is only permitted from boats, into the estuarine waters adjacent to the refuge.

* * * * *

Dated: August 7, 1985.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-20271 Filed 8-23-85; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 50, No. 165
Monday, August 26, 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

Soil Conservation Service

7 CFR Part 655

State Specifications for Soil Removal, Stockpiling, Replacement and Reconstruction for Surface Coal Mining and Reclamation Operations in Illinois, Kentucky, North Dakota, and Ohio

AGENCY: Soil Conservation Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Soil Conservation Service (SCS) of the U.S. Department of Agriculture (USDA) intends to propose a rule and develop an administrative record on the specifications for soil handling (removal, stockpiling, replacement, and reconstruction) related to mining activities on prime farmland as provided for in section 515(b)(7) of the Surface Mining Control and Reclamation Act. In Illinois, Kentucky, North Dakota and Ohio, SCS staff specialists, in cooperation with State regulatory authorities and others, are developing drafts of such specifications for effective soil handling with consideration of the soils, climate, geology, crops, and mining technologies within each state. Interested individuals may obtain copies of the draft specifications by requesting them from the SCS State Conservationists in these states. Similar drafts are also being developed in other states affected by section 515(b)(7), but they are in less advanced stages at this time.

FOR FURTHER INFORMATION CONTACT: Donald E. McCormack, National Leader, Soil Technology, Soil Survey Division, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013. For copies of the draft specifications, contact: John J. Eckes, State Conservationist, Springer Federal Building, 301 North Randolph Street, Champaign, Illinois 61820; Randall W. Giessler, State Conservationist, 333 Waller Avenue, Room 305, Lexington, Kentucky 40504; August J. Dornbusch, State Conservationist, Rosser Avenue & Third Street, Federal Building, P.O. Box 1458, Bismarck, North Dakota 58502; Harry W. Oneth, State Conservationist, 200 North High Street, Room 522, Columbus, Ohio 43215.

SUPPLEMENTARY INFORMATION:

(a) Background. Section 515(b)(7) of the Surface Mining Control and Reclamation Act of 1977 (the Act), Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, requires the Secretary of Agriculture to establish specifications for soil removal, storage, replacement and reconstruction for all prime farmlands, as identified in section 507(b)(16) of the Act, to be mined and reclaimed. This function was delegated to the Soil Conservation Service (SCS) by the Secretary of Agriculture in 7 CFR 601.2(i).

(b) SCS has determined that it is not possible or appropriate to develop national specifications for soil handling because of the wide diversity of soils, geology, climate, mining equipment, and crops in coal mining areas across the nation. This finding is reflected in the permanent program regulations published by the Office of Surface Mining (OSM), U.S. Department of the Interior, specifically in 30 CFR 823.4(a) which states that "SCS within each State shall establish specifications for prime farmland soil removal, storage, replacement, and reconstruction." That rule further elaborates general provisions of such specifications under the headings Soil Removal and Stockpiling (30 CFR 823.12) and Soil Replacement (30 CFR 823.14).

(c) In 1984, SCS reversed an earlier position that the specification to be established in each State were highly technical provisions of interest to only a few scientists and thus that it would not be useful or helpful to obtain public review and comment. Due to previous recommendations by OSM and various concerned individuals, SCS concluded that the specifications should be published for review and comment. On October 1, 1984, the U.S. District Court for the District of Columbia found that these specifications must be published in the **Federal Register** for public comment (*In Re Permanent Surface Mining Regulation Litigation*, Civil Action No. 79–1144).

(d) In Illinois, Kentucky, North Dakota, and Ohio, specialists of the Agricultural Experiment Stations and the State regulatory authorities (SRA's) are assisting in the development of the specifications for soil handling. In addition, individuals employed by the mining industry and others are providing pertinent information. To the fullest possible extent, the state specifications will reflect the latest scientific information and experience available to guide reclamation techniques so that levels of reclamation required by the Act can be achieved.

General National Guidelines

(a) During the development of the proposed state specifications, certain general guidelines were provided at the national level by SCS to assist the states in developing the required specifications. These guidelines reflect in-depth discussions between SCS and OSM personnel, university scientists, scientists and others of the coal mining industry, state agencies including SRA's, and members of conservation and environmental organizations. Careful consideration and thorough scientific evaluation has been directed toward development of both the national guidelines and the draft state specifications to assure that all scientific evidence is properly reflected.

(b) To assist in understanding the draft state specifications, the national guidelines used are presented herein for: (a) Soil moisture and temperature as they affect soil handling; (b) reconstructed soil slope; (c) depth of soil reconstruction; (d) substitute soil materials; (e) compaction and density; (f) and texture and pH. These guidelines are not presented as rigid standards for universal application, but do represent minimum levels, in general terms, for soil handling. Additional provisions of the individual state specifications are a result of state laws, or unique soils, geology and climate.

(1) *Soil moisture and temperature.* Operating decisions about whether the

soil has proper moisture conditions for grading must be the responsibility of the mine operator. They are day-to-day and hour-to-hour decisions. It is in the best interest of the operator and a clear requirement of the Act, that the soil be handled so as to minimize compaction and to help assure success in restoring soil productivity. Avoidance of overcompaction has proven to be one aspect of restoring soil productivity that is difficult in many cases and thus deserving of careful attention by both the industry and regulatory authorities. Limiting soil handling to those moisture conditions at which proper compaction is least difficult to achieve is thus desirable.

(2) *Reconstructed soil slope.* Most prime farmland has slopes of less than 5 or 6 percent and the creation of slopes favorable to agricultural cropping does not generally pose a difficult problem for mine operators. However, in some cases the prime farmland soil was level or nearly so before mining. On many such soils, farm drainage systems had been installed prior to mining. For such level areas, it is advisable to reconstruct the soils with slopes of 1 to 2 percent to assure that there is sufficient runoff to prevent the creation of undue soil wetness. It is essential that adequate surface drainage be provided so that ponding of surface water is avoided.

There may be, in this and other kinds of situations, the opportunity to create, at no extra cost, a soil that is better drained, less erodible and/or more productive, than the soil that existed prior to mining. This may be an attractive opportunity and where it can be done at no extra cost to the mine operator, SCS should bring such cases to the attention of the SRA.

(3) *Depth of soil reconstruction.* Most prime farmland soils have a favorable rooting depth of at least 48 inches and for most such soils proper soil reconstruction to this depth will result in restoration of productivity. However, there may be some prime farmland soils for which reconstruction to a greater depth is needed. The 48 inch depth is specified in state laws in several states.

Where bedrock or approved root inhibiting horizons are at depths of less than 48 inches, reconstruction is thus required to a lesser depth.

Fragipans or other root inhibiting layers, in order to qualify for exclusion from reconstruction, must contribute little or nothing to the productive capacity of the soil. This contribution must be less than 0.06 inches per inch of available water capacity to qualify for such exclusion.

(4) *Compaction and density.* Because of the diversity of soil texture, rock fragments, climate, mining equipment and techniques, it has not been possible to establish soil density standards which clearly relate to soil productivity. In spite of overall high soil density, there are cases where good root deployment and targeted crop yields have been achieved, mainly because the pattern of pore spaces was favorable. On the other hand, there are cases in which the overall density is not high and good root deployment was expected, but a very thin highly compacted layer that could not be detected in standard test methods prohibited the entry of plant roots.

SCS has studied the density issue over a period of more than 5 years, and has concluded that more research is needed before useful limits of density can be established. Excessive compaction within the required depth must be avoided, but until better information is available it is necessary to evaluate crop performance and root system development of the reference crop(s) to determine whether or not the necessary porosity exists. Special techniques and equipment that will prevent over-compaction will be used, or techniques that will alleviate excessive compaction should be required.

(5) *Texture and pH.* The texture and pH of the reconstructed soil horizons will be essentially the same as comparable horizons of the unmined soil, or of any approved mixtures of horizons or strata.

Plans for rulemaking

Accordingly, for the purpose of determining the proper provisions of specifications for soil removal, storage, replacement and reconstruction as required in section 515(b)(7) of the Act and 30 CFR 823.12 and 823.14, SCS intends to propose a rule, on a state-by-state basis, which will address the issue of how the soil should be handled in surface coal mining and reclamation operations on prime farmland. SCS invites public comment on the national guidelines published herein, and on the draft state specifications being developed in Illinois, Kentucky, North Dakota and Ohio. Similar specifications are in early stages of development in the other states with surface coal mining on prime farmland. As appropriate, SCS will announce their availability for review in the **Federal Register.**

Wilson Scaling,

Chief.

[FR Doc. 85-20285 Filed 8-23-85; 8:45 am]

BILLING CODE 3410-16-M

Agricultural Marketing Service

7 CFR Part 1032

[Docket No. AO-313-A33]

Milk in the Southern Illinois Marketing Area; Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends that the location adjustment provisions of the Southern Illinois order be amended to reestablish the same location value of milk at plants in the St. Louis metropolitan area that applied at such plants under the former St. Louis-Ozarks order, which was terminated on April 1, 1985. The amendment was proposed by six dairy cooperatives that represent about 90 percent of the producers who supply milk to the Southern Illinois market. The location adjustment change is needed to assure that an adequate supply of milk for fluid use will be shipped to distributing plants in the St. Louis metropolitan area.

DATE: Comments are due on or before September 10, 1985.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, D.C. 20250.

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

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.

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

Prior document in this proceeding:

Notice of Hearing: Issued April 12, 1985; published April 18, 1985 (50 FR 15432).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Southern Illinois marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC., 20250, by the 15th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)). It is found that it is impracticable and contrary to the public interest to have a comment period which is longer than 15 days because, for purposes of orderly marketing in the area, there is a need to resolve the issue of the proposed location adjustment amendment as soon as possible.

The proposed amendments set forth below are based on the record of a public hearing held at Bridgeton, Missouri, on April 30, 1985, pursuant to a notice of hearing issued April 12, 1985 (50 FR 15432).

The material issues on the record of hearing relate to:

1. Location adjustments.
2. Whether emergency marketing conditions exist with respect to issue No. 1.
3. Conforming and technical changes.

Findings and Conclusions

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

1. *Location adjustments.*

The location adjustment provisions should be amended to provide for a plus 7-cent location adjustment at plants located in the St. Louis metropolitan area. Such area includes the city of St. Louis, the Missouri counties of Jefferson, St. Charles and St. Louis and the adjacent Illinois counties of Madison (except Alton Township), Monroe and St. Clair. Application of the 7-cent location adjustment results in reestablishing the same location value of milk that existed at plants in this area under the St. Louis-Ozarks order that was terminated on April 1, 1985.

Six cooperative associations (Mid-America Dairymen, Inc., Associated Milk Producers, Inc., Land O'Lakes, Inc., Midwest Dairymen's Company, Prairie Farms Dairy, Inc. and Wisconsin Dairies Cooperative) that represent about 90 percent of the producers who supply the Southern Illinois market proposed the location adjustment amendment to reestablish the Class I price level that existed at plants in the St. Louis metropolitan area that have become regulated under the Southern Illinois order. The cooperatives contend that the action is necessary to maintain the historical 7-cent price difference that existed between plants in the St. Louis area and plants located in the base zone of the Southern Illinois marketing area. The cooperatives contend that the maintenance of the price difference is necessary to attract a supply of milk to plants in the St. Louis area from alternative production areas that must be relied on to furnish a sufficient supply of milk to meet the fluid milk needs of this major consumption center. The cooperatives contend that, in the absence of the price difference between St. Louis and Southern Illinois base zone areas, there will not be a sufficient incentive for milk to be shipped to the St. Louis area from production areas that are also a source of supplemental supplies for plants located in the base zone of the Southern Illinois marketing area. In effect, the cooperatives contend that there is a greater economic service provided in supplying the St. Louis area since the supply sources are further from the St. Louis area than from plant locations in the Southern Illinois base zone.

The location adjustment proposal was opposed by three handlers that operate distributing plants in the St. Louis metropolitan area that were formerly regulated under the St. Louis-Ozarks order. A witness for the handlers contended that there should be no difference in prices between the St. Louis area and the base zone of the Southern Illinois marketing area. The witness further contended that the Class I price plants should bear a relationship to the distances that such plants are located from Eau Claire, Wisconsin.

The St. Louis-Ozarks order was terminated effective April 1, 1985. Five distributing plants located in the St. Louis metropolitan area became regulated under the adjacent Southern Illinois order as a result of their fluid milk sales within the marketing area. (Official Notice is taken of the Market Administrator's *Computation of Uniform Price* for the Southern Illinois order for April 1985.) As a result of the change in regulation, distributing plants in the St. Louis metropolitan area became subject to the Southern Illinois base zone price, which is 7 cents per hundredweight below the price that previously applied at such plants under the St. Louis-Ozarks order.

The metropolitan St. Louis area is a major consumption center with a population in excess of 2.2 million and total Class I route sales in the area during 1983 that approached 461 million pounds. The St. Louis area distributing plants that supply the metropolitan area also supply a substantial proportion of the fluid milk needs of the Southern Illinois market. Class I route sales by St. Louis area plants in the Southern Illinois marketing area represents about 28 percent of the total sales in the area, or about 11 million pounds per month. Hence, these plants are also an integral part of the Southern Illinois market.

The St. Louis metropolitan area is a deficit milk production area. Total sales by milk dealers in the St. Louis area are considerably greater than the amount of milk produced by dairy farmers located within a 50-mile radius of St. Louis. In every month but three during the four-year period of 1981–1984, route sales in the St. Louis area exceeded production by dairy farmers in the nearby production area. During 1983, fluid milk sales exceeded production by about 23 million pounds per month. In addition, the total Class I use by distributing plants located in the St. Louis area exceeded direct receipts from producers by about 11 million pounds per month during the recent 15-month period of January 1984–March 1985.

Because there is not sufficient quantity of milk produced in the nearby direct-ship area to meet the fluid needs of distributing plants in the St. Louis area, such distributing plants must rely on supplemental shipments of milk from plants located beyond the local procurement area to meet their fluid milk needs. On a monthly basis over the 15-month period, shipments from supply plants to St. Louis distributing plants ranged from a low of 23 million pounds in February 1985 to a high of 30 million pounds during October 1984.

Each of the distributing plants in the St. Louis area that will be regulated under the Southern Illinois order received shipments from supply plants during the aforementioned 15-month period. Each such plant depends on milk from supply plants to supplement their direct receipts from dairy farmers. Supplemental milk supplies from supply plants located in southwestern and

south-central Missouri, and formerly pooled under the St. Louis-Ozarks order, likely will not be available to supply the needs of distributing plants in St. Louis in the future. The milk at these plants most likely will be attracted to markets to the south where higher returns to the dairy farmers will be available than if such plants were regulated under the Southern Illinois order. Thus, in the future, St. Louis distributing plants will have to place greater reliance on supplemental shipments from supply plants located primarily to the north of the marketing area.

Distributing plants regulated under the Southern Illinois order also have depended on supplemental milk shipments from supply plants and other order sources to furnish their needs. For instance, during the 15-month period of January 1984–March 1985, Southern Illinois distributing plants imported 186 million pounds or about 12 million pounds per month from such outside sources. On a monthly basis over that 15-month period, shipments to Southern Illinois distributing plants ranged from a low of 10 million pounds in March 1985 to a high of about 15 million pounds in October 1984.

There are two supply plants regulated under the Southern Illinois order that are located to the north of the marketing area at Spring Valley, Minnesota, and Waukon, Iowa. These plants were pooled under the Southern Illinois order for each of the months of January 1984–March 1985. In that capacity, they have constituted a regular source of supplemental milk for Southern Illinois distributing plants.

It is evident that distributing plants in the St. Louis area will have to compete with the Southern Illinois base zone price for supplies of supplemental milk from northern supply plants. Since it is 25 miles further from Spring Valley, Minnesota, to St. Louis than to Carlinville, Illinois, it costs about 9 cents more to haul milk from Spring Valley to the St. Louis area than to Carlinville. Likewise, it costs about 12 cents more to haul milk from the supply plant at Waukon, Iowa, to St. Louis rather than to Carlinville because it is 35 miles further from Waukon to St. Louis than it is to Carlinville. Supplemental milk also has been shipped to St. Louis from a supply plant located at Arlington, Iowa. Because it is 35 miles further from Arlington to St. Louis than to Carlinville, it costs about 12 cents more to transport milk from Arlington to St. Louis than it does to move the milk to Carlinville. If the price level were equal at St. Louis and Carlinville, supplemental milk from the foregoing three supply plants would not be attracted to the more-distant St. Louis area.

It is evident from the foregoing that the location pricing proposal advanced by proponent cooperatives is needed to assure that adequate supplies of milk for fluid use will be shipped to distributing plants in the St. Louis area. A 7-cent plus location adjustment for plants in the St. Louis area will reflect a portion of the additional cost incurred in securing a supply of milk from northern supply areas that are more distant from St. Louis than from other Southern Illinois plants. Accordingly, the necessary changes to reestablish the former location value of milk at plants in the St. Louis area are adopted in this decision.

The need to reflect the greater distances that milk must be shipped from northern supply plant locations to St. Louis area plants, versus plants in the base zone of the Southern Illinois marketing area, disputes the views of opponent handlers who contend that there should be no difference in price between the two areas. A higher price in the St. Louis area, relative to the base zone of the Southern Illinois marketing area is necessary to cover at least a portion of the additional transportation cost involved in shipping milk to St. Louis versus Carlinville from northern supply plant locations. In addition, the mileages from Eau Claire, Wisconsin, to distributing plants in the St. Louis area, versus the mileage from Eau Claire to Carlinville, supports the conclusion that a higher price is necessary in the St. Louis area than in Carlinville.

2. *Whether emergency marketing conditions exist with respect to issue No. 1.*

The hearing notice indicated that evidence would be taken at the hearing to determine whether the omission of a recommended decision and the opportunity to file exceptions thereto would be warranted because of emergency marketing conditions.

Proponent cooperatives did not present any evidence of emergency marketing conditions, but requested that a decision be issued as expeditiously as possible. Since no information of a compelling nature was presented, it would be inappropriate to omit the issuance of a recommended decision and the opportunity for interested parties to file exceptions to such decision. Consequently, the request for emergency action is denied.

3. *Conforming and technical changes.*

As stated in issue No. 1, the location adjustment provisions should be amended to assure the delivery of adequate supplies of milk for fluid use to distributing plants in the St. Louis metropolitan area. The proposal by cooperative associations would accomplish this objective by establishing a plus 7-cent location adjustment at plants located in such area.

Portions of the area in the State of Illinois that were proposed to be included in the plus 7-cent zone are currently located within the Southern Illinois marketing area while other portions in the States of Illinois and Missouri are located outside the marketing area. Although the intent of the proposal should be adopted, the amendatory language contained herein is revised from what was proposed to conform with the current zone-pricing structure of the Southern Illinois order.

The Southern Illinois marketing area currently consists of three zones for pricing purposes. No location adjustment applies at plants located in the base zone. Prices at plants in the northern zone are 7 cents per hundredweight below the base zone price while prices in the southern zone are 7 cents per hundredweight above the base zone price.

Those portions of the St. Louis metropolitan area that are currently located in the base zone of the marketing area should be included in the southern zone. The remaining territory in the States of Illinois and Missouri that is outside the marketing area are included in a separate pricing zone with a plus 7-cent location adjustment. These changes do not result in any substantive change from what was proposed but are more consistent with the current zone pricing structure of the order. Several other minor changes are included within the location adjustment provisions because of the above modifications. These modifications are also of a nonsubstantive nature and are intended to make the entire location adjustment section clearer and easier to read and understand.

In addition to the above conforming changes, two technical, nonsubstantive revisions are included in the accompanying amendments to the order. One of these incorporates within the order language the currently effective equivalent price determination that was issued by the Acting Assistant Secretary on March 21, 1985. The determination of an equivalent price for use in computing Class I prices under the Southern Illinois order was necessitated by the April 1,1985, termination of the St. Louis-Ozarks order. Prior to the termination of the St. Louis-Ozarks order, the Class I price for any month under the Southern

Illinois order was the Class I price under the St. Louis-Ozarks order less 7 cents per hundredweight. In order to establish monthly Class I prices under the Southern Illinois order that are identical to Class I prices that would be established under the order in the absence of a termination of the St. Louis-Ozarks order, the equivalent price determination specifies that the Class I price for the month shall be the basic formula price for the second preceding month plus $1.53. Such language is hereby incorporated within § 1032.50(a) to update 7 CFR Part 1032.

A review of 7 CFR part 1032 indicates that § 1032.70(b) should be terminated. This provision applies to a seasonal payment plan that was terminated effective April 7, 1980. Consequently, the provision serves no useful purpose and is terminated to update future publications of the Code of Federal Regulations.

Rulings on Proposed Findings and Conclusions

A single brief and proposed findings and conclusions were filed on behalf of one interested party. Such brief, 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 such interested party are inconsistent with the findings and conclusions set forth herein, the request to make such findings or reach such conclusions are denied for the reasons previously stated in this decisions.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Southern Illinois order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Southern Illinois marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List Of Subjects In 7 CFR Part 1032

Milk marketing orders, Milk, Dairy products.

PART 1032—MILK IN THE SOUTHERN ILLINOIS MARKETING AREA

The authority citation for Part 1032 continues to read as follows:

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

1. Section 1032.2 is revised to read as follows:

§ 1032.2 Southern Illinois marketing area.

"Southern Illinois marketing area", hereinafter called the "marketing area", means all the territory within the following counties, all of which are in the State of Illinois, together with all municipal corporations therein and all institutions owned or operated by the Federal, State, county, or municipal governments located wholly or partially within such counties:

Base zone

Bond, Calhoun, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Edwards, Effingham, Fayette, Greene, Jasper, Jefferson, Jersey, Lawrence, Macoupin, Madison (Alton Township only), Marion, Montgomery, Richland, Shelby, Wabash, Washington and Wayne.

Northern Zone

Champaign, De Witt, Douglas, Edgar, Logan, Macon, McLean, Menard, Morgan, Moultrie, Piatt, Sangamon and Vermilion.

Southern Zone

Franklin, Hamilton, Jackson, Madison (except Alton Township), Monroe, Perry, Randolph, Saline, St. Clair (except Scott Military Reservation, East St. Louis, Centreville, Canteen, and Stites Townships and the city of Belleville), White and Williamson.

2. In § 1032.50, paragraph (a) is revised to read as follows:

§ 1032.50 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.53.

* * * * *

3. In § 1032.52, paragraph (a)(1), (2) and (3) is revised to read as follows:

§ 1032.52 Plant location adjustments for handlers.

(a) * * *

(1) For a plant located within one of the zones designated in § 1032.2, the adjustment shall be as follows:

Zone	Adjustment per hundredweight
Base Zone	No adjustment.
Northern Zone	Minus 7 cents.
Southern Zone	Plus 7 cents.

(2) For a plant located outside the marketing area but in any of the following territory the adjustment shall be as follows:

(i) *Plus 7 cents.* St. Clair County (Scott Military Reservation, East St. Louis, Centreville, Canteen, and Stites Townships and the city of Belleville only) in the State of Illinois and the counties of Jefferson, St. Charles and St. Louis and the city of St. Louis in the State of Missouri.

(ii) *Minus 7 cents.* In the State of Illinois and south of the northern boundaries of Adams and Schuyler counties (except for the territory in St. Clair County, Illinois specified in paragraph (a)(2)(i) of this section) and in the counties of Fountain, Parke, Vermilion and Warren in the State of Indiana.

(3) For a plant located outside the marketing area and the area described in paragraph (a)(2) of this section, the adjustment shall be minus 15 cents for any such plant located 100 miles or more from the city or village limit of Alton, Robinson, or Vandalia, Illinois, whichever is nearest, and minus an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles.

* * * * *

§ 1032.70 [Amended]

4. In § 1032.70, paragraph (b) is removed.

Signed at Washington, D.C., on August 20, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-20337 Filed 8-23-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-85-8]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initition of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of 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 be received on or before, October 28, 1985.

ADDRESS: Send comments on the 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, DC 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), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on August 20, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the petition
2476	Insurance Institute for Highway Safety.	Description of Petition: To amend the Federal Aviation Regulations to prohibit any person from acting or attempting to act as a crewmember with a blood alcohol concentration above 0.00 percent. Regulations Affected: 14 CFR 91.11(a)(4) Petitioner's Reason for Rule: Petitioner offers as a basis for its petition research demonstrating that individuals are impaired by very low doses of alcohol, far below the current prohibited blood alcohol concentration of 0.04 percent.

[FR Doc. 85-20362 Filed 8-23-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-NM-78-AD]

Airworthiness Directives; Saab-Fairchild Corporation Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administation (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modification of the empennage deicer boot system, the nacelle inlet protection device, and the engine control cables on certain Saab-Fairchild Model SF-340A airplanes. These actions are necessary to prevent water accumulation and subsequent freezing. Ice formations may prevent operation of the tail deicer system, prevent proper draining of the nacelle, and cause binding of the engine control cables.

DATE: Comments must be received on or before October 21, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administation, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-78-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Saab-Fairchild Corporation, Product Support, S.58188, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above 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 the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rule Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM)

by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-78-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Swedish Board of Civil Aviation (BCA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of several unsafe conditions that may exist on certain Model SF-340A airplanes. Water can accumulate in the empennage deicer boot pneumatic system, the nacelle inlet protection device drain system, and the engine control cables at the wing/fuselage interface. The entrapped moisture can freeze and result in improper operation of those systems. To prevent this from occurring, the BCA, on February 12, 1985, issued an airworthiness directive which mandates modifications in accordance with Saab-Fairchild Service Bulletins SF340-30-008, SF340-54-002, and SF340-76-006.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, and AD is proposed that would require compliance with the previously mentioned service bulletins.

It is estimated that 10 airplanes of U.S. registry would be affected by this AD, that it would take approximately 15 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $6,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Saab-Fairchild Model SF-240A airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Saab-Fairchild: Applies to Model SF-340A series airplanes as listed in each service bulletin cited below, certificated in any category. Compliance is required within 60 days after the effective date of this AD. To prevent moisture accumulation, accomplish the following, unless previously accomplished:

1. Modify the empennage deicer boot pneumatic system in accordance with Saab-Fairchild Service Bulletin SF 340-30-008, Revision 1, dated February 11, 1985.

2. Modify the nacelle inlet protection device exhaust nozzle in accordance with Saab-Fairchild Service Bulletin SF 340-54-002, Revision 1, dated April 3, 1985.

3. Modify the engine control cables in accordance with Saab-Fairchild Service Bulletin SF 340-76-006, dated February 8, 1985.

4. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

5. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspection and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received these documents from the manufacturer may obtain copies upon request to Saab-Fairchild Corporation, Product Support, S.58188, Linkoping, Sweden. These documents may be examined at the FAS, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 20, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-20360 Filed 8-23-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-NM-77-AD]

Airworthiness Directives; Short Brothers Ltd. Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require replacement of certain ⅛-inch diameter standard blind rivets in the horizontal stabilizer lower skin to rear spar attachment joint with larger Cherrymax rivets and bolts on certain Short Brothers Model SD3-60 airplanes. This action is prompted by reports of loose fasteners and is necessary to prevent the stabilizer skin from detaching from the spar chord. These failures, if not corrected, could compromise the structural capability of the stabilizer.

DATES: Comments must be received on or before October 18, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-77-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All

communications received on or before the closing date for comments specified above 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 the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A reported summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-77-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

DISCUSSION: The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition which may exist on certain Short Brothers Ltd. Model SD3-60 airplanes. Some operators have reported that ⅛-inch diameter standard blind rivets, which attach the stabilizer lower skin to the rear spar chord, are becoming loose. In order to prevent this from occurring, the CAA has mandated compliance with Short Brothers Ltd. Service Bulletin SD-360-55-06, Revision 1, dated May 1985, which describes replacement of certain ⅛-inch fasteners with larger diameter Cherrymax fasteners and bolts.

This airplane model is manufactured in United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require compliance with the previously mentioned service bulletin.

It is estimated that 33 airplanes would be affected by this AD, that it would take approximately 48 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Repair parts are estimated at $50 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $65,010.

For the reasons discussed above, the FAA has determined that this document (1) involves a propcsed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Short Brother Model SD3-60 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Short Brothers Ltd.: Applies to Model SD3-60 airplanes, serial numbers SH3601 through SH3676 inclusive, certificated in any category. Compliance is required within 90 days after the effective date of this AD. To maintain the structural integrity of the horizontal stabilizer, accomplish the following, unless previously accomplished:

1. Modify the horizontal stabilizer lower skin to spar attachment in accordance with Short Brothers Ltd. Service Bulletin SD360-55-06, Revision 1, dated May 1985.

2. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

3. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affective by this proposed directive who have not already received these documents from the manufacturer may obtain copies upon request to Short Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 19, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-20261 Filed 8-23-85; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 117

[CGD8-85-15]

Drawbridge Operation Regulation; Pearl River, Louisiana/Mississippi.

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Seaboard System Railroad (SSR) and the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change in the regulations governing the operations of the following swing span bridges over the Pearl River:

a. The railroad bridge, mile 1.0, between English Lookout, St. Tammany Parish, Louisiana, and Ansley, Hancock County, Mississippi.

b. The US Highway 90 bridge, mile 8.8, between St. Tammany Parish, Louisiana, and Pearlington, Hancock County, Mississippi.

This proposed change would require that the draws of the bridges open on at least four hours advance notice from 9 p.m. to 5 a.m. The draws would open on signal outside these hours. Presently, the draws are required to open on signal at all times.

This proposal is being made because of the infrequent requests for opening the draws during the proposed advance notice period. This action should relieve the bridge owners of the burden of having persons constantly available at the bridges between 9 p.m. and 5 a.m., and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before October 10, 1985.

ADDRESS: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. The comments and other materials reference in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

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, or bridges, and give reasons for concurrence with or any recommended changes in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth 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 Perry Haynes, project, officer, and LCDR James Vallone, USCG, project attorney.

Discussion of Proposed Regulations

a. Vertical Clearance of the railroad bridge in the closed position is 14.0 feet above higher water and 16.0 feet above low water. There are, on average, 12 trains crossing this bridge daily. Navigation through the bridge consists of tugs with tows, shrimp/fish boats and pleasure craft. Data submitted by the SSR for the 12-month period from January 1984 through December 1984 show that this traffic through the bridge is as follows:

(1) During the proposed advance notice period of 9 p.m. to 5 a.m., there were 66 bridge opening-san average of 5.5 openings per month or an average of one opening every six days.

(2) During the remaining hours of 5 a.m. to 9 p.m., there were 900 bridge openings—an average of 75.0 openings per month or an average of 2.5 openings per day.

b. Vertical clearance of the highway bridge in the closed position is 10.0 feet above high water and 12.0 feet above low water. Navigation through the bridge consists of single barge tows, shrimp/fish boats and pleasure craft. Data submitted by the LDOTD show that this traffic is as follows:

(1) In 1984, during the proposed advance notice period of 9 p.m. to 5 a.m., there were 89 bridge openings—an average of 7.4 openings per month or an average of one opening every four days. In 1983, during this same period, there were 110 bridge openings—an average of 9.2 openings per month or an averege of one opening every three days.

Considering the few openings involved, the Coast Guard feels that the current on site attendance at the bridges between 9 p.m. and 5 a.m. is not warranted and that the bridges can be placed on four hours advance notice for an opening between 9 p.m. and 5 a.m. Outside these hours, the bridges would continue to open on signal. This will allow relief to the bridge owners, while still providing for the reasonable needs of navigation.

The advance notice for opening the railroad bridge would be given by placing a collect call at any time to the Chief Dispatcher's office in Mobile, Alabama, telephone (205) 432-0725. The advance notice for opening the highway bridge would be given by placing a collect call at any time to LDOTD District Office in Hammond, Louisiana, telephone (504) 345-7390. To provide for leeway in the appointed arrival times, the SSR and LDOTD would have tenders at the bridges at least one-half hour before the appointed time who would remain at least one-half hour after that time for a late arriving vessel.

Economic Assessment and Certification

This proposed regulation is 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 of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass the bridges during the proposed advance notice period of 9 p.m. to 5 a.m., as evidenced by the 1984 log of bridge openings which show that during this period the railroad bridge averages one opening every six days and the highway bridge averages one opening every four days. These vessels can reasonably give four hours advance notice for a bridge opening by placing a collect call at any time to the bridge owners. Mariners requiring the bridges to open are mainly repeat users and scheduling their arrival at the bridges at the appointed time should involve little or no additional expense to them. 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 Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

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

2. Sections 117.488 and 117.684 are added to read as follows:

§ 117.488 Pearl River.

The draws of the Seaboard System Railroad bridge, mile 1.0 near English Lookout, and the US 90 Highway bridge, mile 8.8 near Pearlington, shall open on signal; except that, from 9 p.m. to 5 a.m. the draws shall open on signal if at least four hours notice is given. During the advance notice period, the draws shall open on less than four hours notice for an emergency and shall open on signal should a temporary surge in waterway traffic occur.

§ 117.684 Pearl River.

The draws of the Seaboard System Railroad bridge, mile 1.0 near Ansley, and the US 90 Highway bridge, mile 8.8 near Pearlington, shall open on signal; except that, from 9 p.m. to 5 a.m. the draws shall open on signal if at least four hours notice is given. During the advance notice period, the draws shall open on less than four hours notice for an emergency and shall open on signal should a temporary surge in waterway traffic occur.

Dated: August 1, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District

[FR Doc. 85-20315 Filed 8-23-85; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 3

Frequency of Payment of Improved Pension

AGENCY: Veterans Administration.

ACTION: Proposed rule.

SUMMARY: The Veterans Administration (VA) is proposing to amend its adjudication regulations to update the annual benefit amounts of improved pension that may be paid less frequently than monthly. These amendments are necessary to reduce the number of

improved pension checks that are issued for relatively small amounts. The effect of these amendments will be the issuance of fewer checks in larger check amounts with no less of benefits to claimants.

DATES: Comments must be received on or before September 25, 1985. We propose to make these changes effective December 1, 1985.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these regulations to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132 at the above address and only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until October 8, 1985.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service (211B), Department of Veterans Benefits, (202) 389-3005.

SUPPLEMENTARY INFORMATION: Each month a large number of improved pension checks are issued in relatively small benefit amounts of $18 dollars or less. Checks for such amounts are both costly for the Government to issue and a nuisance for beneficiaries who must deposit or cash them and for financial institutions which must process them. Congress recognized these problems when Public Law 95-588 was enacted by providing the VA with authority under 38 U.S.C. 508 to pay improved pension benefits less frequently than monthly when the total amount of annual benefits payable to a beneficiary was less than four percent of the maximum annual rate payable to a single veteran.

The current regulatory schedule for making improved pension payments less frequently than monthly (38 CFR 3.30) was implemented in 1979. At that time the maximum annual improved pension rate for a single veteran was $3,550. Under 38 U.S.C. 3112, however, the maximum annual rates of improved pension have been increased from time to time to keep pace with increases in social security benefits. Since 1979 the maximum rate for a single veteran has increased by 60 percent to $5,709 with no corresponding adjustment in the regulatory schedule for paying benefits less frequently than monthly.

The VA currently has the authority under 38 U.S.C. 508 to pay improved pension benefits less frequently than monthly if a beneficiary's annual entitlement is less than $228.36 (four percent of $5,709). Under these proposed amendments to 38 CFR 3.30 the VA would continue to pay improved pension on a monthly basis if a beneficiary's monthly entitlement is $19 or more. If monthly entitlement is at least $12 but less than $19, benefits would be accumulated and paid quarterly. If monthly entitlement is at least $6 but less than $12, benefits would be accumulated and paid semiannually. If monthly entitlement is less than $6, benefits would be accumulated and paid annually except that payments of less than $1 annually would not be made.

The proposed change to the current regulation on frequency of improved pension payments would result in lower check production and mailing costs with no monetary loss to beneficiaries.

The Administrator hereby certifies that these proposed regulations do not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Therefore, pursuant to 5 U.S.C. 605(b), these proposed regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulations impose no regulatory burdens on small entities, and only claimants for VA benefits will be directly affected. In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these proposed regulations are non-major for the following reasons:

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

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

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

List of Subjects in 38 CFR Part 3

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

(The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.105)

Approved: August 5, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 3—[AMENDED]

38 CFR Part 3, ADJUDICATION, is amended by revising § 3.30(a) through (d) to read as follows:

§ 3.30 Frequency of payment of improved pension.

(a) *Monthly.* Payment shall be made monthly if the annual rate payable is $228 or more.

(b) *Quarterly.* Payment shall be made every 3 months on or about March 1, June 1, September 1, and December 1, if the annual rate payable is at least $144 but less than $228. The provisions of § 3.29(b) apply to this paragraph.

(c) *Semiannually.* Payment shall be made very 6 months on or about June 1, and December 1, if the annual rate payable is at least $72 but less than $144. The provisions of § 3.29(b) apply to this paragraph.

(d) *Annually.* Payment shall be made annually on or about June 1, if the annual rate payable is less than $72. (38 U.S.C. 508)

* * * * *

[FR Doc. 85-20333 Filed 8-23-85; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[OW-FRL-2868-3]

Water Quality Standards for Surface Waters of the State of Idaho; Correction

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; correction.

SUMMARY: This notice corrects a proposed rule on Water Quality Standards for Surface Waters of the State of Idaho that appeared at page 33672 in the **Federal Register** of Tuesday, August 20, 1985, (50 FR 33672). The action is necessary to correct typographical errors in the **ADDRESSES** section. Consequently, the entire **ADDRESSES** section is reprinted in this notice.

DATES: Comments on the proposed rule must be submitted on or before November 18, 1985.

ADDRESSES: Written comments should be submitted to David Sabock, Criteria and Standards Division (WH-585), EPA, Washington, DC 20460. EPA will hold public hearings on September 24, 1985, 7:30 P.M., Boise State University, Big Four Room, 1910 University Drive, Boise, Idaho; September 25, 1985, 1:00 P.M., Canyon Springs Inn, 1357 Blue Lakes Boulevard, North Twin Falls, Idaho; September 25, 1985, 7:30 P.M., Idaho, State University, Salmon River Suite, Student Union Building, Pocatello,

Idaho; and September 26, 1985, 7:30 P.M., Coeur d'Alene City Hall, Coeur D'Alene, Idaho.

FOR FURTHER INFORMATION CONTACT: David Sabock, (202) 245–3042.

Dated: August 21, 1985.

James M. Conlon, Acting

Director, Office of Water Regulations and Standards.

[FR Doc. 85–20433 Filed 8–23–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 721

[OPTS–50534; TSH FRL–2848–7]

Halogenated-N-(2-Propenyl)-N-[Substituted Phenyl] Acetamide; Proposed Determination of Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance which was the subject of premanufacture notice (PMN) P–83–1085 and a TSCA section 5(e) consent order issued by EPA. The Agency believes that this substance may be hazardous to human health and the environment and that the uses described in this proposed rule may result in significant human or environmental exposure.

DATE: Written comments should be submitted by October 25, 1985.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate: Document Control Officer (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. E–209, 401 M St., SW., Washington, DC 20460.

Comments should include the docket control number OPTS–50534. Non-confidential versions of comments received on this proposal will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. E–107 at the address given above. For further information regarding the submission of comments containing confidential business information, see Unit XI of this preamble.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460.

Toll Free: (80–424–9065)

In Washington, DC: (554–1404)

Outside the USA: (Operator-202–554–1404

SUPPLEMENTARY INFORMATION: OMB control number 2070–0012.

I. Authority

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B) of TSCA, submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is subject generally to the same requirements and procedures as a PMN submitted under section 5(a)(1)(A) of TSCA which are interpreted at 40 CFR Part 720 published in the **Federal Register** of May 13, 1983 (48 FR 21722). In particular, these include the information submisssion requirements of section 5(b) and (d)(1) of TSCA. In addition, such notices are subject to the regulatory authorities of section 5(e) and (f) of TSCA. If EPA does not take regulatory action under section 5, 6, or 7 of TSCA to control activities on which it has received a SNUR notice, section 5(g) of TSCA requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intent to import a substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

II. Applicability of General Provisions

EPA promulgated general provisions applicable to SNURs under 40 CFR Part 721, Subpart A published in the **Federal Register** of September 5, 1984 (49 FR 35011). Interested persons should refer to that document for a detailed discussion of the general provisions. EPA is proposing that these general provisions apply to this SNUR without change except as discussed in this preamble and set forth in § 721.54.

III. Sumamry of This Proposed Rule

The chemical substance that is the subject of this proposed rulé is identified generally as halogenated-N-(2-propenyl)-N-[substituted phenyl] acetamide. It was the subject of PMN P–83–1085. EPA is proposing to designate the following as significant new usees of the substance: manufacture of the substance in the United States; use other than as an intermediate; processing or distribution in commerce without establishing a program whereby persons who may be dermally exposed to the substance are required to use certain personal protective equipment and are informed of the health concerns presented by the substance; packaging the substance without proper labeling; distrubution of the substance in commerce without inclusion of a material safety data sheet (MSDS); and release of the substance into navigable waters.

IV. Background

On August 25, 1983, EPA received a PMN which the Agency designated as P–83–1085. EPA announced receipt of the PMN in the **Federal Register** of September 1, 1983 (48 FR 39689). The notice submitter stated that the substance will be imported and used as an intermediate in the manufacture of a specific substance.

The notice submitter claimed the following as confidential business information (CBI): The submitter's identity, the specific chemical identity, estimated production volume, and the specific use. Under section 14(a)(4) of TSCA, the Agency may disclose CBI relevant in any proceeding. "[D]isclosure in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding." EPA is not convinced that this rulemaking will be so impaired by these claims as to justify disclosure of CBI. Therefore, EPA has decided not to disclose any of the CBI at this time. The Agency specifically requests comment on this approach for this SNUR rulemaking. For purposes of clarity, this substance will be referred to by its generic name and PMN number.

Based upon results obtained from bioassays on a structurally similar substance, the Agency believes P–83–1085 may be carconogenic. Also, data on this and other structural analogues and acute toxicity data on the PMN substance indicate that the substance is likely to be absorbed via the skin and via the lungs and gastrointestinal tract. During review of the PMN, the Agency concluded that the uncontrolled manufacture, processing, distribution in commerce, and use of the substance may present an unreasonable risk of injury to human health. Therefore, EPA regulated the substance under section 5(e) of TSCA pending the development

of information sufficient to make a reasoned evaluation of the health effects.

EPA concluded that use of appropriate protective equipment will significantly reduce exposures and potential risks to persons exposed to the substance. A section 5(e) consent order requiring the use of appropriate controls was negotiated with the notice submitter. The order became effective December 8, 1983.

The reporting requirements of this proposed SNUR differ from the terms of the section 5(e) consent order in that the SNUR requires notice prior to any release into navigable waters. The consent order contains no comparable restriction because the submitter indicated that no such releases would result from the activities described in the PMN. The Agency is proposing that the SNUR address such releases because, if they were to occur, there could be potential exposure to consumers via drinking water. EPA also is concerned that the substance may be toxic to fish and both terrestrial and aquatic plants.

By issuing a section 5(e) consent order which allows import and controlled processing and use of the substance, EPA has taken a regulatory approach which is appreciably less burdensome than an order prohibiting manufacture, import, and processing of the substance until additional data are submitted. At the same time, the section 5(e) order protects human health by requiring precautionary controls pending the development of the data needed for a more fully reasoned evaluation of the risks associated with the substance.

Section 5(e) orders apply only to the notice submitter. When the notice submitter commenced commercial import of the substance and submitted a notice of commencement of import to EPA, the Agency added the substance to the TSCA Chemical Substance Inventory. When a substance is listed on the Inventory, other persons may manufacture, import, or process the substance without controls. Therefore, EPA is proposing to designate the uses set forth in paragraph (a)(2) of the proposed § 721.54 as significant new uses so that the Agency can review these uses before they occur.

Through a SNUR, the Agency would ensure that all manufacturers, importers, and processors are subject to similar reporting requirements. In addition, a SNUR would afford EPA the opportunity to review exposure and toxicity information on the substance before a significant new use occurs and, if necessary, take action to ensure that persons will not be exposed to levels of P-83-1085 that are potentially hazardous.

V. Determination of Proposed Significant New Uses

To determine what would constitute significant new uses of this chemical substance, EPA considered relevant information about the toxicity of the substance and potential exposures and releases associated with possible uses and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA proposes to define the significant new uses of P-83-1085 as set forth in paragraph (a)(2) of the proposed § 721.54.

EPA has already deteermined in the section 5(e) order that unrestricted manufacture, processing, distribution in commerce, and use of the substance may present an unreasonable risk. While such a finding is not necessary to promulgate a SNUR, it supports a determination that these uses of the substance would be significant.

VI. Recordkeeping

To ensure compliance with this proposed rule and to assist enforcement efforts, EPA is proposing, under its authority in sections 5 and 8(a) of TSCA that, in addition to meeting the requirements in § 721.17, persons who import or process P-83-1085 maintain the following records for 5 years from their creation:

1. Any determination that gloves are impervious to the substance.
2. Names of all persons required to wear protective equipment.
3. Records of shipments of containers which have been labeled.
4. Records of disposal of wastes containing P-83-1085.
5. Copies of all MSDSs.

These recordkeeping requirements would apply to small manufacturers, importers, and processors as well because the small business exemption of section 8 of TSCA is not applicable when the chemical substance which is the subject of the rule also is the subject of a section 5(e) order.

The Agency considered omitting these specific recordkeeping requirements, but believes compliance monitoring for this proposed SNUR would be made more difficult without them.

The basis for the Agency's recordkeeping requirements has been fully discussed in the preamble to previously proposed SNURs. Persons interested in reading a complete discussion of this issue should read the proposed SNUR for P-83-370 published in the Federal Register of January 13, 1984 (49 FR 1753).

VII. Exemptions to Reporting Requirements

EPA has codified general exemption provisions covering SNUR reporting under § 721.19. On a case-by-case basis the Agency may modify these provisions. However, in this case, the Agency is proposing that § 721.19 apply in its entirety.

EPA issued its final premanufacture notification rules under 40 CFR Part 720 published in the Federal Register of May 13, 1983 (48 FR 21722), including § 720.36 which contained rules for the section 5(h)(3) exemption for chemical substances manufactured or imported in small quantities solely for research and development. On September 13, 1983 (48 FR 41132), EPA stayed the effectiveness of § 720.36, among other provisions of the PMN rule, pending further rulemaking to revise the provisions. Revisions of § 720.36 and other provisions were proposed on December 27, 1984 (49 FR 50201). Because § 720.36 was not in effect when EPA codified § 721.19, the Agency relied on the general definition of "small quantities solely for research and development" in § 720.3(cc) and section 5(h)(3) of TSCA to determine whether activities qualify under this exemption. Upon promulgation of a revised § 720.36, EPA intends to amend § 721.19 to adopt the provisions of the revised § 720.36.

Section 721.19(g) of the general SNUR provisions exempts persons from SNUR reporting when they manufacture (the term manufacture includes import) or process the substance solely for export and label the substance in accordance with section 12(a)(1)(B) of TSCA. While EPA is concerned about worker exposure and environmental release during manufacture and processing of the substance, section 12(a) of TSCA prohibits the Agency from requiring reporting of such manufacture or processing for a significant new use. However, such persons would be required to notify EPA of such export under section 12(b) of TSCA (see § 721.7 of the general SNUR provisions). Such notification will allow EPA to monitor manufacture and processing activities which are not subject to significant new use reporting. The term "manufacture solely for export" is defined in the PMN rule (40 CFR 720.3(s)); an amendment clarifying this definition was proposed December 27, 1984 (49 FR 50208). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus, persons would be exempt from reporting under this SNUR if they manufacture or process the substance solely for export

from the U.S. under the following restrictions: (1) There is no use of the substance in the U.S.; (2) processing is restricted to sites under the control of the manufacturer or processor, respectively; and (3) distribution in commerce is limited to purposes of export. If a person manufactured or processed the substance both for export and for use in the U.S., such activity would not be "solely for export" because the manufacture and processing would be for use in the U.S.

VIII. Applicability of Proposal to Uses, Occurring Before Promulgation of Final Rule

To establish a significant new use rule, the Agency must, among other things, determine that the use is not ongoing. In this case, the chemical substance in question has just undergone premanufacture review. When the notice submitter began import of the substance, the submitter sent EPA a Notice of Commencement of Import and the substance was added to the Inventory. The notice submitter is prohibited by the section 5(e) order from undertaking the activities which the Agency is proposing to designate as significant new uses. Therefore, at this time, the Agency has concluded that these uses are not ongoing. However, EPA recognizes that once the chemical substance identified in this SNUR has been added to the Inventory, it may be manufactured, imported, or processed by other persons for a significant new use as defined in this proposal before promulgation of the rule.

If, after publication of this proposal, someone were to undertake the designated significant new uses, they could argue that the uses are not "New" at the time the rule is promulgated, and therefore not significant new uses. EPA finds that the intent of section 5(a)(1)(B) is best served by determining that a use is a significant new use on the proposal date of the SNUR. If uses begun during the proposal period were not considered to be significant new uses, it would be almost impossible for the Agency to establish SNUR notice requirements, since any person could defeat the SNUR by initiating the proposed significant new uses before the rule became final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, if the substance is manufactured, imported or processed between proposal and promulgation for a proposed significant new use, the Agency will consider such use to be a significant new use if it is retained in the final rule. EPA recognizes that this interpretation may disrupt commercial activities of persons who begin manufacture, import, or processing of the substance for a significant new use during the proposal period. However, this proposal constitutes notice of that potential disruption; and, persons who commence a proposed significant new use do so at their own risk.

The Agency, not wishing to unnecessarily disrupt the commercial activities of persons who engage in a proposed significant new use prior to promulgation of a final SNUR, is considering amending Subpart A of 40 CFR Part 721 to allow for advance SNUR compliance (i.e., compliance prior to the date of promulgtion). EPA will solicit public comments on an advance compliance exemption when such an exemption is proposed in the **Federal Register.**

Because the identity of P–83–1085 is confidential, any person who proposes to manufacture or import P–83–1085 is unlikely to know that the substance is on the Inventory and, therefore, is likely to submit a PMN or a *bona fide* request under either 40 CFR 710.7(e) or 720.25(b) to determine whether the substance is on the Inventory. If EPA determines that the person has a *bona fide* intent to manufacture or import the substance and that the substance the person proposes to manufacture or import is P–83–1085, or if the person submits a PMN for the substance, EPA will inform the person that the substance is subject to this proposal. This will give the person notice of this proposal.

IX. Test Data and Other Information

EPA recognizes that under TSCA section 5, persons are not required to develop any particular test data before submitting a notice. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential health and environmental risks that may be posed by a significant new use of this substance, EPA believes that a reasoned evaluation of the risks posed by this use would require additional data on carcinogenicity and ecotoxicity. The carcinogenicity data might be generated by a 2-year rodent bioassary. Fish, daphnia, and algae acute toxicity tests would provide data necessary to assess the aquatic ecotoxicity concerns. After evaluation of the acute ecotoxicity tests, additional chronic studies may be necessary. These studies may not be the only means of addressing the potential risks.

EPA encourages potential SNUR notice submitters to test the substance for these concerns. SNUR notices submitted for significant new uses without such test data may increase the likelihood that EPA will take action under section 5(e). As part of an optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance.

Test data should be developed according to TSCA good laboratory practices regulations at 40 CFR Part 792. EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. EPA urges SNUR notice submitters to provide detailed information on human and environmental exposure that will result from the significant new Uses. In addition, EPA urges persons to submit information on potential benefits of the substance and information on risks posed by the substance compare to risks posed by substitutes.

X. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use reporting requirements for this substance. This evaluation is summarized below. The Agency's complete economic analysis is available in the public file.

A. Costs

The only direct costs that will definitely occur as a result of promulgation of this SNUR will be EPA's costs of issuing and enforcing the SNUR. It is estimated the Agency cost of issuing a SNUR is $10,504–$20,488. The Agency would also incur enforcement costs, although it cannot quantify these costs at this time.

Subsequent to promulgation of the SNUR, EPA believes there are five possible outcomes for firms that would manufacture or process P–83–1085: (1) Process P–83–1085 with the specific protective equipment in place and therefore not trigger the SNUR; (2) submit a SNUR notice proposing manufacture of P–83–1085 in the U.S.; (3) file a SNUR notice with informtion showing other methods of controlling exposure that will mitigate EPA's concerns; (4) file a SNUR notice with the results of recommended testing completed or be prepared to respond to a section 5(e) order requiring the testing; or (5) not manufacture or process the PMN substance because of the restrictions imposed by the SNUR. The costs of these outcomes are summarized below.

Outcome 1

If a company decided to process P–83–1085 under the terms of the SNUR it would not incur the cost of submitting a

SNUR notice. The only cost to the company would be the cost of specific protective equipment and recordkeeping costs. For purposes of this analysis, EPA has assumed that workers would be exposed to P–83–1085 over 38 days a year. Actual exposure data has been claimed as CBI by the original PMN submitter. Each worker would be required to wear full-face shields and gloves (determined to be impermeable to P–83–1085). Assuming a 10 percent interest rate, and a 10-year economic life for P–83–1085, the present value of the cost of protective equipment for one worker would be $672.05. The annualized cost of protective equipment for one worker would be $109.37.

Permeation tests, which can be used to determine if the protective equipment is impervious to P–83–1085, have been estimated to cost $500 per substrate tested (annualized cost of $80), and may cost up to $7,000 to $10,000 if different substrates (i.e., different compositions of gloves) are tested (annualized cost of $1,480).

The company also would have to inform its workers of the hazards presented by the chemical substance with appropriate labels and to maintain certain records. The initial cost of labeling requirements would be between $135 and $500. This is the label development cost. Other labeling costs are expected to be minimal. The annualized labeling cost would be $80.

The present value of the cost of maintaining records over a 10-year period is estimated to be $1,520 or $250 on an annualized basis. An MSDS has been estimated to cost $20.

EPA will incur only enforcement costs once the SNUR has been promulgated.

Outcome 2

A company considering manufacture in the U.S. would face the necessity of filing a SNUR notice. In this case, a company would incur the cost of filing a notice ($1,400 to $8,000); the costs of delaying manufacture of the substance, if any, while the SNUR notice is prepared and reviewed (up to 3.2 percent reduction in profits); the costs of changes in production and marketing plans because of the uncertainty impacts of a SNUR; and the costs of regulatory followup, if any.

SNUR costs following promulgation of the SNUR under this outcome would include reviewing the SNUR notice ($7,100) and modifying the terms of the SNUR ($8,700) if the information provided showed that modification of the SNUR was warranted. EPA would continue to incur enforcement costs.

Outcome 3

In some circumstances it would be cost effective for a company to file a SNUR notice with data which shows that other means of controlling exposure could mitigate EPA's concerns. In this case, the company would incure the cost of filing the SNUR notice ($1,400 to $8,000) and possibly the costs of some exposure controls which would ordinarily not be used without the existence of a SNUR. The submitter may also incur up to a 3.2 percent reduction in profits due to delays in processing, and the cost of regulatory follow-up if any.

EPA costs following promulgation of the SNUR under this outcome would include reviewing the SNUR notice ($7,100) and modifying the terms of the SNUR ($8,700) if the information provided showed that EPA's concerns would be adequately addressed by the use of a different type of exposure control. EPA would continue to incur enforcement costs.

Outcome 4

It is theoretically possible that a company could file a SNUR notice which would include the test results of the recommended testing (2-year bioassay and fish, daphnia, and algae acute toxicity tests). In this case, a company would incur the cost of filing a notice ($1,400 to $8,000), performing the tests ($855,000 in 1983 dollars), the cost of delay (probably a delay in profits of 2.5 to 3.0 years), and the cost of regulatory follow-up, if any. The cost of this option is expected to be prohibitive.

Outcome 5

Some companies could find the cost of controlling exposure too expensive to justify manufacture or processing. Under this outcome a company would not incure any direct costs as a result of the SNUR. The company and society could lose benefits that would have been derived from the manufacture or processing of the PMN substance. However, the fact that the original PMN submitter intends to import and process P–83–1085 with the protective equipment in place indicates that the intended use of the PMN substance will still return an acceptable profit.

B. Benefits

EPA has not attempted to quantify the benefits of the proposed SNUR. In general, however, benefits will accure if the proposed action leads to the identification and control of unreasonable risk before significant health effects can occur. The proposal and promulgation of the SNUR provides the benefits of reduced health risks until production or processing of P–83–1085 ceases.

XI. Confidential Business Information

Any person who submits comments which the person claims as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Any comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA reguests that any party submitting confidential comments prepare and submit a sanitized version of the comments which EPA can place in the public file.

XII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50534). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. The PMN for the substance.
2. The **Federal Register** notice of receipt of the PMN.
3. The section 5(e) consent order.
4. The economic analysis of the proposed rule.
5. The health and environmental effects support document.

The Agency will accept additional materials for inclusion in the record at any time between this notice and designation of the complete record.

EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record containing sanitized copies from which CBI has been deleted is available to the public from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OTS Public Information Office, Rm. E–107, 401 M St., Washington, DC.

XIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, must judge whether a regulation is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major rule" because it will not have an effect on the economy of $100 million or more, and will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this proposed rule, for the reasons discussed in Unit X of this

preamble, EPA believes that the cost will be low. In addition, because of the nature of the proposed rule and the substance identified in it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice, the suggested testing, and the uncertainty of possible EPA regulation may discourage certain innovation, that impact may be limited because such factors are unlikely to discourage innovation of high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial uses.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

b. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this proposed rule are likely to be small businesses. However, EPA believes that few manufacturers, importers, or processors will submit SNUR notices. Therefore, although the costs of preparing a notice under this rule might be significant for some small businesses, the number of such businesses affected is not expected to be substantial.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070–0012. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: August 16, 1985.

Marcia E. Williams,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority for Part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding a new § 721.54 to read as follows:

§ 721.54 Halogenated-N-(2-Propenyl)-N-[substituted phenyl] acetamide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The following chemical substance referred to by its premanufacture notice number and generic chemical name is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section: P–83–1085, halogenated-N-(2-propenyl)-N-[substituted phenyl] acetamide.

(2) The significant new uses are:

(i) Manufacture (excluding import) of the substance in the United States.

(ii) Use other than as an intermediate.

(iii) Processing or distribution in commerce without establishing a program whereby:

(A) During all stages of processing, use, or cleanup operations involving the substance, any person who is employed by or under the control of the processor and involved in, or in the immediate area of, any operation where dermal contact with the substance may occur is required to wear:

(*1*) Full face-shield.

(*2*) Protective gloves which are determined to be impervious to the substance under the condition of exposure, including duration of exposure. This determination is made either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of manufacturer's specifications includes consideration of permability, penetration, and potential chemical and physical degradation by the substance and associated chemical substances.

(B) All persons described in paragraph (a)(2)(iii)(A) of this section are informed of the following in writing or by presenting the information as part of a safety training program where attendance is recorded: That contact with skin may be harmful; that structurally similar chemicals have been found to cause cancer in laboratory animals; and that use of full face-shields and impervious gloves will help protect them.

(C) A label is affixed to each container containing the substance, or a formulation containing the substance, which may be distributed to another person. The label includes, at a minimum, the following information (in print size no smaller than 10-point type):

Warning: A chemical similar to [Insert Appropriate Trade Name] has been shown to cause cancer in laboratory animals. Avoid all contact with skin, eyes, and clothing. Wear gloves and full face-shield when handling.

(D) A material safety data sheet (MSDS) accompanies the distribtuion in commerce of any amount of the substance. The MSDS contains the language specified in paragraph (a)(2)(iii)(C) of this section and specifies the requirements for protective equipment identified in paragraph (a)(2)(iii)(A) of this section.

(iv) Release of the substance into navigable waters.

(b) *Specific requirements.* The provisions of Subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* In addition to the requirement § 721.17, importers and processors of the chemical substance identified in paragraph (a)(1) of this section must maintain the following records for 5 years from their creation:

(i) Any determination that gloves are impervious to the substance as specified in paragraph (a)(2)(iii)(A)(*2*) of this section.

(ii) Names of persons required to wear protective equipment specified in paragraph (a)(2)(iii)(A) of this section, the dates on which they were informed, and the means by which they were informed as specified in paragraph (a)(2)(iii)(B) of this section.

(iii) Dates of shipments of containers which have been labeled in accordance with paragraphs (a)(2)(iii)(C) of this section, a copy of the label, and the identities of persons to whom the containers were shipped.

(iv) Records of quantities, locations, dates, and methods of disposal which demonstrate how wastes containing the substance were disposed of.

(v) Copies of all MSDSs containing reference to the substance.

(2) [Reserved]

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

[FR Doc. 85–20304 Filed 8–23–85; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 721

[OPTS-50536; TSH FRL-2846-2]

Poly(oxy-1,4-butanediyl)-alpha-(1-oxo-2-propenyl)-omega-[(1-oxo-2-Propenyl)oxy]; Proposed Determination of Significant New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance which was the subject of premanufacture notice (PMN) P-84-274 and a TSCA section 5(e) consent order issued by EPA. The Agency believes that the substance may be hazardous to human health and that the uses described in the proposed rule would result in significant human exposure.

DATES: Written comments should be submitted by October 25, 1985.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Room E-209, 401 M Street SW., Washington, DC 20460.

Comments should include the docket control number OPTS-50536. Non-confidential versions of comments received on this proposal will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays, in Room E-107 at the address given above. For further information regarding the submission of comments containing confidential business information, see Unit XI of the preamble.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street SW., Washington, DC 20460. Toll Free: (800-424-9065). In Washington, DC: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB control number 2070-0012.

I. Authority

Section 5(a)(2) of TSCA authorizes EPA to determine that use of a chemical substance is a "significant new use." EPA must make this determination by rule, after considering all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B) of TSCA, submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. Such a notice is subject generally to the same requirements and procedures as a PMN submitted under section 5(a)(1)(A) of TSCA which are interpreted at 40 CFR Part 720 published in the **Federal Register** of May 13, 1983 (48 FR 21722). In particular, these include the information submission requirements of section 5 (b) and (d)(1) of TSCA. In addition, such notices are subject to the regulatory authorities of section 5 (e) and (f) of TSCA. If EPA does not take regulatory action under section 5, 6, or 7 to control activities on which it has received a SNUR notice, section 5(g) of TSCA requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

II. Applicability of General Provisions

EPA promulgated general provisions applicable to SNUR's under 40 CFR Part 721, Subpart A published in the **Federal Register** of September 5, 1984 (49 FR 35011). Interested persons should refer to that document for a detailed discussion of the general provisions. EPA is proposing that these general provisions apply to this SNUR without change except as discussed in this preamble and set forth § 721.567.

III Summary of This Proposed Rule

The chemical substance that is the subject of this proposed rule is identified as poly(oxy-1,4-butanediyl)-alpha-)1-oxo-2-propenyl)-omega-[(1-oxo-2-propenyl)oxy]. It was the subject of PMN P-84-274. EPA is proposing to designate the following as significant new uses: (1) Manufacturing, processing, or distribution in commerce for use as a component in industrial coatings unless specified protective equipment is used, (2) use other than as a component in industrial coatings, and (3) manufacturing, processing, or distribution in commerce without establishing programs to ensure that all persons potentially exposed to the substance are informed of the health concerns which may be presented by the substance; that packages containing the substance or formulations containing the substance are labeled according to the terms specified in § 721.567; and that a material safety data sheet (MSDS) accompanies distribution of the substance in commerce.

The Agency proposed a definition for "industrial coating" in the proposed SNUR published on March 27, 1985 (50 FR 12046). EPA has reexamined this definition and is proposing to redefine "industrial coating" as stated in this proposal rule. The new definition would apply to both proposed SNUR's.

IV. Background

On December 20, 1983, EPA received a PMN which the Agency designated as P-84-274. EPA announced receipt of the PMN in the **Federal Register** of December 30, 1983 (48 FR 57618). The notice submitter stated that the substance will be used as a component in industrial coatings.

The notice submitter claimed the following as confidential business information (CBI): Chemical identity of impurities and byproducts, production volume, and process information. Under section 14(a)(4) of TSCA, the Agency may disclose CBI relevant in any proceeding. "[D]isclosure in such a proceeding shall be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding." EPA is not convinced that this rulemaking will be so impaired by these claims as to justify disclosure of CBI. Therefore, EPA has decided not to disclose any of the CBI at this time. The Agency specifically requests comment on this approach for this SNUR rulemaking. For purposes of clarity, this substance will be referred to by its specific name and PMN number.

Based upon data on two analogues of P-84-274, triethylene glycol diacrylate and tetraethylene glycol diacrylate, which were submitted to EPA under section 8(e) TSCA, the Agency believes P-84-274 may cause cancer. During review of the PMN, the Agency concluded that the uncontrolled manufacture, import, processing, distribution in commerce, use, and disposal of the substance may present an unreasonable risk of injury to human health. Therefore, EPA regulated the substance under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects.

EPA concluded that use of appropriate protective equipment will significantly reduce exposures and potential risks to persons potentially exposed to the substance. A section 5(e) order requiring

use of appropriate controls was negotiated with the submitter. The order became effective August 16, 1984.

The reporting requirements of this proposed SNUR differ from the terms of the section 5(e) consent order in the following way. The proposed SNUR designates spray application of P–84–274, unless respirators are used, as a significant new use. In the consent order, EPA prohibited spray application because the Agency is concerned about uses which could result in inhalation of significant amounts of the substance. The Agency now believes that the approach in the proposed SNUR is preferable because it would allow spray applications of P–84–274 provided appropriate respirators are used. EPA finds that respirators can effectively limit inhalation exposure and that only spray applications without the use of respirators could lead to significant levels of inhalation exposure which should be subject to reporting and Agency review.

The order also limited disposal to incineration pursuant to 40 CFR Part 270. This restriction was based on the possibility that other methods of disposal could present ecotoxicity and drinking water contamination concerns. However, after issuing the order, the Agency determined through further analysis that is no longer has an ecotoxicity concern. In addition, EPA found that there was little chance that commercialization of the substance could result in drinking water contamination. Therefore, this proposed SNUR does not identify any disposal or an environmental release as a significant new use.

By issuing a section 5(e) consent order which allows controlled commercial production, import, processing, distribution in commerce, use, and disposal of the substance, EPA has taken a regulatory approach which is appreciably less burdensome than an order prohibiting manufacture of the substance until additional data are submitted. At the same time, such an approach protects human health by requiring precautionary controls pending the development of the data needed for a more fully reasoned evaluation of the risks associated with the substance.

Section 5(e) orders only to the notice submitter. When the notice submitter commences commercial manufacture of the substance and submits a Notice of Commencement of Manufacture or Import to EPA, the Agency adds the substance to the TSCA Chemical Substances Inventory. When a substance is listed on the Inventory, other persons may manufacture, import, process, or dispose of the substance without controls. Therefore, EPA is proposing to designate the uses set forth in paragraph (a)(2) of the proposed § 721.567 as significant new uses so that the Agency can review these uses before they occur.

Through a SNUR, the Agency would ensure that all manufacturers, importers, and processors are subject to similar reporting requirements. In addition, a SNUR would afford EPA the opportunity to review exposure and toxicity information on the substance before a signficant new use occurs and, if necessary, take action to ensure that persons will not be exposed to levels of P–84–274 that are potentially hazardous.

V. Determination of Proposed Significant New Uses

To determine what would constitute a significant new use of this chemical substance, EPA considered relevant information about the toxicity of the substance and potential exposures and releases associated with possible uses and the four factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA proposed to define the significant new uses of P–84–274 as set forth in paragraph (a)(2) of § 721.567.

EPA has already determined in the section 5(e) order that unrestricted manufacture, import, processing distribution in commerce, use, and disposal of the substance may present an unreasonable risk. While such a finding is not necessary to promulgate a SNUR, it supports a determination that the uses of the substance would be significant.

VI. Recordkeeping

To ensure compliance with this proposed rule and to assist enforcement efforts, EPA is proposing, under its authority in sections 5 and 8(a) of TSCA that, in addition to meeting the requirements in § 721.17, persons who manufacture, import, or process P–84–274 be required to maintain the following records for 5 years from their creation:

1. Any determination that gloves are impervious to the substance.
2. Names used for the substance and the dates on which those names were in use.
3. Names of persons who have been informed on the health concerns, the means by which they were informed, and the dates they were informed.
4. Dates of shipments of containers which have been labeled and the identities of persons to whom they have been shipped.
5. Copies of any MSDSs used.

These recordkeeping requirements would apply to small manufacturers, importers, and processors as well because the small business exemption of section 8 of TSCA is not applicable when the chemical substance which is the subject of the rule also is the subject of a section 5(e) order.

The Agency considered omitting these specific recordkeeping requirements, but believes compliance monitoring for this proposed SNUR would be made more difficult without them.

The basis for the Agency's recordkeeping requirements has been set forth in the preambles to previously proposed SNURs. Persons interested in reading a complete discussion of this issue should read the proposed SNUR for P–83–370 published in the **Federal Register** of January 13, 1984 (49 FR 1753).

VII. Exemptions to Reporting Requirements

EPA has codified general exemption provisions covering SNUR reporting under § 721.19. On a case-by-case basis the Agency may modify these provisions. However, in this case, the Agency is proposing that § 721.19 apply in its entirety.

EPA issued its final premanufacture notification rules under 40 CFR Part 720 published in the **Federal Register** of May 13, 1983 (48 FR 21722), including § 720.36 which contained rules for the section 5(h)(3) exemption for chemical substances manufactured or imported in small quantities solely for research and development. On September 13, 1983 (48 FR 41132), EPA stayed the effectiveness of § 720.36, among other provisions of the PMN rule, pending further rulemaking to revise the provisions. (Revisions of § 720.36 and other provisions were proposed on December 27, 1984 (49 FR 50201). Because § 720.36 was not in effect when EPA codified § 721.19, the Agency relied on the general definition of "small quantities solely for research and development" in § 720.3(cc) and section 5(h)(3) of TSCA to determine whether activities quality under this exemption. Upon promulgation of a revised § 720.36, EPA intends to amend § 721.19 to adopt the provisions of the revised § 720.36.

Section 721.19(g) of the general SNUR provisions exempts persons from SNUR reporting when they manufacture (the term manufacture includes import) or process the substance solely for export and label the substance in accordance with section 12(a)(1)(B) of TSCA. While EPA is concerned about worker exposure during manufacture and processing of the substance, section 12(a) of TSCA prohibits the Agency from requiring reporting of such manufacture or processing for a significant new use.

However, such persons would be required to notify EPA of such export under section 12(b) of TSCA (see § 721.7 of the general SNUR provisions). Such notification will allow EPA to monitor manufacture and processing activities which are not subject to significant new use reporting. The term "manufacture solely for export" is defined in the PMN rule (40 CFR 720.3(s)); an amendment clarifying this definition was proposed December 27, 1984 (49 FR 50208). The term "process solely for export" is defined in § 721.3 of the general SNUR provisions in a similar fashion. Thus, person would be exempt from reporting under this SNUR if they manufacture or process the substance solely for export from the U.S. under the following restrictions: (1) There is no use of the substance in the U.S.; (2) processing is restricted to sites under the control of the manufacturer or processor, respectively; and (3) distribution in commerce is limited to purposes of export. If a person manufactured or processed the substance both for export and use in the U.S., such activity would not be "solely for export" because the manufacture and processing would be for use in the U.S.

VIII. Applicability of Proposal to Uses Occurring Before Promulgation of Final Rule

To establish a significant new use rule, the Agency must, among other things, determine that the use is not ongoing. In this case, the chemical substance in question has just undergone premanufacture review. When the notice submitter began manufacture of the substance, the submitter sent EPA a Notice of Commencement of Manufacture and the substance was added to the Inventory. The notice submitter is prohibted by the section 5(e) order from undertaking the activities which the Agency is proposing be designated as significant new uses. Therefore, at this time, the Agency has concluded that these uses are not ongoing. However, EPA recognizes that once the chemical substance identified in this SNUR is added to the Inventory, it may be manufactured, imported, or processed by other persons for a significant new use as defined in this proposal before promulgation of the rule.

If, after publication of this proposal, someone were to undertake the designated significant new uses, they could argue that the uses are not "new" at the time the rule is promulgated, and therefore not significant new uses. EPA finds that the intent of section 5(a)(1)(B) is best served by determining that a use is a significant new use on the proposal date of the SNUR. If uses begun during the proposal period were not considered to be significant new uses, it would be almost impossible for the Agency to establish SNUR notice requirements, since any person could defeat the SNUR by initiating the proposed significant new uses before the rule became final. This is contrary to the general intent of section 5(a)(1)(B).

Thus, if the substance is manufactured, imported, or processed between proposal and promulgation for a proposed significant new use, the Agency will consider such use to be a significant new use if it is retained in the final rule. EPA recognizes that this interpretation may disrupt commercial activities of persons who begin manufacture, import, or processing of the substance for a significant new use during the proposal period. However, this proposal constitutes notice of that potential disruption; and, persons who commence a proposed significant new use do so at their own risk.

The Agency, not wishing to unnecessarily disrupt the commercial activities of persons who engage in a proposed significant new use prior to promulgation of a final SNUR, is considering amending Subpart A of 40 CFR Part 721 to allow for advance SNUR compliance (i.e., compliance prior to the date of promulgation). EPA will solicit public comment on an advance compliance exemption when such an exemption is proposed in the **Federal Register**.

IX. Test Data and Other Information

EPA recognizes that under TSCA section 5, persons are not required to develop any particular test data before submitting a notice. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential health risks that may be posed by a significant new use of this substance, EPA believes that a reasoned evaluation of the risks posed by the significant new uses would require additional data on carcinogenicity. These data might be generated by a 2-year rodent bioassay. These studies may not be the only means of addressing the potential risks.

EPA encourages potential SNUR notice submitters to test the substance for this concern. SNUR notices submitted for significant new uses without such test data may increase the likelihood that EPA will take action under section 5(e). As part of an optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance.

Test data should be developed according to TSCA good laboratory practices regulations at 40 CFR Part 792. EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. EPA urges SNUR notice submitters to provide detailed information on human exposure that will result from the significant new uses. In addition, EPA urges persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by substitutes.

X. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use reporting requirements for this substance. This evaluation is summarized below. The Agency's complete economic analysis is available in the public file.

A. Costs

The only direct costs that would definitely occur as a result of promulgation of this SNUR would be EPA's cost of issuing and enforcing the SNUR. It is estimated that the Agency costs of issuing the SNUR are $43,600. The Agency would also incur enforcement costs, although it cannot quantify these costs at this time.

Subsequent to promulgation of the SNUR, EPA believes that there are three possible outcomes for firms that would manufacture, process, or use P-84-274: (1) Abide by the provisions of the SNUR (e.g., use the substance only as a component of industrial inks, coatings, and adhesives; attach warning labels, etc.) which would not necessitate the filing of a SNUR notice; (2) submit a SNUR notice describing the intention to manufacture, process, or use P-84-274; or, (3) choose not to manufacture, process, or use P-84-274 due to the existence of the SNUR. The costs of these outcomes are summarized below.

Outcome 1

If a firm complied with the provisions of the SNUR, it would not have to submit a SNUR notice. There may be some costs to a firm to avoid triggering the SNUR, e.g., if a firm had to purchase personal protective equipment specifically to comply with this SNUR. The costs associated with not triggering the SNUR revolve around the use of certain protective equipment, labeling requirements, the creation of MSDS, etc. A discussion of these costs follows.

Limiting the use of P-84-274 to industrial inks, coatings, or adhesives is

not expected to increase the costs of any firm. These use areas are broad enough to cover a wide variety of applications. Consumer use of the substance in its unreacted form is unlikely. The substance will be used in radiation-curable formulations, which are cured (hardened) by exposure to ultraviolet (UV) light or electron beam (EB) energy. EPA knows of no consumer applications for radiation curing; the capital costs associated with equipment purchases preclude use by consumers. EPA cannot, however, rule out future technological developments such as hand-held UV sources that would be purchased by consumers to cure adhesives or coatings.

The costs of protective equipment such as gloves and goggles would vary from company to company. Many firms already have this equipment on hand for use by employees due to the use of different coating components such as resins and organic solvents. Even where radiation-curing is used, organic solvents such as glycol ethers, ketones, and alcohols are used to clean machinery.

On the other hand, if other firms wanted to use the substance, they would have to purchase gloves, goggles, and possibly, respirators. There are many kinds of gloves available for purchase. Specific types of gloves (e.g., neoprene and butyl rubber) are chosen on the basis of cost, type of chemical exposure, duration of exposure, etc.

This SNUR would require that workers wear gloves, goggles, and respirators (in the case of spray applications). While the SNUR would require that the gloves be impervious to the substance, it does not specify what kind of gloves one should wear (e.g., latex, neoprene, and butyl rubber). Gloves range in price from around $1/pair to $30/pair. EPA's experience with industry concerning acrylates indicates that neoprene gloves are often worn, because the exposures are not of a long duration, and the gloves are not overly expensive. Neoprene gloves are disposable gloves that cost around $15 a dozen (about $1.25/pair). Chemical goggles cost about $4.75/pair. For respirators, EPA assumes use of a half-face piece type respirator. These respirators currently cost $15.75 each. Replacement filters cost $5.75/pair, and paint mist prefilters cost $1.81/pair.

For analytical purposes EPA assumed the following: A worker would be exposed to the substance for 45 days a year; gloves would be replaced daily; goggles would be replaced once; filters and prefilters would be changed on a weekly basis; and the respirator itself would last for a year.

On an annual basis, these costs would total about $165 per worker. Assuming a 10-year life cycle for the substance and a 10 percent discount rate, the present value of the $165 is $1,115; the annualized cost is $182 per worker.

In processing and use, the same workers exposed to the PMN substance would likely be exposed to other resins, and perhaps solvents (used in cleanup operations). Protection against these other chemicals by using the equipment specified here will unavoidably occur, and will help to degrade the equipment. Thus, it would be inappropriate to assign all equipment costs to this SNUR.

The SNUR would require labels to be attached to products containing the substance. New products that have not been commercialized would meet this requirement by inclusion of a warning statement. Since such labels have not been prepared, the cost probably will not be directly attributable to this SNUR.

If an entirely new label has to be made, the initial cost of labeling requirement will be between $135–500 (which is the development cost of the label). The annualized cost of labeling is $80. Other labeling costs will be minimal (around $0.02 per label).

The SNUR would require that a MSDS accompany any distribution of products containing the substance. EPA estimates that it costs around $20 to develop a MSDS.

Outcome 2

In some circumstances it would be cost effective for a company to file a SNUR notice with data which shows that its means of controlling exposures could mitigate EPA's concerns. In this case, the company would incur the cost of filing a SNUR notice, which has been estimated at $1,400–$8,000 and possibly the costs of some exposure controls which would ordinarily not be used without the existence of the SNUR. The submitter may also incur up to a 3.2 percent reduction in profits due to delays in manufacture, import, or processing and the cost of regulatory followup, if any.

Another alternative under this outcome would be a firm submitting a SNUR notice with the results of a 2-year bioassay on the substance. The cost of one 2-year bioassay, however, is in the $850,000 range per substance. Therefore, the agency does not expect this alternative to occur.

Outcome 3

Some companies could find the cost of controlling exposure too expensive to justify production, processing, or use. Under this outcome, a company would not incur any direct costs as a result of the SNUR. The company and society could then lose benefits that would have been derived from the manufacturing, processing, or use of the substance. However, the original PMN submitter intends to produce the substance under the conditions of the section 5(e) consent order, which are stricter than in this SNUR. This indicates that some uses of the substance will return an acceptable profit.

B. Benefits

EPA has not attempted to quantify the benefits of the proposed SNUR. In general, however, benefits will accrue if the proposed action leads to the identification and, if necessary, the control of unreasonable risk before significant health effects can occur. The proposal and promulgation of the SNUR provides these benefits of reduced health risk during manufacture, processing, and use of P–84–274.

The PMN submitter will benefit from the SNUR because marketing restrictions contained in the section 5(e) consent order can be lifted once the SNUR is promulgated. Specifically, the submitter will be able to sell P–84–274 to formulators, who play a major role in the sales and distribution of radiation-curable inks, coatings, and adhesives.

XI. Confidential Business Information

Any person who submits comments which the person claims as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Any comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR Part 2. EPA requests that any party submitting confidential comments perpare and submit a sanitized version of the comments which EPA can place in the public file.

XII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50536). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following:

1. The PMN for the substance.

2. The **Federal Register** notice of receipt of the PMN.

3. The section 5(e) consent order.

4. The economic analysis of the proposed rule.

5. The health effects support document for the section 5(e) order.

6. The Engineering Report.

The Agency will accept additional materials for inclusion in the record at any time between this notice and designation of the complete record.

EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record containing sanitized copies from which CBI has been deleted is available to the public from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OTS Public Information Office, Rm. E-107, 401 M Street SW., Washington, D.C.

XIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major rule" because it will not have an effect on the economy of $100 million or more, and will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this proposed rule, for the reasons discussed in Unit X of this preamble, EPA believes that the cost will be low. In addition, because of the nature of the proposed rule and the substance identified in it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice, the suggested testing, and the uncertainty of possible EPA regulation may discourage certain innovation, that impact may be limited because such factors are unlikely to discourage innovation of high potential value. Finally, this SNUR may encourage innovation in safe chemical substances or highly beneficial uses.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C 605(b) EPA certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this proposed rule are likely to be small businesses. However, EPA believes that few manufacturers, importers, or processors will submit SNUR notices. Therefore, although the costs of preparing a notice under this rule might be significant for some small businesses, the number of such businesses affected is not expected to the substantial.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070-0012. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: August 16, 1985.

Marcia E. Williams,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority for Part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding a new § 721.567 to read as follows:

§ 721.567 Poly(oxy-1,4-butanediyl)-alpha-(1-oxo-2-propenyl)-omega-[(1-oxo-2-propenyl)oxy].

(a) *Chemical substance and significant new uses subject to reporting.* (1) The following chemical substance, referred to by its CAS number and chemical name, is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section: 52277-33-5; poly[oxy-1,4-butanediyl]-alpha-(1-oxo-2-propenyl]-omega-[(1-oxo-2-propenyl]oxy].

(2) The significant new uses are:

(i) Use other than as a component in industrial coatings.

(ii) Manufacturing, processing, or distribution in commerce without establishing a program whereby:

(A) During all stages of manufacture, processing, use, or cleanup operations involving the substance any person who is employed by or under the control of the manufacturer or processor and who is involved in, or in the immediate area of, any operation where dermal contact with the substance may occur must wear:

(*1*) Gloves which are determined to be impervious to the substance under the conditions of exposure, including the duration of exposure. This determination must be made either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of manufacturer's specifications shall include consideration of permeability, penetration, and potential chemical and physical degradation by the substance and associated chemical substances.

(*2*) Chemical safety goggles or equivalent eye protection.

(*3*) Clothing which covers any other exposed areas of the arms, legs, and torso.

(B) During spray application of the substance, workers who are potentially exposed to the substances as an aerosol or mist are required to wear:

(*1*) A National Institute for Occupational Safety and Health approved, category 21c, high efficiency filter respirator, excluding single-use or disposable types in accordance with 30 CFR 11.150; category 23c respirator equipped with combination cartridges and approved for paints, enamels, and lacquers; or category 19c; air-supplied respirator; and the selected respirator is used in accordance with 29 CFR 1910.134 and 30 CFR Part 11.

(*2*) [Reserved]

(C) All persons described in paragraph (a)(2)(ii)(A) and (B) of this section are informed in writing, or by presenting the information as part of a safety training program where attendance is recorded, that contact with skin may be harmful; that mist generated from spray application may be harmful if inhaled; that structurally similar chemicals have been found to cause cancer in laboratory animals; and that the use of safety goggles, respirators, impervious gloves, and other clothing will help to protect them.

(D) Each container of the substance, or of a formulation containing the substance, which may be distributed to another person, is labeled at a minimum with the following information (in a print size no smaller than 10-point type):

WARNING: Avoid contact. Contact with skin may be harmful. Chemicals similar in structure to [INSERT APPROPRIATE TRADE NAME] have been found to cause skin cancer in laboratory animals. The required use of safety goggles or equivalent eye protection, impervious gloves, and other clothing will help to protect you. Respirators are required

during spray operations if there is potential inhalation exposure.

(E) A material safety data sheet (MSDS) is included to accompany the distribution of the substance in commerce which contains the language specified in paragraph (a)(2)(ii)(D) of this section and specifies the requirements for protective equipment set forth in paragraph (a)(2)(ii)(A) and (B) of this section.

(b) *Special requirements.* The provisions of Subpart A of this part apply to this section except as modified by the following paragraphs.

(1) *Definitions.* In addition to the definitions in § 721.3, the following definition applies to this section: "Industrial coating" means a coating formulation, including inks and adhesives, applied to a substrate within the confines of a business establishment for purposes of further distribution in commerce or for use by that business.

(2) *Recordkeeping.* In addition to the requirements of § 721.17, manufacturers, importers, and processors of the chemical substance identified in paragraph (a)(1) of this section must maintain the following records for 5 years from the date such records are completed:

(i) Any determination that gloves are impervious to the substance as specified in paragraph (a)(2)(ii)(A)(1) of this section.

(ii) Names used for the substance and the dates on which those names were in use.

(iii) Names of persons who have been informed in accordance with paragraph (a)(2)(ii)(C) of this section, the means by which they were informed, and the dates they were informed.

(iv) Dates of shipments of containers which have been labeled in accordance with paragraph (a)(2)(ii)(D) of this section, a copy of the label, and the identities of persons to whom the containers were shipped.

(v) Copies of any MSDSs used.

(2) [Reserved]

(Approved by the Office of Management and Budget under control number 2070-0012)

[FR Doc. 85-20303 File 8-23-85; 8:45 am]

BILLING CODE 6560-50-M

LEGAL SERVICES CORPORATION

45 CFR Part 1614

Private Attorney Involvement

AGENCY: Legal Services Corporation.

ACTION: Proposal rule; revision.

SUMMARY: On January 4, 1985, the Legal Services Corporation republished Part 1614 of its regulations for comment (50 FR 509). Based upon comments received and recommendations of the Board's Operations and Regulations Committee, the Board of Directors on August 2, 1985 voted to continue requiring recipients to spend 12½% of their annualized basic field awards on private attorney involvement (PAI). Although the Board has now resolved the issue of whether the 12½% standard is a requirement or a guideline, several major changes have been made in Part 1614 since the last publication of the proposed rule. Because of these changes the Board determined that Part 1614 should be published in revised form for further comment.

The revision makes six major changes in Part 1614. Completely new provisions dealing with joint ventures, waiver, and failure to comply have been added to Part 1614. The audit provisions and the provisions on revolving litigation funds have been substantially rewritten. Section 1614.3 has been revised to require recipients to include the direct delivery of legal services by private attorneys in their PAI programs. Numerous technical changes have also been made which do not affect the substance of the regulation.

DATE: Comments must be received on or before September 25, 1985.

ADDRESS: Comments may be submitted to Office of General Counsel, Legal Services Corporation, 733 Fifteenth Street, NW., Room 601, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Acting General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION: Part 1614 of the Corporation's regulations, which concerns private attorney involvement, was adopted by the Corporation's Board of Directors on April 28, 1984. It was published in final form in the **Federal Register** on May 21, 1984, 49 FR 21328. Since September of 1984, the Corporation received comments concerning both substantive and procedural issues involving the adoption of this regulation. After deliberation, the Corporation's Board of Directors, at its December 20, 1984, meeting, decided to republish, for comment, certain regulations, including Part 1614. Part 1614 was republished in the **Federal Register** on January 4, 1985, 50 FR 509. Comments were received and reviewed. Changes were recommended in response to the comments received. A revised draft of Part 1614 was published in the **Federal Register** on June 18, 1985, 50 FR 25270, to inform interested parties of the progress the Corporation had made in revising the regulation. On August 2, 1985, the Corporation's Board of Directors, acting upon recommendations of its Operations and Regulations Committee, voted to continue requiring recipients to spend 12½% of their annualized basic field awards on PAI. It also voted to amend Part 1614 of the regulations, and, because of the amendments that had been made, to publish the regulation, in revised form, for further comment.

The major issues before the Board over the past half year with respect to Part 1614 were whether the 12½% standard should continue to be a requirement or should be considered simply a guideline and whether the standard should remain at 12½%. The board receive 83 comments on these issues and heard extensive public testimony on them. In addition it conducted an extensive study of the degree to which local programs have complied with the 12½% standard. At the May 23, 1985 meeting of the Operations and Regulations Committee, the Office of Field Services presented a preliminary, program-by-program study of the amount of money spent on PAI. To prepare this study, Corporation staff went through the 180 audit files of the programs whose fiscal years ended on December 31, 1984, the first programs that were required to report PAI expenditures separately on their audits. The Office Field Services took a number of steps to doublecheck the preliminary figures presented at the May meeting. On May 17, before the meeting, the Corporation mailed a copy of the statistics to all LSC recipients and regional offices. On June 7, a draft copy of a revised and expanded PAI report, with a request for review and comment, was express mailed to all regional offices. Between June 1 and June 17, LSC staff in Washington, DC, contacted all nine regional offices and verified the statistics with them. The revised figures showed that 20.8% of the programs reviewed (37 out of 180) had fallen short of the 12½% level of compliance.

After considering the comments, the testimony at its meeting, and the statistics, the Board decided to continue employing the 12½% standard as a requirement. Except for the deletion of the old waiver provision and for technical changes that make the mandatory nature of the 12½% standard clear, it has left § 1614.1 as it was.

Although the Board has resolved the issue of whether the 12½% standard is a requirement or a guideline, several major changes have been made in Part 1614 since the last publication of the proposed rule. It is with respect to these

changes, detailed below, that the Board invites further comment.

A new paragraph (b) dealing with joint ventures has been added to § 1614.2. This provision makes clear that recipients whose case service areas are adjacent, coterminous, or overlapping may enter into joint venture agreements. For a joint venture to qualify, however, each of the conditions enumerated in paragraph (b) must be met: The Office of Field Services must approve the joint venture; the venture must meet certain expenditure requirements; each participant must be a bona fide participant; and the venture must provide opportunity for involving private attorneys throughout the entire joint service area. The expenditure requirements vary according to the nature of the joint venture. Where recipients whose case service areas are coterminous or overlapping enter into a joint venture, the recipients must spend at least 12½% of the aggregate of their basic field awards on private attorney involvement (PAI). Where a joint venture involves recipients whose service areas are adjacent but not coterminous or overlapping *each* recipient must spend 12½% of its basic field grant on PAI.

The Board believes that the essence of PAI is the direct delivery of legal services to the poor by private attorneys and that all recipients ought to incorporate direct delivery into their PAI programs. Section 1614.3, accordingly, has been amended to make clear that the direct delivery of legal assistance is a mandatory part of PAI programs. The Board has declined to state what percentage of a PAI program ought to involve direct delivery. Local programs may make that determination. Under new paragraph (a) recipients must include the direct delivery of legal assistance by private attorneys in their PAI programs. Under new paragraph (b), at the option of recipients, PAI programs may also include support activities and other forms of indirect delivery of service. It should be noted, however, that it is not the Board's intent under § 1614.3 to permit recipients to meet their 12½% spending requirement by providing private attorneys with services from national and state support centers.

The Corporation received numerous complaints about the burdensome paperwork requirements formerly contained in § 1614.3(d), the auditing provision. Upon study the Board reached the conclusion that these paperwork and record-keeping requirements went beyond what was necessary. At the same time it recognized that any time the Corporation issues a regulation requiring an expenditure of funds for a certain purpose, it will be necessary to impose a certain number of accounting and bookkeeping requirements. The Board has entirely rewritten the auditing provision which now appears as § 1614.3(e) and has sought to impose only those record-keeping requirements needed to track the progress of recipients in implementing PAI.

Perhaps the most significant change in the auditing provision relates to documenting the time staff attorneys and other recipient employees spend on PAI. Old § 1614.3(d)(6) required that if a recipient allocated the time of staff attorneys or paralegals to PAI, it had to submit detailed timesheets accounting for *all* the time of those employees, not just the time spent on PAI activities. By contrast new § 1614.3(e)(1)(i) requires timesheets from attorneys and paralegals only for time spent on PAI activities. It retains the provision excluding such employees as receptionists, secretaries, intake personnel or bookkeepers from the requirement of keeping timesheets, but with slightly different wording. The Operations and Regulatons Committee found the wording of the old provision to be ambiguous: It might mean either that a recipient could not allocate the time of these staff to PAI or that the recipient simply did not have to keep time records for these personnel. The amended language makes it clear that the second meaning is the one intended, and that, although recipients do not have to keep time sheets for these personnel, they do have to have some reasonable way of allocating their time between PAI and their regular staff duties.

The Board has also deleted from the auditing section the provision (formerly § 1614.3(d)(10)) requiring programs that use Judicare or another compensated bar mechanism to establish an encumbrance system. New § 1614.3(e)(1)(i), however, retains the requirement that encumbrances not be included in calculating whether a recipient has met its PAI requirement.

Finally, the auditing provision now requires that in the year-end audit, recipients report PAI expenditures as a separate fund or on a separate schedule. (§ 1614.3(e)(2)) The approach of old § 1614.3(d)(3) which made establishing a separate fund or schedule optional raised consideration problems for the Corporation in collecting data on PAI. In their year-end audits, some programs explained their PAI activities and expenses in a footnote. Others programs, however, reported only a one-line item expenses for PAI making it impossible for the Corporation to determine how they had spent their PAI money. Still others gave no data about PAI in their audits at all, despite Corporation requirements. The Board has determined that, for the Corporation to track the progress of PAI, there must be more uniformity in the way programs report PAI. The new provision, accordingly, requires that programs highlight PAI expenditures in a separate column in their financial statements. It does not require that programs establish separate bank accounts or separate books to account for PAI expenditures. The words "a separate fund" are a technical phrase used by auditors and are intended to be synonymous with "a separate schedule", words that are perhaps clearer to non-auditors.

For the sake of clarity § 1614.5, prohibiting certain kinds of revolving litigation funds, has been entirely rewritten. New paragraph (a) defines a revolving litigation fund system. Under such systems recipients advance funds to private attorneys to enable them to pay costs, expenses or attorneys fees for representing clients. The private attorneys on their part agree to repay the money advanced from fees or monies awarded as a result of the case. Paragraph (b) makes it clear that recipients may not use LSC funds to establish or maintain systems that advance attorneys fees. Paragraph (c) permits systems that advance costs and expenses as long as two conditions are met in each case: The private attorney involved is representing an eligible client in a matter in which representation of the eligible client would be allowed under the LSC Act and LSC regulations; and the private attorney either spends funds in accordance with a schedule previously approved by the recipient's governing body or, prior to initiating action in the matter, requests the recipient to advance the funds.

The old waiver provision contained in the last sentence of § 1614.1(a) was overly narrow. Replacing this provision, in accordance with the Board's concern for flexibility as well as accountability, is a completely new section on waiver, § 1614.6. It is the hope of the Board that this provision will address all the possible situations in which imposition of the 12½% requirement would cause hardship or would hinder the goal of the economical and effective use of Corporation funds.

Section 1614.6 provides for three kinds of waivers, a complete or full waiver of the expenditure requirement for a fiscal

year, a partial waiver of the expenditure requirement, and a waiver of the special accounting and bookkeeping requirements. The two circumstances under which the Office of Field Service (OFS) will grant a complete or full waiver of the spending requirement are set forth in § 1614.6(b): Where there simply are not enough qualified private attorneys to conduct a PAI program, or where all qualified private attorneys either refuse to take part in the program or have conflicts that render their participation inappropriate. Section 1614.6(c) sets forth the six circumstances under which OFS will grant a partial waiver. First, OFS may grant such a waiver where the pool of available and qualified private attorneys is simply too small to use all the PAI funds economically and effectively. Second, OFS may grant a partial waiver where, despite the recipient's best efforts, there simply are not enough qualified private attorneys willing to take part in the program. The third instance in which OFS may grant a partial waiver is where a recipient, despite its best efforts, finds itself unable to spend the full PAI allocation during a program year. In studying how recipients have complied with the PAI requirement, the Board was distressed to discover that, although a significant number of programs had not come near the 12½% standard, only about four programs had contacted or attempted to communicate with the Corporation about their problems with PAI. The Board believes that communicating with the Corporation about such problems is an affirmative duty that recipients incur when they accept a grant from the Corporation. Accordingly, in defining what constitutes a recipient's "best efforts" for the purposes of § 1614.3(c)(3), the Board included the requirement that the recipient communicate to OFS its problems spending its PAI allocation and that it request and avail itself of assistance or advice from OFS. Unless unusual circumstances caused the shortfall, a recipient is required under this subsection to accompany a waiver with a plan to avoid a shortfall in the future. Programs sending out PAI cases to private attorneys at an even rate have little control over when the attorneys will perform work or when they will bill for their work. The third and fourth types of partial waivers address the problems that might arise because of the time a recipient is billed. Section 1614.6(c)(4) permits a waiver where, simply because attorneys have failed to bill a recipient during one fiscal year, the recipient's PAI expenditure for that year falls below 12½%. Section 1614.6(c)(5) permits a waiver in the situation: Where, simply because attorneys chose to bill a recipient during one fiscal year, it is appropriate to permit PAI expenditures for the following fiscal year to fall below 12½%. Sixth, OFS may grant a partial waiver where a recipient can show that, in the reasonable judgment of its governing body, it would not be economical and efficient for it to expend its full 12½% allocation of PAI. This sixth type of partial waiver, however, may be granted only in two cases: Where a recipient has received substantial contributions from the private bar or other sources and, consequently, has handled and expects to continue handling at least 12½% of its cases through PAI programs; or where the recipient has been unusually efficient and has handled and expects to continue handling at least 12½% of its cases through its PAI programs.

Section 1614.6(d) permits the Audit Division with the concurrence of OFS to grant waivers of the special accounting and bookkeeping requirements. Except with respect to subgrants, it is expected that such waivers will be rarely granted. As discussed above, the auditing requirements have been rewritten to require only the minimum record-keeping necessary for the Corporation to monitor PAI. In most instances, therefore, granting a waiver of these requirements would make it impossible for the Corporation to track a recipient's compliance with the PAI requirement.

Recipients, as set forth in § 1614.6(e)(1), may apply for a waiver for the current or for the next fiscal year. All applications must be in writing. Applications for waivers for the current fiscal year must be received by the Corporation during the current fiscal year. At the expiration of a waiver, a recipient may seek a similar or identical waiver.

In drafting the new waiver provision, the Board has required that within thirty days the Corporation respond in writing to requests for waivers (§ 1614.6(f)). If the Corporation fails to meet this thirty day deadline, the recipient will automatically receive a waiver. The Board determined that it is necessary for the Corporation to rule speedily on waiver requests so that recipients denied waivers late in the year will still have time to comply with the spending requirement.

In addition to the new waiver provision, an enforcement provision has been added to Part 1614. This new provision, § 1614.7, details the penalties assessed against recipients who fail to meet the 12½% spending requirement and who fail to take advantage of the liberal waiver provision. Under paragraphs (a) and (c) of § 1614.7, if a recipient falls short of the 12½% spending requirement and also fails without good cause to seek a waiver, it loses the unspent money to qualified PAI programs in its service area. In any case where a recipient applies for a waiver, however, or, in cases where it fails with good cause to seek a waiver, the recipient does not lost its money; it must simply spend the required amount of money during its next fiscal year. To avoid losing its money under the penalty provision in § 1614.7(c), all a recipient need do is apply for a waiver. It does not actually have to receive a waiver nor does it need good cause for requesting one.

List of Subjects in 45 CFR Part 1614

Legal Services, Private attorneys.

For the reasons set out above 45 CFR Part 1614 is proposed to be revised to read as follows:

PART 1614—PRIVATE ATTORNEY INVOLVEMENT

Sec.

1614.1 Purpose.
1614.2 General policy.
1614.3 Range of activities.
1614.4 Procedure.
1614.5 Prohibition of revolving litigation funds.
1614.6 Waivers.
1614.7 Failure to comply.

Authority: Sec. 1007(a)(2)(C) and Sec. 1007(a)(3); (42 U.S.C. 2996f(a)(2)(C) and 42 U.S.C. 2996f(a)(3)).

§ 1614.1 Purpose.

(a) This Part is designed to ensure that recipients of Legal Services Corporation funds involve private attorneys in the delivery of legal assistance to eligible clients. Except as provided hereafter, a recipient of Legal Services Corporation funding shall devote an amount equal to at least twelve and one-half percent (12½%) of the recipient's LSC annualized basic field award to the involvement of private attorneys in such delivery of legal services. Funds received from the Corporation as one-time special grants shall not be considered in determining the private attorney involvement (PAI) requirements.

(b) Recipients of Native American or migrant funding shall provide opportunity for involvement in the delivery of services by the private bar in a manner which is generally open to broad participation in those activities undertaken with those funds, or shall demonstrate to the satisfaction of the

Corporation that such involvement is not feasible.

(c) Because the Corporation's PAI requirement is based upon an effort to generate the most possible legal services for eligible clients from available, but limited, resources, recipients should attempt to assure that the market value of PAI activities substantially exceeds the direct and indirect costs being allocated to meet the requirements of this Part.

§ 1614.2 General policy.

(a) This part implements the policy adopted by the Board of Directors of the Corporation that a substantial amount of funds be made available to encourage the involvement of private attorneys in the delivery of legal assistance to eligible clients through both *pro bono* and compensated mechanisms, and that such funds be expended in an economical and efficient manner.

(b) In the case of recipients whose service areas are adjacent, coterminous or overlapping, the recipients may enter into joint efforts to involve the private attorneys in the delivery of legal services to eligible clients, subject to the following conditions:

(1) The joint venture plan must be approved by the Office of Field Services;

(2) The recipients involved in the joint venture must expend at least twelve and one-half percent (12½%) of the aggregate of their basic field awards on PAI. In the case of recipients with adjacent service areas, 12½% of each recipient's grant shall be expended on PAI;

(3) Each recipient in the joint venture must be a bona fide participant in the activities undertaken by the joint venture; and

(4) The joint PAI venture must provide opportunity for involving private attorneys throughout the entire joint service area(s).

(c) Private attorney involvement shall be an integral part of a total local program undertaken within the established priorities of that program in a manner that furthers the statutory requirement of high quality, economical and effective client-centered legal assistance to eligible clients. Decisions concerning implementation of the substantial involvement requirement rest with the recipient through its governing body, subject to review and evaluation by the Corporation.

§ 1614.3 Range of activities

(a) Activities undertaken by the recipient to meet the requirements of this Part must include the direct delivery of legal assistance to eligible clients through programs such as organized *pro bono* plans, reduced fee plans, judicare panels, private attorney contracts, or those modified *pro bono* plans which provide for the payment of nominal fees by eligible clients and/or organized referral systems; except that payment of attorneys' fees through "revolving litigation fund" systems, as described in § 1614.5 of this part, shall neither be used nor funded under this Part nor funded with any LSC support;

(b) Activities undertaken by recipients to meet the requirements of this part may also include, but are not limited to

(1) Support provided by private attorneys to the recipient in its delivery of legal assistance to eligible clients on either a reduced fee or *pro bono* basis through the provision of community legal education, training, technical assistance, research, advice and counsel; co-counseling arrangements; or the use of private law firm facilities, libraries, computer-assisted legal research systems or other resources; and,

(2) Support provided by the recipient in furtherance of activities undertaken pursuant to this Section including the provision of training, technical assistance, research, advice and counsel; or the use of recipient facilities, libraries, computer assisted legal research systems or other resources.

(c) The specific methods to be undertaken by a recipient to involve private attorneys in the provision of legal assistance to eligible clients will be determined by the recipient's taking into account the following factors:

(1) The priorities established pursuant to Part 1620 of these regulations;

(2) The effective and economical delivery of legal assistance to eligible clients;

(3) The linguistic and cultural barriers to effective advocacy;

(4) The actual or potential conflicts of interest between specific participating attorneys and individual eligible clients; and,

(5) The substantive and practical expertise, skills and willingness to undertake new or unique areas of the law of participating attorneys.

(d) Systems designed to provide direct services to eligible clients by private attorneys on either a *pro bono* or reduced fee basis, shall include at a minimum, the following components:

(1) Intake and case acceptance procedures consistent with the recipient's established priorities in meeting the legal needs of eligible clients;

(2) Case assignments which ensure the referral of cases according to the nature of the legal problems involved and the skills, expertise, and substantive experience of the participating attorney;

(3) Case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the result desired by the client and the efficient and economical utilization of recipient resources; and

(4) Access by private attorneys to LSC recipient resources, including those of LSC national and state support centers, that provide back-up on substantive and procedural issues of the law.

(e) The recipient shall demonstrate compliance with this part by utilizing financial systems and procedures and maintaining supporting documentation to identify and account separately for costs related to the PAI effort. Such systems and records shall meet the requirements of the Corporation's Audit and Accounting Guide for Recipients and Auditors and shall have the following characteristics:

(1) They shall accurately identify and account for:

(i) The recipient's administrative, overhead, staff, and support costs related to PAI activities. Non-personnel costs shall be allocated on the basis of reasonable operating data. All methods of allocating common costs shall be clearly documented. If any direct or indirect time of staff attorneys or paralegals is to be allocated as a cost to PAI, such costs must be documented by time sheets accounting for the time those employees have spent on PAI activities. The timekeeping requirement does not apply to such employees as receptionists, secretaries, intake personnel or bookkeepers; however, personnel cost allocations for non-attorney or non-paralegal staff should be based on other reasonable operating data which is clearly documented;

(ii) Payments to private attorneys for support or direct client services rendered. The recipient shall maintain contracts on file which set forth payment systems, hourly rates, and maximum allowable fees. Bills and/or invoices from private attorneys shall be submitted before payments are made. Encumbrances shall not be included in calculating whether a recipient has met the requirement of this part;

(iii) Contractual payments to individuals or organizations that undertake administrative, support, and/or direct services to eligible clients on behalf of the recipient consistent with the provisions of this part. Contracts concerning transfer of LSC funds for PAI activities shall require that such funds be accounted for by the recipient in accordance with LSC guidelines, including the requirements of the Audit

and Accounting Guide for Recipients and Auditors and 45 CFR Part 1627;

(iv) Other such actual costs as may be incurred by the recipient in this regard.

(2) Support and expenses relating to the PAI effort must be reported separately in the recipient's year-end audit. This shall be done by establishing a separate fund or providing a separate schedule in the financial statement to account for the entire PAI allocation. Recipients are not required to establish separate bank accounts to segregate funds allocated to PAI. Auditors are required to perform sufficient audit tests to enable them to render an opinion on the recipient's compliance with the requirements of this part.

(3) In private attorney models, attorneys may be reimbursed for actual costs and expenses. Attorney's fees paid may not exceed 50% of the local prevailing market rate for that type of service.

(4) All records pertaining to a recipient's PAI requirements which do not contain client confidences or secrets as defined by applicable state law shall be made available for inspection and review by LSC auditors and monitors during regular business hours.

§ 1614.4 Procedure.

(a) The recipient shall develop a plan and budget to meet the requirements of this part which shall be incorporated as a part of the refunding application or initial grant application. The budget shall be modified as necessary to fulfill this part. That plan shall take into consideration:

(1) The legal needs of eligible clients in the geographical area served by the recipient and the relative importance of those needs consistent with the priorities established pursuant to section 1007(a)(2)(C) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)(C)) and Part 1620 of the Regulations (45 CFR Part 1620) adopted pursuant thereto;

(2) The delivery mechanisms potentially available to provide the opportunity for private attorneys to meet the established priority legal needs of eligible clients in an economical and effective manner; and

(3) The results of the consultation as required below.

(b) The recipient shall consult with significant segments of the client community, private attorneys, and bar associations, including minority and women's bar associations, in the recipient's service area in the development of its annual plan to provide for the involvement of private attorneys in the provision of legal assistance to eligible clients and shall document that each year its proposed annual plan has been presented to all local bar associations within the recipient's service area and shall summarize their response.

§ 1614.5 Prohibition of revolving litigation funds.

(a) A revolving litigation fund system is a system under which funds are advanced to private attorneys to enable them to pay costs, expenses or attorneys fees for representing clients and under which the private attorneys agree to repay from fees or other money awarded as a result of the case any funds advanced to them.

(b) No funds received from the Legal Services Corporation shall be used to establish or maintain revolving litigation fund systems that advance funds to private attorneys for attorney fees.

(c) The prohibition in paragraph (b) of this section does not prevent recipients from reimbursing or paying private attorneys for costs and expenses, provided:

(1) The private attorney is representing an eligible client in a matter in which representation of the eligible client by the recipient would be allowed under the Act and under the Corporation's Regulations; and

(2) The private attorney has expended such funds in accordance with a schedule previously approved by the recipient's governing body or, prior to initiating action in the matter, has requested the recipient to advance the funds.

§ 1614.6 Waivers.

(a) While it is the expectation and experience of the Corporation that most basic field programs can effectively expend their PAI requirement, there are some circumstances, temporary or permanent, under which the goal of economical and effective use of Corporation funds will be furthered by a partial, or in exceptional circumstances, a complete waiver of the PAI requirement.

(b) A complete waiver shall be granted by the Office of Field Services (OFS) when the recipient shows to the satisfaction of OFS that

(1) Because of the unavailability of qualified private attorneys, an attempt to carry out a PAI program would be futile; or

(2) All qualified private attorneys in the program's service area either refuse to participate or have conflicts generated by their practice which render their participation inappropriate.

(c) A partial waiver shall be granted by OFS when the recipient shows to the satisfaction of OFS that

(1) The population of qualified private attorneys available to participate in the program is too small to use the full PAI allocation economically and effectively; or

(2) Despite the recipient's best efforts too few qualified private attorneys are willing to participate in the program to use the full PAI allocation economically and effectively; or

(3) Despite a recipient's best efforts,—including, but not limited to, communicating its problems expending the required amount of OFS and requesting and availing itself of assistance and/or advice from OFS regarding the problem—expenditures already made during a program year are insufficient to meet the PAI requirement, and there is insufficient time to make economical and efficient expenditures during the remainder of a program year, but in this instance, unless the shortfall resulted from unforeseen and unusual circumstances, the recipient shall accompany the waiver request with a plan to avoid such a shortfall in the future; or

(4) The recipient uses a fee-for-service program whose encumbrances would meet the requirement, but its actual current expenditures do not meet the requirement, and could not be increased to do so economically and effectively in the remainder of the program year, or could not be increased to do so in a fiscally responsible manner in view of outstanding encumbrances; or

(5) The recipient uses a fee-for-service program and its PAI expenditures in the prior year exceeded the twelve and one-half percent (12½%) requirement but, because of variances in the timing of work performed by the private attorneys and the consequent billing for that work, its PAI expenditures for the current year fail to meet the twelve and one-half percent (12½%) requirement; or

(6) If, in the reasonable judgment of the recipient's governing body, it would not be economical and efficient for the recipient to expend its full 12½% of Corporation funds on PAI activities, provided that:

(i) The recipient has received substantial contributions from the private bar and/or other sources, and, consequently, the recipient has handled and expects to continue to handle at least 12½% of its cases through its PAI program(s); or

(ii) The recipient has been unusually efficient in the use of its PAI resources, and, consequently, the recipient has handled and expects to continue to handle at least 12½% of its cases through its PAI program(s).

(d)(1) A waiver of the special accounting and bookkeeping requirements of this Part maybe granted by the Audit Division with the concurrence of OFS, if the recipient shows to the satisfaction of the Audit Division and OFS that such waiver will advance the purpose of this Part as expressed in §§ 1614.1 and 1614.2.

(2) As provided in 45 CFR 1627.3(c) with respect to subgrants, alternatives to Corporation audit requirements or to the accounting requirements of this Part may be approved for subgrants by the Audit Division with the concurrence of OFS; such alternatives for PAI subgrants shall be approved liberally where necessary to foster increased PAI participation.

(e) Waivers of the PAI expenditure requirement may be full or partial, that is, the Corporation may waive all or some of the required expenditure for a fiscal year.

(1) Applications for waivers of any requirement under this Part may be for the current, or next fiscal year. All such applications must be in writing. Applications for waivers for the current fiscal year must be received by the Corporation during the current fiscal year.

(2) At the expiration of a waiver a recipient may seek a similar or identical waiver.

(f) All waiver requests shall be addressed to the Office of Field Services (OFS) or the Audit Division as is appropriate under the preceding provisions of this Part. The Corporation shall make a written response to each such request postmarked not later than thrity (30) days after its receipt. If the request is denied, the Corporation will provide the recipient with an explanation and statement of the grounds for denial. If the waiver is to be denied because the information submitted is insufficient, the Corporation will inform the recipient as soon as possible, both orally and in writing, about what additional information is needed. Should the Corporation fail to so respond, the request shall be deemed to be granted.

§ 1614.7 Failure to comply.

(a) If a recipient fails to comply with the expenditure required by this part and if that recipient fails without good cause to seek a waiver during the term of the grant or contract, the Corporation shall withhold from the recipient's support payments an amount equal to the difference between the amount expended on PAI and twelve and one-half percent (12½%) of the recipient's basic field award.

(b) If a recipient fails with good cause to seek a waiver, or applies for but does not receive a waiver, or receives a waiver of part of the PAI requirement and does not expend the amount required to be expended, the PAI expenditure requirement for the ensuing year shall be increased for that recipient by an amount equal to the difference between the amount actually expended and the amount required to be expended.

(c) Any funds withheld by the Corporation pursuant to this section shall be made available by the Corporation for use in providing legal services in the recipient's service area through PAI programs. Disbursement of these funds shall be made through a competitive solicitation and awarded on their basis of efficiency, quality, creativity, and demonstrated commitment to PAI service delivery to low-income people.

Dated: August 20, 1985.

Richard N. Bagenstos,

Acting General Counsel.

[FR Doc. 85-20272 Filed 8-23-85; 8:45 am]

BILLING CODE 6820-35-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-248; RM-4950]

FM Broadcast Station in Wadley, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to allot Channel 247A to Wadley, Alabama, as that community's first local aural broadcast service, in response to a petition filed by Bob Haynes.

DATES: Comments must be filed on or before October 15, 1985, and reply comments on or before October 30, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting, Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Wadley, Alabama); (MM Docket No. 85-248, RM-4950).

Adopted: August 12, 1985.

Released: August 23, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Bob Haynes ("petitioner"),[1] requesting the allotment of Channel 247A to Wadley, Alabama, as that community's first local broadcast service. Petitioner submitted information in support of the proposal and stated his intention to apply for the channel.

2. A staff engineering study reveals that Channel 247A can be allotted to Wadley, Alabama, in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules, provided the transmitter is sited approximately 9.5 kilometers (5.9 miles) south of the community to avoid short-spacing to Channel 248A at both Talladega, Alabama, and Hogansville, Georgia.

PART 73—[AMENDED]

§ 73.202 [Amended]

3. In view of the above, and the fact that the proposal could provide a first local broadcast service to Wadley, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules with regard to that community, as follows:

City	Channel No.	
	Present	Proposed
Wadley, AL		247A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before October 15, 1985, and reply comments on or before October 30, 1985, and are advised to read the Appendix for the proper

[1] Petitioner is the President of Clay County Broadcasters, Inc., licensee of daytime only AM Station WZZX, Lineville, Alabama.

procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Lauren A. Colby, Esq., Law Offices of Lauren A. Colby, 10 East Fourth Street, P.O. Box 113, Frederick, MD 21701.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Nancy V. Joyner, 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* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(a), 5(d)(1), 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 FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the data 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 allot 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, DC.

[FR Doc. 85-20279 Filed 8-23-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-247; RM-4757]

FM Broadcast Station in Columbus, Central City, Crookston, Kearney, Lexington, McCook and Valentine, NE, Hill City, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the substitution of Class C Channel 262 for 228A at Columbus, Nebraska, the modification of the Class A license for Station KTTT-FM and six related channel substitutions in response to a petition filed by City and Farm Broadcasting, Inc. The allotment could provide Columbus with a second Class C service.

DATES: Comments must be filed on or before October 15, 1985, and reply comments on or before October 30, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting, Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making and Orders To Show Cause

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Columbus, Central City, Crookston, Kearney, Lexington, McCook and Valentine, Nebraska, and Hill City, Kansas) (RM Docket No. 85-247; RM-4757).

Adopted: August 13, 1985.

Released: August 23, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it a petition for rule making filed by City and Farm Broadcasting, Inc. ("petitioner"), licensee of KTTT-FM (Channel 228A),

Columbus, Nebraska, requesting the substitution of Class C Channel 262 for 228A and modification of its license to specify operation on the Class C channel.

2. Petitioner acknowledges that if Channel 262 is allocated to Columbus, it will be necessary to make channel substitutions at six communities. Petitioner states a willingness to reimburse the existing permittees or licensees for all reasonable costs involved in changing frequencies if petitioner is the ultimate licensee of Channel 262.

3. Channel 262 can be allocated to Columbus, Nebraska, in compliance with the Commission's minimum spacing requirements provided the following substitutions are made:

a. Substitute Channel 255 for 262 at Central City, Nebraska. Station KZEN is authorized to operate on Channel 262 by a recently issued construction permit.

b. Substitute Channel 227 for 255 at Kearney, Nebraska. Station KRNY–FM currently operates on Channel 255.

c. Substitute 241 for 226 at Lexington, Nebraska. Station KRVN–FM operates on Channel 226.

d. Substitute Channel 270 for 241 at McCook, Nebraska. Station KICX–FM is authorized to operate on Channel 241. It currently operates on Channel 240A. In Docket 80–569, Channel 241 was substituted for 240A with the license for Station KICX–FM modified to specify Channel 241.

e. Substitute Channel 228A for 270 at Hill City, Kansas. (New application pending. File No. BPH840604IB.)

f. Substitute Channel 222 for 241 at Crookston, Nebraska. Channel 241 is allocated to Valentine, Nebraska, but used at Crookston by Station KINI.

4. In support, petitioner asserts that the proposal would enable Station KTTT–FM to expand its coverage to reach over 16,000 additional miles of mainly farm area which is presently lacking in service. Only one FM signal serves the market that petitioner intends to serve with its upgraded FM station. Petitioner further states that another Class C FM allocation to Columbus is a necessity in light of the large population increase since the 1960's when the FM Table was originally developed. Along with the population increase, the area has also experienced a growth in the business community which could support a wide coverage station.

5. A staff engineering study indicates that the proposed substitution of Class C Channel 262 for Channel 228A at Columbus, Nebraska, could be made provided that each of the proposed channel substitutions previously discussed is made. The substitutions are mutually dependent. Thus, we shall also propose to make the following substitutions.

Channel 255 for 262 at Central City, Nebraska,
Channel 241 for 226 at Lexington, Nebraska,
Channel 227 for 255 at Kearney, Nebraska,
Channel 270 or 250A at McCook, Nebraska,
Channel 228A for 270 at Hill City, Kansas, and
Channel 222 for 241 at Crookston, Nebraska.

We shall also correct the Table of Allotments to reflect the actual usage of Channel 222 at Crookston, Nebraska, instead of Valentine, Nebraska. With the exception of Hill City, Kansas, each station will receive an equivalent substitute channel. At Hill City, the only applicant for a Class A station, Jerrell E. Kautz has indicated his consent to this substitution on an attached letter filed with the petition. Kautz is the only applicant affected since the cutoff date for Channel 270 has expired. We propose to retain Kautz' cutoff protection for Channel 228A. In its letter, Kautz also suggests that it would be more appropriate to continue the McCook, Nebraska, station as a Class A facility than to downgrade the Hill City channel. We believe it appropriate to seek comments on that option in view of the fact that almost 4 years (9/28/81) have transpired since Station KICX was modified to a Class C channel but has not yet effectuated the change. In this regard, Station KICX should indicate what steps it has taken to comply with its authority to operate on Class C Channel 241 at McCook. So as not to preclude the allotment of Channel 241 to Lexington, we have determined that Channel 230A could be substituted for Channel 240A at McCook.

6. On the basis of the foregoing, we shall propose the substitution of Class C Channel 262 for Channel 228A at Columbus, Nebraska, and modification of KTTT–FM's license to specify operation on Channel 262. However, conforming with Commission precedent, should another interest in the Class C assignment be shown, the proposed modification could not be permitted, unless an additional equivalent channel is allocated at Columbus. See, *Modification of FM Station Licenses*, Docket 83–1148, 98 F.C.C. 2d 916 (1984).

PART 73—[AMENDED]

§ 73.202 [Amended]

7. In view of the fact that the proposed allotment could provide a second wide area coverage FM service at Columbus, Nebraska, the Commission proposes two options to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Option I		
Hill City, KS	270	228A.
Central City, NE	262	255.
Columbus, NE	228A, 266	262, 266.
Crookston, NE		222.
Kearney, NE	255, 272A, and 290.	227, 272A and 290.
Lexington, NE	226	241.
McCook, NE	241, 287	270, 287.
Valentine, NE	241	
Option II		
Hill City, KS	270	270.
Central City, NE	262	255.
Columbus, NE	228A, 266	262, 266.
Crookston, NE		222.
Kearney, NE	255, 272A, and 290.	227, 272A, and 290.
Lexington, NE	226	241.
McCook, NE	241, 287	230A, 287.
Valentine, NE	241	

8. It is ordered, that pursuant to section 316 of the Communications Act of 1934, as amended, Osage Radio Inc., the licensee of Station KZEN (FM), Central City, Nebraska, shall show cause why its license should not be modified to specify operation on Channel 255 in lieu of 262.

9. It is ordered, that pursuant to section 316 of the Communications Act of 1934, as amended, Semoco Broadcasting Corp., licensee of Station KRNY-FM, Kearney, Nebraska, shall show cause why its license should not be modified to specify operation on Channel 227 in lieu of 255.

10. It is ordered, that pursuant to section 316 of the Communications Act of 1934, as amended, Nebraska Rural Radio Association, licensee of Station KRVN-FM, Lexington, Nebraska, shall show cause why its license should not be modified to specify operation on Channel 241 in lieu of 226.

11. It is ordered, that pursuant to section 316 of the Communications Act of 1934, as amended, Semeco Broadcasting Corp., licensee of Station KICX-FM, McCook, Nebraska, shall show cause why its license should not be modified to specify operation on Channel 270 or Channel 250A in lieu of 241.

12. It is ordered, that pursuant to section 316 of the Communications Act of 1934, as amended, Rosebud Educational Society, licensee of Station KINI, Crookston, Nebraska, shall show cause why its license should not be modified to specify operations on Channel 222 in lieu of 241.

13. Pursuant to § 1.87 of the Commission's Rules, these licensees or permittees may, not later than October 15, 1985, request that a hearing be held on the proposed modifications. If the right to request a hearing is waived, the licensees or permittees may, not later than October 15, 1985, file a written statement showing with particularity why its license or permit should not be modified as proposed in the *Order to Show Cause*. In this case, the Commission may call on the licensee or permittee to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an *Order* modifying the licenses or permits as provided in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, the licensees or pemittees will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modifications are ultimately found to be in the public interest.

14. It is further ordered, that the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Central City, Station KZEN, Channel 262, E.E. McCoy, Jr., President, Osage Radio, Inc., 520 Market Street, Osage City, Kansas 66523

Kearney, Station KRNY–FM, Channel 255, Semeco Broadcasting Corporation, 403 E. 25th Street, Kearney, Nebraska 68847

Lexington, Station KRVN-FM, Channel 266, Otto Geiger, President, Nebraska Rural Radio, Box 880, Lexington, Nebraska 68850

McCook, Station KICX-FM, Channel 241, Semeco Broadcasting Corporation, 201 West 4th Street, Box 333, McCook, Nebraska 69001

Hill City, Kansas, Channel 270, Kanza Society, Inc., One Broadcast Plaza, Pierceville, Kansas 67868

Crookston, Station KINI(FM), Channel 241, Rosebud Education Society Inc., St. Francis Mission, St. Francis, South Dakota 57572

15. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

16. Interested parties may file comments on or before October 15, 1985, and reply comments on or before October 30, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Joseph Stavas, Vice President, City and Farm Broadcasting, Inc., Box 518, Columbus, Nebraska 68601–0518.

17. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to the rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act do not apply to rule making to amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules*, 46 FR 11549, published February 9, 1981.

18. For further information concerning this proceeding, contact Kathleen Scheuerle, 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* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contract is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, It is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as 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 allot 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 Section 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 DC.

[FR Doc. 85-20276 Filed 2-23-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-251]

TV Broadcast Stations in Santa Barbara, Ventura, and Bakersfield, CA; Streator and Galesburg, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of UHF channels at Santa Barbara, California; Ventura, California; Bakersfield, California; Streator, Illinois; and Galesburg, Illinois. These substitutions are proposed in order to make additional spectrum available to land mobile services pursuant to the Commission's recent Notice of Proposed Rule Making in Gen. Dkt. 85-172 (RM-3975, RM-4829).

DATES: Comments must be filed on or before October 15, 1985, and reply comments on or before October 30, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting, Television.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.606, Table of Assignments, TV Broadcast Stations. (Santa Barbara, Ventura, and Bakersfield, California; Streator and Galesburg, Illinois); (MM Docket No. 85-251).

Adopted: August 13, 1985.
Released: August 23, 1985.

By the Commission.

1. The Commission on its own motion proposes to substitute UHF Channel *51 for UHF Channel *32 in Santa Barbara, California; UHF Channel 57 for UHF Channel 41 in Ventura, California; UHF Channel 45 for UHF Channel 48 in Bakersfield, California; UHF Channel *63 for UHF Channel *64 in Streator, Illinois; and Channel 67 for Channel 63 in Galesburg, Illinois. These substitutions are proposed in order to implement the Commission's recent *Notice of Proposed Rule Making* in Gen. Docket 85-172,[1] which proposes to make additional land mobile services available.

Background

2. In 1969 there were approximately 295,000 authorized stations in the private land mobile radio services. Due to the tremendous growth in these services over the last 15 years, there are now over one million authorized stations employing nearly eight million transmitters. As a result, the frequency bands below 800 MHz that are available to private land mobile users are heavily used, especially in and around the major urban areas.

3. Since 1970, spectrum sharing between land mobile and UHF television has helped to accommodate a significant portion of the demands of private land mobile service in major metropolitan areas. Under the rules adopted in Docket 18261,[2] the Commission designated thirteen major urban areas where private land mobile users could share certain specific UHF television channels between 14 through 20. Such utilization has accomplished an equitable and efficient means of accommodating some of the private land mobile requirements in the major urban markets.

4. On May 31, 1985, the Commission adopted the *Notice of Proposed Rule Making, Further Sharing of the UHF Television Band by Private Land Mobile Services,* General Docket No. 85-172. Therein, the Commission proposed additional spectrum sharing to provide sufficient communication capacity for land services in certain major urban areas of the country. In order to facilitate the changes proposed in that docket, several vacant UHF television assignments in these areas will have to be deleted. In each case, substitute channels are available.

5. Specifically, we are proposing to substitute UHF Channel *51 for Channel *32 in Santa Barbara, California. Since Santa Barbara is located within 200 miles of the Mexican border, Mexican concurrence is required. In Ventura, California, we are proposing to substitute UHF Channel 41 for Channel 57. There is one application pending for Ventura with a cut off date of July 25, 1985. The applicant for Channel 57, in Ventura, will be personally served with a copy of this *Notice.* Mexican concurrence is also required for Ventura. In Streator, Illinois, we are proposing to substitute UHF Channel *63 for Channel *64. In order to assign Channel *63 to Streator, it is also necessary to substitute UHF Channel 67 for Channel 63 in Galesburg, Illinois. Finally, we are proposing to substitute UHF Channel 45 for Channel 48 in Bakersfield, California. Channel 48 currently has six applications pending. However, Channel 45 can be substituted without affecting the proposed transmitter sites. Each applicant will be individually served with a copy of this *Notice.*

[1] 50 FR 25587, published June 20, 1985.
[2] 23 F.C.C. 2d 3255 (1970).

PART 73—[AMENDED]

§ 73.606 [Amended]

6. Accordingly, we consider it appropriate to elicit comments on the proposals to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules as follows:

City	Channel No.	
	Present	Proposed
Bakersfield, CA	17, 23-, 29, *39-, and 48.	17, 23-, 29, *39-, and 45+.
Santa Barbara, CA	3-, 14[1], *20[1], *32, and 38.	3-, 14[1], *20[1] 38, and *51+.
Ventura, CA	16+ and 41+	16+ and 57+.
Galesburg, IL	63	67.
Streator, IL	*64+	*63-

[1] Following the decision in Docket 18261, channels so indicated will not be available for television use until further action by the Commission.

7. It is further ordered, that the Secretary shall send copies of this *Notice of Proposed Rule Making* to the following:

Bakersfield

1. Liberty Broadcasting Corporation, c/o Seymour M. Chase, P.C., 4201 Connecticut Avenue, Washington, DC 20008.

2. Harold L. Mullican, 8608 West 72nd Street, Overland Park, Kansas 66204.

3. Crown City TV, Inc., c/o Edward J. Flynn, 840 Sierra Madre Blvd., San Marino, California 91108.

4. Dorothy J. Owens, Route 1, Box 526, Bakersfield, California 93308.

5. Bakersfield Television Associates, c/o Peter A. Casciato, Media Building, 943 Howard Street, San Francisco, California 94103.

6. Gamez Communications, Ltd. Partnership, 3021 Crest Avenue, Bakersfield, California 93306.

Ventura

1. Truecella Chumley, Rt. 1, Box 160C, Cumberland Gap, Tennessee 57724.
2. KFG "85, c/o 897 Hinkley Rd., Burlingame, California 94010.
3. Pobles Communications, Inc., 7462 Jackson Street, Ventura, California 93003.
4. Buenaventura Communications, 7633 Foothill Road, Ventura, California 93004.
5. Ventura 41 Associates, 774 Wildomar Street, Pacific Palisades, California 90272.
6. Costa De Oro Broadcasting Corp., 4628 Vanderbilt Court, Ventura, California 93003.

8. The Commission's authority to institute rule making proceedings, showings required, cut off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

9. Interested parties may file comments on or before October 15, 1985, and reply comments on or before October 30, 1985, and are advised to read the Appendix for the proper procedures.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the Table of Television Assignments, § 73.606(b) of the Commission's Rules. See *Certification that sections 603 and 604 of the Regulatory Flexibility Act do not apply to rule making to amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

11. For further information concerning this proceeding, contract 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* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte*, contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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)(1), 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 expected to file comments even if it only resubmits or incorporates by reference its former pleadings, it should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (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, DC.

[FR Doc. 85–20278 Filed 8–23–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85–250; RM–4981]

FM Broadcast Station in Twisp, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allotment of Channel 292A to Twisp, Washington, as that community's first FM channel, at the request of Broadcasters Northwest, Inc.

DATES: Comments must be filed on or before October 15, 1985, and reply comments on or before October 30, 1985.

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

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Twisp, Washington); MM Docket No. 85-250, RM-4981.

Adopted: August 12, 1985.
Released: August 23, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by Broadcasters Northwest, Inc. ("petitioner"), requesting the allotment of FM Channel 292A to Twisp, Washington, as that community's first FM channel. Petitioner submitted information in support of the proposal and expressed an intention to apply for the channel, if allotted.

2. The channel can be allotted to Twisp in compliance with our minimum spacing requirements. Since Twisp, Washington is located 320 kilometers (200 miles) of the U.S.-Canadian border, the proposal requires concurrence by the Canadian government.

PART 73—[AMENDED]

§ 73.202 [Amended]

3. In view of the fact that the proposed allotment could provide a first FM channel to Twisp, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Twisp, WA		292A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before October 15, 1985, and reply comments on or before October 30, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follws: Michael H. Bader, James E. Dunstan, Haley, Bader & Potts, 2000 M Street, NW, Suite 600, Washington, D.C. 20036.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, 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* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is alloted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot 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. 85-20280 Filed 8-23-85; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 50, No. 165
Monday, August 26, 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

Privacy Act of 1974; Amendment of an Existing System of Records

AGENCY: Office of Personnel, Office of the Secretary, USDA.

ACTION: Amendment of an existing system of records and to provide additional information concerning an earlier announced computer matching program.

SUMMARY: The purpose of this notice is to incorporate as a routine use the furnishing of data to a contractor from the system of records known as USDA/OP-1 and to provide additional information concerning a computer matching program.

EFFECTIVE DATE: A notice concerning the matching program was published at 49 FR 48071 on December 10, 1984, which referenced the use of a contractor to conduct the actual match. Because no comments to the proposal were received, we have determined that the amendment should be effective August 26, 1985.

FOR FURTHER INFORMATION CONTACT: Carolyn Wright, Security, Employee Management and Training Staff, Office of Personnel, Department of Agriculture, Washington, D.C. 20250, (202) 447-3083.

SUPPLEMENTARY INFORMATION: The Omnibus Reconcillation Act of 1980 (Pub. L. 96-499 dated December 5, 1980) transferred the administration of the Federal unemployment insurance program from the Department of Labor to Executive Departments and Agencies. In order to develop a viable unemployment compensation program, USDA has elected to contract out this function until an effective and efficient system can be developed which can be operated by agency personnel.

Under the terms of the contract, the contractor will use payroll data to determine if the claimant is a former USDA employee, identify the USDA agency which employed him/her, and complete the claim forms and return them to the requesting State agency. The contractor will review all employee separation documents for necessary employment information and review claimants' circumstances of separation, availability for work and allocation of severance payments. All matches will be referred back to the Department which will decide whether to accept or appeal State determinations. Collection of any overpayments found as a result of this matching program will be the responsibility of the requesting State, which overpayments will then be credited to the Department. Tapes received by the contractor from the requesting State(s) will be erased once the match has been conducted and returned to the State(s) for reuse.

The following routine use is being added to the Office of Personnel's system of records know as USDA/OP-1 published at 49 FR 45071 et seq., December 10, 1984.

USDA/OP-1

SYSTEM NAME:

Personnel and Payroll System for USDA Employees, USDA/OP.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(22) the contractor selected to conduct a matching program relating to unemployment compensation.

Dated: August 20, 1985.

John R. Block,

Secretary of Agriculture.

[FR Doc. 85-20286 Filed 8-23-85; 8:45 am]

BILLING CODE 3410-01-M

National Plant Genetic Resources Board; Meeting

According to the Federal Advisory Committee Act of October 1972 (Pub. L. 92-463, 86 Stat. 770-776), the USDA, Science and Education, announces the following meeting:

Name: National Plant Genetic Resources Board.

Date: October 8-9, 1985.

Time:

8:30 a.m.-4:30 p.m., October 8.

8:30 a.m.-4:30 p.m., October 9.

Place: Room 104-A, Williamsburg Room, Administration Building, Department of Agriculture, Washington, DC.

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review matters that pertain to plant germplasm in the United States and possible impacts on related national and international programs; and discuss other initiatives of the Board.

Contact person: C.F. Murphy, Executive Secretary, National Plant Genetic Resources Board, U.S. Department of Agriculture, BARC-West, Room 239, Building 005, Beltsville, Maryland 20705. Telephone: (301) 344-1560.

Done at Beltsville, Maryland, this 6th day of August 1985.

Charles F. Murphy,

Executive Secretary, National Plant Genetic Resources Board.

[FR Doc. 85-20347 Filed 8-23-85; 8:45 am]

BILLING CODE 3410-03-M

Agricultural Research Service

National Arboretum Advisory Council; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. (770-776), the Agricultural Research Service announces the following meeting:

Name: National Arboretum Advisory Council.

Date: October 7-8, 1985.

TIME:

9:00 a.m.—4:30 p.m., Oct. 7.

9:00 a.m.—4:30 p.m., Oct. 8.

Place: U.S. National Arboretum, 3501 New York Avenue, NE., Washington, D.C.

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To reveiw progress of National Arboretum relating to Congressional mandate of research and education concerning trees and plant life. The Council submits its recommendations to the Secretary of Agriculture.

Contact person: Howard J. Brooks Executive Secretary, National Arboretum Advisory Council, Room 236 Bg-005, BARC-W, Beltsville, MD 20705. Telephone: AC 301/344-3912.

Done at Beltsville, Maryland, this 12th day of August 1985.

Howard J. Brooks,

Executive Secretary, National Arboretum Advisory Council.

[FR Doc. 85-20346 Filed 8-23-85; 8:45 am]

BILLING CODE 3410-03-M

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.

Date: September 10-11, 1985.

Time: 8:30 a.m.-4:30 p.m.

Place: Faculty Club, University of California, Berkeley, California 94720.

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations.

Contact person for agenda and more information: Dr. Edward M. Wilson, Recording Secretary, U.S. Department of Agriculture, Cooperative State Research Service, Room 209 Justin Smith Morrill Building, Washington, D.C. 20251; telephone 202/447-4587.

Done at Washington, D.C., this 19th day of August 1985.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 85-20345 Filed 8-23-85; 8:45 am]

BILLING CODE 3410-22-M

COMMISSION ON CIVIL RIGHTS

Massachusetts Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 6:00 p.m. on September 26, 1985, at the U.S. Commission on Civil Rights, 55 Summer Street, 8th Floor, Boston, MA. The purpose of the meeting is to discuss plans for FY86 projects and community forums.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Phillip Perlmutter, or Jacob Schlitt, Director of the New England Regional Office at (617) 223-4671, (TDD 617/223-0344).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., August 19, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 20322 Filed 8-23-85; 8:45 am]

BILLING CODE 6335-01-M

West Virginia Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 10:00 a.m., break at 12:30 p.m. for lunch, reconvene at 2:30 p.m. and adjourn at 5:30 p.m. on September 27, 1985, at the Heart-O-Town (Holiday Inn), Washington and Broad Streets, East, 2nd Floor Committee Room, Charleston, West Virginia. The purpose of the meeting is to develop plans for a series of community forums in the State to determine the status of civil rights related to housing, employment, education, voting, and the administration of justice.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Adam Kelly or John Binkley, Director of the Mid-Atlantic Regional Office at (202) 254-6717, (TDD 202/254-5461).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 21, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-20323 Filed 8-23-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1986 National Content Test.

Form number: Agency—DE-1 (PIA), (PIB) (P2); DE-2(PI)—(P4); OMB-N/A.

Type of request: New collection.

Burden: 50,000 respondents; 25,000 reporting hours.

Needs and uses: This Census Bureau is planning to test a variety of new questions, modifications to question wording, questionnaire design, and the effect of different envelopes on response rates in the National Content Test. Respondent will provide information similar to that asked in the Decennial Census.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's obligation: Mandatory.

OMB desk officer: Timonthy Sprehe, 395-4814

Copies of the above information collection proposal 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, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: August 20, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-20329 Filed 8-23-85; 8:45 am]

BILLING CODE 3510-07-M

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: General Administration.

Title: Preaward Surveys for Ship Construction, Ship Alteration, and Ship Repair.

Form number: ITA—N/A; OMB—N/A.

Type of request: New collection.

Burden: 12 respondents; 192 reporting hours.

Needs and uses: This collection will survey prospective ship repair contractors where the contract cost over $100,000, and where the contracting officer is unable to make an affirmative determination of responsibility.

Affected public: Businesses or other for-profit institutions, non-profit

institutions, and small businesses or organizations.
Frequency: On occasion.
Respondent's obligation: Required to obtain or retain a benefit.
OMB desk officer: Timothy Sprehe, 395–4814.
Agency: General Administration.
Title: Women-Owned Small Business Sources Clause.
Form number: Agency—N/A; OMB—N/A.
Type of request: New collection.
Burden: 45 respondents; 540 reporting hours.
Needs and uses: This clause will increase opportunities for women-owned businesses by requiring contractors to provide information on opportunities to women-owned businesses and by requiring contractors to include women-owned businesses in their subcontracting plans where the contract cost is over $500,000.
Affected public: Businesses or other for-profit institutions; non-profit institutions; and small businesses or organizations.
Frequency: On occasion.
Respondent's obligation: Required to obtain or retain a benefit.
OMB desk officer: Timothy Sprehe, 395–4814.

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, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: August 20, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–20330 Filed 8–23–85; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket No. 29–85]

Proposed Foreign-Trade Zone; Coos County, OR; Within the Coos Bay Customs Port of Entry; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Commissioners of the Oregon International Port of Coos Bay (Port Commission), requesting authority to establish a general-purpose foreign-trade zone in Coos County, Oregon, within the Coos Bay customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 19, 1985. The applicant is authorized to make this proposal under section 307.650 of the Oregon Revised Statutes.

The proposed foreign-trade zone would involve 3 sites on Coos Bay on the Oregon coast totaling 1300 acres. Site 1 covers 284 acres on the eastern shore of the central section of the North Spit Peninsula, Coos County, on the North Spit Access Road. It is owned by the Port Commission and would be used for heavy industrial operations and for deadloading barges. Site 2 is a 520-acre parcel located on the northeast section of the North Spit Peninsula, also on the access road. This facility is owned by Roseburg Lumber Company which would provide general-purpose zone warehousing services. Site 3 is a 500-acre parcel on the north shore of the Eastside section of the City of Coos Bay, on Coos River Highway. It is owned by the Port Authority and would be developed as an industrial park site.

The application contains evidence of the need for zone services in the Coos Bay area. Several firms have indicated an interest in warehousing and processing of items such as oil pipeline modules, bicycle components, wood products, fish, and wool materials. No specific manufacturing approvals are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

The application included a proposed subzone site for proceassing fish landed by foreign-flag vessels. While this activity is the subject of pending federal legislation, it is not permissible under present law. Thus, this portion of the proposed zone plan cannot be formally filed at this time.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Mr. Clyde Kellay, District Director, U.S. Customs Service, Pacific Region, 511 NW. Broadway, Federal Building, Room 198, Portland, OR 97209; and Colonel Gary R. Lord, District Engineer, U.S. Army Engineer District Portland, P.O. Box 2946, Portland, OR 97208.

As part of its investigation, the examiners committee will hold a public hearing on September 19, 1985, beginning at 9:00 a.m., in the Community Conference Room of the Port Building, Front and Market Streets, Coos Bay.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by September 13. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through October 28, 1985.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 324 N. Front St., Coos Bay, OR 97420
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room, 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230

Dated August 20, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85–20295, Filed 8–23–85; 8:45 am.]

BILLING CODE 3510-25-M

International Trade Administration

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance, Gothenburg Feed Products Co. et. al.

Petitions have been accepted for filing on the dates indicated from the following firms: (1) Gothenburg Feed Products Company, P.O. Box 409, Gothenburg, Nebraska 69138, producer of alfalfa pellets and corn (July 22, 1985); (2) Pyrometer Instrument Company, Inc., 234 Industrial Parkway, Northvale, New Jersey 07647, producer of industrial temperature instruments (July 26, 1985); (3) Ferronics, Inc., 60 North Lincoln Road, East Rochester, New York 14445, producer of electronic computer components (July 29, 1985); (4) Woodville, Inc., 11680 Wright Road, Lynwood, California 90262, producer of household furniture (July 29, 1985); (5) Markbilt, Inc., 55 Thomas Road North, Hawthorne, New Jersey 07506, producer of knitted fabric (July 29, 1985); (6) PDS Technologies, Inc., 2000 Blackrock Turnpike, Fairfield, Connecticut 06430, producer of computers, parts and accessories; laboratory and medical equipment (July 30, 1985); (7) North Hoquiam Cedar Products, Inc., 902

Monroe Street, Hoquiam, Washington 98550, producer of shakes and shingles (July 30, 1985); (8) Littlestown Manufacturing Company, 2190 Whitehall Road, Littlestown, Pennsylvania 17340, producer of children's pants, shirts, coats, shorts, suits and dresses (July 31, 1985); (9) John Boos & Company, 315 South First Street, Effingham, Illinois 62401, producer of household and commercial furniture (July 31, 1985); (10) Apron Linen Tree of California, Inc., 2200 Zanker Road, Suite D, San Jose, California 95131, producer of table linens and aprons (August 2, 1985) (11) Dover Handbag Company, Inc., Route 46 & Flanders Road, Netcong, New Jersey 07857, producer of handbags (August 5, 1985); (12) Ampower Technologies, Inc., 26 Just Road, Fairfield, New Jersey 07006, producer of electronic photo-optic devices (August 5, 1985); (13) Micromax Systems, Inc., 6868 Nancy Ridge Drive, San Diego, California 92121, producer of computer circuit boards (August 6, 1985); (14) ORCA Pacific Products, Inc., P.O. Box 5029, Charleston, Oregon 97420, processor of seafood (August 6, 1985); (15) E. L. Smith & Sons Company, P.O. Box 1007, Quincy, Illinois 62306, producer of air compressors (August 6, 1985); (16) Superwood Corporation, P.O. Box 6267, Duluth, Minnesota 55806, producer of hardboard (August 7, 1985); (17) Charles I. Allen, Inc., P. O. Box 186, Pequabuck, Connecticut 06781, producer of wood handles, knobs, mallets, gavels and other wood turnings (August 8, 1985); (18) Fibrex, Inc., P.O. Box 1148, Aurora, Illinois 60507, producer of mineral fiber insulation (August 9, 1985); (19) Plycraft, Inc., 39 South Canal Street, Lawrence, Massachusetts 01843, producer of wood furniture (August 9, 1985); (20) Thomas Hodgson & Sons, Inc., Box A, Suncook, New Hampshire 03275, producer of yarn (August 9, 1985); (21) New York Toy Corporation, 250 Canal Street, Lawrence, Massachusetts 01840, producer of toys (August 9, 1985); (22) Franz Manufacturing Company, Inc., 240 Sargent Drive, New Haven, Connecticut 06511, producer of metronomes (August 9, 1985); (23) Caroline Becker, Inc., Cherry and Ford Streets, Brockton, Massachusetts 02403, producer of shoe soles and heels (August 9, 1985); (24) Interspace Industries Corporation, P.O. Box 5864, Caguas, Puerto Rico 00625, producer of household furniture (August 12, 1985); (25) Warley Worsted Mills, 12 Perkins Street, Lowell, Massachusetts 01854, producer of yarn (August 13, 1985); (26) Eastern Case Company, 52–07 Flushing Avenue, Maspeth, New York 11378, producer of briefcases, attache' cases and portfolios (August 13, 1985); (27) Gladys Spirawk, 5934 Vausold Road, Valois, New York 14888, producer of grapes (August 13, 1985); (28) North Shore Steel Company, Inc., 116 Oakville Avenue, Lynn, Massachusetts 01905, producer of structural steel (August 13, 1985); (29) Smith Fruit Farms, Route 414, Valois, New York 14888, producer of grapes and cherries (August 13, 1985); (30) Donald E. Singer, 4966 Route 414, Burdett, New York 14888, producer of grapes (August 13, 1985); (31) Douglas and Charlotte Bond, Route 414, Box 28, Hector, New York 14841, producer of grapes (August 13, 1985); (32) The Strong Group, Inc., 105 Maplewood Avenue, Gloucester, Massachusetts 01930, producer of leather holsters, belts, briefcases, and small leather goods (August 13, 1985); (33) Nancy's Fancy's Inc., 3790 East 44th Street, Tuscon, Arizona 85713, producer of fabric household accessories (August 14, 1985); (34) Soren Shirt Company, Inc., 350 Fifth Avenue, New York, New York 10018, producer of men's shirts (August 14, 1985); and (35) Sheffield Steel Corporation, P.O. Box 218, Sand Springs, Oklahoma 74063, producer of steel bars and posts (August 16, 1985).

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93–618), 19 U.S.C. 2341, 15 CFR Part 320. Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Director, Certification Division, Office of Trade Adjustment Assistance, Room 4015A, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Insofar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

Jack W. Osburn, Jr.,

Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 85–20294 Filed 8–23–85; 8:45 am]

BILLING CODE 3510–DR–M

[C–351–406]

Final Affirmative Countervailing Duty Determination; Certain Agricultural Tillage Tools From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of certain agricultural tillage tools. The net subsidy is 8.06 percent *ad valorem*. Our determination with respect to "critical circumstances" is addressed in the "Critical Circumstances" section of this notice.

We have notified the United States International Trade Commission (ITC) of our determinations. We are directing the U.S. Customs Service to continue to require a cash deposit or bond for each such entry in an amount equal to the net subsidy listed in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: August 26, 1985.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–5050 or 377–2438.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Brazil of certain agricultural tillage tools. For purposes of this investigation, the following programs are found to confer subsidies:

- Preferential Working-Capital Financing for Exports;
- Export Financing Under the CIC–CREGE 14–11 Circular;
- Finex Export Financing;
- Income Tax Exemption for Export Earnings; and

• Finep/ADTEN Long-Term Loans.

We determine the net subsidy to be 8.06 percent *ad valorem.*

Case History

On September 28, 1984, we received a petition filed by Ingersoll Products Corporation of Chicago, Ill., Empire Plow Company of Cleveland, Ohio, and Nichols Tillage Tools, Inc. of Sterling, Colo. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Brazil of certain agricultural tillage tools receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on October 18, 1984, we initiated such an investigation (49 FR 42971). We stated that we expected to issue a preliminary determination by December 22, 1984.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On November 12, 1984, the ITC preliminarily determined that there is a reasonable indication that these imports threaten material injury to a U.S. industry (49 FR 37856).

We presented a questionaire concerning the allegations to the government of Brazil in Washington, D.C. on October 29, 1984. On December 6, 1984, we received a response to the questionnaire.

On December 14, 1985, we received information from petitioners which established a reasonable basis to believe or suspect that the products under investigation benefitted from upstream subsidies in the form of subsidized steel inputs. Therefore, pursuant to section 701(g) of the Act, we included the upstream subsidy allegation in the investigation. In addition, because we determined that additional time was needed to make a determination concerning upstream subsaidization, on January 3, 1985, we extended the due date for our preliminary determination to June 4, 1985, pursuant to section 703(h)(1) of the Act (50 FR 300). On January 25, 1985, we issued an upstream subsidy questionnaire, and received a response on February 25, 1985. On April 17, 1985, we issued a supplementary upstream subsidy questionnaire, and received responses on May 17, 22, and 28, 1985.

On the basis of information contained in these responses, we made a preliminary determination on June 4, 1985 (50 FR 24270). We verified the responses of the government of Brazil, the tillage tool producers, and their suppliers of steel inputs, from June 20 to July 11, 1985. Subsequent to the verification, we received an amended response from the government of Brazil on July 31, 1985.

Both petitioners and respondents submitted briefs addressing the issues arising from the investigation on July 19, 1985, and rebuttal briefs on August 2, 1985. Additional briefs were received on August 5 and August 8, 1985.

Scope of Investigation

The products covered by this investigation are certain agricultural tillage tools, which are defined for purposes of this proceeding as ground-engaging metal tools for tillage and cultivating equipment, such as cultivators, discers, and harrows. Tillage tools include round-shaped tools, such as colters, furrow-opener blades, etc., and tools that are not round-shaped (rectangular, triangular, and other odd shapes), such as points, chisels, sweeps, shovels, knives, furrowers, tines, drills, lister bottoms, rotary tiller blades, bed-shaping tools as well as plowshares, plowshines, moldboards, etc. Tillage tools are currently provided for in items 666.0015, 666.0020, 666.0050, 666.0060, 666.0065, and 666.0075 of the *Tariff Schedules of the United States, Annotated (TSUSA).*

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, issue of the **Federal Register** (49 FR 18006).

There are three known producers and exporters in Brazil of agricultural tillage tools to the United States for which we received information from the government of Brazil. These are Baldan Implementos Agrícolas S.A. (Baldan), Marchesan Implementos e Máquinas Agrícolas "TATV" S.A. (Baldan) and Companhia Semeato de Aços (Semeato). In addition, we identified Companhia Aços Especiais Itabira S.A. (ACESITA) and Usinas Siderúrgicas de Minas Gerais S.A. (USIMINAS) as the upstream suppliers of steel inputs to the tillage tool manufacturers mentioned above. For purposes of this final determination, the period for which we are measuring subsidization ("the review period") is the calendar year 1983.

Based upon our analysis of the petition, the responses to our questionnaires, our verification, and comments filed by petitioners and respondents, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of certain agricultural tillage tools under the following programs.

A. Preferential Working-Capital Financing for Exports

The Carteira do Comércio Exterior (Foreign Trade Department, or CACEX) of the Banco do Brasil administers a program of short-term working-capital financing for the purchase of inputs. During the review period, these working-capital loans were provided under Resolution 647 of the Banco Central do Brasil. On January 1, 1984, Resolution 647 was superseded by Resolution 882, which was itself substantially amended by Resolution 950 on August 21, 1984.

Eligibility for this type of financing is determined on the basis of past export performance or of an acceptable export plan. The amount of available financing is calculated by making a series of adjustments to the dollar value of exports. During the review period, the maximum level of eligibility for such financing was 30 percent of the value of exports, and then 22 percent. At present, financing is capped at 20 percent of the value of exports.

Following approval by CACEX of their applications, participants in the program receive certificates representing portions of the total dollar amount for which they are eligible. The certificates may be presented to banks in return for cruzeiros at the exchange rate in effect on the date of presentation.

Use of a certificate establishes a loan obligation with a term of up to one year (360 days). Certificates must be used within 12 months of the date of issue, and loans incurred as a result of their use must be repaid within 18 months of that date.

The interest rate ceiling was raised from 40 to 60 percent on loans obtained under Resolution 674 on June 11, 1983. On January 1, 1984, Resolution 882 changed the payment date for both interest and principal to the expiration date of the loan. On August 21, 1984,

Resolution 950 made this working-capital financing available from commercial banks, with interest calculated at the time of repayment.

Under Resolution 950, the Banco do Brasil paid lending institution an equalization fee of up to 10 percent of the interest (after monetary correction). In May 1985, the equalization fee was increased to up to 15 percent of the interest. Therefore, if the interest rate charged to the borrower is less than full monetary correction plus 15 percent, the Banco do Brasil pays the lending bank the difference, up to 15 percent. We verified that the lending bank, in turn, passes the 15 percent equalization fee on to the borrower in the form of a reduction of the interest due or a credit to borrower's account. Receipt of the equalization fee by the borrower reduces the interest rate on these working-capital loans by 15 percentage points below the commercial rate of interest. In addition, Resolution 950 working-capital loans are exempted from the Imposto sobre Operações Financeiras (IOF), which is charged on all financial transactions in Brazil.

Since receipt of working-capital financing is contingent on export performance, and since the equalization fee results in interest rates lower than commercially available rates, we determine that this program confers an export subsidy.

Our stated policy is to take into account program-wide changes that go into effect after the review period and before our preliminary determination. As stated previously, the current maximum level of eligibility is 20 percent of the previous year's value of exports. At verification, respondents did not demonstrate that they are using less than the maximum amount of financing for which they are eligible. Therefore, to calculate the benefit, we multiplied 20 percent by the 15 percent equalization fee plus the IOF. We thus calculated a net subsidy of 3.30 percent *ad valorem*.

B. Export Financing Under the CIC–CREGE 14–11 Circular

Under its CIC–CREGE 14–11 circular ("14–11"), the Banco do Brasil provides 180- and 360-day cruzeiro loans for export financing, on the condition that companies applying for these loans negotiate fixed-level exchange contracts with the bank. Companies obtaining a 360-day loan must negotiate exchange contracts with the bank in an amount equal to twice the value of the loan. Companies obtaining a 180-day loan must negotiate an exchange contract equal to the amount of the loan.

In addition to requiring exchange contracts, the Banco do Brasil requires that these loans be fully secured by collateral in the form of tangible property. The bank normally requires that the value of collateral equal at least 130 percent of the amount of the loan. The bank also charges a commission on all such loans.

All exporters of manufactured products with production cycles of less than 180 days may apply for these loans. The maximum level of eligibility is based on the value of the applicant's exports in the previous year. Companies receiving the working-capital export financing described in section I.A of this notice have a maximum eligibility of 10 percent of the previous year's export value. All other companies have a maximum eligibility of 15 percent.

Although this program does in certain aspects appear to operate on a commercial basis, the government of Brazil did not supply sufficient data, in its current responses or at verification, to support its assertion that commissions, exchange contract requirements and collateral requirements serve to raise the effective rate on these loans to a level of comparability with those on short-term loans from other commercial sources. Without sufficient information with which to quantify these additional charges, we must compare unadjusted nominal rates on 14–11 loans with our commercial benchmark, *i.e.*, the nomimal discount rate of accounts receivable, as the best information available. This comparision shows that the rate on 14–11 loans is below the benchmark. Therefore, we determine that this program confers an export subsidy.

Baldan and Marchesan both obtained loans under this program. To calculate the benefit, we compared the interest rates charged with the appropriate benchmark and applied the difference to the principal amounts. We then allocated the benefit over the total exports of the three tillage tool producers, which resulted in a net subsidy of 1.78 percent *ad valorem*.

C. FINEX Export Financing

Resolution 68 of the Conselho Nacional do Comércio Exterior (CONCEX) provides that CACEX may draw upon the resources of the Fundo de Financiamento à Exportação (FINEX) to extend medium- and long-term financing for manufactured exports. Financing may be provided to exporters or to foreign importers. When provided to exporters, up to 85 percent of the value of the merchandise can be financed. Resolution 68 sets no limit on the amount available to foreign importers, nor does it specify the interest rates charged to either importers or exporters.

In its response, the government of Brazil stated that the products under investigation were eligible for FINEX financing but that the respondents did not receive it on transactions with the United States during the review period. We verified that the exporters did not use this financing, but were unable, during verification, to obtain any information from the government of Brazil as to the level of financing (if any) received by U.S. importers of agricultural tillage tools from Brazil. We received a statement from Baldan's sole U.S. importer that it never used FINEX financing. We also recieved statements from some U.S. importers of Marchesan's products that they had not used this form of buyer's credit since mid-1984. The government of Brazil did not supply any documentation in its responses or at verification to demonstrate that Marchesan's and Semeato's importers did not receive FINEX financing during the review period or are not currently receiving it.

Because use of FINEX financing is contingent upon exports, we determine that it is countervailable to the extent that it is offered on preferential terms. As noted above, Resolution 68 does not specify the interest rates charged. However, the *Gazeta Mercantil* reported on June 21, 1985, that FINEX rates were being lowered by up to 1.5 percent. Comparison of the lowered rates to the average U.S. prime rate for the first five months of 1985 indicates that FINEX financing is made at preferential interest rates.

In order to measure the benefit conferred by FINEX financing on exports of tillage tools from Brazil, we have used the best information available. Information on the record indicates that Baldan's sole U.S. importer has never used FINEX. We have assumed that 100 percent of Marchesan's and Semeato's exports to the United States were financed at an interest rate of 6 percent, which is 1.5 percentage points below the lowest FINEX rate listed in the *Gazeta Mercantil*. To calculate the benefit, we multiplied Marchesan's and Semeato's exports to the United States by the interest rate differential. We then divided the benefit by total exports of tillage tools to the United States, and calculated a net subsidy 2.91 percent *ad valorem*.

D. Income Tax Exemption for Export Earnings

Under Decree-Laws 1158 and 1721, exporters of agricultural tillage tools are

eligible for an exemption from income tax on a portion of profits attributable to export revenue. Because this exemption is tied to exports and is not available for domestic sales, we determine that this exemption confers an export subsidy. Semeato did not claim this exemption. Baldan and Marchesan both took an exemption from income tax payable in 1983 on a portion of export profits earned in 1982. We indexed that portion as required under Brazilian tax law, and multiplied it by each company's effective corporate tax rate to calculate the benefit. We determined each company's effective corporate tax rate by taking the base tax liability and adding, were applicable, the standard surcharge for excess profits, and subtracting the deductions for the investment tax credit and the Social Integration Program (SIP) tax taken by the respondents, and dividing the result by taxable income. In the past, we have refused to accept the investment tax credits in calculating an effective tax rate because, absent a showing of a reasonable expectation of returns from these investments, we considered them to be merely a way of targeting the firm's taxes. However, in this proceeding, Baldan and Marchesan have demonstrated that these investments can yield returns. Therefore, we have deducted the investment credits in calculating each company's effective tax rate. We allocated the benefit over the total value of all exports by the respondents to calculate a net subsidy of 0.07 percent *ad valorem*.

E. FINEP/ADTEN Long-Term Loans

During verification, we discovered that Semeato received in 1983 a long-term loan under the ADTEN program of FINEP, an agency of the government of Brazil.

We received no information from the government of Brazil describing FINEP's organization, purpose, and programs. Information on the record of the case of *Certain Cast-Iron Pipe Fittings from Brazil* (50 FR 8755) indicates that FINEP (Financiador de Estudos e Projectos) is charged with promoting scientific and technological development in Brazil, in conjunction with the Conselho Nacional de Desenvolvimento Científico e Tecnológico. To this end, FINEP grants loans through state-owned development banks, in the case of Semeato, the Banco Regional de Desenvolvimento de Extremo-Sul (BRDE). FINEP programs must implement the objectives set forth by the federal Secretaria de Planejamento (SEPLAN) in its third "Plano Básico de Desenvolimento Científico e Tecnológico" (III PBDCT).

Under the ADTEN program, FINEP makes loans for projects which:

- Develop new products,
- Adapt and absorb new technology,
- Train human resources to absorb new technology,
- Market new products and implement management techniques to employ new technology,
- Develop quality-control techniques,
- Establish new research and development centers in Brazil, and
- Engage in pure research.

Borrowers negotiate the terms of each loan with the regional development banks with which they deal. They must submit to the terms of the loan imposed by the bank and by FINEP, which disburses the funds in allotments, and maintains project oversight throughout the life of the loan.

The interest rate on this loan to Semeato was substantially equivalent to rates charged on loans made in 1983 by the Banco Nacional de Desenvolvimento Econômico e Social (BNDES). However, the principal amount of the loan was only partially indexed to inflation, as measured by the variation in ORTN (Obrigações Reajustáveis do Tesouro Nacional or National Treasury Readjustable Bonds). We have no information on the record of this case that BNDES loans are not fully indexed to the inflation rate. For this reason, and because the government of Brazil did not demonstrate that these loans were not provided to a specific enterprise, industry, or group of enterprises or industries, we determine that these loans are countervailable.

Using BNDES financing as the benchmark in this case, we compared principal and interest payments due on this loan in 1983 using both partial and full indexation, and took the differential in payment streams as the benefit. We allocated the benefit over the respondents' total sales, and calculated a net subsidy of less than 0.001 percent *ad valorem*.

II. Upstream Subsidies

Petitioners allege that Brazilian tillage tool producers receive an "upstream subsidy" through the purchase of subsidized steel inputs. Under section 771A(a) of the Act, we must apply the following tests in order to determine whether "upstream subsidies" are being paid or bestowed upon the products under investigation:

> The term "upstream subsidy" means any subsidy described in section 771(5)(B) (i), (ii), or (iii) by the government of a country that—
>
> (1) Is paid or bestowed by that government with respect to a product (hereafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;
>
> (2) In the judgment of the administering authority, bestows a competitive benefit on the merchandise; and
>
> (3) Has a significant effect on the cost of manufacturing or producing the merchandise.

In our preliminary determination, we found that the three tests were met. With respect to the last test, the "significant effect" test, we stated:

> We multiplied the *ad valorem* subsidy rates calculated for ACESITA and USIMINAS (the producers of the input product) by the percentage that the government of Brazil claims the subsidized steel inputs account for in the cost of producing tillage tools. In both cases, we found that the estimated net subsidy accounted for more than one percent of the cost of manufacturing or producing the merchandise. For purposes of this preliminary determination, we consider that the "significant effect" test has been met.

We also requested comments on this threshold measure for significant effect.

We have reviewed the comments submitted by petitioners and respondents and the legislative history of the upstream provision. We have concluded that it would be inappropriate to apply an automatic threshold in determining whether subsidies to suppliers of an input have a significant effect on the cost of producing the merchandise under investigation. We have been guided in reaching this conclusion by the statement of the House Committee on Ways and Means:

> The purpose of this condition is to avoid needless investigation and verification of upstream subsidies which, although passed through to the final merchandise, are insignificant in affecting the competitiveness of that final product.
>
> [H.R. Rep. No. 725, 98th Cong., 2d Sess. 34 (1984)].

Under our interpretation of this statement, any evaluation of the effect of upstream subsidies on the competitiveness of the final product involves more than a simple multiplication of the *ad valorem* subsidy rate on the input times the share that the input accounts for in the cost of producing the final product. Instead, the significance of the subsidies to the upstream product derives from the significance those subsidies may have on the competitiveness of the final product.

To assess the significance on the competitiveness of the final product, we must consider the degree to which the final product competes on the basis of price. When a small decrease in price can lead to a large increase in sales,

even a very small subsidy to an upstream supplier could have a significant effect on the competitiveness of the final product. In these circumstances, the application of a threshold exceeding one percent, as suggested by respondents, would be inappropriate. Conversely, when the competitiveness of the final product is heavily influenced by non-price factors, such as quality, consumer loyalty and consumer concern for diversity of supply, a higher threshold for significant effect may be appropriate. In short, we intend, at this time, to apply the significant effect test on a case-by-case basis.

While we cannot support at this time a fixed threshold for significant effect, we recognize that a case-by-case approach may lead to some uncertainty. In particular, petitioners should have some indication of whether it will be worthwhile to pursue an upstream investigation, and respondents should be made aware of the general standard to which they will be held accountable and the types of information we will need.

Therefore, we intend to apply the following standards with respect to the significant effect test. If the product of the *ad valorem* subsidy rate on the input times the share that the input product accounts for in the cost of producing the final product exceeds five percent, we will presume that the subsidies on the input have a significant effect on the cost of producing the merchandise under investigation. At the other extreme, if the product of the *ad valorem* subsidy rate on the input times the share that the input product accounts for in the cost of producing the final product is less than one percent, we will presume that the subsidies on the input do not have a significant effect on the cost of producing the merchandise under investigation. We consider both norms to be rebuttable presumptions; these one and five percent thresholds are not immutable. If the parties in a particular case present evidence that the competitive circumstances of the final product warrant a higher or lower thershold, we will take such evidence into consideration.

In establishing these norms, we also recognize our limited experience in administering the provision. As we attempt to apply these norms in future cases, we may find them to be inappropriate. We may learn that the proper administration of the upstream provision requires an automatic application of a minimum threshold.

As noted in the above-quoted legislative history, one purpose of this provision is to avoid needless investigation and verification of upstream subsidies. The standards we have proposed are an attempt to balance the competing concerns of finding those subsidies that confer a competitive benefit on the final product and of not expending our resources on difficult investigations that yield little in the way of relief to domestic industries. Based on our limited experience in administering this provision, a one percent threshold for initiating an upstream investigation is a reasonable starting point for achieving this balance.

We have applied the standards outlined above to determine whether the significant effect test is met in this investigation. We have calculated the net subsidy bestowed on the two suppliers of steel inputs, ACESITA and USIMINAS, and the share acounted for by this input in the cost of producing agricultural tillage tools.

A. Domestic Subsidies

Our calculation of the net subsidy is based on our determination that domestic subsidies are being provided to ACESITA and USIMINAS, suppliers of hot-rolled carbon steel plate in coil and hot-rolled carbon steel sheet in coil to the tillage tool manufacturers, under the following programs.

1. *Government Provision of Equity Capital to USIMINAS.* Siderurgia Brasileira S.A. (SIDERBRAS) is a government-controlled corporation under the jurisdication of the Ministry of Industry and Commerce. Pursuant to Decree-Law 6159 of December 6, 1974, SIDERBRAS became the holding company for the federally-owned steel corporations. SIDERBRAS is a majority shareholder of nine Brazilian steel producers and a minority shareholder of one small Brazilian steel producer. During 1979–1983, SIDERBRAS made equity infusions into USIMINAS.

We have consistently held that government provision of, or assistance in obtaining, capital does not *per se* confer a subsidy. Government equity purchases or financial backing bestow a countervailable benefit only when provided on terms inconsistent with commercial considerations. When a company's shares are not publicly traded and, hence, there is no market-determined price for the shares, we examine whether the company was a reasonable equity investment (a condition we have termed "equityworthiness") in order to determine whether the equity infusions were inconsistent with commercial considerations.

For purposes of this determination, we reviewed the company's financial data and all other factors on the record. We focused on the rate of return on equity and long-term prospects for the company in question for the period 1977 through 1983. We examined financial ratios, profits and losses, and other factors, such as market demand projections and current operating results, to evaluate the company's current and future ability to earn a reasonable rate of return on equity investments.

Based on these factors, as applied to information on the record, we found USIMINAS to be equityworthy between 1977 and 1979 and unequityworthy between 1980 through 1982 [*see* "Certain Carbon Steel Products from Brazil; Final Affirmative Countervailing Duty Determinations (49 FR 17988)]. In addition, we now find USIMINAS to be unequityworthy in 1983. Accordingly, we determine that the action of the government in taking an equity position in the company in those years is inconsistent with commercial considerations and confers a subsidy.

2. *IPI Tax Rebates for Capital Investment.* Decree-Law 1547, enacted in April 1977, provides funding for capital investment in approved expansion projects in the brazilian steel industry through a rebate of the Imposto sobre Produtos Industrializados (IPI), which is a value-added tax imposed on domestic sales. The IPI tax is an indirect tax and, as such, is passed on to the consumer. A steel company collects this tax on sales as an agent for the government, and does not pay the tax itself. Decree-Law 1547 is a mechanism by which a steel company is permitted to collect funds due the government and then receive a 95 percent tax rebate. The program does not involve the rebate of payments made from the company's own funds.

Originally, the IPI tax applied to all domestic sales transactions. In 1979, the value-added tax was eliminated except for producers in 14 industry sectors, including tobacco, automobiles, spirits and alcohol, ceramics, rubber, and steel. The tax rate is different for each of the specified industry sectors; for steel products, the value-added tax is 5 percent.

A Brazilian steel company may deposit 95 percent of the net IPI tax due in a special account with the Banco do Brasil. The amounts deposited are to be applied to steel expansion projects. When rebated to the firms, they constitute reserves that must eventually be converted into subscribed capital.

Under the terms of Resolution 68–77 issued by the Conselho de Näo-Ferrosos e Siderurgia (CONSIDER), which implements Decree-Law 1547, IPI tax

rebates are payable only on basic steel product and certain fabricated steel products such as seamless steel pipes. ACESITA and USIMINAS both received IPI tax rebates as manufacturers of basic steel products. Because IPI tax rebates are limited to a specific number of products and tied to investiments in government-approved projects, we determine that these rebates confer a subsidy.

3. *Exemption of IPI Tax and Customs Duties on Imported Equipment (CDI).* Under Decree-Law 1428, the Conselho do Desenvolvimento Industrial (Industrial Development Council, or CDI) provides for the exemption of 80 to 100 percent of the customs duties and 80 to 100 percent of the IPI tax on certain imported machinery for projects approved by the CDI. The recipient must demonstrate that the machinery or equipment for which an exemption is sought was not available from a Brazilian producer. The investment project must be deemed to be feasible and the recipient must demonstrate that there is a need for added capacity in Brazil.

Decree-Law 1726 repealed this program in 1979. Subsequently, no new projects were eligible for these benefits. However, companies whose projects were approved prior to the repeal still receive these benefits pending completion of the project.

Both ACESITA and USIMINAS received benefits under this program during the review period. In "Certain Carbon Steel Products from Brazil; Final Affirmative Countervailing Duty Determinations" (49 FR 17988), we found that receipt of this benefit is limited to projects in 14 industries approved by the government of Brazil. During verification, the government of Brazil provided no new documentation with respect to this program. Based on the record of this and earlier Brazilian countervailing duty investigations, we have concluded that these benefits are limited to specific enterprises or industries. Accordingly, we determine the CDI program confers a subsidy on ACESITA and USIMINAS.

We examined several other domestic programs which were available to ACESITA and USIMINAS:

- Loan Guarantees on Foreign-Denominated Debt;
- Special Tax Deductions; and
- Accelerated Depreciation for Brazilian-Made Capital Equipment.

The first of these programs is determined not to confer a subsidy, and is discussed below in "Program Determined Not to Confer a Subsidy;" the last two are discussed in "Programs Determined Not to Be Used."

B. Calculation of Net Subsidy to Input Suppliers

Using the methodogies outlined in our preliminary determination, we calculated the net subsidies under the domestic subsidy programs described above. We then calculated the overall subsidy to suppliers of steel inputs by weighting the net subsidy received by ACESITA and USIMINAS by the percentage of steel they each supplied for the production of tillage tools in 1983. This net subsidy is 2.43 percent *ad valorem.*

C. Share of the Cost of Production Accounted for by Steel Inputs

Petitioners alleged that steel inputs account for 50 percent of the cost of producing tillage tools. In its initial response, the government of Brazil stated this figure was approximately 47 percent. At verification, the respondents were unable to demonstrate that 47 percent was an accurate figure, and instead provided a number of lower estimates. Petitioners, however, stated in their briefs that the Department must continue to use the 47 percent average supplied by the government of Brazil in its response, and not the lower estimates supplied during verification. Moreover, the government of Brazil indicated that 47 percent was not an inaccurate estimate. Accordingly, we are assuming, as best information available, that steel inputs account for 47 percent of the cost of producing tillage tools.

D. Significant Effect

According to the significant effect methodology outlined *supra*, the product of the *ad valorem* subsidy rate on the input product times the share that the input accounts for in the cost of producing agricultural tillage tools is 1.14 percent. This is slightly greater than the one percent threshold and, therefore, we have analyzed its potential significance by examining the competitiveness of the final product.

We did not seek this type of information in this investigation. Nevertheless, respondents have claimed that "tillage tools are not fungible and quality differs among products." We have compared this claim to the information contained in the ITC's preliminary report and have concluded that such an unqualified statement is not substantiated by evidence on the record.

Statements in the ITC report by purchasers of tillage tools indicate that the Brazilian product is of a lower quality. They also indicate that there is a price/quality tradeoff in the view of consumers. When there is a slight price differential, the purchaser will opt for the higher quality product. When the price differential is large, purchasers appear to select the lower-priced product. For example, Brazilian prices are reportedly 30 to 50 percent lower. Other purchasers have used the Brazilian product because their suppliers stock this product or for diversity of supply. Thus, there are indications of both price and non-price competition.

We have concluded that if the quality of the Brazilian tillage tools were comparable to that of the products with which they compete, the subsidies to the input suppliers might have a significant effect on the competitiveness of Brazilian tillage tools. However, this is not the case. Quality differences and other non-price factors appear to be important determinants of demand for agricultural tillage tools. Also, substantial price differentials appear to encourage consumers to switch to the Brazilian products. Given the magnitude of the cited price differentials, we conclude that a subsidy to input producers that accounts for 1.14 percent of the cost of producing tillage tools does not have a significant effect on the competitiveness of the Brazilian tillage tools. Therefore, we determine that the subsidies to Brazilian steel producers do not have a significant effect on the cost of producing Brazilian agricultural tillage tools. Given this finding, we need not determine whether subsidies to Brazilian steel producers confer a competitive benefit on agricultural tillage tool producers in Brazil.

III. Program Determined Not To Confer a Subsidy

We determine that subsidies are not being provided to manufacturers, producers, or exporters in Brazil of certain agricultural tillage tools under the following program.

Loan Guarantees to Input Suppliers on Foreign-Denominated Debt

During verification, we ascertained that both ACESITA and USIMINAS had received government guarantees on foreign-denominated loans that were still outstanding during the review period. Under Decree-Law 1312, guarantees on foreign-denominated debt are available to Brazilian borrowers to finance the following projects: Modernization of harbors, programs of Federal agencies abroad, transportation, cold storage and slaughterhouses, electrical energy, basic industries and agriculture, education, public health,

urban or rural sanitation, communications, fisheries, assistance to small and medium enterprises, housing, livestock raising, urban and regional integration and development, and national security. The law also indicates that guarantees are available to private as well as government-owned firms. Accordingly, we determine that government loan guarantees on foreign-denominated debt are not limited to a specific enterprise or industry or group of enterprises or industries.

IV. Programs Determined Not To Be Used

We determine that manufacturers, producers or exporters in Brazil of certain agricultural tillage tools did not use the following programs which were listed in our notice of "Initiation of a Countervailing Duty Investigation: Agricultural Tillage Tools from Brazil" (49 FR 40431).

A. IPI Tax Rebates for Capital Investment

Decree-Law 1547, enacted in April 1977, provides funding for approved expansion projects in the Brazilian steel industry through a rebate of the IPI, a value-added tax imposed on domestic sales.

The government of Brazil stated in its response that tillage tool producers are not eligible for IPI rebates under Decree-Law 1547. During verification, we ascertained from our review of the legislation that tillage tool manufacturers are ineligible for these rebates. We also reviewed the respondents' balance sheets and accounting ledgers, and saw no evidence that they had received these rebates.

B. Resolution 330 of the Banco Central do Brasil

Resolution 330 provides financing for up to 80 percent of the value of the merchandise placed in a specified bonded warehouse and destined for export. Exporters of agricultural tillage tools would be eligible for financing under this program. However, the government of Brazil stated in its response that none of the tillage tool producers participated in this program during the review period. During verification, we reviewed each company's accounting ledgers and found no evidence that the respondents received such financing with respect to their exports.

C. Exemption of IPI Tax and Customs Duties on Imported Equipment (CDI)

Under Decree-Law 1428, the Conselho do Desenvolvimento Industrial (Industrial Development Council, or CDI) provides for the exemption of 80 to 100 percent of the customs duties and 80 to 100 percent of the IPI tax on certain imported machinery for projects approved by the CDI. The recipient must demonstrate that the machinery or equipment for which an exemption is sought was not available from a Brazilian producer. The investment project must be deemed to be feasible and the recipient must demonstrate that there is a need for added capacity in Brazil. We verified that none of the tillage tool producers received incentives under this program during the review period.

D. The BEFIEX Program

The Comissão para a Concessão de Benefícios Fiscais a Programas Especiais de Exportação (Commission for the Granting of Fiscal Benefits to Special Export Programs, or BEFIEX) grants at least three categories of benefits to Brazilian exporters:

- Under Decree-Law 77.065, BEFIEX may reduce by 70 to 90 percent import duties and the IPI tax on the importation of machinery, equipment, apparatus, instruments, accessories and tools necessary for special export programs approved by the Ministry of Industry and Trade, and may reduce by 50 percent import duties and the IPI tax on imports of components, raw materials and intermediate products;
- Under article 13 of Decree No. 72.1219, BEFIEX may extend the carry-forward period for tax losses from 4 to 6 years; and
- Under article 14 of the same decree, BEFIEX may allow special amortization of pre-operational expenses related to approved projects.

We verified that none of the tillage tool producers participated in this program.

E. The CIEX Program

Decree-Law 1428 authorized the Comissão para Incentivos à Exportação (Commission for Export Incentives, or CIEX) to reduce import taxes and the IPI tax up to 10 percent on certain equipment for use in export production. We verified that none of the tillage tool producers received any benefits under this program.

F. Accelerated Depreciation for Brazilian-Made Capital Equipment

Pursuant to Decree-Law 1137, any company which purchases Brazilian-made capital equipment and has an expansion project approved by the CDI may depreciate this equipment at twice the rate normally permitted under Brazilian tax laws. We verified that none of the respondents availed itself of this program during the review period.

G. Incentives for Trading Companies

Under Resolution 643 of the Banco Central do Brasil, trading companies can obtain export financing similar to that obtained by manufacturers under Resolution 674, 882, and 950. Tillage tool producers are ineligible for participation in this program because such participation is precluded by receipt of working-capital export financing. At verification we saw no evidence that any of the tillage tool producers used the services of trading companies for export sales.

H. The PROEX Program

Short-term credits for exports are available under the Programa de Financiamento à Produção para à Exportação (PROEX), previously referred to as the Apôio à Exportação program. We verified that none of the tillage tool producers participated in this program during the review period.

I. Programs Not Used by Input Suppliers

1. *Special Tax Deductions.* We verified that USIMINAS incurred a loss in 1982 and paid no income tax for that year in 1983; therefore, it could not have used losses of other companies in the SIDERBRAS group to offset profits during the review period. We also verified that neither ACESITA nor USIMINAS benefits from any local tax incentives which minimize their tax liability. Accordingly, we determine that neither ACESITA nor USIMINAS received any special tax deductions.

2. *Accelerated Depreciation for Brazilian-Made Capital Equipment.* We verified that ACESITA took advantage of this tax provision during trhe review period. Under this provision, after taking the initial deductions for accelerated depreciation, companies must, in subsequent years; add back to net profits amounts equal to the accelerated depreciation previously claimed. On the income tax return filed during the review period, ACESITA added back more accelerated depreciation than it deducted, thereby cancelling out any benefit that could have accrued to the company. We also verified that USIMINAS paid no corporate income taxes in 1983 because it incurred a loss in 1982.

V. Program Determined To Have Been Terminated

IPI Export Credit Premium

Until very recently, Brazilian exporters of manufactured products were eligible for a tax credit on the

Imposto, sobre Productos Industrializados (Tax on Industrialized Products, or IPI). The IPI export credit premium, a cash reimbursement paid to the exporter upon the export of otherwise taxable industrial products, was found to confer a subsidy in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the government of Brazil reinstated it on April 1, 1981.

Subsequent to April 1, 1981, the credit premium was gradually phased out in accordance with Brazil's commitment pursuant to Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"). Under the terms of Ministry of Finance "Portaria" (Notice) No. 176 of September 12, 1984, the credit premium was eliminated effective May 1, 1985. We verified that the tillage tool producers received no IPI export credit premiums after that date.

Accordingly, consistent with our stated policy of taking into account program-wide changes that occur subsequent to the review period but prior to our preliminary determination, we determine that this program has been terminated, and no benefits under the program are accruing to current exports of tillage tools to the United States.

VI. Program Determined Not To Exist

Income Tax Deductions for Foreign Selling Expenses

During verification, we reviewed the respondents' income tax returns and the instruction manual for filling out Brazilian income tax forms. We saw no evidence that there exists a special program of tax deductions for foreign selling expenses. Accordingly, we determine this program does not exist.

Petitioners' Comments

Comment 1: Petitioners argue that the information provided by the respondents regarding the utilization of FINEX financing by U.S. importers of tillage tools is not verifiable, and should not affect the Department's final determination.

DOC Position: As best information available, we have accepted the information in the record that Baldan's sole U.S. importer has never used FINEX buyer credits. However, since we do have information on the record from several other importers stating that they have used FINEX, we consider this to be the best information available, and are using it in our calculation of benefits provided to U.S. importers of tillage tools under this program.

Comment 2: Petitioners argue that the types of subsidies being bestowed on the input producers provide those producers with a windfall of "up-front" cash, or may allow them to achieve economies of scale or increased productivity so that a small subsidy may have an effect that extends beyond the value of the subsidy as calculated by the Department. Moreover, cash infusions can affect a company's debt/equity ratio and its creditworthiness. This, in turn, means that the consumers of those inputs realize a savings greater than the per-unit subsidy attributed to the inputs they purchase. Therefore, petitioners argue that an upstream subsidy of one percent or more of the cost of producing tillage tools meets the significant effect standard.

DOC Position: We disagree. In determining significant effect, we have followed the statutory mandate of examining the effect that domestic subsidies to input suppliers have on the cost of producing tillage tools. The methodology we apply to value subsidy programs captures the benefits which can be measured. Petitioners are asking us to consider secondary effects of domestic subsidies to the input producers. We have consistently maintained that we will not look at these effects because such analysis is highly speculative and could result in double-counting (see, *e.g.*, "Final Affirmative Countervailing Duty Determination; Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina," 49 FR 18006). More importantly, were we to find that a competitive benefit is being bestowed on agricultural tillage tools through upstream subsidies, the amount of the countervailing duty on the tillage tools could not, under section 771A(c) of the Act, exceed the amount of the domestic subsidy found to exist on the input product. Therefore, it would be inappropriate to consider any secondary effects the subsidies on inputs may have on the merchandise under investigation. While we have adopted the rebuttable presumption of a one percent threshold for the significant effect test, it was for the reasons described in section II of our notice.

Comment 3: Petitioners argue that there is no verified evidence that the two CIC–CREGE 14–11 loans taken out by Marchesan were repaid. The Department should therefore treat any loans outstanding beyond their term as grants to the producer.

DOC Position: The evidence on the record shows that Marchesan has repaid these loans; therefore, we are calculating the benefit in accordance with our standard short-term loan methodology.

Comment 4: Petitioners argue that because respondents did not provide an explanation for Semeato's exemption from the IPI tax, the Department should find that the exemption constitutes an export subsidy

DOC Position: The verification exhibits show that Semeato received one very small exemption from the IPI tax on one of its import shipments and that the IPI tax was charged on all other imports of the same merchandise. This one small exemption does not provide any indication that Semeato is benefiting from regular exemptions from the IPI tax on imported goods. Even if we were to consider that this single small exemption was a subsidy, the amount of the subsidy would be so small that there would be no effect on the overall net subsidy calculated.

Respondents' Comments

Comment 1: The government of Brazil contends the Department improperly valued the amount of net subsidy from Resolution 950 loans by erroneously assuming a maximum utilization level and interest rate differential.

DOC Position: We disagree. With respect to our use of a maximum interest rate differential of 15 percent, we verified that the lending bank passes the 15 percent equalization fee on to the borrower in the form of a reduction of the interest due or a credit to the borrower's account. Regarding our assumption of the maximum 20 percent utilization rate, the respondents did not demonstrate during verification that they are using less than the maximum amount of financing for which they are eligible.

Comment 2: The government of Brazil contends that the Imposto sobre Operações Financeiras (IOF) is an indirect tax on the production of goods for export, that the exemption of loans under Resolutions 674/882/950 from this tax is not a subsidy, and that if we determine that Resolution 674 financing provides a subsidy, we should not consider this exemption as part of that subsidy.

DOC Position: We disagree. Since financing for domestic transactions is subject to the IOF tax, it is appropriate that we reflect the exemption of Resolution 950 loans from the IOF as part of the subsidy in order to measure the full benefit provided under this program. Moreover, we do not view the IOF as a tax on the production or distribution of the product.

Comment 3: The government of Brazil argues that the CIC-CREGE 14–11 circular is not a government program and, therefore, does not bestow a government subsidy on the exportation of agricultural tillage tools. The CIC-CREGE 14–11 program is consistent with commercial considerations, since the costs of the program are covered by charges payable by the recipients; therefore, under Annex A of the Subsidies Code, paragraphs (j) and (k), this program does not confer a subsidy.

DOC Position: We disagree. Our determination that the CIC-CREGE 14–11 program provides countervailable benefits is based on (1) the fact that, under Brazilian law, the Banco do Brasil, which administers this program, acts as the government of Brazil's financial agent, and (2) respondents' failure to demonstrate that the program does not provide preferential loans to exporters. Our uniform practice has been to calculate a subsidy provided under a preferential loan program by comparing the preferential rate to the benchmark interest rate, rather than to the cost of the funds to the lender.

As previously stated in our notice of "Final Affirmative Countervailing Duty Determination: Ceramic Tile from Mexico" (47 FR 20012), "[r]egardless of what effects the Illustrative List of Export Subsidies may have on U.S. law otherwise, the uniform past practice on this issue in comparison with the legislative history of the Trade Act requires us to calculate the bounty or grant provided under a preferential loan program on the basis of a comparison between the preferential rate and the commercially available rate rather than on the basis of a comparison with the cost of funds to the government."

Comment 4: The government of Brazil claims the Department, in calculating the subsidy benefit derived from the alleged CIC–CREGE 14–11 program, incorrectly includes the IOF tax in the benchmark. Furthermore, the government of Brazil contends that the use of a compounded average benchmark for the period is inappropriate because the discount rate in effect on the date the loan was taken out most accurately reflects the cost of alternative available financing.

DOC Position: We disagree. We consider that it is appropriate to include the IOF tax in our benchmark since the IOF tax is imposed on all domestic financial transactions. With respect to the benchmark, because the CIC–CREGE 14–11 loans we are examining were taken out throughout the review period, we have calculated a benchmark for that some period. Calculating a specific benchmark rate for each loan, as respondents suggest, would undermine our short-term loan methodology which states that the use of company-specific benchmarks would significantly impair our ability to administer the countervailing duty law within the short time limits established by the Act.

Comment 5: The government of Brazil claims that the Department has overstated the benefit from the income tax exemption for export earnings by using the nominal tax rate, as opposed to the effective tax rate applicable to the respondents. Brazilian tax law allows corporations to invest 26 percent of taxes owed into certain specified corporations or funds. The government argues that this provision results in an effective reduction of the corporate income tax rate, which decreases the benefit from the income tax exemption.

DOC Position: Where we were able to verify that the company used the 26 percent investment tax credit, we have taken it into account in calculating the company's effective tax rate.

Comment 6: As it has in the past, the government of Brazil argues that the Department erred in valuing the subsidy arising from the income tax exemption for export earnings by allocating the benefit over export sales rather than total sales. Because the determining factor in a firm's eligibility for this benefit is its overall profitability for a given year, the benefits accrue to the entire operations of the firm and not just to exports. Further, an income tax exemption calculated on this basis does not affect the price of the exported product only; rather, it must have a general effect on all prices, both domestic and export.

DOC Position: We disagree. As we have stated repeatedly in prior Brazilian determinations, when a firm must export to be eligible for benefits under a subsidy program, and when the amount of the benefit received is tied directly or indirectly to the firm's level of exports, that program confers an export subsidy. The fact that the firm as a whole must be profitible to benefit from the program does not detract from the program's basic function as an export subsidy. Therefore, the Department will continue to allocate the benefits under this program over export revenues instead of total revenues.

Comment 7: The government of Brazil argues that FINEX export financing does not confer a subsidy because the terms of such financing are commercially reasonable.

DOC Position: We disagree. Information on the record indicates that FINEX interest rates are below prevailing commerical interest rates that would be paid by importers in the United States.

Comment 8: Respondents contend that no Brazilian exporters or U.S. importers of tillage tools received any short-term FINEX export financing during the review period. Furthermore, respondents contend that tillage tools have not been eligible for long-term FINEX financing since September 1984, and that our stated policy to take into account program-wide changes made subsequent to the review period but prior to the preliminary determination should preclude us from finding this program to confer an export subsidy.

DOC Position: We disagree. There is no evidence on the record of this case to document either of these assertions, which were made subsequent to the verification.

Comment 9: The government of Brazil contends that FINEP/ADTEN loans are generally available to all industries in Brazil and should not be found to confer a domestic subsidy.

DOC Position: We disagree. The only information on the record concerning these loans is a telex from one Brazilian government agency to counsel for the government of Brazil in Washington. During verification, Department officials were not given an opportunity to meet with FINEP administrators or to examine program records.

Comment 10: The government of Brazil argues that the Department, in finding government equity infusions in USIMINAS to be inconsistent with commercial considerations, erred by focusing on a restricted number of short-term financial ratios, thereby ignoring the broader industrial and financial context in which this company operates.

DOC Position: In arriving at our determination, we considered the information submitted by the respondents concerning this issue, specially untranslated annual reports and financial statements for the last several years. Therefore, we focused our reveiw on the financial results of the company, including the ability to meet debt obligations, current operations, and rates of return on assets and equity. In light of these results, we consider USIMINAS to be unequityworthy and uncreditworthy in 1983.

Comment 11: The government of Brazil contends that a review of the performance of USIMINAS over the past 15 years demonstrates that, with a few exceptions, the company has had a record of positive rates of return on equity and postive financial ratios.

DOC Position: Although USIMINAS earned some profits between 1975 and 1980, it showed very low or negative

profits from 1980 onwards. Since a private investor will focus on a company's most recent performance as an indication of future earnings trends, we considered the more recent years to be more important to our analysis of whether government equity infusions into USIMINAS were inconsistent with commercial considerations. Moreover, a demonstration of profits or earnings alone is not sufficient for a company to be equityworthy. The rate of earnings per unit of equity, and not the absolute level of earnings, is a far more important determinant of a company's performance.

Comment 12: The government of Brazil argues that the Department should not use the year-end equity amount when determining the rate of return on equity used in our short-fall calculation. The government argues that the rate of return on equity is distorted by use of a year-end equity figure which already reflects the amount of the loss.

DOC Position: We agree that the year-end equity figure should not be used since it does not reflect the average amount of equity employed by the company throughout the year. Accordingly, we have revised the company's rate of return on equity by calculating this return on the average equity for 1983.

Comment 13: The government of Brazil argues that the Department erroneously calculated the benefits from equity infusions in USIMINAS by distributing over all of 1983 infusions which were not made until later in that year.

DOC Position: We disagree. It has been our consistent practice to compute benefits received by a firm during a period of time (in this case the 1983 calendar year), and apply them to the total value of sales for the same period (see, *e.g.*, "Final Affirmative Countervailing Duty Determinations; Certain Carbon Steel Products from France," 47 FR 39332). Any other approach would present an enormous administrative burden. When there are many types of benefits received and the number of disbursements under any given program is large, it would be unduly burdensome to make adjustments for the fact that a particular benefit was received earlier or later in the review period.. Therefore, to be consistent in our treatment of different types of subsidies and across cases, we have chosen to treat all benefits received during the review period as applying to all sales made during that same period.

Comment 14: The government of Brazil contends that the Department incorrectly applied average annual ORTN coefficients in converting cruzeiro-denominated equity infusions to determine the amount of benefit, rather than using the ORTN value in effect on the date of the equity infusion.

DOC Position: We disagree. We would prefer to use in this calculation the equity amount adjusted for inflation as reported in the company's books. However, absent this information, we are not persuaded that using average ORTN rates to adjust the value of the equity is inappropriate.

Comment 15: The government of Brazil states the Department erred in using its benchmark an industry-wide average rate of return, rather than the average rate of return applicable to heavy industry.

DOC Position: We disagree. In the Subsidies Appendix, we stated that "[f]or government equity purchases which we deem inconsistent with commercial considerations, we measure the benefit by multiplying the difference between the company's rate of return on equity and the national average rate (of return on equity)." The national, as opposed to a sectoral, rate of return is a more accurate measure of what a reasonable investor in Brazil will earn on his investments.

Comment 16: The government of Brazil contends, with respect to IPI tax rebates provided under Decree-Law 1547, that the value-added tax or IPI is not generally applicable in Brazil and that the rebate of this tax does not confer a countervailable benefit.

DOC Position: We disagree. Although the same amount of IPI tax is applied to all steel products, only companies producing certain priority products and whose expansion projects are government-approved may receive the rebates. Fabricators of steel products (such as welded pipe and tube manufacturers who purchase coil) are not eligible for the rebates. USIMINAS itself has not been eligible for the rebates since Decree-Law 1843, enacted in December 1980, directed that rebates of the IPI tax collected on sales by state-owned steel companies accrue to SIDERBRAS. Therefore, the rebates are not generally available and constitute a benefit to selected producers.

Comment 17: The government of Brazil argues that since IPI tax rebates under Decree-Law 1547 are paid only on goods sold in the domestic market, no products exported to the United States benefit from the rebate and therefore no subsidy is conferred.

DOC Position: We are countervailing these rebates because receipt thereof is tied to investment in government-approved projects. Although the amount of rebate any firm receives may increase along with domestic sales, the existence of domestic sales does not guarantee that a rebate will be received.

Comment 18: The government of Brazil argues that the Department's calculation of the benefits to USIMINAS from IPI rebates was erroneous because (1) a discount rate reflecting USIMINAS's creditworthiness from 1977–79 should have been used for grants in those years; (2) the discount rate during USIMINAS's uncreditworthy period included compensating balances, which the Department has recognized are not required in Brazil; and (3) the maximum interest rate inherently includes a risk premium and, therefore, the addition of a risk premium is not justified.

DOC Position: We have found USIMINAS to be creditworthy through 1979, and uncreditworthy from 1980 through 1983 (see "Final Affirmative Countervailing Determinations; Certain Carbon Steel Products from Brazil" (49 FR 17988) and "DOC Position" on respondents' Comment 10 above). In accordance with the Subsidies Appendix, we have calculated a discount rate for allocating benefits received during the uncreditworthy period by adding a risk premium to the highest commercial interest rate a creditworthy borrower would have to pay in order to receive a loan. The rate for discounting accounts receivable, including compensating balances, is the best information available on the highest commercial interest rate applicable to creditworthy borrowers. The addition of a risk premium to this rate reflects the additional risk in lending to an uncreditworthy firm. For grants received during the period when USIMINAS was creditworthy we used a discount rate reflecting the firm's creditworthiness.

Comment 19: The government of Brazil contends that the CDI program is generally available to all industries of Brazil.

DOC Position: We disagree. Under the terms of Decree-Law 1428, which instituted the CDI program, exemptions from the IPI tax and import duties under the CDI program were limited to certain government-approved projects in fourteen selected industries. Based on the record of this and earlier countervailing duty determinations on Brazilian products, we have no evidence that this requirement does not allow the government of Brazil to target benefits to particular companies.

Comment 20: Respondents argue the Department erred in setting the threshold for "significant effect" of upstream subsidies on the cost of

production of a downstream product at one percent. Respondents also cite a number of previous antidumping and countervailing duty, and other precedents where the numerical value of the term "significant" was considered higher than one percent.

DOC Position: Our determination with respect to the signifiant effect test is addressed in the "Upstream Subsidies" section of the notice.

Comment 21: Respondents argue that the Department erred in calculating a separate "significant effect" for each supplier of subsidized steel inputs, because ACESITA's flat-rolled capacity far exceeds the total demand of the tillage tool producers. Accordingly, the higher domestic subsidy rate for USIMINAS is irrelevant in determining either significant effect or competitive benefit.

DOC Position: The fact that ACESITA's capacity exceeds the total demand for tillage tool inputs is irrelevant because tillage tool producers purchase steel inputs from both ACESITA and USIMINAS. Therefore, any domestic subsidies accruing to USIMINAS can potentially have a significant effect on the purchasers' costs of production.

Comment 22: The government of Brazil argues that the Department erred in assuming a full pass-through of upstream subsidies to tillage tool producers, because these subsidies benefit the entire operations of the company rather than specific inputs.

DOC Position: Because we have determined that no significant effect exists, this issue is moot.

Comment 23: The government of Brazil contends that, in making its competitive benefit analysis, the Department erroneously disregarded the competitive, arms-length prices charged by the two steel suppliers, ACESITA and USIMINAS.

DOC Position: Because we have determined that no significant effect exists, this issue is moot.

Comment 24: Respondents contend that since the prices paid to ACESITA and USIMINAS by the tillage tool producers are still lower than the benchmark steel import price, competitive benefit should be measured by constructing average adjusted, unsubsidized prices for both ACESITA and USIMINAS. When this is done, USIMINAS' average adjusted price is lower than ACESITA's. Consequently, respondents argue, steel purchasers received no competitive benefit from subsidies to ACESITA since they could have purchased all their inputs from USIMINAS at a lower price.

DOC Position: Because we have determined that no significant effect exists, this issue is moot.

Comment 25: The government of Brazil contends that the use of Japanese surrogate prices is inappropriate since Brazilian tillage tool producers do not purchase sheet from Japan. Furthermore, the Japanese price used was a price to the East Coast of the United States which bears no relationship to prices to Brazil.

DOC Position: Because we have determined that no significant effect exists, the issue of which benchmark price to use is moot. However, the government of Brazil is incorrect in its statement that we used, in our preliminary determination, a price to the East Coast of the United States. We used an average Japanese export price to all markets except the United States.

Comment 26: The government of Brazil contends the Department erred in weight-averaging its surrogate domestic and import prices. This averaging is erroneous and bears no relationship to competitive benefit. The Department should have used the lowest unsubsidized price as its benchmark price.

DOC Position: Because we have determined that no significant effect exists, this issue is moot.

Comment 27: Respondents contend that the Department erred in weight-averaging surrogate Brazilian domestic steel prices, one including import duties and the other excluding import duties. Because we are seeking to determine whether tillage tools exported to the U.S. are subsidized, the higher effective price of steel imports used to make tillage tools sold in Brazil is irrelevant and import duties should be excluded from the benchmark formula.

DOC Position: Because we have determined that no significant effect exists, this issue is moot.

Comment 28: Respondent argue that the Department incorrectly relied on the formula set out in section 771A(b) of the Act in calculating the amount of "competitive benefit," since the value of the upstream subsidy to the downstream user is not necessarily equal to the difference between the price of the subsidized input and that which would be paid to another seller in an arms-length transaction.

DOC Position: Because we have determined that no significant effect exists, this issue is moot.

Comment 29: Respondents argue that the Department erred in summarily rejecting the concept that upstream subsidies must be afforded to specific industries in order to be countervailable. They contend that the inputs at issue (flat-rolled steel products), are used by virtually all manufacturing sectors in Brazil, making the provision of "benefits" to such a large economic sector generally available.

DOC Position: Because we have determined that no significant effect exists, this issue is moot.

Comment 30: The government of Brazil maintains that the Department applied incorrect standards in determining that Brazilian export subsidies are inconsistent with the Subsidies Code. In particular, the Department ignored Brazil's commitment under the GATT to phase out its export subsidies. Unless the Department determines that Brazil is in violation of its commitment, it cannot find Brazil's export subsidies to be inconsistent with the Subsidies Code.

DOC Position: Our determination with respect to whether Brazilian export subsidies are inconsistent with the Subsidies Code is addressed in the "Critical Circumstances" section of this notice.

Comment 31: The government of Brazil contends that the Department erred in finding a massive increase in imports of tillage tools in a relatively short period. Increases in shipments in 1984 and 1985 were lower than increases in 1981 and 1982. Moreover, the Department's comparison of import levels for the seven months preceding the filing of the petition with import levels during the seven months following filing is arbitrary, a sixteen percent increase is not massive, and, the increase reflects the cyclical nature of demand for this product.

DOC Position: Respondents have provided no reason as to why a comparison of the percentage increase in imports in 1984 and 1985 to the percentage increases in 1981 and 1982 is an appropriate measure of whether there has been a massive increase in imports over a relatively short period of time. Indeed, as respondents have pointed out we would expect the rate of increase to be much higher in the earlier period because imports were effectively zero in 1980. Nor have they provided any evidence regarding cyclical demand for the product or why a sixteen percent increase should not be considered massive. We focus on the months following the filing of the petition to be the "relatively short period" referred to by the statute because we regard the purpose of the critical circumstances provision as acting as a deterrent to exporters who would try to circumvent the intent of the law by increasing shipments during this period.

Comment 32: Respondents argue that the Department has mistakenly equated the term "serious prejudice" with the "material injury" standard of the ITC. Not only does this undermine the statutory authority of the ITC, but a casual link must be demonstrated between the export subsidy and the 'serious prejudice" to a signatory.

DOC Position: Our determination with respect to the issue of "serious prejudice" is addressed in the "Critical Circumstances" section of this notice.

Critical circumstances

Where, as in this case, petitioners have alleged the existence of critical circumstances, section 705(a)(2) of the Act requires us to include in our final determination "a finding as to whether—(A) the subsidy is inconsistent with the Agreement, and (B) there have been massive imports of the class or kind of merchandise involved over a relatively short period.'

A. Consistency With the Subsidies Code

We have determined that the government of Brazil provides export subsidies on the merchandise under investigation. As we noted in our preliminary determination (50 FR 24270), Article 9 of the Subsidies Code prohibits the use of export subsidies on non-primary products. When given by developed countries, such subsidies are inconsistent with the Subsidies Code and are actionable under its dispute settlement provisions. However, Article 14 section 3 provides an exception for developing countries, provided they do not use "export subsidies on their industrial products . . . in a manner which causes serious prejudice to the trade or production of another signatory." For a developing country like Brazil, then, the issue is whether we find export subsidies causing "serious prejudice" to trade or production of agricultural tillage tools in the United States. Under section 771(7)(C)(iii) of the Act, the ITC evaluates all relevant economic factors bearing on the state of the industry, including actual and potential decline in output, sales, market share, profits, productivity, return on investment, and capacity utilization. Thus, in making its preliminary and final injury determinations, the ITC considers trade and production in the United States. We conclude that, in principal, serious prejudice can exist where material injury to a U.S. industry occurs by reason of imports benefiting from export subsidies. Therefore, should the ITC make a final determination of material injury, we determine serious prejudice exists.

If the ITC's final determination should be negative, our critical circumstances finding will be moot; in any event, under section 705(a)(4)(A) of the Act, the ITC must make its own affirmative determination of critical circumstances to effect our affirmative finding. If the ITC's final determination is that a U.S. industry is threatened with material injury, we conclude serious prejudice does not exist therefore, critical circumstances do not exist.

We stress that this finding is limited to the facts of this case and the application of Article 14 section 3 of the Subsidies Code. This finding draws no conclusion, and none should be inferred, with respect to the commitment made by the government of Brazil under Article 14 section 5 of the Subsidies Code. Under Article 14 section 5, developing countries are urged to "enter into a commitment to reduce or eliminate export subsidies when the use of such export subsidies is inconsistent with its competitive and development needs." Article 14 section 6 precludes any signatory from taking countermeasures pursuant to the provisions of Parts II and VI of the Subsidies Code against any export subsidies of such developing country, to the extent that the subsidies in question are covered by a commitment made under Article 14 section 5.

Parts II and VI of the Subsidies Code concern notification of subsidies and international dispute settlement. Significantly, Article 14 section 6 does not affect actions taken under Part I of the Subsidies Code, concerning domestic countervailing duty proceedings.

B. Massive Imports

In determining whether there have been massive imports over a relatively short period, we considered the following factors: (1) Whether imports have surged recently, (2) whether recent imports are significantly above the average calculated over several years (1980–1984), and (3) whether the patterns of imports over that four-year period may be explained by seasonal swings. Based upon our analysis of the information, we determine that imports of the products covered by this investigation appear massive over a relatively short period.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. Commerce officials spent the period from June 20 to July 11, 1985, verifying the information submitted by respondents and the government of Brazil, and gathering additional information to be used in this determination. We followed normal verification procedures, including inspection of documents and ledgers, and tracing the information in the response to source documents, accounting ledgers, and to financial statements.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all unliquidated entries of certain agricultural tillage tools from Brazil entered, or withdrawn from warehouse, for consumption, on or after March 12, 1985. As of the date of publication of this notice in the **Federal Register**, the liquidation of all entries, or withdrawals from warehouse, for consumption of this merchandise will continue to be suspended and the Customs Services should require a cash deposit or bond of 8.06 percent *ad valorem* for each such entry of this merchandise. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(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 detemine whether these imports materially injure, or threaten material injury to, a U.S. industry 45 days after the date of publication of this notice.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that material injury and critical circumstances do exist, we will issue a countervailing duty order, directing Customs officers to assess a countervailing duty on certain agricultural tillage tools from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of the suspension of liquidation indicated in the "Suspension of Liquidation"

section of this notice, equal to the net subsidy of 8.06 percent *ad valorem*. If the ITC determines that a threat of material injury exists, or that material injury exists but critical circumstances do not exist, we will issue a countervailing duty order, directing Customs officers to assess a countervailing duty on certain agricultural tillage tools from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication of our preliminary determination (June 10, 1985), equal to the net subsidy of 8.06 percent *ad valorem*.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

August 19, 1985.

[FR Doc. 85-20293 Filed 8-23-85; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; North Carolina State University et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 86-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 85-263. Applicant: North Carolina State University, Box 7908, Raleigh, NC 27695-7908. Instrument: Soil Testing System. Manufacturer: GDS Instruments, Limited, United Kingdom. Intended use: Studies of both trimmed samples of natural soil and reconstituted samples. The phenomena to be studied will be the stress-strain properties and shear strength of the soil. The objective of these studies is to experimentally determine the compressibility that should be used to predict the amount of settlement of buildings constructed and to determine the shear strength for use in design of retaining walls and excavated slopes. Application received by Commissioner of Customs: August 2, 1985.

Docket No. 85-264. Applicant: Berea College, CPO 1630, Berea, KY 40404. Instrument: Planetarium Projector and Remote Control Console, Model MS-10. Manufacturer: Minolta Camera Company, Limited, Japan. Intended use: The instrument is intended to be used for teaching the following courses:

1. Physics 111—Introduction to Astronomy.
2. Physics 270—Advanced Astronomy.
3. Physics 115—General Physics I.
4. Physics 215—Intermediate Mechanics and Heat.
5. Education 200—Teaching Science in the Elementary School.
6. Education 214—Methods of Teaching Secondary School Science.
7. General Studies 206—Religious and Historical Perspectives.
8. General Studies 232—Natural Science.

Application received by Commissioner of Customs: August 2, 1985.

Docket No. 85-265. Applicant: University Medical Center, Clinical Pathology, 1501 N. Campbell Avenue, Tucson, AZ 85724. Instrument: Electron Microscope, Model JEM-100CXCII. Manufacturer: JEOL, Ltd., Japan. Intended use: The instrument is intended to be used to study the structure of various biologic specimens involved in human diseases. Studies will be done correlating the transmission image with the elemental content using the x-ray analysis capabilities of the instrument. Application received by Commissioner of Customs: August 2, 1985.

Docket No.: 85-266. Applicant: University of California, San Diego, Department of Chemistry, D-006, La Jolla, CA 92093. Instrument: Stopped Flow Apparatus. Manufacturer: Hi-Tech Scientific, United Kingdom. Intended use: The instrument is intended to be used in kinetic studies of heme proteins, which transport and utilize oxygen in living systems, and synthetic iron porphyrin or other iron complexes which mimic the biological system. It will be used to follow rapid chemical and biochemical reactions. The objectives of the experiments to be conducted are to understand the mechanisms by which oxygen is transported by iron proteins and to understand in detail the mechanisms of oxidation of organic compounds catayzed by enzymes such as cytochrome P-450 and drugs such as bleomycin. Application received by Commissioner of Customs: August 2, 1985.

Docket No.: 85-267. Applicant: East Carolina University, Fifth Street, Greenville, NC 27834. Instrument: Electron Microscope, Model JEM-1200EX. Manufacturer: JEOL, Limited, Japan. Intended use: The instrument is intended to be used to view and analyze cells in various organs and tissues following experimental treatment. The research projects will include:

(1) Determining the role of ovarian nerves in reproductive function.

(2) Delineating the diversity and migration of macrophages and their role in the immune response.

(3) Determining the role of opioid peptidergic neurons in the brain.

(4) Determining the influence of elevated prolactin (as found in many pituitary tumors) on gonadotrope cells;

(5) Defining the control of muscle protein metabolism during exercise.

In addition, the instrument will be used in training M.D. and Ph.D. candidates in biomedicine. Application received by Commissioner of Customs: August 2, 1985.

Docket No.: 85-269. Applicant: Columbia University, Department of Chemistry, 119th Street & Broadway, New York, NY 10027. Instrument: Spectropolarimeter, Model J-500A. Manufacturer: Japan Spectroscopic Company, Limited, Japan. Intended use: The article is intended to be used to conduct research in the following areas:

a. Development of inorganic complexes as probes for DNA helical conformation and the design of drugs that bind to DNA with high stereospecificity.

b. Conformational changes of biopolymers, e.g., kinetics of self-assembly of hemoglobin, folding kinetics of Hb a and b chains, B to Z transition of DNA.

c. Development of catalysts that mimic enzymes.

d. Development of helical metallocenes and the study of their binding to DNA.

e. Development of the exciton chirality method and its application in micro-scale studies of oligosaccharide structures.

f. Studies on the chiral properties of the retinal binding site in visual pigments, bacteriorhodopsin, and related pigments.

g. Synthetic studies of chiral induction using chiral auxiliaries. Application received by Commissioner of Customs: August 2, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-20325 Filed 8-23-85; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Purdue University et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 85-257. Applicant: Purdue University, 401 South Grant Street, Freehafer Building, West Lafayette, IN 47907. Instrument: Electron Microscope, Model EM 109TS with Accessories. Manufacturer: Carl Zeiss, Incorporated, West Germany. Intended Use: Studies of biological specimens—cells, tissues and subcellular fraction—in experiments to monitor and evaluate, at the ultrastructural level, separations achieved in a cell/organelle subfractionation facility. Investigations will be conducted to accurately document the morphology of the specimens under investigation and to provide quantitation of those morphological parameters required to provide conclusive evaluations of fraction purity, changes during different developmental changes, etc. The instrument will also be used for training purposes in Biology and Medicinal Chemistry courses. Application received by Commissioner of Customs: August 2, 1985.

Docket No. 85-258. Applicant: The Institute for Orgonomic Science, P.O. Box 304, Gwynedd Valley, PA 19437. Instrument: Light Microscope with Camera Attachments and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: Studies of tissue and blood cells of experimental animals (mice). Pathologic changes in structure and function of living tissue and blood cells and pathologic morphology of fixed and stained tissue will be investigated to determine the effects of carcinogenic stimuli on these issues. Application received by Commissioner of Customs: August 2, 1985.

Docket No. 85-259. Applicant: University of Oklahoma, 660 Parrington Oval, Norman, OK 73019. Instrument: Mass Spectrometer, Model MS-25 with Accessories. Manufacturer: Kratos Analytical Instruments, United Kingdom. Intended Use: Studies of pure chemical compounds and mixtures of chemical compounds including but not limited to: polynuclear aromatic carcinogenic materials, highly polar oxygenated derivatives of nucleotides and other chemicals of biological/biochemical origin, and trace compounds from marine organisms and bacteria. The objective of all the studies envisioned is the determination of the structure of molecules, whether available in pure form or in mixtures. Application received by Commissioner of Customs: August 2, 1985.

Docket No. 85-260. Applicant: State University of New York at Stony Brook, Stony Brook, NY 11794. Instrument: Monolayer Handling Instrumentation. Manufacturer: Mayer-Feintechnik, West Germany. Intended use: Study of the molecular area, surface pressure, and surface potential of multicomponent lipid monolayer and multilayer assemblies formed from the following materials: phosphatidylcholine, triphosphoinositide, ganglioside, and phosphatidylserine. Experiments will be conducted to measure the dependence of surface potential on the subphase composition for a single film. These assemblies will be formed over the following aqueous substrates: 0.1M NaCl, 0.001M NACl, 0.01M NaCl. The same monomolecular film (monolayer) will be transferred from one substrate to another, to measure the accompanying change in surface potential. Application received by Commissioner of Customs: August 2, 1985.

Docket No. 85-261. Applicant: Michigan State University, East Lansing, MI 48824. Intrument: Electron Microscope, Model JEM-100 CXII with Accessories. Manufacturer: JEOL, Japan. Intended use: The instrument is intended to be used to carry out the following research projects:

1. Fine structure of animals treated with pyrethroid pesticides.
2. Analysis of WH, a mutation in the Syrian hamster.
3. Ultrastructure of methyl mercury toxicity in neurons.
4. Spatial orientation of axonal microtubules.
5. Morphological studies of isolated mammalian myocytes.
6. Biodynamics of the nuclear membrane and matrix.
7. Ultrastructure of action of prostaglandins.
8. Ultrastructural analysis of fibroblast growth regulator.

In addition, the intrument will be used in the training of graduate students and postdoctoral fellows for high resolution TEM. Application received by Commissioner of Customs: August 2, 1985.

Docket No. 85-262. Applicant: North Carolina State University, Soil Science Department, Box 7619, Raleigh, NC 27695-7619. Instrument: Root Length Scanner, Manufacturer: Commonwealth Aircraft Corporation Limited, Australia. Intended use: The instrument is intended to be used to measure the length of plant roots in an attempt to identify the best combinations of plows, disks, etc. which can be used to maximize the length of crop roots in soil. Application received by Commissioner of Customs: August 2, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-20327 Filed 8-23-85; 8:45 am]

BILLING CODE 3510-DS-M

The Pennsylvania State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 85-158. Applicant: The Pennsylvania State University, University Park, PA 16802. Instrument: Electrophoresis Apparatus, Model Mark II with Accessories. Manufacturer: Rank Brothers, United Kingdom. Intended use: See notice at 50 FR 21481.

Comments: None.

Decision: Denied. An instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is beihg manufactured in the United States.

Reasons: The applicant has not adequately supported the claim for duty-free waiver, which rests on a demonstration that a domestic instrument suitable for the institution's purposes is not available. In fact, the applicant in response to Question 8.c.(2) states that the domestic instrument (Model 501 Laser Zee Meter) manufactured by PenKem, Inc., Bedford Hills, NY, ". . . would be suitable for our purposes but its cost ($16,000) was well beyond the funds available." Cost and the availability of funds may not be

considered in making our finding. Accordingly, we deny pursuant to § 301.5(d)(1)(i) and § 301.5(d)(3) of the regulations.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-20326 Filed 8-23-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Daniel H. Mann

On June 25, 1985, notice was published in the **Federal Register** (50 FR 26243) that an application had been filed by the Daniel Mann, (P361), College of Forest Resources, AR-10, University of Washington, Seattle, Washington 98195 to import 20 unidentified whale bones.

Notice is hereby given that on August 16, 1985, as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361-1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220-222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115.

Dated: August 20, 1985.

Carmen J. Blodin,

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

[FR Doc. 85-20356 Filed 8-23-85; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary Retirement Board of Actuaries; Meeting

AGENCY: Department of Defense, Retirement Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Board has been scheduled to execute the provisions of chapter 74, title 10, United States Code (10 U.S.C. 1461 et. seq). The Board shall review and authorize the FY86 normal cost percentage and unfunded liability payment of the military retirement system. The FY87 DoD budget figures will be approved. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: September 17, 1985, 1:00 p.m. to 5:00 p.m.

ADDRESS: Room 3E794, the Pentagon (River Entrance).

FOR FURTHER INFORMATION CONTACT: Toni Hustead, Executive Secretary, Defense Manpower Data Center, 4th floor, 1600 Wilson Blvd., Arlington, Virginia 22209 (202/696-5793).

Linda M. Lawson,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-20359 Filed 8-23-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Armed Forces Epidemiological Board; Closed Meeting

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) notice is hereby given that a closed meeting of the Armed Forces Epidemiological Board has been scheduled on September 11-13, 1985 at the McCormick Facility Parson's Island, Kent Island, Maryland.

2. As defined in section 552(b) of Title 5 United States Code, subparagraphs 2 and 6, this meeting, commencing at 1300 hours on September 11 and concluding at 1200 hours September 13, will be closed to the public due to a comprehensive review of immune deficiency diseases involving patient case reports, disclosure of which would constitute unwarranted invasion of individual patient privacy. In addition, discussions involving representatives from the Department of Defense, Health Affairs and the other military medical services will include and involve substantive issues relative to internal personnel rules and Department of Defense agency practices.

Dated: August 13, 1985.

Robert F. Nikolewski,

Col, USAF, BSC, Executive Secretary.

[FR Doc. 85-20351 Filed 8-23-85; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee, National Energy Security Policy Task Force; Closed Meeting; Correction

Notice was given August 1, 1985, at 50 FR 31218 of a meeting of the Chief of Naval Operations Executive Panel Advisory Committee National Energy Security Policy Task Task Force on August 29-30, 1985, from 9 a.m. to 5 p.m. each day. The dates and times for the meeting have been changed to October 1-2, 1985, from 9 a.m. to 5 p.m. All other information in the previous notice remains effective.

For further information on this meeting contact Lieutenant Thomas E. Arnold, Executive Secretary of the Chief on Naval Operations Executive Panel Advisory Committee, telephone (703) 756-1205.

Dated: August 21, 1985.

R.E. Coyle,

Captain, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 85-20332 Filed 8-23-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Withdrawal of Intent To Prepare an Environmental Impact Statement for Powerplant Conversions to Coal in the State of Florida

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Withdrawal of Intent to Prepare an Environmental Impact Statement for Powerplant Conversions to Coal in the State of Florida.

SUMMARY: The Department of Energy (DOE) announces its intent to withdraw the April 7, 1982, notice of intent to prepare an environmental impact statement (EIS) (47 FR 15088). DOE is preparing an environmental impact

report which will be available in September 1985. Those individuals who would like to receive a copy of this report should contact Ms. Deborah Valentine at the address printed below.

FOR FURTHER INFORMATION CONTACT:

Deborah Valentine, RG–22, Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252–9504

Elizabeth V. Jankus, EH–151, Environmental Compliance Division, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252–6374

SUPPLEMENTARY INFORMATION: On April 7, 1982, DOE announced its intent to prepare an environmental impact statement (EIS) in accordance with the National Environmental Policy Act of 1969 (NEPA), to analyze the potential environmental impacts associated with the proposed conversions of up to 31 powerplants at 15 stations in Florida from oil to coal, later revised to 27 powerplants and 14 stations. The powerplants included in the environmental impact analysis were selected and submitted to DOE by the Florida Public Service Commission as potential recipients of proposed prohibition orders under the amended Powerplant and Industrial Fuel Use Act of 1978 (FUA). Under FUA, as amended by the Omnibus Budget Reconciliation Act of 1981, a utility may certify to DOE that it is technically and economically feasible to convert a powerplant from oil to coal. DOE may then issue to the utility a prohibition order after completion of the appropriate level of compliance required by NEPA.

To date, none of the subject utilities have certified that it is technically and economically feasible to convert their powerplants. Therefore, DOE has decided not to prepare an EIS. However, DOE will utilize the environmental impact analysis to prepare an environmental impact report entitled "The Florida Statewide Coal Conversion Study: A Report on the Potential Environmental Impacts of the Conversion of up to 27 Powerplants from Oil to Coal or Alternate Fuels." This report will be made available in September 1985. Questions regarding the withdrawal notice or the environmental report should be addressed to Ms. Valentine at (202) 252–9504.

Issued in Washington, DC, on August 12, 1985.

William A. Vaughan,

Assistant Secretary, Environment, Safety, and Health.

[FR Doc. 85–20283 Filed 8–23–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 3133–007 et al.]

Hydroelectric Applications, (Union Water Power Co. 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: Transfer of License (Major).

b. Project No. 3133–007.

c. Dated Filed: July 29, 1985.

d. Applicant: Union Water Power Company, Public Service Company of New Hampshire and Errol Hydroelectric Limited Partnership.

e. Name of Project: Errol Dam.

f. Location: On the Androscoggin River in Coos County, New Hampshire and Oxford County, Maine.

g. Filed Pursuant to: Section 9 of the Federal Power Act Sections 791(a)–825(r).

h. Contact Person: Mr. Charles E. Monty, Union Water Power Company, Edison Drive, Augusta, ME 04336.

i. Comment Date: September 30, 1985.

j. Description of Project: On August 29, 1983, a major license was issued to the Public Service Company of New Hampshire (PSNH) and Union Water Power Company (UWPC) to construct, operate, and maintain the Errol Dam Project No. 3133. The PSNH intends to sell its interest in the project to the Errol Hydroelectric Limited Partnership (EHLP). For that reason, UWPC, PSNH and EHLP have filed a request that the project license be transferred to UWPC and EHLP.

k. This notice also consists of the following standard paragraphs: B and C.

2. a. Type of Application: Major License (Over 5MW).

b. Project No.: 5993–001.

c. Date Filed: December 3, 1982.

d. Applicant: White Chuck Water Company.

e. Name of Project: Lime Creek.

f. Location: On Lime Creek, tributary to the Suiattle River, in Snohomish and Skagit Counties, Washington, and affecting U.S. lands within the Mt. Baker National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Mr. William N. Fowler, White Chuck Water Company, 91 Newbury Street, Boston, MA 02116.

i. Comment Date: September 23, 1985.

j. Competing Application: Project No. 5792, Date Filed: 05/14/82.

k. Description of Project:-The proposed run-of-river project would consist of: (1) A 6-foot-high, 40-foot-long ogee-type reinforced-concrete diversion weir across Indigo Creek having spillway crest elevation 3,360 feet msl and having a gated, screened intake structure along the right bank with a fishway/sluiceway; (2) a 2-foot-diameter, 5,700-foot-long steel pipeline leading to; (3) a 6-foot-high, 30-foot-long ogee-type reinforced-concrete diversion weir across Unnamed Creek having spillway crest elevation 3,215 feet msl and having a gated, screened intake structure along the right bank with a fishway/sluiceway; (4) a 2½-foot-diameter, 2,500-foot-long steel pipeline leading to; (5) an 8-foot-high, 60-foot-long ogee-type reinforced-concrete diversion weir across Meadow Creek having spillway crest elevation 3,200 feet msl and having a gated, screened intake structure along the right bank with a fishway/sluiceway; (6) a 3-foot-diameter 1,300-foot-long steel penstock; (8) an upper powerhouse containing a generating unit rated at 2.5-MW operated at a gross head of 480 feet and at a flow of 76 cfs; (9) a 13,600-foot-long, 13.5-kV underground transmission line; (10) a 350-foot-long tailrace leading to; (11) a 10-foot-high, 70-foot-long ogee-type reinforced-concrete diversion wier across Lime Creek having spillway crest elevation 2,700 feet msl and having a gated, screened intake structure along the right bank with a fishway/sluiceway; (12) a 4½-foot-diameter, 13,600-foot-long steel penstock; (13) a lower powerhouse containing a generating unit rated at 2.5-MW operated at a flow of 30 cfs and a generating unit rated at 15.0-MW operated at a flow of 200 cfs both operated at a gross head of 1,260 feet; (14) a 4½-foot-diameter, 900-foot-long pipe tailrace and a 5-foot-diameter, 150-foot-long pipe tailrace; (15) 22.3-mile-long, 34.5-kV underground transmission line; and (16) new temporary access roads to the Indigo Creek Diversion, Meadow Creek Diversion, and the lower powerhouse. Applicant would also construct and maintain recreational facilities consisting of a roadside turnout, campground, and picnic area.

l. Purpose of Project: Applicant estimates that the average annual generation for the Upper Development

would be 7,400-MWh and the Lower Development would be 67,000-MWh. The project total construction cost would be $21,855,000 in 1983 dollars. Project energy would be sold.

m. This notice also consists of the following standard paragraphs: A5, B, and C.

3 a. Type of Application: Major License.

b. Project No.: 6151-006.

c. Date Filed: November 15, 1984.

d. Applicant: S.V. Hydrotech, Incorporated.

e. Name of Project: Cabin Creek.

f. Location: On Cabin Creek, tributary to the Humma Hamma River, in Mason and Jefferson Counties, Washington, and affecting lands within the Olympic National Forest.

g. Filed Pursuant to: Federal Power Act., 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Michael Smith, S.V. Hydrotech, Inc., 11400 Washington Plaza West, Suite 1203, Reston, VA 22090.

i. Comment Date: September 23, 1985.

j. Competing Application: Project No. 5900, Date Filed: 01/19/82.

k. Description of Project: The proposed run-of-river project would consist of: (1) A 6-foot-high, 30-foot-long ogee-type reinforced-concrete diversion weir having spillway crest elevation 1,501 feet msl and having a 1-foot-deep, 4-foot-long low-flow notch and a gated sluiceway; (2) an intake structure at the right (west) bank; (3) a 30-inch-diameter, 5,400-foot-long buried steel pipeline; (4) a 30-inch-diameter, 1,800-foot-long steel penstock; (5) a powerhouse containing a generating unit rated at 2.89-MW operated at a net head of 850 feet and at a flow of 45 cfs; (6) a 60-inch-diameter, 25-foot-long pipe tailrace; (7) a 7.0-mile-long, 12.47-kV transmission line; and (8) a 1,200-foot-long access road to the powerhouse and a 3,300-foot-long access road to the diversion.

This application has been accepted for filing as of April 1, 1982, the submittal date of the Applicant's originally accepted exemption application pursuant to *Eagle Power Company*, 28 FERC ¶61,061 issued July 18, 1984. Applicant estimates that the average annual generation would be 11,870,000 kWh and that the total construction cost in 1984 dollars would be $3,645,000. Project energy would be sold.

l. This notice also consists of the following standard paragraphs: A9, B, C, and D1.

4 a. Type of Application: License (Under 5MW).

b. Project No.: 6279-001.

c. Date Filed: May 25, 1985.

d. Applicant: F & T Services Corporation.

e. Name of Project: Bayou D'Arbonne.

f. Location: Bayou D'Arbonne, Union Parish, Louisiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. V.A. Forte, F & T Services Corporation, Post Office Box 64844, Baton Rouge, Louisiana 70896.

i. Comment Date: October 15, 1985.

j. Description of Project: The proposed project would consist of: (1) the existing Bayou D'Arbonne Lake Dam owned by the State of Louisiana, an approximately 2,400-foot-long, 34-foot-high earthfill structure (2) an existing reservoir, approximately 15,250 acres in surface area, with a storage capacity of approximately 130,000 acre-feet; (3) a proposed siphon intake structure; (4) three proposed penstocks, each about 280 feet long, and 8 feet in diameter; (5) a proposed powerhouse containing three generating units of 600 kW capacity each; (6) a proposed tailwater channel, approximately 130 feet long and 45 feet wide; (7) a proposed ½ mile long transmission line; and (8) appurtenant facilities.

k. Purpose of Project: The estimated average annual generation of 6,622,560 kWh would be sold to Louisiana Power and Light Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

5 a. Type of Application: Minor License.

b. Project No.: 6434-006.

c. Date Filed: August 8, 1984.

d. Applicant: Thomas A. Nelson.

e. Name of Project: Ditch Creek Hydro.

f. Location: On Ditch Creek, within Boise National Forest in Valley County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Warren B. Nelson, 3410 Montvue Drive, Meridian, ID 83642.

i. Comment Date: October 15, 1985.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high, 45-foot-long aluminum diversion dam with the crest at elevation 6,020 feet; (2) an 18-inch-diameter, 5,200-foot-long penstock; (3) a log powerhouse at elevation 5,320 feet containing two generating units with a total rated capacity of 440 kW operated at a head of 680 feet and at a flow of 10 cfs; and (4) a 69-kV, 100-foot-long transmission line connecting to an existing Idaho Power Company transmission line. A fish passage facility would be constructed at the diversion and step-dams are proposed to be installed below the diversion site to enhance the fishery. The project would have an average annual generation of 2.4 GWh and an estimated cost, as of August 1984, of $450,000.

This application has been accepted for filing as of June 15, 1982, the submittal date of the Applicant's originally accepted exemption application pursuant to Snowbird, Ltd. et al., 28 FERC ¶ 61,062, issued July 18, 1984.

k. Purpose of Project: Project output would be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A9, B, C, and D1.

m. License or Conduct 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 60 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).

6 a. Type of Application: Major License (Under 5MW).

b. Project No.: 7077-001.

c. Date Filed: November 23, 1984.

d. Applicant: Frontier Land and Power.

e. Name of Project: Genesee.

f. Location: On Little Grizzly Creek, a tributary to Indian Creek, thence to the North Fork Feather River, near Genesee, in Plumas County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Bruce McDowell, Frontier Land and Power, 3054 Franklin Street, San Francisco, CA 94123, (415) 885-6160.

i. Comment Date: October 15, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) A 5-foot-high, 50-foot-long concrete diversion structure located across Little

Grizzly Creek at elevation 4,250 feet msl; (2) a 42-inch-diameter, 8,500-foot-long steel pipe penstock; (3) a powerhouse located at elevation 3,840 feet msl in the SE ¼ of the SW ¼ of Section 17, T25N R11E MDM, containing five 400 kW reaction turbine-generator units with a total installed capacity of 2.0 MW and producing an estimated average annual generation of 6.132 GWh; (4) a tailrace; and (5) a 7,000-foot-Long primary transmission line to incterconnect the project to an existing Pacific Gas and Electric Company (PG&E) line. The project would be located entirely on Plumas National Forest lands. Project power would be sold to PG&E. Applicant estimates the project cost at $2 million.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

7 a. Type of Application: License (Minor).

b. Project No.: 7342–001.

c. Date Filed: November 23, 1984.

d. Applicant: Manti City Corporation.

e. Name of Project: Manti Canyon Towr Project.

f. Location: Manti Creek in Sanpete County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Patrick M. Hanlon, Esq., Shea & Gardner, 1800 Massachusetts Avenue, NW, Washington, D.C. 20036.

i. Comment Date: October 15, 1985.

j. Description of Project: The Lower Manti Project is currently a constructed operating unlicensed project, part of which is located within the Manti-Lasal National Forest. A proposed redevelopment of the project consists of: (1) Removing the present diversion structure, powerhouse canal, and penstock; (2) constructing a new diversion structure, 4 feet high and 35 feet long, across Manti Creek about 2,080 feet upstream of the present structure; (3) constructing a new penstock, 24-inches to 30-inches in diameter and 10,200 feet long; (4) renovating the powerhouse and installing a new turbine-generator unit rated at 1,285 kW, replacing the existing 105-kW unit; (5) constructing a new concrete tailrace returning flow to Manti Creek; (6) utilizing the existing 4.160-kV transmission line to Manti's distribution system; and (7) providing appurtenant new facilities. The Applicant estimates that the average annual energy output will be increased from 750,000 kWh to 5,024,170 kWh.

k. Purpose of Project: Project energy will continue to be utilized by the Applicant.

l. This application has been accepted for filing as of June 6, 1983, the submittal date of the Applicant's originally accepted exemption application pursuant to Eagle Power, 28 FERC ¶61,061 issued July 18, 1984.

m. This notice also consists of the following standard paragraphs: B and C.

8 a. Type of Application: Conduit Exemption.

b. Project No.: 8375–001.

c. Date Filed: December 13, 1984.

d. Applicant: Blind Canyon Aquaranch, Incorporated.

e. Name of Project: Blind Canyon.

f. Location: At Blind Canyon, on a tributary to the Snake River, in Gooding County, Idaho.

g. Filed Pursuant to: Section 30 of the Federal Power Act.

h. Contact Person: Samuel F. Curtis, Jr., Route 3–6 Ranch View W., Twin Falls, ID 83301.

i Comment Date: September 23, 1985.

j. Description of Project: The proposed project would utilize return flows from the North Side Canal Irrigation Company S. Coulee sediment holding pond located at the head of Blind Canyon and would consist of: (1) A 2,000-foot-long canal; (2) a headworks structure; (3) an 800-foot-long, 45-inch-diameter penstock; (4) a powerhouse containing two generating units each rated at 610-kW operated at a head of 300 feet and at a flow of 30 cfs; (5) a transformer; (6) a 500-foot-long transmission line; and (7) a short tailrace to the Snake River.

Applicant estimates that the average annual energy production would be 5,656,896 kWh. Project energy would be sold.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

9 a. Type of Application: Exemption (5MW or less).

b. Project No.: 8960–000.

c. Date Filed: February 8, 1985.

d. Applicant: Jared E. and Pamela Holve.

e. Name of Project: Bear Creek Hydroelectric Project.

f. Location: On Bear Creek, partly within the Sequoia National Forest, in Tulare County, California.

g. Filed Pursuant to: Section 408 of Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 *as amended*).

h. Contact Person: Jared E. and Pamela Holve, Route 2, Box 190, Springville, CA 93265.

i Comment Date: September 23, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 3-feet-high concrete diversion dam at elevation 3,200 feet; (2) a 24-inch-diameter, 7,350-foot-long penstock; (3) a powerhouse to contain a single generating unit with a rated capacity of 1,200 kW operating under a head of 1140 feet; and (4) a 2,000-foot-long, 12-kV transmission line will connect the project with an existing Southern California Edison Company's (SE) line north of the powerhouse.

k. Purpose of Project: The project's estimated annaul generation of 4.3 million kWh will be sold to SCE.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

10 a. Type of Application: Preliminary Permit.

b. Project No: 9109–000.

c. Date Filed: April 16, 1985.

d. Applicant: ATCP Associates.

e. Name of Project: Soapstone.

f. Location: On Grizzly Creek, near Storrie, in Plumas County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Roy Avery, ATCP Associates, 2001 Odyssey Falls, Greenwood, CA 95635, (702) 826–8032.

Mr. Robert F. Young, Raymond Vail & Associates, 1410 Ethan Way, Sacramento, CA 95825, (916) 929–3323.

i. Comment Date: October 15, 1985.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high, 80-foot-long Gabion-type diversion structure across Grizzly Creek at elevation 2,400 feet msl; (2) a 42-inch-diameter, 10,000-foot-long pipeline; (3) a 42-inch-diameter, 1,500-foot-long penstock; (4) a powerhouse located adjacent to Grizzly Creek at elevation 1,600 feet msl, containing a single Pelton turbine-generator unit with a rated capacity of 4.9 MW and producing an estimated average annual generation of 8.45 GWh; (5) a tailrace; and (6) a 700-foot-long, 12-kV transmission line. Project power would be sold to Pacific Gas and Electric Company (PG&E).

A preliminary permit, if issued, does not authorize construction. Applicant seeks a preliminary permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $150,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. The proposed project would be located within the project boundary of PG&E's Bucks Creek Project No. 619.

11 a. Type of Application: Preliminary Permit.

b. Project No: 9111–000.

c. Date Filed: April 16, 1985.

d. Applicant: ATCP Associates.

e. Name of Project: Storrie.

f. Location: On Bucks Creek, a tributary to the North Fork Feather River, near Storrie, in Plumas County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Roy Avery, ATCP Associates, 2001 Odyssey Falls, Greenwood, CA 95635, (702) 826–8032.

Mr. Robert F. Young, Raymond Vail and Associates, 1410 Ethan Way, Sacramento, CA 95825, (916) 929–3323.

i. Comment Date: October 15, 1985.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high, 80–foot-long gabion diversion dam located across Bucks Creek at elevation 2,200-feet msl; (2) a 42-inch-diameter, 5,000-foot-long pipeline; (3) a 42-inch-diameter, 1,200-foot-long penstock; (4) a powerhouse located adjacent to the confluence of Bucks Creek and the North Fork Feather River at elevation 1,840 feet msl, containing a single Pelton turbine-generator unit with a rated capacity of 1.8 MW and producing an estimated average annual generation of 4.56 GWh; (5) a tailrace; and (6) an 800-foot-long, 12-kV transmission line. Project power would be sold to Pacific Gas and Electric Company (PG&E). The project would be located on Plumas National Forest lands.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a preliminary permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $150,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. The proposed project would be located adjacent to PG&E's Bucks Creek Project No. 619.

12a. Type of Application: Preliminary Permit.

b. Project No.: 9125–000.

c. Date Filed: April 22, 1985.

d. Applicant: ATCP Associates.

e. Name of Project: New York.

f. Location: Round Valley Reservoir on North Canyon Creek, near Greenville, in Plumas County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Roy Avery, ATCP Associates, 2001 Odyssey Falls, Greenwood, CA 95635, (702) 826–8032.

Mr. Robert F. Young, Raymond Vail and Associates, 1410 Ethan Way, Sacramento, CA 95825, (916) 929–3323.

i. Comment Date: October 15, 1985.

j. Description of Project: The proposed run-of-the-river project would utilize the outlet works at the existing Pacific Gas and Electric Company (PG&E) Round Valley Dam and Reservoir and would consist of: (1) A 24-inch-diameter, 8,500-foot-long pipeline/penstock; (2) a powerhouse located adjacent to North Canyon Creek at elevation 3,670 feet msl, containing a single Pelton turbine-generator unit with a rated capacity of 1.2 MW and producing an estimated average annual generation of 3,288 GWH; (3) a tailrace; and (4) a 3,000-foot-long, 12-kV transmission line. Project power would be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a preliminary permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $100,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. The proposed project would be located within the project boundary of PG&E's DeSable-Centerville Project No. 803.

13a. Type of Application: Preliminary Permit.

b. Project No.: 9138–000.

c. Date Filed: April 29, 1985.

d. Applicant: Energy Locators, Inc.

e. Name of Project: Lake Francis Dam.

f. Location: On the Illinois River at Lake Francis in Adair County, Oklahoma and Washington County, Arkansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Stephen Sloan Thomas, President, Energy Locators, Inc. 903 Mayo Building, Fifth and Main, Tulsa, Oklahoma 74103.

i. Comment Date: September 23, 1985.

j. Competing Application: Project No. 9022–000; Date Filed: March 12, 1985; Due Date: August 12, 1985.

k. Description of Project: The Applicant would utilize an existing dam owned by the City of Siloam Springs, Arkansas. The proposed project would consist of: (1) An existing 6,000-foot-long, earthfilled dam; (2) an existing reservoir with a storage capacity of 2,000 acre-feet and a surface area of 577 acres at powerpool elevation of 936 feet m.s.l.; (3) a proposed 20-foot-long, 42-inch-diameter penstock; (4) a refurbished powerhouse containing one generating unit rated at 100 kW; (5) a proposed 15-foot-long, 10-foot-deep, and 30-foot-long tailrace; (6) a proposed 1,500-foot-long, 12.5-kV transmission line; and (7) appurtenant facilities. The estimated average annual energy output for the proposed project would be 657 MWh.

l. This notice also consists of the following standard paragraphs: A8, 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 $125,000.

14 a. Type of Application: Minor License.

b. Project No.: 9160–000.

c. Date File: May 2, 1985.

d. Applicant: Glenwood Springs Power Company.

e. Name of Project: Twin Tunnels.

f. Location: City of Glenwood Springs, in Garfield County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Scott M. Balcomb, Delaney & Balcomb, PC, P.O. Drawer 790, Glenwood Springs, CO 81602, (303) 945–6546.

i. Comment Date: October 11, 1985.

j. Description of Project: The proposed project would utilize the existing City of Glenwood Springs' water conveyance system and would consist of: (1) A bifurcation in the existing flume leading to the City's pre-treatment storage tanks; (2) a 1,500-foot-long penstock, 18 to 24 inches in diameter; (3) a 37-foot by 31-foot powerhouse containing a single turbine-generator unit with a rated capacity of 650 kW and producing an estimated average annual generation of 2.456 GWh; (4) a tailrace discharging to the Colorado River; and (5) a 1,400-foot-long primary transmission line. Applicant intends to sell the project power to either Public Service Company of Colorado or the City of Glenwood Springs. Applicant estimates the project cost at $1,400,000.

k. Purpose of Project: Municipal raw water is diverted by the City of Glenwood Springs at Grizzly and No Name Creeks and conveyed to two pre-treatment storage tanks. Excess water spills over the tanks and cascades to the Colorado River. Applicant intends to utilize excess spilled water.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

15 a. Type of Application: Minor License

b. Project No.: 9202–000
c. Date Filed: May 20, 1985
d. Applicant: Upper Yampa Water Conservancy District
e. Name of Project: Stagecoach
f. Location: On the Yampa River, near Steamboat Springs, in Routt County, Colorado
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r)
h. Contact Person:
Mr. John Fetcher, Upper Yampa Water Conservancy District, Steamboat Springs, CO 80488–0339.
Mr. Jean Yves Perez, Woodward—Clyde Consultants, Harlequin Plaza—North, 7600 East Orchard Road, Suite 101, Eaglewood, CO 80111, (303) 694–2770.
i. Comment Date: October 15, 1985.
j. Description of Project: The proposed project would consist of: (1) A 145-foot-high, 450-foot-long concrete dam located downstream of the confluence of Morrison Creek and the Yampa River, impounding; (2) a proposed reservoir with a total storage capacity of 33,738 acre-feet and a surface area of 777 acres at a spillcrest elevation of 7,200 feet msl; (3) a 60–inch–diameter, 120-foot-long steel pipeline; (4) a 36–inch-diameter, 20–foot–long steel penstock; (5) a 40-foot by 40-foot powerhouse, located in the vicinity of the dam's outlet works, containing a single Francis turbine-generator unit with an installed capacity of 800 kW and producing an estimated average annual generation of 4.26 GWh; (6) a tailrace; and (7) a 1.8-mile-long, 12.5–kV transmission line. Applicant intends to sell the project power to a public utility and estimates the total project cost at $1,100,000. No Federal lands would be affected. The project includes extensive plans for recreational facilities.
k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.
16 a. Type of Application: Preliminary Permit.
b. Project No.: 9204–000.
c. Date Filed: May 20, 1985.
d. Applicant: Millstream Hydro.
e. Name of Project: Swain-Lowell Dam.
f. Location: On the Warner 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. Scott T Waite, Millstream Hydro, Box 287, Bradford, NH 03221.
i. Comment Date: October 15, 1985.
j. Description of Project: The proposed project would consist of: (1) An existing 9-foot-high, 114-foot-long concrete gravity dam; (2) a reservoir with a surface area of 6 acres, a storage capacity of 24 acre-feet, and a normal water surface elevation of 520 feet m.s.l.; (3) an existing 5-foot-wide, 12-foot-high concrete intake structure; (4) an existing wood frame powerhouse containing one generating unit with a capacity of 100 kW; (5) an existing 10-foot-wide, 150-foot-long earth-cut tailrace; (6) a new transmission line, 60 feet long; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 350,000 kWh. The existing dam is owned by Mr. Wilson F. Sammis, Bradford, 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: A5, A7, A9, B, C, and D2.
m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorized construction. Applicant seeks issuance of a preliminary permit for a period of 18 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 $4,500.
17 a. Type of Application: 5MW Exemption.
b. Project No.: P–9263–000.
c. Date Filed: June 3, 1985.
d. Applicant: Hutchins-Stevens Branch Hydro, Inc.
e. Name of Project: Hutchins-Stevens Branch.
f. Location: On the Jail Branch River in Washington County, Vermont.
g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2709.
h. Contact Person: Kermit Hutchins, P.O. Box 222, East Barre, VT 05649.
i. Comment Date: September 23,1985.
j. Description of Project: The proposed project would consist of: (1) An existing 10-foot-high and 60-foot-long concrete gravity dam with a spillway crest elevation of 1072 feet m.s.l. owned by Hutchins and Perreault, Inc.; (2) an existing reservoir of negligible size and storage capacity; (3) a proposed 295-foot-long and 48-inch-diameter penstock; (4) a proposed powerhouse to contain one turbine/generator unit with an installed capacity of 100 kW; (5) an existing 18-foot-long tailrace; (6) a new 480-volt transmission line 100 feet long; and (7) appurtenant facilities. The estimated average annual energy produced by the project would be 450,000 kWh.
k. Purpose of Project: Project power would be sold to Green Mountain Power Corporation.
l. This notice also consists of the following standard paragraphs: A3, 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 develop the project.
18 a. Type of Application: Preliminary Permit.
b. Project No.: 9296–000.
c. Date Filed: June 19, 1985.
d. Applicant: Seneacquoteen Associates.
e. Name of Project: Trapper Creek.
f. Location: On Trapper Creek, tributary to Rapid Lightning Creek in Bonner County, Idaho.
g. Filed Pursuant to : Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Dan Jacobson, P.O. Box 905, Sandpoint, ID 83864.
i. Comment Date: October 15, 1985.
j. Description of Project: The proposed project would consist of: (1) A 3-foot-high diversion dam at elevation 4,000 feet; (2) a settling tank; (3) a 6,000-foot-long, 21-inch-diameter pipeline; (4) a powerhouse containing two generating units with a total capacity of 600 kW and an average annual generation of 2.6 GWh; and (5) a 2.2-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 $45,000. No new roads would be constructed or drilling conducted during the feasibility study.
k. Purpose of Project: Project power would be sold.
l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.
19 a. Type of Application: Preliminary Permit.
b. Project No.: 9339–000.
c. Date Filed: July 8, 1985.
d. Applicant: Mountain Empire Hydro, Ltd.
e. Name of Project: Mountain Empire Hydroelectric Project.
f. Location: On Leavitt Creek, within Toiyabe National Forest, in Mono County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Roy McDonald, P.O. Box 11154, Beverly Hills, CA 90213–4154.

i. Comment Date: October 15, 1985.

k. Description of Project: The proposed project would consist of: (1) 5-foot-high diversion dam at elevation 7,810 feet; (2) a 42-inch-diameter, 1,500-foot-long low pressure pipe; (3) a 30-inch-diameter, 1,700-foot-long penstock; (4) a powerhouse to contain generating units with a total rated capacity of 2,450 kW operating under a head of 620 feet; and (5) a 3-mile-long, 12.5-kV transmission line would connect the project with an existing Southern California Edison Company's line northeast of the powerhouse.

l. Purpose of Project: The project's estimated 7.2 million kWh of annual energy will be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D3.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development 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 development application allows an interested person to file the competing 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.

A4. Development Application—Public notice of the filing of the initial development 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 development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

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 and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

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 development application (specify which type of 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 of Practice and Procedure, 18 CFR 385.210, 585.211, 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, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–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 Applicants 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 from the Applicant.) If an agency does not file comments 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 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 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 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 and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions 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 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 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: August 21, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20343 Filed 8-23-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OW-FRL-2887-9]

Availability of the Coastal Marinas Assessment Handbook

AGENCY: Environmental Protection Agency.

ACTION: Announcing the Availability of the Coastal Marinas Assessment Handbook (EPA 904/6-85-132).

SUMMARY: EPA, Region IV recently completed an environmental assessment addressing the regulation and development of coastal marinas in the southeastern United States. The Coastal Marinas Assessment Handbook provides information and guidance for the environmentally sound development of coastal marinas. The Handbook covers key marina development topics including marina siting, environmental impacts of marina development, marina impact mitigation measures and regulation of coastal marina development in EPA, Region IV. A general information booklet "Coastal Marinas: An Environmental Approach" that serves as a non-technical introduction to the subject of coastal marina development and a guide to the Handbook is also available.

ADDRESS: Copies of the Coastal Marinas Assessment Handbook and information booklet may be obtained by contacting Mr. Robert J. Lord, Project Monitor, Environmental Assessment Branch, EPA-Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/881-3776 or FTS 257-3776.

FOR FURTHER INFORMATION CONTACT: Robert Lord at 404-881-3776.

Dated: July 30, 1985.

Sanford W. Harvey, Jr.,

Acting Regional Administrator.

[FR Doc. 85-20316 Filed 8-23-85; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-2887-5]

Antidegradation Policy; Water Quality Standards; Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA announces the availability of a series of questions and answers on the antigradation policy and its interpretation. The document addresses the origin and application of the policy in broad terms and in specific examples. An antidegradation policy is one of the required components of water quality standards adopted by the States and approved by EPA pursuant to Section 303(c) of the Clean Water Act.

Availability of Document: Copies of the document, titled *Questions and Answers on Antidegradation* are available by written request from the name and address listed below.

FOR FURTHER INFORMATION CONTACT: Mr. David K. Sabock, Chief, Standards Branch, Criteria and Standards Division (WH-585), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 245-3042.

SUPPLEMENTARY INFORMATION:

Background

Water quality standards for all waters of the United States are required to be established by the States pursuant to the general requirements of section 303(c) of the Clean Water Act. An antidegradation policy is one of the minimum requirements to be included in a State's standards. The basic policy was established on February 8, 1968, by the Secretary of the U.S. Department of the Interior. It was included in the first water quality standards regulation, 40 CFR 130.17, 40 FR 55340-41, November 28, 1975. It was slightly refined and repromulgated as part of the current program regulation published on November 8, 1983, (48 FR 51400, 40 CFR 131.12).

This document describes the antidegradation policy and its application. The rationale for the Agency's requirements and interpretation is also included.

Dated: August 16, 1985.

Henry L. Longest II,

Acting Assistant Administrator for Water.

[FR Doc. 85-20317 Filed 8-23-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-42072; FRL-2866-7]

2-Chloro-1,3-Butadiene; Response to the Interagency Testing Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice is EPA's response to the Interagency Testing Committee's (ITC's) recommendation that EPA consider requiring chemical fate and

environmental effects testing of 2-chloro-1,3-butadiene (chloroprene, CAS No. 126-99-8) under section 4(a) of the Toxic Substances Control Act (TSCA). EPA is not at this time initiating rulemaking under section 4(a) to require chemical fate or environmental effects testing of chloroprene.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll Free: (800-424-9065). In Washington, D.C. (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTAL INFORMATION: EPA is not initiating rulemaking at this time under section 4(a) of TSCA to require environmental effects or chemical fate testing of chloroprene as designated by the ITC In its Fifteenth Report.

I. Introduction

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established the ITC to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act.

The ITC designated chloroprene (CAS No. 126-99-8) for priority consideration in its 15th Report submitted to EPA on November 6, 1984. The report was published in the **Federal Register** of November 29, 1984 (49 FR 46931). The ITC recommended that chloroprene be considered for chemical fate testing, including water solubility and persistence, and environmental effects testing, including acute toxicity to algae, aquatic invertebrates, and sensitive life stages of fish. The bases for these recommendations were as follows: (1) Estimated annual production volume of 254 million pounds; (2) probable environmental release; (3) need for information on the rate and extent of chloroprene's partitioning to the atmosphere and other environmental media; (4) lack of persistence data; and (5) inadequate ecotoxicology data (LC_{50} and EC_{50} values were based on nominal concentrations).

Further testing for health effects was not recommended by the ITC because sufficient testing of potential health effects either has been conducted, is underway, or is planned. The National Toxicology Program is testing chloroprene for a number of toxicological endpoints (sperm morphology and vaginal cytology; *in vivo* cytogenetics, carcinogenicity by inhalation, toxicokinetcs and metabolism, inhalation teratology, and fertility assessment in mice).

In evaluation the ITC's testing recommendations for chloroprene, EPA considered all relevant information, including: (1) Information presented in the ITC's Fifteenth Report; (2) information reported by manufacturers of chloroprene; (3) data submitted under TSCA sections 8(a), Preliminary Assessment Information Rule (40 CFR Part 712), and 8(d), Health and Safety Data Reporting Rule (40 CFR Part 716); and (4) other published and unpublished data available to the Agency. Based on its evaluation, as discussed in Unit III, EPA is not initiating rulemaking at this time under section 4(a) to require chemical fate or environmental effects testing of chloroprene.

II. Review of Available Data

A. Production, use, and Exposure

Chloroprene (2-chloro-1,3,-butadiene) is a colorless liquid at room temperature (boiling point 58.4 °C at 1 atm., Ref. 1) with an ethereal odor (Ref. 2). It is volatile (vapor pressure 188 mm Hg at 20 °C, Ref. 3) and water soluble (1270 mg/l at 25 °C, Ref. 4).

1. *Production and use.* The major current U.S. manufacturers of chloroprene are E.I. du Pont de Nemours & Co., Inc., and Denka Chemical Corp. Production information has been submitted under TSCA section 8(a) as confidential business information (CBI). The total annual production volume can be estimated, however, from its use in the production of polychloroprene (neoprene) elastomers, the reported significant use of chloroprene (Ref. 5). In 1983, approximately 254 million pounds of polychloroprene were produced in the United States (Ref. 6); the amount of chloroprene produced is expected to be similar. In 1976, approximately 63 percent of the production volume of polychloroprene was used in the production of automotive tubing, belts, and gaskets; 13 percent in wire and cable jackets; 10 percent in contruction applications; and 8 percent in adhesives (Ref. 7).

Conoco Chemicals Co. reported production of 1.71 million lbs of chloroprene on the 1977 TSCA Inventory as a reaction by-product of ethylene cichloride manufacture. Conoco has stated that current (1984) annual production of chloroprene is still at approximately that level (Ref. 8).

2. *Exposure and release.* Information submitted as CBI by the manufacturers under section 8(a) fo TSCA indicates that there is substantial release of chloroprene to the evnironment for manufacturing and processing.

The primary route of release during manufacturing and processing is through vents to the atmosphere. Two chloroprene exposure estimates were made by EPA for one of the manufacturing sites. Airborne levels were estimated assuming first, atmospheric degradation as predicted by the FAP (Fat of Atmospheric Pollutants) mathematical model, and second, no atmospheric degradation. The maximum ambient atmospheric concentration of chloroprene in the vicinity of the manuracturing plant is 5.1 ppb (Ref. 9). Air monitoring data from 1984 were provided by Denka Chemical Corp. for its manufacturing and processing site where water chloroprene is discharged to biological oxidation ponds for treatment. Chloroprene concentrations in air at the biological waste treatment facility were less than 0.5 pp. (Ref. 10).

Chloroprene is expected to occur in the aquatic environment at very low levels. At the manufacturing and processing site where chloroprene is treated in biological oxidation ponds, a general exposure evaluation model (EXAMS) used by EPA predicted a maximum concentration of 2.5 ppb in the stream at the point of chloroprene effluent release after treatment (Ref. 11). This ambient concentration would be further reduced by volatilization and down-stream dilution.

Estimates were also made of altmospheric depositons to a lake near a manufacturing site. Assuming a water depth of only 1 meter, the concentration of chloroprene in water as a result of atmospheric release was calculated to be 0.18 ppb (Ref. 9). Actual concentrations in the lake are expected to be less than this value, because this estimate neglects volatilization, transformation, transport from the lake, and the likelihood that water depth is greater than 1 meter.

Conoco Chemical Co. was the only company to report production of waste chloroprene as a reaction by-product of ethylene dichloride manufacture. The waste chloroprene is incinerated as part of the "tars" formed at the bottom of processing columns (Ref. 12).

No significant release of chloroprene is expected from the final polychloroprene products because steps are taken to recover both light and heavy monomers after polymerization. The Consumer Poduct Safety commission in a limited literature search found no information to suggest that significant levels of chloroprene remain in any consumer product (Ref. 13).

B. Chemical Fate

As discussed in Unit II.A. above, chloroprene is water soluble, although

its volatility indicates that it would partition to the atmosphere if an aquatic release were to occur. Volatilization half-life estimates range from 1–4 days (Ref. 9).

Once released or partitioned to the atmosphere, chloroprene is oxidized rapidly by reacting with hydroxyl radicals and ozone (Ref. 14). The atmospheric half-life of chloroprene was estimated by EPA to be 1.55 hours (Ref. 15).

C. Environmental Effects

Acute toxicity studies of chloroprene have been conducted using fish and algae (Ref. 16). A test of bluegill sunfish (*Lepomis macrochirus* Raf.) under continuous-flow conditions resulted in a 96-hr LC_{50} of 245 ppm, based on nominal concentrations. For the diatom (*Navicula seminulum* var. *hustedtii* Patr.) batch growth rate test, the 7-day EC_{50} was 380 ppm, also based on nominal concentrations.

Chloroprene is not likely to bioconcentrate or bioaccumulate in organisms, bsed on the octanol/water partition coefficient (log P=1.73) calculated using the method of Hansch and Leo (Ref. 17).

III. Decision Not To Initiate Rulemaking

The Agency is not at this time proposing testing of section 4 of TSCA, for the following reasons: (1) Adequate water solubility data are available; (2) adequate fate and monitoring data and modeling results are available to reasonably predict limited persistence in the environment; (3) available data provide no evidence of potential unreasonable risk to aquatic organisms; and (4) although there is substantial production and release of chloroprene to the air, available data are sufficient to reasonably predict that chloroprene will not enter or partition to the aquatic environment in sufficient quantitites to warrant further aquatic toxicity testing.

Chloroprene is rapidly degraded in the atmosphere and is not expected to enter the aquatic environment in substantial quantities (see Units II.A. and C. above). Environmental levels of chloroprene in air and water are expected to be less than 0.5 ppm and 3 ppb, respectively (see Unit II.A.).

IV. Public Record

The EPA has established a public record for this testing decision, docket number [OPTS–42072], which includes:

A. Supporting Documentation

(1) **Federal Register** notice designating chloroprene to the Priority List and any public comments received thereon (49 FR 46931; November 29, 1984).

(2) Rules requiring TSCA section 8(a) and 8(d) reporting on chloroprene (49 FR 46739, 46741; November 29, 1984).

(3) Communications from industry consisting of letters, contact reports of telephone conversations, and meeting summaries.

(4) Published and unpublished data.

B. References

(1) Verschueren, K. Handbook of Environmental Data on Organic Chemicals. 2nd ed. New York: Van Nostrand Reinhold Co. p. 384. 1983.

(2) Johnson, P.R. "Chloroprene" under "Chlorocarbons and chlorohydrocarbons" in Kirk-Othmer Encyclopedia of Chemical Technology. 3rd ed., Vol. 5, pp. 773–785. E.I. du Pont de Nemours & Co., Inc. 1979.

(3) NIOSH. Criteria for a recommended standard . . . Occupational exposure to chloroprene. U.S. Dept. of Health, Education, and Welfare. National Institute for Occupational Safety and Health. DHEW (NIOSH) Publ. No. 79–210. 176 pp. 1977.

(4) Du Pont. Solubility and removal of organic materials from waste brine. Biweekly Summary No. 73–5. 1973.

(5) CEH. Chemical Economics Handbook. Stanford Research Institute. Menlo Park, CA: SRI International. Sections 300.5802 J.K. 1982.

(6) Greek, B.F. Elastomers finally recover growth. *Chem. Eng. News*, April 30, 1984, pp. 35–56.

(7) International Agency for Research on Cancer. IARC monographs on the evaluation of the carcinogenic risk of chemicals to humans, v. 19. Lyon, France: IARC; 131–156. 1979.

(8) Hall, J.J. Letter from J.J. Hall, Conoco Chemical Co., to M. Grief, TSCA ITC. July 20, 1984.

(9) Harrigan, P. Memorandum from P. Harrigan, EPA Design Development Branch, to K. Hart, EPA Test Rules Development Branch. April 4, 1985.

(10) Hinkson, R.E. Letter from R.R. Hinkson, Denka Chemical Corp., to K. Hart, EPA Test Rules Development Branch. May 1, 1985.

(11) Harrigan, P. Memorandum from P. Harrigan, EPA Design Development Branch, to K. Hart, EPA Test Rules Development Branch. April 26, 1985.

(12) Hall, J.J. Telephone conversation. K. Hart, TRDB, USEPA to J.J. Hall, Conoco Chemical Co., Houston, TX. March 25, 1985.

(13) Simpson, G. Memorandum from G. Simpson, U.S. Consumer Product Safety Commission, August 12, 1980.

(14) Cupitt, L.T. Fate of toxic and hazardous materials in the air environment. Research Triangle Park, NC: U.S. Environmental Protection Agency; EPA Report No. EPA–600/3–80–084. Available from NTIS, Springfield, VA: PB 80–2211948. 1980.

(15) Unpublished data. Estimates of physical/chemical properties and fate of chloroprene. EPA Design Development Branch. April 19, 1985.

(16) Academy of Natural Sciences of Philadelphia. Toxicity tests on the fish, *Lepomis macrochirus* Raf., and the diatom *Navicula seminulum* var. *hustedtii* Patr. for E.I. du Point de Nemours and Company. Acad. Nat. Sci. Phil., Philadelphia, PA 19103. 1971.

(17) Hansch, C. Leo, A. Substituent constants for correlations analysis in chemistry and biology. New York, NY: John Wiley & Sons. 1979.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in Rm. E–107, 401 M St., SW., Washington, D.C., from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

(15 U.S.C. 2603)

Dated: August 19, 1985.

Marcia Williams,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85–20308 Filed 8–23–85; 8:45 am]

BILLING CODE 6560–50–M

[OW-FRL-2888-4]

Underground Injection Control Program; Proposed Fracture Gradients and Establishment of Maximum Injection Pressure Formula for Rule Authorized Fields in the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA Region III has, after extensive investigation, developed and is proposing, for public comment today, fracture gradients and a maximum injection pressure formula for oil/gas-bearing geologic formations in the Commonwealth of Pennsylvania where enhanced recovery injection wells operate under the Underground Injection Control (UIC) program's rule authorization. EPA is making this proposal in accordance with the Programmatic Requirements and State Specific Requirements of the Underground Injection Control (UIC) program, §§ 144.22(b) 144.28(f)(3)(i) and 147.1954(a) respectively.

DATES: Anyone wishing to make comments for the record may do so until October 3, 1985. If no significant public comments are received which warrant changes to this proposal, including public comment which may be received if a public hearing is held, this proposal will become final on November 2, 1985. A public hearing to discuss this proposal has been scheduled for 7:00 p.m. on Thursday, September 26, 1985. However, if sufficient public comments requesting a public hearing are not received by

September 17, 1985. EPA reserves the right to cancel this hearing.

ADDRESS: Comments should be submitted to Stephen Platt, Pennsylvania Implementation Section, Water Supply Branch, USEPA, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. The public hearing will be located at the University of Pittsburgh, Bradford Campus auditorium, East Washington Street, Bradford, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Stephen Platt, (215) 597-2783.

SUPPLEMENTARY INFORMATION:

Background

Section 147.1954(a)(1)(i) of the Underground Injection Control (UIC) program State Specific Requirements states * * * "the owner or operator shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum injection pressure after notice, opportunity for comment, and opportunity for public hearing * * *".

EPA, Region III has developed fracture gradients and a maximum injection pressure formula for oil/gas-bearing geologic formations in the Commonwealth of Pennsylvania where enhanced recovery operations occur under the UIC program's rule authorization.

Basis for Proposal

The proposed fracture gradients and the maximum injection pressure formula set forth today were developed from information submitted to EPA during the promulgation process of the Pennsylvania UIC program in 1984 as well as from additional information supplied to EPA by owners and operators during the first year of program implementation.

Table 1 provides information on the fracture gradient of each of the geologic formations and the representative fields of concern. These fracture gradients were determined by analyzing instantaneous shut-in pressures, step-rate tests, and other relevant geologic data from wells drilled into these oil/gas-bearing strata. During calculation of each fracture gradient the hydrostatic pressure gradient was assumed to be equivalent to .433 psi/ft of depth multiplied by the average depth to the top of the producing formation.

TABLE 1

Oil/gas fields	Producing formation(s)	Fracture gradient
Bradford and Guffey	Bradford Sands: 1st, 2nd, and 3rd.	1.18
Lewis Run	do	1.18
Windfall	do	1.21
Shinglehouse and Ormsby	Chipmunk	1.20
Kane	Kane Sand	1.20
Youngsville	Glade	1.21
	Cherry Grove	1.23
Foster-Reno	Venango Sands	1.10
Pleasantville	Venango/Red Valley	1.10
Glade and Morrison Run	Glade	1.21
Cooper	Cooper	1.24
Washington-Taylorstown	Gordon Sand (and related sands including Big Injun, Squaw Sand, 100 Foot Sand, Fourth Sand and Fifth Sand).	1.20

The maximum injection pressure formula to be utilized for each well or well field authorized by rule is as follows:

$$P_{max} = [\text{Fracture Gradient} - (.433 \times \text{Specific Gravity})] \times \text{Well Depth}$$

In determining final maximum injection pressures, if the injection fluid does not have a specific gravity (Sg) of 1.00, the hydrostatic pressure gradient (.433 psi/ft.) must be multiplied by the specific gravity of the injection fluid before being subtracted from the fracture gradient. The shallowest well depth in a rule authorized project should be the well depth utilized for multiplication purposes for calculation of maximum injection pressure for all wells in that project.

If a sufficient data base were not available to determine an appropriate formation fracture gradient, EPA Region III did not list a specific gradient. Therefore, for those geologic formations being utilized for the enhanced recovery of oil or gas not listed above, the formula to be utilized for determining maximum injection pressure is:

$$[.733 \times (\text{Specific Gravity})] \times \text{Well Depth (shallowest well of project)}$$

Upon EPA's receipt of additional data appropriate to the determination of the fracture gradient for a specific formation or a specific field within a particular formation, or for the calculation of maximum injection pressure, EPA Region III will entertain amendments to the above specifications. The request must be in writing and sent to the address provided at the beginning of this notice. Also, anyone wishing to review the supporting information which led to the development of this proposal may do so by visiting the offices of EPA Region III.

Dated: August 21, 1985.

James M. Seif,

Regional Administrator, EPA Region III.

[FR Doc. 85-20432 Filed 8-23-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0515D]

ACH Transaction Data Report; Final Approval of Information Collection Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final approval of information collection request.

SUMMARY: Notice is hereby given of final approval of the ACH Transaction Data Report (FR 2220; OMB No. 7100-0211) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public). Respondents will have the option of filing the reports weekly or daily.

In response to comments raised during the public comment period, the Board is also modifying the ex post monitoring procedures for automated clearing house transactions by both Federal Reserve and privately operated ACHs that obtain net settlement services from the Federal Reserve.

DATE: The Board will begin collecting information from privately operated ACHs beginning December 5, 1985.

FOR FURTHER INFORMATION CONTACT: Edward C. Ettin, Deputy Director (202/452-3368), David B. Humphrey, Assistant Director (202/452-2557), Division of Research and Statistics; Elliott C. McEntee, Associate Director (202/452-2231), Florence M. Young, Adviser (202/452-3955), Division of Federal Reserve Bank Operations; Joseph R. Alexander, Attorney (202/452-2489), Legal Division); or Joy W. O'Connell, Telecommunications Device for the Deaf (202/452-3244).

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC. 20551 (202/452-3829).

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC. 20503 (202-395-6880).

SUPPLEMENTARY INFORMATION: Recently, the automated clearing house (ACH)

mechanism has been evolving in such a way that it appears to be taking on many of the characteristics of large-dollar electronic funds transfer systems, and consequently presents many of the same risks. In light of the changes occurring in the ACH, the Board directed its staff to undertake a study of ACH risk, and, on May 17, 1985, issued for comment a series of questions concerning the various aspects of such risk. See Docket No. R-0515B, 50 FR 21,130 (May 22, 1985).

In its May 17 request for comments, the Board noted that pending the formulation a new policy to deal with ACH risk, it had determined that its procedures for ex post monitoring of intra-day credit exposures should be modified to (1) recognize the potential risks associated with ACH transactions processed by both the Federal Reserve and privately operated ACHs, and (2) inhibit the use of the ACH to circumvent the Board's risk reduction policies for large-dollar electronic funds transfer systems. In order to meet these objectives, the Board requested comments on a modification of its ex post monitoring procedures so that gross debits resulting from the origination of credit transactions and gross credits resulting from the receipt of credit transactions would be posted at the Reserve Banks' opening of business on the settlement date, and gross credits resulting from the origination of debit transactions and gross debits resulting from the receipt of debit transactions would be posted at the Reserve Banks' close of business on the settlement date.

The Board determined that any change in the data used for its ex post monitoring procedures would apply not only to the Reserve Banks, but also to privately operated ACHs that obtain net settlement services from the Federal Reserve. Accordingly, such privately operated ACHs would be required to provide any data necessary for modification of the ex post monitoring system for each of its participants.

In response to the issues raised by the commenters, the Board has determined to give final approval to the proposed information collection request, but to make certain modifications to the proposal and to the procedures for ex post monitoring of the intra-day credit exposures. Specifically, the Board made the following decisions:

1. Privately operated ACHs will not be eligible to receive Federal Reserve net settlement services unless they agree to provide the Federal Reserve with the following data elements for each settling participant:[1]

(a) The total dollar value of gross debits resulting from the origination of credit transactions,

(b) The total dollar value of gross credits resulting from the receipt of credit transactions,

(c) The total dollar value of gross credits resulting from the origination of debit transactions, and

(d) The total dollar value of gross debits resulting from the receipt of debit transactions.

2. Because the majority of commenters reported that it would be less costly to provide the four data elements regardless of the dollar value of each element, the Board has determined not to adopt a dollar cut-off for this information collection request.

3. Privately-operated ACHs will be given the option of submitting data on a weekly basis for a seven day period ending on Wednesday or submitting the ex post data each day with settlement data.

4. Only transactions processed solely by the privately operated ACH should be included in the information provided to the Federal Reserve. Any transactions deposited by a privately operated ACH with the Federal Reserve will be included in the ex post monitoring data generated by the Reserve Banks.

5. The Board has modified the way it will monitor ACH transactions to determine an institution's intra-day position. Specifically, rather than posting ACH credit transactions at the opening of business and ACH debit transactions at the close of business, the Board determined that all ACH transactions will be posted to the daylight overdraft monitoring system at the opening of business on the settlement date. It should be noted that (a) this procedure may be modified after the Board reviews the staff study on ACH payments risks now underway, and (b) these procedures are for monitoring purposes only and do not affect the finality accorded to these ACH transactions under the Reserve Banks' uniform ACH operating circulars or net settlement agreements with privately operated ACHs.

6. The Federal Reserve will begin collecting the four data elements from privately operated ACHs on December 5, 1985, rather than September 30, 1985, as originally proposed.

7. Federal Reserve operated ACHs will also have to provide the four data elements to the Board, and the data for ex post monitoring procedures will also be applied to ACH transactions processed by the Federal Reserve. The costs of providing these data to the Board and of the monitoring will be included in the Federal Reserve's ACH cost base so that the new ex post monitoring procedures will have a comparable effect on Federal Reserve and privately operated ACHs.

The Board has determined that this information collection will not have a significant economic impact on a substantial number of small entities.

By order of the Board of Governors of the Federal Reserve System, August 21, 1985.

James McAfee,

Associated Secretary of the Board.

[FR Doc. 85-20335 Filed 8-23-85; 8:45 am]

BILLING CODE 6210-01-M

[1] The term "settling participant" is defined as a participant for which settlement entries are presented to the Federal Reserve. A settling participant may settle for its own account only or for its own account and the accounts of one or more respondents.

Signal Hills Associates, Inc.; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has 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 225.24) 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)).

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 to the Reserve Bank indicated for that application 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.

Comments regarding this application must be received not later than September 16, 1985.

A. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Signal Hills Associates, Inc.*, West St. Paul, Minnesota; to acquire 100

percent of the voting shares of State Bank of Hampton, Hampton, Minnesota.

Board of Governors of the Federal Reserve System, August 20, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-20342 Filed 8-23-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreement for a Project to Support a Cross-sectional Epidemiologic Study to Evaluate the Possible Relationship of Birth Defects to Residence Near Superfund Sites; Availability of Funds for Fiscal Year 1985

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1985 for a Cooperative Agreement to assist the California Department of Health Services to conduct a cross-sectional epidemiologic study to determine the degree, if any, that rates of congenital malformation are different in census tracts where exposure to superfund hazardous waste sites occur compared to rates in other San Francisco Bay area census tracts. This program is authorized under section 104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as the "Superfund" Act).

There is concern that exposure to water and air contaminants from hazardous waste sites are associated with congenital malformations. In California, concern has recently focused on Santa Clara County where a California Department of Health Services report suggested higher congenital malformations and spontaneous abortions for populations living in an area receiving water contaminated by chemical leaks.

Assistance will be provided only to the State of California which, under its legal authorities, has the responsibility to perform studies on the health of its residents. Under the "Superfund" Act, CDC is authorized to enter into cooperative agreements with States to conduct studies and/or surveys of potential health effects at hazardous waste sites. Accordingly, California has requested assistance to conduct the above described epidemiologic study.

This is not a formal request for applications, and no other applications will be accepted.

The proposed project is of 3 years duration. It is expected that approximately $185,300 will be available during Fiscal Year 1985 to support this project. Continuation awards will depend upon scientific need, technical feasibility, and the availability of funds.

Technical information may be obtained from Larry Edmonds, Birth Defects Branch, Chronic Disease Division, Center for Environmental Health, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 452-4035 or FTS 236-4035.

Business information may be obtained from Luther E. DeWeese, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, GA. 303035, telephone (404) 262-6575 or FTS 236-6575.

This project is not subject to review under Executive Order 12372.

Dated: August 16, 1985.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 20350 Filed 8-23-85; 8:45 am]

BILLING CODE 4160-18-M

Cooperative Agreement for a Project to Design and Support a Communitywide Survey of Human PCB Serum Levels; Availability of Funds for Fiscal Year 1985

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1985 for a Cooperative Agreement to assist the Indiana State Board of Health (ISBH) to design and conduct a communitywide survey in Monroe County to evaluate the extent and magnitude of elevated polychlorinated biphenyls (PCB) serum levels.

In 1981, the U.S. Environmental Protection Agency identified PCB's in soil leachates and groundwater samples around three waste disposal sites in Bloomington in Monroe County. Two hundred additional sites in the county are being evaluated. In 1984, the ISBH and CDC conducted a pilot study which was intended to measure exposure to PCB in persons living around the above mentioned three sites who were presumed to be at higher risk of exposure. The findings suggested that in general persons residing in the three sites may have higher than average PCB serum levels.

The State of Indiana, under its legal authorities, has the responsibility to perform studies related to the health of its residents. Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as the "Superfund" Act), CDC is authorized to enter into Cooperative Agreements with States to conduct studies and/or surveys of potential health effects at hazardous waste sites. Accordingly, Indiana has requested assistance to conduct the above described survey.

This is not a formal request for applications, and other applications will not be accepted.

The proposed project is of 3 years duration. It is expected that approximately $269,000 will be available during Fiscal Year 1985 to support this project. Continuation awards will depend upon scientific need, technical feasibility, and the availability of funds.

Technical information may be obtained from Paul A. Stehr, Dr.P.H., Chronic Diseases Division, Center for Environmental Health, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 452-4161 or FTS 236-4161.

Business information may be obtained from Luther E. DeWeese, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Ga. 30335, telephone (404) 262-6575 or FTS 236-6575.

This project is not subject to review under Executive Order 12372.

Dated: August 16, 1985.

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 85-20349 Filed 8-23-85; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 85E-0320]

Determination of Regulatory Review Period for Purposes of Patent Extension; Ridaura Capsules

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Ridaura capsules and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Ridaura capsules, an oral form of auranofin, which is indicated in the management of adults with active classical or definite rheumatoid arthritis. Based on this approval, Smith Kline Beckman Corp. now seeks patent term restoration.

FDA has determined that the applicable regulatory review period for Ridaura capsules is 3,005 days. Of this time, 1,677 days occurred during the testing phase of the regulatory review period, while 1,328 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* March 3, 1977. FDA has verified that the date that the exemption application was received and became effective was March 3, 1977.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* October 5, 1981. FDA has verified that the date that the application for the new drug approval was received and became effective was October 5, 1981.

3. *The date the application was approved:* May 24, 1985. FDA has verified that the application (NDA 18-689) was approved on May 24, 1985.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 25, 1985, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 24, 1986, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the document number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 19, 1985.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 85-20266 Filed 8-23-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85E-0311]

Determination of Regulatory Review Period for Purposes of Patent Extension; Seldane Tablets

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Seldane tablets and is publishing this notice of that determination has required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims the human drug product.

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

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Seldane tablets, an oral form of terfenadine, which is indicated for the treatment of seasonal allergic rhinitis. Based on the recent

approval of Seldane tablets, Merrell Dow Pharmaceuticals, Inc., applied for patent term restoration.

FDA has determined that the applicable regulatory review period for Seldane tablets is 4,614 days. Of this time, 3,814 days occurred during the testing phase of the regulatory review period, while 800 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* September 20, 1972. The applicant claimed August 16, 1972, as the date that the exemption was submitted; however, FDA did not receive the exemption until August 22, 1972. Moreover, under FDA regulations (21 CFR 312.1(b)(4)), the exemption did not become effective until 30 days after the notice of claimed investigational exemption for the drug was received by FDA.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* March 1, 1983. FDA has verified that the application (NDA 18-949) was initially submitted on March 1, 1983.

3. *The date the application was approved:* May 8, 1985. FDA has verified that the application (NDA 18-949) was approved on May 8, 1985.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 25, 1985, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 24, 1986, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and indentified with the document number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 19, 1985.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 85-20267 Filed 8-23-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85N-0179]

Recommendations To Minimize Diagnostic Nuclear Medicine Exposure to the Embryo, Fetus, and Infant; Availability of Draft Recommendations

Correction

In FR Doc. 85-16425 appearing on page 28265 in the issue of Thursday, July 11, 1985, make the following correction: In the Second Column, in the date paragraph, "September 1" should read "September 9".

BILLING CODE 1505-01-M

Centers for Disease Control

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 50 FR 26053, June 24, 1985), is amended to reflect the reorganization of the Center for Environmental Health and a restatement of its mission.

Section HC-B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the statement for the *Center for Environmental Health (HCN)* and substitute the following:

Center for Environmental Health (HCN). Plans, directs, and coordinates a national program to maintain and improve the health of the American people by promoting a healthy environment and by preventing premature death and avoidable illness and disability caused by noninfectious, nonoccupational environmental and related factors. In carrying out this mission, the Center: (1) Assists in increasing the capacity of States to prevent and control environmental and chronic disease public health problems through training, technology transfer, grants, cooperative agreements, contracts, and other means; (2) provides services, advice, technical assistance, and information to State and local public health officials, other Federal agencies, academic, professional, international, and private organizations, and the general public; (3) plans for and provides emergency response assistance to States, localities, other Federal agencies, and international organizations; (4) identifies, designs, develops, implements, influences, and evaluates interventions to reduce or eliminate environmental hazards, exposures to these hazards, and adverse health outcomes resulting from exposure to these hazards; (5) measures, estimates, and predicts the incidence of adverse health outcomes through surveillance, surveys, and registries; (6) measures, estimates, and preducts the incidence of exposure to substances, conditions, or forces in the environment through surveillance, surveys, and registries; (7) describes and evaluates associations between environmental exposures and adverse health outcomes by using information from surveillance systems, surveys, registries, epidemiologic and laboratory studies, and by developing and maintaining a broad base of normative and diagnostic laboratory data; (8) develops and validates advanced laboratory technology for diagnosing chronic diseases and for assessing exposure and health effects in persons exposed or potentially exposed to environmental toxicants or other environmental agents; (9) develops and validates new epidemiologic techniques for use in study of chronic diseases and the effects of exposure to environmental hazards; (10) provides leadership in coordinating efforts in States and in national and international organizations concerned with standardizing selected laboratory measurement systems; (11) conducts special programs, e.g., coordination and review of Environmental Impact Statements; (12) in carrying out the above functions, collaborates, as appropriate, with other Centers/Institute/Offices of CDC.

Office of the Director (HCN1). (1) Manages, directs, coordinates, and evaluates the activities of the Center for Environmental Health (CEH); (2) develops goals and objectives and provides leadership, policy formulation, scientific oversight, and guidance in program planning and development; (3) coordinates assistance provided by CEH to other CDC organizations, other Federal, State and local Government agencies, the private sector, and other nations; (4) provides administrative, fiscal, information, publications, and

distribution services to CEH; (5) coordinates CEH program activities with other PHS agencies and other Federal agencies, as appropriate.

Office of Planning, Legislation, and Information Management (HCN13). (1) Within the policies and guidelines of HHS, PHS, and CDC, conducts CEH planning and evalution activities including tracking objectives and performing evaluation studies; (2) provides information for the development of CEH's annual budget submission and supporting documents; (3) reviews, prepares, and coordinates legislation, congressional testimony, and briefing documents, develops proposed legislation, analyzes bills, and provides for other legislative-related activities; (4) provides publications-related activities including editing, preparing articles and drafting news releases, distributing publications, and bibliographic services; (5) provides technical information support to the environmental epidemiology, toxicologic, and other scientific services and applied research activities of CEH; (6) coordinates the utilization of data, requests for the acquisition of ADP, word processing, and telecommunications equipment, and the provision of information services with the CDC central services; (7) provides liaison with staff offices and other officials of CDC.

Office of Program Operations and Management (HCN14). (1) Plans, coordinates, and provides administrative and management support, advice, and guidance to CEH; (2) coordinates CEH-wide administrative management and support services in the areas of fiscal management, personnel, travel, and other administrative services; (3) prepares annual budget plans and budget justifications; (4) coordinates CEH requirements relating to contracts, grants, cooperative agreements, and reimbursable agreements; (5) develops and implements administrative policies, procedures, and operations, as appropriate, for CEH, and prepares special reports and studies, as required, in the administrative management areas; (6) maintains liaison with staff offices and other officials of CDC.

Division of Birth Defects and Developmental Disabilities (HCN5). (1) Conducts and disseminates findings of epidiologic research, investigations, demonstrations, and programs directed toward determining the environmental, both naturally occurring and man-made, causes of selected adverse reproductive outcomes and perinatal and childhood diseases, including developmental disabilities; (2) plans, develops, establishes, and maintains systems of surveillance including registries for monitoring, evaluating, and disseminating information on these conditions; (3) develops and evaluates prevention strategies and provides training and technical consultation and assistance to States and localities in developing their capacity in planning, establishing, and maintaining surveillance and prevention programs for these conditions; (4) provides training in the epidemiology of these conditions for professionals from within and outside the United States; (5) works closely with international organizations and entities in developing strategies and programs for reducing these conditions; (6) provides assistance to State and local health departments on community exposures to teratogenic, mutagenic, embryotoxic, or other environmental agents adversely interfering with normal growth and development; (7) collaborates and coordinates Division activities with other CDC organizations and PHS agencies, as appropriate.

Division of Chronic Disease Control (HCN6). (1) Serves as the focal point within CDC for the identification of problems, needs, and recommendations of priorities for the prevention and control of chronic diseases, including health problems of older persons and environmentally related health conditions; (2) plans, directs, and conducts epidemiologic research and investigations, demonstrations, and programs directed toward the definition, prevention, and control of chronic diseases that are environmentally related, suspected of being environmentally related, or of multiple etiologies; (3) plans, develops, establishes, and maintains systems of surveillance, including registries, of selected chronic diseases; (4) develops and evaluates prevention strategies and provides training and technical consultation and assistance to States and localities in planning, establishing, maintaining, and evaluating prevention and control programs for selected chronic diseases; (5) conducts surveillance activities and epidemiologic research and evaluation studies into the health effects of ionizing radiation, coordinates PHS/HHS activities in response to radiation emergencies, and participates in response planning and field exercises; (6) plans and conducts specially mandated epidemiologic studies; (7) provides consultation to Federal, State, and local agencies, and other national, international, and private organizations on selected chronic diseases; (8) disseminates to interested individuals and organizations findings from all activities; (9) serves as a primary Federal resource of technical assistance and expertise in the epidemiology and control of selected chronic diseases; (10) coordinates Division activities with other CDC organizations and PHS agencies, as appropriate.

Division of Environmental Hazards and Health Effects (HCN7). (1) Conducts and disseminates findings of surveillance and epidemiologic research and investigations of human exposure to environmental hazards, including man-made and naturally occurring toxins, and resultant and presumed health effects, including environmentally related syndromes of unknow etiology; (2) develops methods and conducts activities to assess risk to human populations from exposure to environmental hazards; (3) plans, develops, implements, and maintains surveillance systems, including registries relating to exposure to environmental hazards, e.g., lead, weather phenomena, and natural hazards, and to resultant diseases or syndromes; (4) provides epidemiologic emergency response to natural and other environmental disasters; (5) maintains liasion with and serves as a primary Federal resource of specialized technical and managerial assistance and consultation to Federal, State and local agencies, and other national, international, and private organizations on a wide range of environmental health issues including natural and other environmental disasters; (6) provides consultation and technical assistance on the development and implementation of environmental health programs addressing the prevention of human health problems associated with environmental toxicants, climate extremes, lead hazards, and other health hazards; (7) develops mechanisms to disseminate information on environmental health technologies to State and local health departments, and to other agencies with related responsibilities; (8) assists States and local governments in the development of personnel, training programs, and other services to deal with chemical and other environmental health hazards; (9) coordinates Division activities with other CDC organizations and PHS agencies, as appropriate.

Division of Environmental Health Laboratory Sciences (HCN8). (1) Develops and maintains a national laboratory response capability for applying state of the art technology to the resolution of noninfectious environmental health emergencies and the identification of hazardous

substances in the population; (2) provides services, advice, assistance, and information to State and local public health authorities, Federal agencies, international organizations, academic, international, and private laboratories, and professional organizations to support laboratory science in the fields of environmental health and noninfectious chronic diseases; (3) assists in increasing the capacity of State, national, and international laboratories through training, technology transfer, cooperative agreements, and other mechanisms to respond to environmental and chronic disease public health problems; (4) measures, estimates, and predicts the incidence of exposure to substances in the environment through laboratory support of surveillance, surveys, registries, and other epidemiologic studies; (5) describes and evaluates associations between environmental exposures and adverse health outcomes by evaluating laboratory information from epidemiologic studies, and by developing and maintaining a broad base of normative and diagnostic laboratory data; (6) develops and validates advanced laboratory technology for assessing both public health problems in selected chronic diseases and genetics, and health effects in persons exposed or potentially exposed to chemical toxicants or other enviromental agents; (7) provides leadership in coordinating efforts in States and in national and international organizations concerned with standardizing selected laboratory measurement systems; (8) conducts and/or supports special laboratory and epidemiologic programs; (9) collaborates with other CDC organizations and PHS agencies, as appropriate.

Division of Injury Epidemiology and Control (HCN9). (1) Proposes goals and objectives for unintentional, nonoccupational national injury prevention and control programs, recommends priority prevention activities and facilitates similar analyses by other interested Federal, State, and local agencies; (2) plans, directs, and conducts epidemiologic research focused on development and evaluation of strategies to prevent injuries; (3) plans, establishes, and evaluates surveillance systems to monitor national trends in morbidity and epidemiology of injuries and to facilitate surveillance by State and local agencies; (4) develops, implements, directs, and evaluates demonstration programs to prevent injuries; (5) provides technical and management consultation and assistance to States and localities in assessing the problem of injuries, planning prevention programs, and evaluating these prevention activities; (6) develops, directs, and provides technical and managerial training in the prevention of injuries; (7) disseminates findings from all activities to Federal, State, and local agencies, private organizations, and other national and international groups; (8) conducts on-site reviews and analyses documents relating to the testing, transportation, or disposal of biological/chemical warfare agents; (9) serves as a primary Federal resource of technical assistance and management expertise in the epidemiology and prevention of unintentional, nonoccupational injuries; (10) coordinates Division activities with other CDC organizations, PHS agencies, and other Federal agencies and private organizations, as appropriate.

Dated: August 15, 1985.

James F. Dickson,

Acting Assistant Secretary for Health.

[FR Doc. 85-20344 Filed 8-23-85; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Pascua Yaqui Indian Reservation, Arizona; Acceptance of Retrocession of Jurisdiction

August 14, 1985.

Pursuant to the authority vested in the Secretary of the Interior by Executive Order No. 11435 of November 21, 1968, (33 FR 17339) and redelegated to the Assistant Secretary—Indian Affairs by 209 DM 8, I hereby accept, as of 12:01 a.m., MST, of the day following publication of this notice in the **Federal Register**, retrocession to the United States of all jurisdiction, Civil and criminal, over the Pascua Yaqui Indian Reservation which was vested in the State of Arizona by section 1(c) of the Act of September 18, 1978, Pub. L. 95-375, 25 U.S.C. 1300f(c) and section 3 of the Act of December 23, 1982, Pub. L. 97-386, 96 Stat. 1946.

The retrocession herein accepted was offered by Proclamation of the Governor of the State of Arizona dated October 4, 1984. By Resoluton No. C-42-84(A), dated September 3, 1984, the Pascua Yaqui Tribe requested that the State of Arizona retrocede civil and criminal jurisdiction to the United States.

James S. Bregman,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85-20352 Filed 8-23-85; 8:45 am]

BILLING CODE 4310-02-M

Fish and Wildlife Service

Endangered and Threatened Species; Receipt of Application for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-691992

Applicant: Nicholas/Hendrix/Post Corp., Key Largo, FL.

The applicant requests a permit for incidental taking in order to capture all specimens of Key Largo wood rats *(Neotoma floridiana smalli)* and Key Largo cotton mice *(Peromyscus gossypinus allapaticola)* from one acre of a three-acre tract he owns and wishes to clear for development, and transplant the specimens to nearby sites.

PRT-696581

Applicant: John M. Hinerwadel, North Syracuse, NY.

The applicant requests a permit to import a sport-hunted trophy of a bontebok *(Damaliscus dorcas dorcas)* culled from the captive herd of Mike D'Alton, Couzierskraal, Bredasddorp, Cape Province, South Africa, for the purpose of enhancement of propagation.

PRT-697111

Applicant: James T. Parsons, Birmingham, AL.

The applicant requests a permit to import a sport-hunted trophy of a bontebok *(Damaliscus dorcas dorcas)* culled from the captive herd of C.J. Retief, Greenlands Game Ranch in Harrismith, South Africa, for the purpose of enhancement of propagation.

PRT-696918

Applicant: Albert A. Cheramie, Golden Meadow, LA.

The applicant requests a permit to import a sport-hunted trophy of a bontebok *(Damaliscus dorcas dorcas)* culled from the captive herd of the Clober Ranch, Mafeking, South Africa, for the purpose of enhancement of propagation.

PRT-697329

Applicant: Darryl J. Hastings, Rochester, MI

The applicant requests a permit to import a sport-hunted trophy of a bontebok *(Damaliscus dorcas dorcas)* culled from the captive herd of Frank Bowker of Grahamstown, South Africa, for the purpose of enhancement of propagation.

PRT-697808

Applicant: Bernard C. Hennings, Modesto, CA.

The applicant requests a permit to import a sport-hunted trophy of a bontebok *(Damaliscus dorcas dorcas)* culled from the captive herd of Theo Erasmus, Free State Safaris, South Africa, for the purpose of enhancement of propagation.

PRT-694184

Applicant: Robert Trembath/Austin Zoo, Austin, TX.

The applicant requests a permit to import 5 captive-born cheetah *(Acinonyx jubatus)* from Neil Hulett, Natal, South Africa, for enhancement of propagation.

PRT-697813

Applicant: Dan Mooney, Kerrville, TX.

The applicant requests a permit to import a sport-hunted trophy of a bontebok *(Damaliscus dorcas dorcas)* culled from the captive herd of Phil van der Merwe, Skietkuil, Cape Province, Republic of South Africa, for the purpose of enhancement of propagation.

PRT-697170

Applicant: Dallas Zoo, Dallas, TX.

The applicant requests a permit to export nine (9) captive-born San Francisco garter snakes *(Thamnophis sirtalis tetrataenia)* to the Jersey Wildlife Preservation Trust, Jersey, for the purpose of enhancement of propagation of the species.

PRT-697917

Applicant: National Park Service, Golden Gate National Recreation Area, San Francisco, CA.

The applicant requests a permit to remove and reduce to possession (take) one specimen of Ravens Manzanita *(Arcostaphylos hookeri ravenii)* to serve as parental stock for artificial propagation of specimens to return to the wild.

PRT-696999

Applicant: Fresno Zoo, Fresno, CA.

The applicant requests a permit to export three (3) captive-born timber wolves *(Canis lupus)* to the Zacango Zoo, Toluca, Mexico, for enhancement of the propagation and survivial of the species.

PRT-697730

Applicant: Honolulu Zoo, Honolulu, HI.

The applicant requests a permit to import one captive born female Asian elephant *(Elephas maximus)* from India for enhancement of propagation of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: August 20, 1985.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-20273 Filed 8-23-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[AA-6661-C]

Alaska Native Claims Selection; Eklutna, Inc.

Correction

In FR Doc. 85-19729 appearing on page 33418 in the issue of Monday, August 19, 1985, make the following corrections: In the first column, in the first paragraph, in the sixth line, "40 FR" should read "50 FR"; in the second paragraph, in the third line, "1988" should read "1985".

BILLING CODE 1505-01-M

Alaska Native Claims Selection; Sealaska Corp.

Correction

In FR Doc. 85-19593 appearing on page 33116 in the issue of Friday, August 16, 1985, make the following correction: In the first column, in the third paragraph, in the third line, remove the words "30 days after".

BILLING CODE 1505-01-M

Resource Management Plans; Colorado; Partial Record of Decision for the San Juan-San Miguel Planning Area

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Availability of Partial Record of Decision for the San Juan-San Miguel Planning Area, Montrose District, Colorado.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the Department of the Interior, Bureau of Land Management (BLM), has issued a Partial Record of Decision on the Final San Juan-San Miguel Resource Management Plan/Environmental Impact Statement (FRMP/EIS).

ADDRESS: Copies of the Partial Record of Decision are available upon request at the San Juan Resource Area Office, Bureau of Land Management, Federal Building, Room 102, 701 Camino del Rio, Durango, Colorado 81301, telephone (303) 247-4982; or Uncompahgre Resource Area, 2505 South Townsend, Montrose, Colorado 81401.

FOR FURTHER INFORMATION CONTACT: David J. Miller, San Juan Resource Area Manager, Federal Building, Room 102, 701 Camino del Rio, Durango, Colorado 81301, telephone (303) 247-4082; or Lance Nimmo, Uncompahgre Resource Area Manager, 2505 South Townsend, Montrose, Colorado 81401, telephone (303) 249-7791.

SUPPLEMENTARY INFORMATION:

Alternatives Analyzed: Four alternatives for managing the resources were considered: Current Management, Resource Conservation, Resource Utilization, and Preferred.

The Current Management Alternative emphasized current management direction, policies, and existing land use plans; it was the No Action Alternative required by the National Environmental Policy Act.

The Resource Conservation Alternative emphasized nonconsumptive natural resource values.

The Resource Utilization Alternative emphasized consumptive use of resources in the planning area.

The Preferred Alternative (called the Proposed Plan in the Final Environmental Impact Statement) balances competing demands by providing goods and services while protecting important environmental values.

Decision: The decision is to adopt the Proposed Plan as the San Juan-San Miguel Resource Management Plan except where the BLM Director authorized certain changes in response to public comments on the Final RMP/EIS. This document identifies one decision reached by BLM. Further decisions will be documented in a subsequent Record of Decision (ROD)

when the remaining protests are resolved by decision of the Director. The specific action contained in this document is:

A wild horse herd consisting of an average of 50 horses will be maintained on the Spring Creek Basin rangeland. All wild horses will be removed from the Naturita Ridge area. This decision responds to a desire by the public to maintain a wild horse herd in southwestern Colorado, while minimizing conflicts with other resources and users of the public lands.

Mitigation Measures: All practical measures will be taken to mitigate adverse impacts. These measures will be strictly enforced during implementation of the RMP. Monitoring will tell how effective these measures are in minimizing environmental impacts. Additional measures to protect the environment may be taken during or following monitoring as warranted.

Dated: August 16, 1985.

Kannon Richards,

Bureau of Land Management.

[FR Doc. 85-20353 Filed 8-23-85; 8:45 am]

BILLING CODE 4310-JB-M

[ES-035241, Group 58]

Louisiana; Filing of Plat of Dependent Resurvey

August 20, 1985.

1. The plat of the dependent resurvey of the Tunica-Biloxi Indian Reservation in section 65, Township 2 North, Range 4 East, Louisiana Meridian, Louisiana, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on October 4, 1985.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., October 4, 1985.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 85-20358 Filed 8-23-85; 8:45 am]

BILLING CODE 4310-GJ-M

Realty Action; Exchange of Public Lands; La Paz and Mohave Counties, AZ

The Bureau of Land Management (BLM) proposes to exchange public land with the State of Arizona in order to achieve more efficient management of the public land through consolidation of ownership.

The following public land is being considered for disposal by exchange pursuant to the Federal Land Policy and Management Act of 1976, according to section 206(a) (90 Stat. 2758, 43 U.S.C. 1716).

Gila and Salt River Meridian, La Paz and Mohave Counties, Arizona

Township	Range	Section	Subdivisions
Mohave County			
20N	21W	8	All.
		18	All.
		20	N2.
16N	21W	1	All.
		3	E2.
		10	NE.
		12	All.
		13	All.
		22	E2E2.
		24	All.
		25	All.
		26	N2; SE.
La Paz County			
8N	19W	1	W2.
		2	All available.
		11	E2; E2W2.
		12	W2.
		13	W2.
		14	E2; E2W2; SWSW.
		15	SESE.
		21	All.
		22	All available.
		23	All.
		24	W2.
		25	W2.
		26	All.
		27	NWNW; E2SE.
		28	All available.
		29	All available.
		32	All available.
		33	All.
		34	All available.
		35	All available.
		36	W2.
7N	19W	3	W2E2; W2.
		4	All.
		5	All.
		6	All available.
		7	All available.
		8	All.
		9	All.
		10	W2E2; W2.

Final determination on disposal will await completion of an environmental analysis. In exchange for these lands, the United States will acquire presently undescribed lands throughout the state.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this notice will segregate the public lands as described in this notice from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above described lands shall terminate upon issuance of a document conveying such lands or upon publication in the Federal Register of a notice of termination of the segregation, or the expiration of two years from the date of the publication, whichever occurs first.

For a period of forty-five (45) days from the date shown below, interested parties may submit comments to the District Manager, Yuma District Office, Post Office Box 5680, Yuma, Arizona 85364.

Dated: August 16, 1985.

J. Darwin Snell,

District Manager, Yuma District Office.

[FR Doc. 85-20357 Filed 8-23-85; 8:45 am]

BILLING CODE 4310-32-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30682]

Hammermill Paper Co.; Exemption From 49 U.S.C. 10746, 10901, 11301, and 11343 et seq.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts (1) the Allegheny Railroad Company, Hammermill Paper Company's (Hammermill) wholly-owned, to-be-formed subsidiary (a) from the provisions of 49 U.S.C. 10901 with respect to the operation of certain lines of railroad and, in connection with the acquisition of a lease and operating agreement and an agreement to interchange, (b) from the provisions of 49 U.S.C. 11301 with respect to the issuance of securities, and (c) from the provisions of 49 U.S.C. 10746; and (2) Hammermill from the provisions of 49 U.S.C. 11343 with respect to its acquisition of a controlling interest in IWK&J Railroad Company.

DATES: This exemption will be effective on August 21, 1985. Petitions to reopen must be filed by September 16, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30682 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Virginia D. Green, 1150 Connecticut Avenue, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washinton, DC 20423, or call 289-4357

(DC Metropolitan area) or toll free (800) 424–5403.

Decided: August 2, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Lamboley concurred with a separate expression. Chairman Taylor was absent and did not participate.

James H. Bayne,

Secretary.

[FR Doc. 85–20289 Filed 8–23–85; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30687]

Missouri Pacific Railroad Co., Lease Exemption; Consolidated Rail Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 11343 *et seq.*, the lease by Missouri Pacific Railroad Company of a 1.8-mile line of Consolidated Rail Corporation between Altamont and East St. Elmo, IL, subject to standard employee protective conditions.

DATES: This exemption is effective on September 25, 1985. Petitions to stay must be filed by September 5, 1985 and petitions for reconsideration must be filed by September 16, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30687 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC. 20423.
(2) James C. Stroo, 1416 Dodge Street, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll-free 800–424–5403.

Decided: August 19, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Chairman Taylor was absent and did not participate in this proceeding. Commissioner Sterrett did not participate in this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 85–20290 Filed 8–23–85; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Festivals Section) to the National Council on the Arts will be held on Monday, September 9, 1985 from 9:00 am-5:30 pm, and on Tuesday, September 10, 1985 from 9:00 am-5:30 pm in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC.

A portion of this meeting will be open to the public on September 10, 1985 from 1:30–3:00 pm to discuss policy issues and guidelines.

The remaining sessions of this meeting on September 9, 1985 from 9:00 am-5:30 pm and September 10, 1985 from 9:00 am-12:30 pm and 3:00–5:30 pm are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1985, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: August 20, 1985.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–20264 Filed 8–23–85; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Physics; Subcommittee for Review of the NSF Nuclear Science Programs; 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 Committtee for Physics; Subcommittee for the Review of the NSF Nuclear Science Programs.

Date and time:

September 10, 1985; 9:00 a.m. to 9:30 p.m.
September 11, 1985; 8:00 a.m. to 4:00 p.m.

Place: Room 341, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of meeting: Closed.

Contact person: Dr. Marcel Bardon, Director, Division of Physics, Room 341, National Science Foundation, Washington, D.C. 20550. Telephone: (202) 357–7985.

Purpose of subcommittee: To provide oversight concerning NSF support and planning for research in nuclear science.

Agenda: To review NSF Nuclear Science Section documentation as part of the program oversight function.

Reason for closing: The meeting will deal with a review of grants and declinations in which the Subcommittee will review materials containing the names of applicant institutions and principal investigators and privileged information from the files pertaining to the proposals. The meeting will also include a review of the peer review documentation pertaining to applicants. 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 Managment Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: August 21, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–20274 Filed 8–23–85; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (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).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: 10 CFR Part 73—Physical Protection of Plants and Materials.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Reports are submitted at irregular intervals as events occur. Licensee logs are submitted to NRC every three months.

5. Who will be required or asked to report: Licensees who are authorized to operate a nuclear power reactor or fuel reprocessing plant, who possess or use special nuclear material or spent reactor fuel in excess of 100 grams, are authorized to transport or deliver to a carrier for transportation or to take delivery of special nuclear material or spent reactor fuel in excess of 100 grams, or who import or export special nuclear material.

6. An estimate of the number of responses: 720

7. An estimate of the total number of hours needed to complete the requirement or request: 5,220.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: NRC is proposing revisions to 10 CFR 73.71 to clarify the requirements for the reporting of safeguards events. Certain definitions of safeguards events would be eliminated or redefined. Telephonic notification and followup reporting requirements for safeguards events would be revised.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 21st day of August, 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85-20338 Filed 8-23-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-321]

Consideration of Issuance of Amendment To Facility Operating License and Opportunity for Prior Hearing; Georgia Power Co. et al.

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-57 issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia (the licensees), for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 1, located in Appling County, Georgia.

In accordance with the licensees' application for amendment dated July 24, 1985, the amendment would modify the Technical Specifications for Hatch Unit 1 to account for and support modifications to the plant design associated with the planned final installation of an Analog Transmitter Trip System (ATTS). The proposed revisions include changes to the following:

1. Surveillance and trip setpoint requirement for the ATTS components;
2. Reactor core isolation cooling turbine exhaust pressure trip setpoint;
3. Drywell pressure sensor functions;
4. Post-accident monitoring instrumentation ranges and surveillance requirements;
5. Trip setpoint/allowable values for reactor vessel water level, shroud water level and reactor steam dome pressure instruments;
6. Reactor steam dome pressure permissive setpoint for Core Spray and Low Pressure Coolant Injection System injection valves; and
7. Nomenclature changes.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By September 25, 1985, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petion for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: (petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the

Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 24, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated a Bethesda, Maryland, this 20th day of August, 1985.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 85–20339 Filed 8–23–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-321]

Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing; Georgia Power Co. et al.

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–57 issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia (the licensees), for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 1, located in Appling County, Georgia.

In accordance with the licensees' application for amendment dated August 1, 1985, the amendment would modify the Technical Specifications for Hatch Unit 1 to: (1) Delete the current requirements that certain Emergency Core Cooling Systems (ECCS) be demonstrated to be operable when a redundant or associated safety-related component is declared inoperable; (2) modify the current requirements for inservice inspection of the reactor coolant system pressure boundary; (3) decrease the number of plant service water pumps required to be operable prior to startup; (4) delete monthly operability tests for ECCS pumps and valves; (5) provide requirements to test Class 1, 2, and 3 components in accordance with section XI of the ASME Boiler and Pressure Vessel Code; and (6) make miscellaneous editorial changes.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By September 25, 1985, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: (petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or

request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 1, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Bethesda, Maryland this 20th day of August, 1985.

For the Nuclear Regulatory Commission.

John F. Stolz,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 85–20340 Filed 8–23–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–305]

Withdrawal of Application for Amendment To Facility Operating Licenses; Wisconsin Public Service Corp.

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Wisconsin Public Service Corporation (the licensee) to withdraw its August 7, 1981 application of the Kewaunee Nuclear Power Plant located in Kewaunee County, Wisconsin. The proposed amendment would have revised the provisions in the Technical Specifications for the Kewaunee Plant in regard to testing pressure isolation valves at variance to our Order of April 20, 1981. The Commission issued a Notice of Consideration of Issuance of the Amendment in the **Federal Register** on July 20, 1983 (48 FR 33095). By letter dated July 19, 1985, the licensee requested, pursuant to 10 CFR 2.107, permission to withdraw its application for the proposed amendment. The Commission has considered the licensee's July 19, 1985 request and has determined that permission to withdraw the August 7, 1981 application for amendment should be granted.

For further details with respect to this action, see (1) NRC Order of April 20, 1981; (2) the application for amendment dated August 7, 1981; (3) the licensee's letter dated July 19, 1985, withdrawing the application for license amendment; and (4) our letter dated August 19, 1985. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the University of Wisconsin Library Learning Center, 2402 Nicolet Drive, Green Bay, Wisconsin 54301.

Dated at Bethesda, Maryland this 19th day of August 1985.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 85–20341 Filed 8–23–85; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 1C–14685; File No. 812–6138]

The Guardian Insurance & Annuity Company, Inc., et al.; application and Opportunity for Hearing

August 20, 1985.

Notice is hereby given that The Guardian Insurance & Annuity Company, Inc. ("Guardian"), 201 Park Avenue South, New York, NY 10003, and The Guardian Separate Account B, registered under the Investment Company Act of 1940 ("Act") as a unit investment trust (the "Account") (collectively known as "Applicants"), as issuers of certain single premium variable life insurance contracts funded by the Account, filed an application on June 24, 1985, and an amendment thereto on August 13, 1985, for an order pursuant to Section 6(c) of the Act, exempting Applicants from the provisions of sections 9(a), 12(d)(1), 13(a), 15(a), 15(b), 26(a)(2), and 27(c)(2) of the Act, and from Rule 6e2(b)(15) thereunder, to the extent necessary to permit transactions described in the application. All interested persons are referred to the application on file with the Commission for a statement of the represenations contained therein, which are summarized below, and are referred to the Act and rules thereunder for a statement of the relevant provisions.

Sections 12(d)(1), 26(a)(2) and 27(c)(2)

Under Applicants' proposed structure, the Account would invest at net asset value in shares issued by either the Value Line Centurion Fund, Inc., The Guardian Cash Fund, Inc., The Guardian Stock Fund, Inc., or the The Guardian Bond Fund, Inc., ("the Funds"), each of which is a diversified open-end management investment company, or units of a unit investment trust, The Shearson Lehman Brothers Fund of Stripped ("Zero") U.S. treasury Securities, Series A, and any subsequent series ("Zero Trust"), to be established by Shearson Lehaman Brothers, Inc. ("Shearson"). The Zero Trust is registered under the Act and will be comprised of multiple unit investment trusts ("Trusts"), each Trust containing U.S. Treasury securities which have been stripped of their unmatured interest coupons, interest coupons which have been stripped from U.S. Treasury securities, and receipts and certificates for such stripped obligations and coupons ("zero coupon bonds"). The Account will purchase units of each Trust based upon the net transactions by contractowners. Applicants state that the total offering price of Zero Trust units placed in the Account, whether they are sold to the Account in the primary or secondary market, will include a "transaction charge." At the time of purchase, the Account will pay that portion of the total price of the units equal to their "net asset value." Guardian will directly pay to shearson out of its general assets a transaction charge, which is currently designed to range from .5–2.0% of the offering price depending upon the maturity of the Trusts for which securities are purchased. Thereafter, Guardian will seek to be reimbursed for the amounts advanced by assessing a charge on the assets of the Account held in the investment divisions investing in the Zero Trust. Applicants represent that this charge may vary, but will only reflect actual costs. These actual costs will include an element of interest compensating Guardian for the delay in recouping amounts advanced. Applicants state that the rate of interest will be based on the current yield for U.S. Treasury bonds having a maturity equal to the weighted average maturity of the bonds held in the Zero Trust. Applicants represent that the total charge against account assets will never exceed an effective annual rate of .50 percent of the average daily net assets of each of the Account's investment divisions investing in the Trusts.

Guardian and the Account seek relief from the provisions of section 12(d)(1) to allow the Account to acquire the units of the Zero Trust and from sections 26(a)(2) and 27(c)(2) to the extent necessary to permit Guardian to recover through an asset charge the amounts paid by it to Shearson in connection with the Account's acquisition of Zero Trust units. In support of their application, Applicants assert that this proposed structure does not raise legal or policy issues materially different from the common separate account structure in which a unit investment trust invests solely in shares of an underlying open-end management investment company, which Applicants assert is permitted by section 12(d)(1)(E) of the Act. Moreover, Applicants note that by permitting the investment divisions of the Account to

be allocated to the Zero Trust, which invests in zero coupon bonds, contractowners will have available an investment vehicle that will have a fixed yield for a specified period of time. Applicants contend that the proposed transaction does not run counter to the statutory purposes underlying section 12. In this regard, Applicants state that the transaction is not a method for leveraging control or assessing overlapping charges. Applicants claim that the compensation received by Shearson is necessary to induce Shearson to create the Zero Trust, to implement the operational procedures for the Zero Trust, and to enter into a contractural agreement with Guardian to maintain a secondary market in Zero Trusts units, and, thus, is a necessary acquisition cost. In this connection, Applicants note that the secondary market here, unlike the case of most publicly offered unit investment trusts, is not merely a desirable feature designed to avoid disruption of the Zero Trust's portfolio; it is necessary to maintain the stabilized rate of return on the funds in an investment division. Applicants also represent that the compensation will reimburse Shearson for operational and overhead expenses, and legal, accounting and evaluator's fees, and that none of this compensation is designed as reimbursement of distribution expenses or compensation for sales efforts. Guardian believes that allocating a proportionate share of the acquisition expenses to all contractowners who allocate premiums to the investment divisions investing in the Zero Trust, rather than permitting the expenses borne by individual contractowners to vary based upon the timing of their particular allocation, benefits contractowners by stabilizing yield and by creating more equitable results among contractowners.

Applicants also believe that the proposed asset charge is a reasonable and proper charge designed to cover expenses that are properly viewed as a cost of operating and administering the Account. Moreover, Applicants point out that Shearson is neither an affiliated person nor a principal underwriter for the Account; therefore the negotiations between Shearson and Guardian and its Account in setting the amount of the compensation were at arm's length and are presumed to have yielded fair values. Finally, Applicants assert that the agreement between Guardian and Shearson in establishing this structure will require that the terms of the transactions will be at least as good, if not better, than the Account could receive from other parties. Applicants note that unit investment trusts offering units to the public charge a sales load of 3 to 5% of purchases while the maximum transaction charge assessed by Shearson is 2%, although Shearson, because units of the Zero Trust will be offered solely to the Account, will bear no distribution expenses.

Applicants assert it is appropriate to recover interest costs through deduction of the proposed asset charge. Guardian expects to advance large amounts in the early years in connection with the purchase of units of interest in the Zero Trust, but considerably less in later years because purchases of units (and transaction charges) will diminish since later purchases by contractowners will be offset by redemptions. Because the asset charge will be designed to recover these charges over the life of each of the Trusts (thus spreading the costs among contractowners purchasing early in the life of each Trust and those purchasing later), Applicants represent that a significant portion of the cost to Guardian is the loss of interest on monies advanced caused by the delay in recovery. Given that Guardian anticipated recovery of the transaction costs over the life of each Trust, Applicants believe that a rate of interest associated with the weighted average maturity of the bonds held by the Trust is the fair and reasonable measure of the time value of the monies advanced by Guardian. Applicants represent that as to each investment division, the rate of interest will be applied to the amounts by which the transaction charges for the division for each quarter exceed the asset charges collected as reimbursement for such charges, plus any amounts (including interest) that were unrecovered at the end of the prior quarter. Applicants further represent that Guardian will monitor the cumulative amounts collected for each division through this asset charge in comparison with the amounts paid by Guardian and will not charge any division of the Account more than actual costs.

Section 9(a), 13(a), 15(a), 15(b) and Rule 6e–2(b)(15)

Applicants request an exemption from Rule 6e–2, the exemptive rule under the Act for separate accounts offering scheduled premium variable life contracts, and sections 9(a), 13(a), 15(a), and 15(b) of the Act to the extent necessary to permit applicants to rely on the relief provided under paragraph (b)(15) of Rule 6e–2, even though (1) the Funds will offer their shares to the Account, The Guardian Separate Account A, which is a separate account established by Guardian issuing individual and group variable annuity contracts, and possibly other variable life (scheduled or flexible premium) or variable annuity separate accounts sponsored by Guardian or an affiliated insurance company (this practice is commonly referred to as "mixed funding"), and (2) the Account will invest in the Zero Trust, which is not a management investment company. Applicants state that, in addition, additional registered management investment companies may be created in the future which would offer their shares to both the Account and other separate accounts established by Guardian or an affiliated company to fund both variable annuity and variable life contracts.

Applicants submit that paragraph (b)(15) limits its exemptive relief to a unit investment trust all the assets of which consist of shares of one or more registered *management investment companies* which offer their shares *exclusively* to variable life insurnace separate accounts of the insurer or an affiliated insurer. Because shares of the Funds are currently offered to a variable annuity separate account, The Guardian Separate Account A, and possibly will be offered to other separate accounts in the future, Applicants assert that the exclusivity requirement of paragraph (b)(15) may not be satisfied. Additionally, because paragraph (b)(15) explicitly refers to a separate account investing all of its assets in shares of one or more registered management investment companies, Applicants assert that the literal language of this paragraph could be interpreted so as not to extend relief to a separate account, organized as a unit investment trust, that invests in a unit investment trust such as the Account's investments in the Zero Trust.

Applicants represent that granting the requested relief will not compromise the regulatory purposes of the above cited provisions and will result in cost savings for purchasers and that they will comply with certain conditions set forth in the application, which are summarized as follows: (1) Any Fund which is organized as a Massachusetts business trust will comply with all provisions of the Act requiring voting by shareholders, and in particular such Fund will either provide for annual meetings or comply with section 16(c) of the Act (even if the Fund is not one of the trusts described in section 16(c) of the Act) as well as with Sections 16(a) and, if applicable, 16(b). Further, such Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with

respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto. (2) A majority of the board of directors of each Fund shall consist of persons who, with limited exceptions as described in the application, are not "interested persons" of the Fund, as described in the Act. (3) The board of directors of each Fund will monitor whether, from the standpoint of variable life insurance contractowners or variable annuity contractowners, mixed funding would create an irreconcilable material conflict. An irreconcilable material conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any portfolio are being managed; (e) a difference in voting instructions given by owners of variable annuity contracts and owners of variable life insurance contracts; or (f) a decision by an insurer to disregard the voting instructions of policyowners. (4) Guardian and any affiliated insurance company whose separate account invests in a Fund shall monitor the Fund and shall promptly provide the board of directors of the Fund with information regarding any potential or existing irreconcilable material conflict. Such insurance companies will be responsible for assisting the board in carrying out its responsibilities under these conditions, by providing the board with all information reasonably necessary for the board to consider any issues raised. This includes, but is not limited to, an obligation by each such insurance company to inform the board whenever policyowner voting instructions are disregarded. (5) If it is determined by either the board of directors of a Fund, a majority of its disinterested directors, or Guardian or an affiliated insurance company of Guardian whose separate account invests in the Fund, that an irreconcilable material conflict has occurred, the relevant insurance companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy the conflict, up to and including: (i) Establishing a new registered management investment company or managed separate account, and (ii) withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series and reinvesting such assets in a different investment medium, including another series of the Fund, or submitting the question whether such segregation should be implemented to a vote of all affected contractholders and, as appropriate, segregating the assets of any group (i.e., owners of annuity contracts, owners of life insurance or owners of variable contracts of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected policyowners the option of making such a change. For purposes of condition 5, Applicants state that a majority of the disinterested directors of the board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund be required to establish a new funding medium for any variable contract if an offer to do so has been declined by a vote of a majority of contractowners materially adversely affected by the irreconcilable material conflict.

Finally, Applicants represent that if and to the extent that Rule 6e–2 is amended to provide exemptive relief from any provision of the Act or the rules promulgated thereunder with respect to mixed funding on terms different from any relief granted to them by order, then Applicants, the Funds or both shall take such steps as are necessary to comply with the amended rule.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 13, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Mangement, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–20310 Filed 8–23–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–14684; 812–6089]

Merrill Lynch, Pierce, Fenner & Smith Incorporated, et al.; Application for an Order Amending Previous Orders Approving Certain Offers of Exchange, and Approving Proposed Offers of Exchange

August 19, 1985.

Notice is hereby given that Merrill Lynch, Pierce, Fenner & Smith Incorporated, Prudential-Bache Securities Inc., Shearson Lehman Brothers Inc., Dean Witter Reynolds Inc. And Paine Webber Incorporated ("Sponsors"), and all presently outstanding and subsequently issued series ("Series") (with the exception of short-term Series, or any other Series on which the maximum applicable sales charge is lower than that applicable to the current public offering price of the Intermediate Term Series of The Corporate Income Fund) of The Corporate Income Fund, The Equity Income Fund, The Government Securities Income Fund, The International Bond Fund, The Liberty Street Trusts, Municipal Income Fund and Municipal Investment Trust Fund, unit investment trusts registered or to be registered under the Investment Company Act of 1940 ("Act") ("Funds" and, together with sponsors, "Applicants"), c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated, One Liberty Plaza, 165 Broadway, New York, New York 10080, filed an application on April 11, 1985, and amendments thereto on June 26, July 11, and August 5, 1985 pursuant to sections 6(c) and 11 of the Act, for an order (1) amending the conditions prescribed in three prior orders issued by the Commission approving certain offers of exchange ("Exchange Option"); (2) approving, on substantially identical terms, an offer of exchange proposed to be made by all present and subsequent and similar series of the International Bond Fund; and (3) approving an additional offer of exchange ("Conversion Option") which Applicants propose to extend to holders of any registered unit investment trust carrying a specified sales load. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized

below, and to the Act for the text of the applicable statutory provisions.

Applicants state that each Series is created by a separate trust indenture on the deposit of a portfolio of securities by the Sponsor as consideration for units of fractional undivided interest ("Units") which the Sponsors then offer to the public by means of a separate prospectus at maximum applicable sales charges currently ranging from 3.25 to 4.0% of the public offering price (5.5% on The Liberty Street Trusts), depending on the type of Series. In is further stated that although they are not obligated to do so, the Sponsors maintain secondary markets for Units at prices generally based on the higher, "offering side" evaluation of the underlying securities (the prices for the Liberty Street Trusts, however, are based on the bid side evaluation, while prices for Units of the Equity Income Fund are normally based on closing sale prices on the New York Stock Exchange). Units purchased in the secondary market may be re-offered by the Sponsors to the public at prices based on the current aggregate offering side evaluation (excepting series of The Liberty Street Trusts and The Equity Income Fund) of underlying securities plus the applicable sales charge, or they may be deposited in future Series at prices based on the offering side evaluation only, or presented to the trustee of the particular Series for redemption at prices based on the bid side evaluation of those securities. If the secondary market were to be discontinued, holders could present Units to the trustee for redemption, but the redemption price, it is noted, is generally 1 to 2% below the price based on the offering side evaluation.

Applicants further state that Series of The Corporate Income Fund, The Government Securities Fund, The Municipal Income Fund and Municipal Investment Trust Fund have established the Exchange Offer in accordance with an order issued by the Commission on November 16, 1978 (Investment Company Act Release No. 10481); and that Series of The Equity Income Fund are permitted to participate in the Exchange Option by an order dated December 16, 1980 (Investment Company Act Release No. 11494). Lastly, by order dated September 8, 1982 (Investment Company Act Release No. 22647) Series of The Liberty Street Trusts are permitted to participate in the Exchange Option to the extent that Units of certain Series of the Liberty Street Trusts may be exchanged for Units of certain other Series of The Liberty Street Trusts.

It is further stated that to exercise his Exchange Option, a Unitholder sells his Units to the Sponsor, who applies the sales proceeds to the purchase, at the current public offering price, including a reduced sales charge, of whole Units of the Series into which the Unitholder wishes to exchange. The reduced sales charge is normally $15 per Unit, reflecting certain cost savings. Under present restrictions, a Unitholder must exchange his investment for whole Units only, i.e., he is not permitted to make up any difference between the proceeds from the Units submitted for exchange and the cost of the Units being acquired, so that any excess amount representing less than the price of the whole Unit of the Series into which the exchange is being made must be distributed to him in cash. Applicants therefore, propose that the Unitholder be permitted to contribute the amount of this difference in cash to round up to the next highest number of whole Units.

Applicant's second amendatory proposal involves the present provision of the Exchange Option requiring a Unitholder who wishes to exchange his Units prior to the expiration of eight months from the date of his purchase of the Units to be exchanged to pay the difference, if any, between the sales charge he paid on the Units he holds and the sales charge on the Units to be acquired, if that difference is greater than the fixed Exchange Option charge (generally, $15 per Unit). Applicants' requested amendment would permit the reduction of this eight-month period to five months. The justification offered for this reduction is that the minimum period for differentiating between short-term and long-term capital gains and losses under the Internal Revenue Code of 1954 ("Code") for property acquired on or after June 23, 1984, and before January 1, 1988, is currently "more than six months," increased from "more than one year." It is submitted that many exchanges between Series may be motivated by the desire to take profits as soon as the preferential long-term capital gains treatment under the Code is available; or, conversely, to realize short-term capital losses to be applied to reduce taxable income—an objective which could be impeded by an Exchange Option holding period requirement that exceeds six months. Therefore, in order to permit the Exchange Option to be utilized without forfeiting any such tax benefits, Applicants propose that a five-month period be instituted in place of the present eight-month holding requirement. This modification would not, Applicants assert, materially reduce the protection against unfair pricing afforded by the provisional period requirement, and would meet the objective of conforming the requirement to the terms of current federal income tax policy.

The Exchange Option, as described above, is not presently being offered by Series of the International Bond Fund (811–2843) (originally, "The International Dollar Fund", and thereafter, "The International Income Fund"), for the reason that the exemptive relief from the Act needed to permit the International Bond Fund to participate in the Exchange Option has heretofore never been applied for. Applicants represent that on May 17, 1984, the Sponsors (except Paine Webber Incorporated) entered into a trust indenture for the First Multi-Currency Series of The International Income Fund, a unit trust designed to provide current income and the prospect of capital appreciation through investment in a fixed portfolio of interest-bearing debt obligations payable in foreign currencies which, in the opinion of the Sponsors, appear to have the ability to maintain or improve their strength in the world economy relative to the U.S. dollar over the intermediate term. Since May, 1984, the Sponsors have created five Multi-Currency Series of The International Bond Fund (the first Series was named "The International Income Fund"; the name of the Fund for the Second through Fifth Multi-Currency Series was changed to "The International Bond Fund"). With a sales charge of 4.0% of the public offering price, scaled down on purchases of 100 Units (approximately $100,000) or more, the operations of these Series are identical to the Funds with respect to which the Commission has heretofore granted exemptions from Section 11 to permit the Exchange Option to be offered. Therefore, Applicants request that this relief be granted pursuant to Section 6(c) of the Act, subject to the same terms and conditions, to permit The International Bond Fund to participate in the Exchange Option.

In addition to the foregoing, Applicants request further exemptive relief to permit the Funds to offer on terms substantially the same as the Exchange Option, in exchange for beneficial interests in any and all registered unit investment trusts which have been initially offered to the public at a maximum applicable sales charge of at least 3% ("Conversion Trust"). This proposed new exchange offer (referred to hereinafter as the "Conversion Option") would apply to Units of any Series (except Series of The Liberty

Street Trusts) in which the Sponsors may be maintaining a secondary market. Unit investment trusts promoted by the Sponsors, but not included among the Funds, may be Conversion Trusts. Applicants state, but all holders of Conversion Trust will be eligible to participate in the Conversion Option regardless of whether they are or were retail customers of any Sponsor, or whether any Sponsor participated as an underwriter or selling dealer in the original public offering of units of the Conversion Trust.

It is further stated that holders of Conversion Trust interests may wish to exercise the Conversion Option for a variety of reasons, including a revision of their investment objectives; a desire to acquire an interest in an underlying portfolio not previously available in a unit trust format; a desire to enhance income tax results; or, in the instance of a Conversion Trust for which no secondary market has been established, the desire to participate in a unit investment trust which is active and ongoing, and for which attendant investor services are offered of the type supplied by the Sponsors. Applicants assert that the Conversion Option is expected to appeal to investors of active trusts only if the Funds are offering a better investment opportunity than the conversion Trusts.

Applicants represent that, pursuant to the Conversion Option, holders of Conversion Trust interests would, in general, be eligible to acquire Units of a Series of the Funds at a reduced charge, which normally will be $15 per Unit of about $1000 face amount ($15 per 1,000 Units of about $1 face amount, or 1.50% of the public offering price for certain other Series). This fixed reduced sales charge is expected to approximate about 1.5% of the offering price, and as a condition to the granting of the exemption requested, the Sponsors have agreed to charge no more than $5 per Unit more for the Conversion Option than the corresponding fee currently being charged for the Exchange Option. It is stated that these reductions reflect the fact that while conversion is likely to require some professional assistance, such as the analysis of an investor's financial and tax circumstances, the customer's essential investment needs will have been determined previously and, as the structure of unit trusts are similar, somewhat less advice and selling effort is expected. Applicants submit that the reduced sales charge is a reasonable and justifiable expense to be allocated to the professional assistance and operational expenses which are contemplated in connection with these transactions.

As in the case of the Exchange Option, a holder of a Conversion Trust interest who at the time of purchase of that interest paid a sales charge lower than that applicable to a direct purchase of the quantity of Units to be acquired, and who has held his Conversion Trust interest for at least five months, would be allowed to exercise the Conversion Option at the reduced fixed sales charge stated above. However, if the Conversion Trust interests have been held for less than five months, the sales charge collected will be the greater of the reduced fixed sales charge, described above, or the difference between the sales charge actually paid on acquisition of the Conversion Trust interests, on the one hand, and the sales charge applicable to direct purchases of the quantity of Units of the Series being acquires through exercise of the Conversion Option, on the other. Applicants submit that the purpose of the holding period, as reduced to five months, is to diminish any unfairness or price discrimination between an investor who acquired Units pursuant to the Conversion Option and one who acquires Units by direct purchase, paying the full sales load.

Notice is further given that any interested person wishing to request a hearing on the application may, not later that September 9, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission order a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20311 Filed 8-23-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14683; 812-6155]

Merrill Lynch California Municipal Series Trust; Application For An Order Granting Exemption

August 19, 1985.

Notice is hereby given that Merrill Lynch California Municipal Series Trust ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on July 17, 1985, and an amendment thereto on August 7, 1985, for an order of the Commission, pursuant to section 6(c) of the Act exempting Applicant from the provisions of section 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act, and Rule 22c-1 thereunder, to the extent necessary to permit Applicant to assess a contingent deferred sales charge on certain redemptions of shares of Applicant's Merrill Lynch California Tax-Exempt Fund ("Fund"), a sole separate series, and to waive the contingent deferred sales charge with respect to redemptions which result from the death or disability (as defined in section 72(m)(7) of the Internal Revenue Code of 1954 ("Code")) of a shareholder, or which pertain to certain distributions from Individual Retirement Accounts, or other qualified retirement plans to the extent such accounts or plans (which generally would not be expected to invest in Applicant) maintain a position in Applicant's shares. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

Applicant is organized as a business trust under the laws of the Commonwealth of Massachusetts. The Fund is its only existing portfolio, and has as its investment objective the maximum level of income exempt from federal and state (California) income taxes consistent with prudent investment management. It is further stated that Fund Asset Management, Inc. ("Management"), a wholly-owned subsidiary of Merrill Lynch Asset Management, Inc., is the Fund's investment adviser, and that Merrill Lynch Asset Management, Inc. ("Distributor") is the Fund's principal underwriter/distributor.

Applicant states that mutual funds sold with a sales charge have traditionally imposed a front-end load, so that purchase payments are invested after the deduction of any applicable

sales charge. Applicant proposes to offer the Fund's shares without an initial sales charge so that investors will have the entire amount of their purchase payments fully invested a contingent deferred sales charge out of the proceeds of certain redemptions of its shares. Applicant states that in no event could the amount of such charges, in the aggregate, exceed 4% of the aggregate purchase made by the investor.

The contingent deferred sales charge will not be imposed on redemptions of Fund shares which were purchased more than 4 years prior to the redemption, or which were derived from reinvestment of distributions. In addition, with respect to shares purchased during the four years preceding the redemption, no contingent deferred sales charge will be imposed on an amount which represents an increase in the value of the particular shares being redeemed due to capital appreciation. Applicant states that for purposes of determining whether a contingent deferred sales charge will be imposed it will be assumed that a redemption is made, first, of shares purchase more than four years prior to the redemption, second, of shares derived from reinvestment of distributions and, third, of shares purchased less than four years prior to the redemption. Where a contingent deferred sales charge is imposed, the amount of the charge will depend upon the number of years which have elapsed since the investor made the purchase from which an amount is being redeemed according to the following table:

Year since purchase payment made	Contingent deferred sales load as a percentage of amount redeemed
First	4.0
Second	3.0
Third	2.0
Fourth	1.0
Fifth and Thereafter	None.

Applicant further states that, in determining the rate of any applicable contingent deferred sales charge, it will be assumed that a redemption is made of Fund shares held by the investor for the maximum length of time within the applicable four-year period.

Applicant believes that the imposition of the contingent deferred sales charge is fair and in the best interests of the Fund's shareholders. Applicant submits that the proposed transaction permits shareholders to reap the benefit of a larger amount of capital invested for them from the time of their purchase of Fund shares. Moreover, Applicant states that, because the contingent deferred sales charge applies only to redemptions of amounts representing purchase payments during the first four years after the purchases, it does not apply to increases in net asset value per share, or to amounts representing reinvestment of distributions.

Applicant proposes, in addition, to finance the Fund's distribution expenses pursuant to a plan adopted under Rule 12b–1 under the Act (the "Plan"). Under the Plan, the Fund will pay an annual fee to the Distributor to defray certain costs incurred in offering the Fund's shares. These expenses include advertising and promotional costs, sales administration and related sales expenses, including the costs of printing and distributing prospectuses to prospective investors, and sales commissions and incentive compensation. Applicant's distribution fee will be calculated on the basis of .50% per annum of the average daily net assets of the Fund. The distribution fee will be accounted for as a current expense by the Fund.

Where amounts attributable to purchase payments are redeemed (and thus no longer are contributing to the annual distribution charge), Applicant believes that it is fair (1) to impose on the withdrawing shareholder a lump-sum payment (i.e., the proposed contingent deferred sales charge) reflecting expenses which have not been recovered through payments by the Fund, and (2) to remove the assets on which the contingent deferred sales charge was imposed from the base amount on which the Fund's distribution fee is calculated. Applicant asserts that the amount, computation and timing the contingent deferred sales charge thus are designed to promote fair treatment of all shareholders, while permitting the Fund to offer investors the benefit of having purchase payments fully invested on their behalf immediately. Applicant represents that, in its review of the Plan pursuant to Rule 12b–1, Applicant's board of trustees will consider the use by the Distributor of revenues raised by the contingent deferred sales charges.

Applicant proposes to waive the contingent deferred sales charge on any redemption following the death or disability of a shareholder. An individual would be considered disabled for this purpose if he meets the definition thereof set forth in section 72(m)(7) of the Code. The waiver would be applicable where the decedent or disabled person is either an individual shareholder or owns the shares with his or here spouse as a joint tenant with right of survivorship, and where the redemption is made within one year of the death or initial determination of disability.

Applicant also proposes to waive the contingent deferred sales charge when a total or partial redemption is made in connection with certain distributions from Individual Retirement Accounts ("IRA's"), or other qualified retirement plans (IRA's and other qualified retirement plans would not generally be expected to invest in the Fund, but may nevertheless do so if they so desire). It is proposed that the charge be waived for any redemption in connection with a lump-sum, or other distribution following retirement, or in the case of an IRA or self-employed retirement plan qualified under section 401 of the Code (Keogh Plan) or a custodial account established pursuant to section 403(b)(7) of the Code, after attaining age 59½. The deferred charge also would be waived on any redemption resulting from the tax-free return of an excess contribution pursuant to section 408(d)(4) or (5) of the Code.

Applicant submits that the imposition of the contingent deferred sales charge in the manner described above would not cause shares of Applicant to fall outside the definition of redeemable securities in section 2(a)(32) of the Act. Applicant further believes that imposition of the contingent deferred sales charge in no way restricts a shareholder from receiving his proportionate share of the current net assets of the Fund, but merely defers the deduction of a sales charge and makes it contingent upon an even which may never occur. Although the contingent deferred sales charge is not a redemption charge in the ordinary sense, Applicant submits that the conditions of section 10(d) of the Act contemplate that an investment company may both be an open-end company and impose a discount from net asset value on redemption of its shares. However, in order to resolve any ambiguity in this regard, Applicant requests an exemption from section 2(a)(32) of the Act to the extent necessary to permit implementation of the proposed contingent deferred sales charge.

Applicant further submits that the proposed contingent deferred sales charge is consistent with the intent of the definition "sales load" contained in section 2(a)(35). The contingent deferred sales charge will be paid to the Distributor as sales compensation and reimbursement for expenses related to offering the Fund's shares for sale to the public. Therefore, Applicant submits

that this arrangement would fall within the section 2(a)(35) definition of sales load but for the timing of the imposition of the charge. Applicant contends that postponement of the sales charge, and its contingency upon the occurrence of an event which might not occur, does not change the basic nature of this charge, which is in every other respect a sales charge. However, Applicant requests an exemption from the provisions of section 2(a)(35) to the extent necessary to implement the proposed charge.

Applicant submits, in addition, that implementation of the proposed contingent deferred sales charge is in no way violative of the current pricing requirements of section 22(c) of the Act, or Rule 22c-1 thereunder. When a redemption of Applicant's shares is effected, it is stated, the price of the shares at which redemption will be effected will be based on current net asset value. The contingent deferred sales charge will merely be deducted at the time of redemption in order to determine the shareholder's proportionate redemption proceeds. Applicant will, it is stated, disclose the contingent deferred sales charge in its prospectus.

In further support of its request for exemptive relief, Applicant submits that, because of the manner in which its contingent deferred sales charge and the waiver therefrom will be applied, Rule 22d-1 exempts the contingent deferred sales charge and the waiver therefrom from the prohibitions of section 22(d) of the Act. Specifically, Applicant asserts that the waiver of the contingent deferred sales charge in the extraordinary circumstance of death or total disability of the investor is justified on the basis of fairness. This waiver, Applicant submits, will not discriminate against shareholders of funds having traditional initial sales loads for which no such waiver or reduction is proposed because the impact of such a charge is not sustained by the shareholder at the time of redemption (as it is with a contingent deferred sales charge).

Furthermore, it is stated, the waiver of the contingent deferred sales charge under the circumstances contemplated would not adversely effect existing shareholders. Waiver of the charge would not result in the loss of any revenue to Applicant because proceeds from the charge will be paid to the Distributor. Furthermore, Applicant asserts, because the .50% distribution fee payable by the Fund is based on the average daily net assets of the Fund, amounts redeemed, including amounts upon which the contingent charge has been waived, will be removed from the base upon which the fee is calculated.

Applicant submits that the exemptions it has requested are appropriate and in the public interest, consistent with the protection of investors and purposes fairly intended by the Act. Applicant further submits that waiver of the contingent deferred sales charge under the above-described circumstances will not harm Applicant or its remaining shareholders or purchasers. Additionally, Applicant represents that it will fully disclose the waiver provision in the Fund's prospectus.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 9, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20312 Filed 8-23-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14686; File No. 812-6064]

Ryland Acceptance Corporation Four; Mortgage-Backed Bond Application

August 20, 1985.

Notice is hereby given that Ryland Acceptance Corporation Four (the "Applicant"), 10221 Wincopin Circle, Columbia, MD 21044, filed an application on February 28, 1985, and amendments thereto on May 24, July 31, and August 19, 1985, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting it from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below and to the Act and rules thereunder for the text of their relevant provisions.

According to the application, Applicant is a wholly-owned subsidiary of Ryland Mortgage Company ("Ryland"), which is a wholly-owned subsidiary of The Ryland Group, Inc., a homebuilder whose common stock is listed on the New York Stock Exchange. Applicant proposes to issue one or more series of Bonds ("Series of Bonds") rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is unaffiliated with the Applicant. Applicant represents that each Series of Bonds will be secured primarily by collateral pledged to secure only that Series of Bonds ("Bond Collateral") and each Series of Bonds will consist of one or more classes of Bonds and will be issued pursuant to an indenture ("Indenture") between the Applicant and an independent trustee ("Trustee"). The Bond Collateral securing each Series of Bonds, including Notes, Mortgage Collateral (Both as defined below) (whether owned by the Applicant or pledged by a participating financial affiliate to secure Notes) and reserve funds, other than buy-down reserve funds, will be held by the Trustee or by an independent custodian on behalf of the Trustee pursuant to the Indenture for that Series of Bonds.

Applicant states that the Bond Collateral will consist primarily of interests in some combination of the following (collectively, "Mortgage Collateral"): (a) Funding agreements together with related promissory notes evidencing loans made by the Applicant to limited purpose financial subsidiaries of homebuilders or mortgage originating institutions ("Financial Affiliates"), which notes are secured by Mortgage Certificates or Mortgage Loans (both as defined below) and (b) fully modified pass-through certificates guaranteed as to timely payment of principal and interest by the Government National Mortgage Association, mortgage pass-through securities guaranteed as to timely payment of principal and interest by the Federal National Mortgage Association, or mortgage participation certificates guaranteed as to timely payment of interest and ultimate collection of principal by the Federal Home Loan Mortgage Corportion (collectively, "Guaranteed Mortgage Certificates"), (c) other pass-through certificates evidencing an undivided interest in pools of mortgage loans secured by first liens on single family residences (together with Guaranteed Mortgage Certificates, "Mortgage Certificates") or (d) mortgage loans secured by first liens on single family residences ("Mortgage Loans"), together

with payments that may become due under certain related mortgage insurance and hazard insurance policies.

Applicant states that Bond Collateral may include several types of reserve funds and accounts. First, payments received in respect of the Mortgage Collateral will be held by the Trustee and reinvested pending the next bond payment date; all such reinvestments will mature on or prior to such bond payment date, and on such bond payment date such payments and the earnings thereon will be distributed as required by the Indenture. Second, certain reserve funds may have a fixed or declining amount, and earnings on such funds will be released from the lien of the Indenture on certification by independent accountants. Finally, there may be established certain reserve funds or accounts that are required by the rating agencies that rate the Bonds as additional collateral in light of the nature of the Mortgage Collateral and of Applicant's obligations on the Bonds. In any event, the amounts due pursuant to the terms of the Bonds will not depend on the actual earnings on such reserve funds.

Applicant will obtain the Mortgage Collateral used to secure a Series of Bonds by sale from Ryland and by pledge pursuant to funding agreements between the Applicant and each Financial Affiliate participating in the issuance of a Series of Bonds ("Funding Agreements"). The Funding Agreements provide that (i) Applicant will make a loan out of the net proceeds of the sale of such Series of Bonds to each Financial Affiliate, such loan to be evidenced by one or more promissory notes (Notes"); (ii) each such Financial Affiliate will pledge Mortgage Collateral to the Applicant as security for its loan; and (iii) each such Financial Affiliate will be obligated to repay its loan by causing payments on the Mortgage Collateral that secures its Notes to be made directly to the Trustee. Applicant will in turn pledge its entire right, title and interst in such Funding Agreements (except as provided in the Indenture), and in the related Notes and Mortgage Collateral to the Trustee as security for such Series of Bonds. Each Financial Affiliate is expected to distribute its loan proceeds to its related homebuilder or mortgage originating institution, which in turn is expected to use some or all of such proceeds to build houses or invest in mortgage loans and mortgage-related securities.

Where the Mortgage Collateral pledged by a participating Financial Affiliate pursuant to a Funding Agreement includes Mortgage Loans, such Mortgage Loans will consist of mortgage loans that were initially originated on behalf of the builder or a mortgage originating institution ("Participant") with which such Financial Affiliate is affiliated. Where such Mortgage Collateral includes Mortgage Certificates, the Applicant will not control whether all the underlying mortgage loans were initially originated on behalf of such Participant; however, each Participant will represent that except for de minimus amounts the mortgage loans underlying such Mortgage Certificates were originated on behalf of the Participant or a predecessor.

Applicant and each Financial Affiliate will have the limited right to pledge new Mortgage Collateral ("Substitute Collateral") in place of the Mortgage Collateral beneficially owned by it and initially pledged as security for the Bonds or Notes. The Substitute Collateral will have payment terms similar to, and in no event scheduled cash flows less than, those of the Mortgage Collateral it replaces. After giving effect to any such substitution, the scheduled cash flows on the Mortgage Collateral, together with the reinvestment income thereon at assumed rates acceptable to the rating agencies that rate the Bonds; will be sufficient, according to the application, to make payments on the Bonds in accordance with their terms. Applicant and any Financial Affiliate will only be permitted to replace (i) Mortgage Loans with Mortgage Loans of equal or better quality, (ii) Guaranteed Mortgage Certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates") with other GNMA Certificates, (iii) Guaranteed Mortgage Certificates guaranteed by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation ("FNMA Certificates" or "FHLMC Certificates," respectively) with GNMA Certificates, FNMA Certificates, or FHLMC Certificates, and (iv) private Mortgage Certificates with private Mortgage Certificates of equal or better quality issued by the same entity; provided that in case of a Mortgage Loan that the substituted Mortgage Loan is of higher or equal quality (that is, such substitute Mortgage Loan is insured to at least the same level by a mortgage insurer, the claims paying ability of which is rated at least as high as that of the insurer of the Mortgage Loan being replaced, by the rating agency or agencies rating the Bonds, or if the Mortgage Loan being replaced is not so insured, the substitute Mortgage Loan has a loan to value ratio no higher than the Mortgage Loan being replaced). In the event that Mortgage Loans originated more than one year prior to substitution are substituted for Mortgage Loans orginially included in the Mortgage Collateral, each such substitute Mortgage Loan will be reviewed for continuing underwriting qualification. Applicant represents that it will be a further condition of any such substitution that the outstanding ratings of the Bonds not be affected by such substitution.

Applicant does not anticipate that substitution of Mortgage Collateral will occur frequently. Applicant believes that, in practice, substitution is likely to occur, if at all, only where the Applicant or a participating Financial Affiliate desires to remove a particular loan from the Bond Collateral in order to have greater discretion in dealing with a particular homeowner.

Applicant states that the Bonds may be subject to redemption by the Applicant under circumstances set forth in the prospectus supplement for each Series of Bonds. The Bonds will not be redeemable at the option of the Bondholders. Unless an event of default on a series has occurred and is continuing, Applicant states that Bondholders will not be entitled to accelerate payment of the Bonds of that series.

Applicant represents that it will provide computer data concerning any Mortgage Loans and mortgage loans underlying any private Mortgage Certificates securing a Series of Bonds to the rating agency or agencies rating the Series of Bonds for their review with respect to relevant credit considerations, including the type of lien, the type of property, the payment terms, the location and dispersion of the properties, the size of the loans, loan-to-value ratios, the number of loans, and other matters. The rating agencies rating the Bonds will approve the methodology used to compute collateral value. Independent accountants or other independent third parties will verify the accuracy of the computer data by examing the original loan files, by statistical sampling or other generally accepted methods. Based upon their review, the independent accountants will confirm the collateral values assigned to the Mortgage Collateral. The Trustee or another independent party will review the mortgage note, the mortgage or deed of trust, the title insurance policy, the standard hazard insurance policy, the primary mortgage insurance policy, if any, the appraisal report, the loan application, the loan settlement and other documentation

related to each Mortgage Loan. Applicant believes that the foregoing procedures, conducted by independent third parties, will be sufficient to determine the quality and value of such Mortgage Collateral.

Applicant submits that it is not the type of entity that the Act was intended to regulate, that the interest of investors will be adequately protected and that there are strong public policy reasons for granting Applicant an exemptive order.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 13, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20313 Filed 8-23-85; 8:45am]

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[Release No. 34-22339; File No. SR-MSRB-85-16]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Proposed Rule Change

The Municipal Securities Rulemaking Board on August 13, 1985, filed with the Securities and Exchange Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), a 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

A. The Municipal Securities Rulemaking Board (the "Board") is filing amendments to rule rule G-12(b) concerning settlement dates for when, as and if issued ("when-issued") transactions (hereafter referred to as "the proposed rule change"), as follows:

Rule G-12*

(a)-(b)(ii)(B) No change.

(C) for "when, as and if issued" transactions, a date agreed upon by both parties, which date shall not be earlier than the fifth business day following the date the confirmation indicating the final settlement date is sent, or, with respect to transactions between the manager and members of a syndicate or account formed to purchase securities from an issuer, a date not earlier than the sixth business day following the date the confirmation indicating the final settlement date is sent; *provided, however,* that **[**if the issuer gives notice of pending delivery within less than six business days before delivery, the settlement date for transactions with respect to such issue of securities may be accelerated

(1) For transactions between the manager and members of the syndicate or account, as determined by the manager,

(2) For transactions between members of the syndicate or account, as determined by each seller, but by not more than the number of days of acceleration by the syndicate manager, and

(3) For all other transactions, as may be determined by agreement between the parties to such transactions; and**]** *for when, as and if issued transactions compared through the automated comparison facilities of a registered clearing agency under paragraph (f) of this rule, a managing underwriter shall provide the registered clearing agency with not less than six business days notice of settlement for the issue, and the settlement date shall be not less than five business days following the date notice indicating the final settlement date is provided by the registered clearing agency; and*

(D) No change.

[(iii) Notice of Accelerated Delivery. In the event the issuer gives notice of pending delivery of securities within less than six business days before delivery, the manager of a syndicate or account formed to purchase the securities from the issuer shall, immediately upon determination of the accelerated delivery date pursuant to subparagraph (b)(ii)(C) hereof, give immediate notice to the members of the syndicate or account of the settlement date for transactions between the manager and the members**]**.

(d)-(k) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Under current provisions of rule G-12(b)(ii)(C), if an issuer notifies a syndicate manager that it would like to go to settlement in less than six days, the manager, in turn, can accelerate its deliveries to syndicate members. Syndicate members may not force other dealers to accept accelerated settlements unless the dealers agree to them, and, of course under rule G-15, a dealer may not accelerate a settlement with a customer unless the customer agrees.

Rule G-12(b)(iii) provides that a manager who receives notice from an issuer of an accelerated settlement and who wishes to accelerate delivery of the securities to syndicate members under paragraph (b)(ii)(C), shall give immediate notice to the syndicate members of the new settlement date.

These provisions are consistent with the Board's efforts to provide the industry with sufficient flexibility to accommodate various trading practices on a day-to-day basis. The Board recognizes, however, that as automated comparison, clearance and settlement of municipal securities transactions becomes the norm, some of the flexibility currently enjoyed by the industry will be lost while operational efficiencies and cost savings should increase. The Board was informed that automated comparison facilities soon will be available for when-issued transactions that meet the criteria of rule G-12(f). It also has learned that this system does not distinguish between intra-syndicate transactions and transactions between syndicate members and other dealers ("street trades") for purposes of specifying settlement dates for when-issued transactions. After considering this issue, the Board has concluded that it would be appropriate to amend rule G-12(b) to specify standardized settlement dates for all when-issued inter-dealer transactions.

The draft amendments would retain the current definition of settlement date for when-issued transactions compared pursuant to rule G-12 (*i.e.* five business days, or six business days in the case of

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* Italics indicate new language; [brackets] indicate deletions.

transactions between a manager and syndicate members, after the date the final confirmation is sent). For transactions compared through the automated comparison facilities of a registered clearing agency, the rule would require a managing underwriter to provide the registered clearing agency with not less than six days notice of settlement for the issue and would specify that the settlement date would be not less than five business days following the date notice indicating the final settlement date is provided by the clearing agency. The amendments would delete the provisions that, when a manager receives less than six business days notice of settlement from an issuer, permit acceleration of when-issued transactions. The rule amendments, however, would not limit the ability of a syndicate manager to accept an accelerated delivery from an issuer.

The Board concluded that it was appropriate to adopt these provisions in light of the need to accommodate the current automated clearance systems. It believes that substantial cost savings should be realized from comparing when-issued trades on an automated basis. In addition, the Board understands that instances in which issuers accelerate settlements are rare and that in most instances final confirmations of when-issued transactions are sent well in advance of the six and five day minimum time periods. The Board is suggesting that syndicate managers take appropriate steps in setting settlement dates with issuers to avoid unnecessary settlement accelerations by issuers.

(2) The Board has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act which authorizes the Board to adopt rules designed to foster coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, and section 17A of the Act which mandates the creation of a national clearing system that envisions the development of uniform standards and procedures for clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not affect the conduct of business by any broker, dealer, or municipal securities dealer. The Board, therefore, believes that the proposed rule change would not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board has neither solicited nor received formal comments on the proposed rule change, although it has had informal discussions with NSCC and other interested industry members on this matter.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file number in the caption above and should be submitted by September 16, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

August 20, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20354 Filed 8-23-85; 8:45 am]

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[Release No. 34-22338; File No. SR-NYSE-85-27]

Self-Regulatory Organization; Proposed Rule Change by New York Stock Exchange, Inc.; Relating to Amendment to Rule 51 of the NYSE Rules To Provide That the Exchange Will Be Open for the Transaction of Business at 9:30 a.m. Instead of 10:00 a.m.

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 August 9, 1985 the New York 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 proposed rule change consists of an amendment to Rule 51 to provide that the new hours of trading, effective September 30, 1985, shall be 9:30 a.m. to 4:00 p.m. instead of the present hours of 10:00 a.m. to 4:00 p.m.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose. The Exchange's determination that trading should commence at 9:30 a.m. is based on a conviction that the Exchange must be competitive in a rapidly changing and increasingly complex business environment. The growth of securities markets is already creating round-the-clock investor interest in securities listed on the Exchange, and that interest does not stop at national boundaries or time zones. The growth in international

securities trading has come from increased activity on overseas exchanges as well as greater use of U.S. markets by foreigners.

More than ten years have elapsed since the last change in trading hours by the NYSE. While volume has increased dramatically during the intervening period, the Exchange's hours of trading have remained constant. Member firm offices are already open for business prior to the opening of trading on the Exchange. The additional ½ hour of trading will provide a vehicle for trading in the primary market during a period when such market was previously unavailable, and should provide greater flexibility and convenience to public investors.

In the last few years, both the domestic and international nature of securities trading has given rise to consideration of extending trading hours to accommodate differences in time zones, to give public investors greater access to the primary trading market, and to respond to competitive factors.

The additional ½ hour of trading will increase the current period of overlap between trading hours in New York and London. It is expected that the one-half hour extension of trading in the morning will be a factor in attracting both domestic and foreign business to the Exchange and its member firms, and in accommodating the needs of public investors. In deciding to extend trading the Exchange has been responsive to member firm desires to expand retail order flow and to enhance the international competitiveness of the U.S. market.

It is anticipated that the longer hours for trading will be a cost-efficient method for increasing business for member firms and the Exchange. The one-half hour extension is a modest but essential step, and will enable the Exchange to evaluate whether further extensions of trading hours will be beneficial, and result in increased business, volume and public convenience.

In December 1984 and January 1985 the Exchange initiated a broad preliminary survey which was sent to nearly 3,400 Exchange constituents. The survey response rate was 28%.

The questions in the survey included matters such as 24 hour trading, opening on Good Friday, and extending trading hours in the morning or afternoon, and for varying lengths of time. The results of the survey were that upstairs firms, particularly the major firms, and listed companies were generally in favor of extending trading hours, while floor brokers, specialists and institutions were generally opposed. Significantly, among the top 20 member firms, which represent 61% of the Exchange's volume, 70% favored the extension of trading hours. The majority of those favoring an extension of trading hours preferred adding a half hour at the beginning of the day.

(2) *Statutory Basis for the Proposed Rule Change.* The statutory basis for the proposed rule change is section 11A(a)(1) of the Securities Exchange Act of 1934 which states, in relevant part, that the "securities markets are an important national asset which must be preserved and strengthened", and declares that it is "in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets" to assure "fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets".

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition. In fact, it is anticipated that the extension of trading hours will promote competition among the Exchange and other markets by providing access to the primary market during a period when such market was previously closed.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited comments on the proposed rule change and no unsolicited comments have been received. (See item IIA, above, for discussion of preliminary survey results).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit 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. 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by [21 days from the date of this publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

August 20, 1985.

[FR Doc. 85-20355 Filed 8-23-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2195; Amdt. 1]

California; Declaration of Economic Injury, Disaster Loan Area

The above-mentioned declaration (50 FR 30554) is amended in accordance with the President's declaration of July 18, 1985, to include those portions of Los Angeles County that were not previously declared to now constitute an adjacent area in the State of California as a result of damage from forest fires beginning on or about June 26, 1985. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on September 16, 1985,

and for economic injury until the close of business on April 18, 1986.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 16, 1985.

Win Allred,

Acting, Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-20297 Filed 8-23-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-0147]

Benson Investment Company, Inc.; Surrender of License

Notice is hereby given that Benson Investment Company, Inc. (Benson), 406 South Commerce Street, Geneva, Alabama 36340 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Benson was licensed by the Small Business Administration on August 3, 1978.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on August 16, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: August 20, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-20298 Filed 8-23-85; 8:45 am]

BILLING CODE 8025-01-M

Augusta District Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Augusta, Maine, will hold a public meeting at 12:00 noon on Thursday, October 3, 1985, at the Senator Inn & Restaurant, Outer Western Avenue, Augusta, Maine, to discussion such matters as may presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Tom McGillicuddy, District Director, U.S. Small Business Administration, 40 Western Avenue, Augusta, Maine (207) 622-6382.

August 19, 1985.

Jean M. Nowak,

Director, Office of Advisory Council.

[FR Doc. 85-20299 Filed 8-23-85; 8:45 am]

BILLING CODE 8025-01-M

El Paso District Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of El Paso, Texas, will hold a public meeting on Tuesday, September 3, 1985, 10:00 a.m. thru 12:00 noon, at the District Office Conference Room, 10737 Gateway West, Suite 320, El Paso, Texas 79935, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Henry Zuniga, District Director, U.S. Small Business Administration, 10737 Gateway Boulevard, West, Suite 320, El Paso, Texas 79935, (915) 541-7586.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 19, 1985.

[FR Doc. 85-20300 Filed 8-23-85; 8:45 am]

BILLING CODE 8025-01-M

Region VI—San Antonio Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of San Antonio, Texas, will hold a public meeting at 9:00 a.m., on Thursday, September 19, 1985, at the Federal Building, 727 E. Durango, Room A-206 (2nd Floor), San Antonio, Texas, 78206, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For futher information, write or call Julio G. Perez, District Director, U.S. Small Business Administration, Federal Building, Room A-513, 727 E. Durango, San Antonio, Texas, (512) 229-6105.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 19, 1985.

[FR Doc. 85-20301 Filed 8-23-85; 8:45 am]

BILLING CODE 8025-01-M

Region VII—St. Louis Advisory Council; Public Meeting

The U.S. Small Business Administration Region VII St. Louis Advisory Council, located in the geographical area of St. Louis and Eastern Missouri, will hold a public meeting at 10:00 a.m., on Tuesday, October 8, 1985, at Omni International Hotel, St. Louis Union Station, 1820 Market Street, St. Louis, Missouri, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For futher information, write or call Robert L. Andrews, District Director, U.S. Small Business Administration, 815 Olive St., Room 242, St. Louis, Missouri, 63101—314/425-6600.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 19, 1985.

[FR Doc. 85-20302 Filed 8-23-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CCG 85-056]

Marine Transportation of Oil Field Wastes; Public Meeting

August 21, 1985

The Eighth Coast Guard District sponsored public meeting to discuss the marine transportation of oil field wastes will be held at the Marriott Hotel, Galley 6, 550 Canal Street, New Orleans, LA on September 12, 1985. It will begin at 8:00 a.m. Details were published in the July 25, 1985 **Federal Register** (50 FR 30325).

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statement, but no later than the day before the meeting, members of the public shall submit in writing, to Commander, Eighth Coast Guard District (mvs), Hale Boggs Federal Building, 500 Camp Street New Orleans, LA 70130 the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. The individual making the presentation shall also provide their name, address, and if applicable, the organization they are representing. Any member of the public may submit a written statement at any time.

Additional information may be obtained from Commander D.R. Carlberg, USCG, c/o Commander, Eighth Coast Guard District (mvs), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130, telephone (504) 589-6271.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Commander Eighth Coast Guard District.

[FR Doc. 85-20328 Filed 8-23-85; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Aircraft Fly-By-Wire and Other Advanced Control System Designs; Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Technical Information Exchange Conference on Aircraft Fly-By-Wire and Other Advanced Control System Designs.

The Federal Aviation Administration hereby gives notice that it intends to hold daily meetings on the subject at 8:30 a.m. on October 28, 29, and 30, 1985, at the Twin Bridges Marriott Hotel, 333 Jefferson Davis Highway, Arlington, Virginia. For further information concerning technical issues, please contact Mr. Frank Rock, Aircraft Engineering Division, Office of Airworthiness, (202) 426–8323. For matters concerning conference administration, accomodations, and meeting agenda, please contact Ms. Jocelyn Gushue, Conference Coordinator, The Washington Consulting Group, 1625 I Street, NW., Suite 214, Washington, DC 20006, (202) 427–0233.

Information from this meeting could be the basis for agency decisionmaking regarding the criteria and guidance necessary for the certification of aircraft with control systems dependent on electrical, electronic technology, or other advanced technology for their proper operation. Such aircraft are commonly referred to as fly-by-wire aircraft. None of the civil aircraft certificated by the Federal Aviation Administration have flight control systems that are completely fly-by-wire control system, but several current military aircraft are so equipped and at least one currently proposed civil transport aircraft, is expected to have a fly-by-wire control system.

Time will be allowed the first day for selected papers, 30 minute maximum, on the current fly-by-wire technology as it applies to transport aircraft, general aviation aircraft, and rotorcraft. Agenda items and obstracts of proposed papers to be submitted before September 28, 1985, to Frank Rock, Aircraft Engineering Department Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

The Federal Aviation Administration is seeking to establish the issues which should be considered for certification of fly-by-wire aircraft; and intends to use this forum to receive the views and ideas of both the domestic and international Government/industry aviation communites.

Issued In Washington, D.C., on July 23, 1985.

Thomas E. McSweeny,

Manager, Aircraft Engineering Division.

[FR Doc. 85–20361 Filed 8–23–85; 8:45 am]

BILLING CODE 4910–13–M

[FAA Order 6850.26A]

Federal Funding of Visual Glideslope Indicators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Funding Policy.

SUMMARY: This notice announces the FAA's intention to implement the FAA Order which sets policy for Federal Funding of visual glideslope indicators. The Precision Approach Path Indicator (PAPI) system is proposed as the national standard visual glideslope indicator for Federal funding purposes in order to enhance safety through standardization.

DATE: Comments must be received on or before September 27, 1985.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed funding policy by submitting such written data, views, or arguments as they may desire. Communications should identify the Order number and be submitted in duplicate to: Federal Aviation Administration, Office of Airport Standards, Attention: Mr. Robert Bates, AAS–200, 800 Independence Avenue, SW., Washington, D.C. 20591. All communications received on or before September 27, 1985 will be considered by the Administrator. All comments submitted will be available, both before and after the closing date for comments, in the Office of Airport Standards for examination by interested persons on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

As a rule, any decision which relates to "public property, loans, grants, benefits, or contracts", such as that reflected in FAA Order 6850.26A, is exempt from the requirements of notice and public comment applicable to regulatory actions by administrative agencies. 5 U.S.C. 553(a)(2). However, as to the matter addressed by FAA Order 6850.26A, Congress has directed the FAA not to implement or enforce any national policy regarding the "Federal funding of visual glideslope indicators until such time as the Administrator has published notice in the **Federal Register** and has provided for adequate opportunity for public comment concerning a national policy for Federal funding of such indicators", Pub. L. No. 99–88 (1985). This notice is in response to that directive. Until the FAA has had an opportunity to review the comments sent in response to this notice, no new funding for any type of visual glideslope indicator will be approved. Projects specifically approved by the FAA, before the new law became effective, for the purchase or funding of visual glideslope indicators for specific airports are not affected by the new law.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments on FAA Order No. 6850.26A." The Postcard will be dated and time stamped and returned to the commenter.

Availability of Notice

Any person may obtain a copy of the Notice by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–3058. Communications must identify the Order number.

Statutory Authority

FAA Order No. 6850.26A contains national policy on Federal funding of visual glideslope indicators pursuant to statutory authority found at section 519 of the Airport and Airway Improvement Act of 1982 (AAIA), 49 U.S.C. 2218. This provision is a grant of broad discretionary authority for the purpose of aiding in the implementation of other sections of the AAIA. This particular Order furthers the implementation of sections 505(a) and 507(a)(3)(A) of the AAIA, 49 U.S.C. 2204(a) and 2206(a)(3)(A), which authorize grants for the purpose of airport development, and section 506(a) of the AAIA, 49 U.S.C. 2205(a), which permits appropriations for expenditures under the Facilities and Equipment Program of section 307(b) of the Federal Aviation Act of 1958, 49 U.S.C. 1348(b).

Discussion of the Proposed Funding Policy

Federal funding of visual glideslope indicators was first initiated in 1961. This was preceded by a test program to select the best available system. Systems tested included the Westinghouse tri-color, Navy mirror,

British RAE system, USAF interim mirror, and the Australian Cumming-Lane system. The system selected as the national standard was the British RAE system. This system was also shortly thereafter selected as the international standard by the International Civil Aviation Organization (ICAO) and became known as the VASI (Visual Approach Slope Indicator).

During the period from, 1961 to 1982 the VASI was the U.S. standard system and was the only system eligible for Federal funding. During this period over 300 runways in the U.S. were equipped with a VASI. Although the VASI was an English developed system, it was not patented and could be made by anyone. All of the systems installed in the U.S. were made by American manufactures.

In 1978, a system called the Precision Approach Path Indicator (PAPI) was proposed for adoption as a new international standard to replace the VASI. The PAPI is basically a reconfigured VASI with an improved signal format and consists of four light units located on a line perpendicular to the runway centerline. The PAPI was thoroughly tested by a number of countries, including the U.S., and was adopted by ICAO as the new international standard in 1982. The VASI will cease to be an international standard on January 1, 1995.

In 1983, the FAA revised its longstanding policy of funding only one standard system. The new policy permitted Federal funding of only the new international system, the PAPI, at international airports while permitting the funding of various types of systems at other than international airports. During the period this policy was in effect, three systems, including the PAPI, VASI, and the Pulsed Light Approach Slope Indicator (PLASI), were made eligible for Federal funding at non-international airports.

The three systems (VASI, PAPI, PLASI) were all in a comparable price range. For Federally funded projects, competitive bidding must be followed. Because of their similar price range, any of the three approved systems could be the lowest bid on any particular project. This could result in a situation where a particular airport could have three different systems. As more systems, each employing a different signal format, were expected to be added to the approved list, this problem would have become even more pronounced. Several of the other systems on the market which were expected to be added to the approved list were substantially lower in price than the three original systems on the list. Thus, the competitive bid process would insure that only the lowest cost systems would be funded. This would have effectively eliminated the three original systems. (VASI, PAPI, PLASI).

Need for Standardization

It seemed apparent that the new policy would lead to a proliferation of systems, each having a different signal format. Also, it was felt that pilots need to see the same visual presentation at all airports and especially when breaking out of a low overcast or approaching a new field at night. FAA professional opinion did not consider these issues to be in the best interest of aviation safety. In the critical approach to landing phase, a pilot has many things to do and it was felt by those who considered the issue that pilots should not be unnecessarily burdened with the need to determine which of several different signal formats is presented by the visual glideslope indicator. It was also felt that the use of a standard signal format lessens the pilot's workload by having one less thing to concentrate on, thereby reducing the margin of error and enhancing safety. One approach that was considered would have limited Federal funding to the three systems previously approved. However, this was not considered a fair approach since it would favor some manufacturers while discriminating against others. Also, it would not lead to the desired goal of standardization.

The PAPI was chosen as the new national standard for Federal funding purposes primarily because it is the system that has been adopted by the International Civil Aviation Organization (ICAO) as the standard international system for use by fixed-wing aircraft. It is the policy of the Federal Aviation Administration (FAA), consistent with U.S. obligations under the convention on international civil aviation to implement ICAO standards in international airports, whenever practicable. To select a system other than the PAPI for use at non-international airports would not be consistent with the desired goal of standardization.

The PAPI is a moderately priced system with an excellent signal format. It is a multiple light system which makes it easily identifiable as a visual glideslope indicator. It was felt that single light source systems did not provide this latter characteristic. Several instances have been reported where lights on an airport have been mistakenly identified as a single light type visual glideslope indicator. The PAPI equipment is very simple and has no moving parts, which assures long life and makes it very easy to maintain (which is a very important feature for smaller airports). Also, the PAPI system is not patented and can be made by anyone. There are currently six U.S. manufacturers who already or plan to market the PAPI. The PAPI has also been selected as the standard visual glideslope indicator for use by fixed-wing aircraft by the U.S. Army, the U.S. Navy, and by NATO (North Atlantic Treaty Organization).

One of the most fundamental responsibilities provided for under the Federal Aviation Act of 1958 is to develop a safe aviation system. Inherent in this charge is the wide discretionary latitude to establish standards and regulations that are directed towards accomplishing this goal. This mandate covers landing aids for aircraft; consequently, the FAA has a duty to provide a standard for a visual glideslope indicator system that is safe and unambiguous. It is the firm belief of this Agency that standardization is directly related to safety and that the issueing of an Order establishing a standard is necessary to discharge the FAA's statutory duty.

Supplemental Background (Test Results)

Federal Aviation Administration Tests

The FAA conducted a comparative evaluation of the VASI and PAPI at the FAA Technical Center in Atlantic City, N.J. in 1980. Twelve test pilots made a total of 108 tracked approaches with the results that 58% preferred the PAPI, 42% rated the VASI and PAPI equally, and none preferred the VASI over the PAPI.

An in-service evaluation was also conducted at Newark International Airport during 1981. A total of 117 pilots returned questionnaires and the tabulated results are as follows:

	PAPI better than VASI	PAPI same as VASI	PAPI worse than VASI
Rate of information	57	37	6
Ease of maintaining approach angle	50	43	7
Correcting vertical excursions	57	33	10
Usefulness of touchdown aiming point	40	53	7
Coincidence with ILS	40	57	3
Initial contact range	60	29	11
Overall value compared with VASI	61	28	11

U.S. Army Test

The U.S. Army conducted a comparative evaluation of five visual glideslope indicator systems at Ft. Meade, Maryland, during August–October 1983. The systems tested were the CHAPI, PAPI, VASI, OASIS, and PLASI.

The five systems were combined into 10 different pairs, one pair for each test session. This allowed each system to be compared to each of the other systems. Pairs for each session were chosen at random. The order in which systems were evaluated in each session was arranged to eliminate any patterns which would favor a particular system. During a typical evaluation session, a pilot would fly three approaches to each of the two systems and observe three approaches to each system flown by a second pilot. This made a total of 12 approaches for each pilot per evaluation session. A total of 35 pilots participated in the tests.

Pilots were asked to rate each of the following:

Acquisition and Identification
Signal Interpretation
Determining Glidepath Deviations
Required Workload
Maintaining Glidepath Signal

Rating factors for each of the preceding were as follows:

Rating factor	Numerical rating assigned
Very difficult	1
Difficult	2
Acceptable	3
Easy	4
Very easy	5

The results are shown as follows:

System name	Acquisition and identification	Signal intrepretation	Determine glidepath deviations	Require more attention	Maintain glidepath signal	Average[2] score
Individual scores:[1]						
CHAPI	4.59	4.77	4.82	4.46	4.17	4.5623
VASI	4.13	4.09	4.218	4.00	4.04	4.096
PAPI	4.12	4.25	4.12	3.91	4.04	4.088
PLASI	3.65	3.91	4.04	3.78	3.78	3.832
OASIS	3.917	3.71	3.71	3.79	3.783	3.782
Individual ranking:[2]						
CHAPI	1	1	1	1	1	
VASI	2	3	2	2	2	
PAPI	3	2	3	3	3	
PLASI	5	4	4	5	5	
OASIS	4	5	5	4	4	
Overall ranking:						
CHAPI	1					
VASI	2					
PAPI	3					
OASIS	4					
PLASI	5					

[1] Highest numbers reflect best performance.
[2] 1 indicates highest ranking.

U.S. Air Force Tests

The U.S. Air Force conducted a comparative evaluation of the VASI, PAPI, and PLASI at Tuscon, Arizona, in 1984. These tests showed that the PAPI and PLASI were exactly equivalent in ability to maintain the glideslope angle with both rating above the VASI in this respect. A second part of this evaluation consisted of asking pilots the question, "Which system would you prefer to have?" This question was asked of 8 pilots and the results were as follows:

NUMBER OF PILOTS

	PLASI	BVASI	PAPI
First choice	6	1	1
Second choice	3	4	1
Third choice	0	3	5

Costs

An analysis of visual glideslope indicators funded under the Airport Improvement Program during the period of May 1982 to February 1985 (the period in which the FAA permitted the funding of various systems) reveals the following system installed cost based on the lowest bid price.

VASI (2-unit)—$8,562 average for 56 locations
VASI (4-unit)—$11,900 average for 27 locations
PAPI—$10,885 average for 20 locations
VASI—$17,695 average for 27 locations

A complete listing of these bid prices are as follows:

	Location	VASI-4	PLASI	PAPI
Kissimmee, FL	$5,975			
Do	5,975			
Ocala, FL				$8,200
Do				8,200
Ormand Beach, FL	7,810			
Do	7,810			
St. Augustine, FL		5,500		
Do	6,820			
Leesburg, FL		7,070		
Do		7,070		
Mt. Pleasant, SC				7,955
Do				7,955
Greenville, NC		9,400		
Do		9,400		
Lincolntown, NC		9,475		9,475
Raleigh, NC				8,700
Cartersville, GA	6,500			
Newnan, GA	5,650			
Do	5,650			
Dalton, GA		9,000		
Do		9,000		
Punxsutawney, PA	7,950		9,110	
Altoona, PA	13,085		16,000	
Greenville, PA	28,875		30,000	
Do	28,875		30,000	
Reedsville, PA	21,000		23,500	
Do	21,000		23,500	
Somerset, PA		14,915	29,691	
Wellsville, NY		22,250	19,500	
Do		22,250	19,500	
Olean, NY	7,725		13,817	
Poughkeepsie, NY	12,700		21,900	
Albany County, NY		27,840	17,391	
Utica, NY		23,432	25,775	
Port Lauaca, TX				6,000
Austin, TX	7,000			
McKinney, TX				15,975
Clarksville, ARK	10,608			
Sweetwater, TX	19,945			
McAllen, TX	7,800			
Conroe, TX		12,745		10,000
Harlem, MT			17,725	
Milbank, SD	6,510			
Pine Ridge, SD	8,240			
Do	4,980			
Duluth, MN		9,350	8,950	7,750
Mora, MN				9,320
Ely, MN		13,800	14,475	13,400
Red Wing, MN				8,340
Austin, MN				9,980
Ulm, MN		6,500		8,000
Watford, ND	5,170			
Walpeton, ND	4,800		9,000	11,000
Bowman, ND	5,500			
Dickenson, ND	5,500			
Frederick, MD		8,967	10,700	
Ocean City, MD		13,630	15,158	
Do		13,630	15,158	
Chesterfield, VA		9,484	10,420	
Blacksburg, VA			25,718	
Manassas, VA	7,676		10,780	
Brawley, CA	7,077			
Do	7,077			
Santaynez, CA	7,200		10,000	
Sedona, CA	11,800		20,000	
Coolidge, AZ	6,500			
Do	6,500			
Casa Grande, AZ	6,197			
Do	6,197			
Safford, CA	5,000			
Do	5,000			
Calexico, CA	7,564			
Do	7,564			
Moses Lake, WA				18,654
Pittsburg, KS		7,201		
Do		7,201		
Lebanon, MO			15,000	
Do			15,000	

	Location	VASI-4	PLASI	PAPI
Independence, IA	5,596			
Do	5,596			
Shenandoah, IA	5,164			
Do	5,164			
Hartselle, AL	11,279			
Do	11,279			
Talladega, AL		7,095		
Do		7,095		
Columbus, MS	6,000			
Troy, AL		16,800		
Fairhope, AL				6,600
Do				6,600
Enterprise, AL	6,000			
Do	6,000			
Eufaula, AL	8,300			
Do	8,300			
Pittsfield, MA	3,500			
Claremont, NH	5,921			
Highgate, VT	6,350			
Fryeburg, ME	6,709			
Laconia, NH		12,000		
Morrisville, VT	7,500			
Marathon, FL				17,804
Do				17,804

In consideration of the foregoing, the FAA proposes to implement the following Order with respect to the funding of visual glideslope indicators.

Issued in Washington, D.C., on August 21, 1985.

Donald D. Engen,

Administrator.

FAA Order Number 6850.26A

Subject: Visual glideslope Indicators

1. *Purpose.* This order establishes national policy on Federal funding of visual glideslope indicators which provide visual descent guidance to pilots of landing aircraft.

2. *Distribution.* This order is distributed to the division level in the Office of Flight Operations, Office of Airport Standards, Office of Airport Planning and Programming, Office of Aviation Policy and Plans, Program Engineering and Maintenance Service, Systems Engineering Service, Air Traffic Service, and to the regional Airports, Air Traffic, Airway Facilities, and Flight Standards Divisions.

3. *Cancellation.* Order 6850.26, Visual Approach Slope Indicators, dated May 9, 1983, is cancelled.

4. *Background.* a. The visual approach slope indicator (VASI) (as described in Order 1010.47B, cancelled October 31, 1982), was selected as the national standard visual glideslope indicator in 1961 and shortly thereafter was adopted as the international standard by the International Civil Aviation Organization (ICAO). To date, over 3000 runways in the United States have been equipped with a VASI. The VASI has been, and continues to be, effective aid for providing visual descent guidance.

b. An improved version of the VASI, called the precision approach path indicator (PAPI), was recently adopted by ICAO as the new international standard to replace the VASI. The VASI will cease to be an ICAO standard system after January 1, 1995.

5. *Explanation of Changes.* The policy has been revised to promote standardization of visual glidepath indicators by limiting Federal funding to only one system, the PAPI, for use by pilots of fixed-wing aircraft.

6. *Policy.* a. The PAPI, as described in ICAO Annex 14, Aerodromes, shall be the standard visual glideslope indicator for new installations at U.S. airports when funded under the Facilities and Equipment Program or through the Airport Improvement Program.

b. Existing VASI installations shall remain in service and need not be replaced with the PAPI.

c. Other types of systems, which have been determined operationally suitable by the Office of Flight Operations, may be Federally funded for use on heliports or may be installed on airports when non-Federally funded.

7. *Responsibilities.* a. The Office of Flight Operations shall develop performance characteristics which assure safe and effective visual guidance for all visual glidepath indicators and shall determine acceptability of proposed system concepts for operational use.

b. The Office of Airport Standards shall develop equipment and installation standards for those visual glideslope indicators, which have been determined to be acceptable by the Office of Flight Operations, to be funded under the Airport Improvement Program.

c. The Program Engineering and Maintenance Service shall develop equipment and installation standards for those visual glideslope indicators, which have been determined to be operationally acceptable by the Office of Flight Operations, to be funded under the Facilities and Equipment Program.

d. The equipment specifications and installation standards issued under the Airport Improvement Program and the Facilities and Equipment Program shall be coordinated with the Office of Airport Standards and the Program Engineering and Maintenance Service, respectively, to assure that the agency specifications and standards are uniform in meeting the operational requirements of the Office of Flight Operations.

e. The Office of Aviation Policy and Plans shall have the responsibility for developing establishment, discontinuance, and replacement criteria for visual glideslope indicators to be funded under the Facilities and Equipment Program.

[FR Doc. 85-20364 Filed 8-23-85; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP85-8; Notice 2]

B.F. Goodrich Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by B.F. Goodrich Co., of Akron, Ohio, to be exempted from the notification and remedy requirements of the National Highway Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR Part 571.119, Motor Vehicle Safety Standard No. 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars.* The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on May 14, 1985, and an opportunity afforded for comment (50 FR 20159).

Paragraph section 6.5(c) of Standard No. 119 requires tires to be marked with the tire size designation as listed in the documents and publications designated in section 5.1. Goodrich manufactured 2,823 LT235/85R16 Goodrich Trail Edge light truck tires labled as LT235/80R16. The incorrect stamping is in the bead area, on the opposite-serial side. The tires were produced from December 16, 1984 through March 24, 1985. The correct aspect ratio appears in all other size designations on these light truck tires.

Goodrich argued that the noncompliance was inconsequential because the failure to label properly has no impact on safety, and the tires otherwise comply with all requirements of Standard No. 119. Goodrich contended that the tire industry has confined these LT type tires to the 75 and 85 aspect series to date and to the best of their knowlege there is no such tire size as LT235/80R16. It stated that since the incorrect stamping is in 0.250-inch high characters in the bead area, it would be impractical to corrent the label by buffing-off the incorrect numeral 0 and rebranding with the numeral 5. Further, Goodrich stated that the point of sale information, on the paper tread labels, contains the correct identification for the light truck tires.

No comments were received on the petition.

The NHTSA has decided to grant this petition. It notes that each tire has four tire size designations, two on each sidewall, one in larger characters than the other. The error appears only in the smaller of the two sizes and only on the opposite serial side. In any investigation of tire size, there would be a tendency to read the larger of the two designations, in NHTSA's view. Were the tires subject to inventory control or inspection, the inspection would be made on the serial side which contains the correct labelling on both upper and lower sidewalls.

The tires are certified as otherwise meeting the requirements of Standard No. 119. If the tires are retreaded, the noncompliance would not cause a change in the buffing process as the critical measurements of tread circumference and selection of the matrix size are made after buffing. Rebranding could possibly damage the bead area of the tire and is not advisable.

Accordingly, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is hereby granted.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on August 20, 1985.

Barry Felrice,

Associate Administrotor for Rulemaking.

[FR Doc. 85–20318 Filed 8–23–85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 85–138]

Reimbursable Service; Excess Cost of Preclearance Operation

August 18, 1985.

Notice is hereby given that pursuant to § 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning August 18, 1985.

Installation	Biweekly excess cost
Montreal, Canada	$22,518
Toronto, Canada	33,350
Kindley Field, Bermuda	11,251
Nassau, Bahama Islands	23,330
Vancouver, Canada	17,967
Winnipeg, Canada	4,111
Freeport, Bahama Islands	14,509
Calgary, Canada	10,218
Edmonton, Canada	5,410

D. Lynn Cordon,

Acting Comptroller.

[FR Doc. 85–20324 Filed 8–23–85; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Service

[Dept. Circ. 570, 1984 Rev., Supp. No. 35]

Surety Companies Acceptable on Federal Bonds; Change of Name; American Credit Indemnity Co.

American Credit Indemnity Company of New York, a New York Corporation, has formally changed its name to American Credit Indemnity Company, effective December 7, 1984. The company is listed as an acceptable surety on Federal bonds in 50 FR 27106, July 1, 1985, under its new name.

A Certificate of Authority as an acceptable surety on Federal bonds, dated July 1, 1985, is hereby issued under sections 9304 to 9308 of Title 31 of the United States Code, to American Credit Indemnity Company. This new certificate replaces the Certificate of Authority issued to the Company under its former name, American Credit Indemnity Company of New York. The underwriting limitation of $5,749,000 established for the company as of July 1, 1985, remains unchanged until the July 1, 1986 revision is published.

Certificates of Authority expire on June 30, each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the circular may be obtaied from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20226, or by calling (202) 634–2319.

Dated: August 13, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85–20268 Filed 8–23–85; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1984 Rev., Supp. No. 36]

Surety Companies Acceptable on Federal Bonds; Change of Name; Delta America Insurance Co.

Delta America Insurance Company, a New Hampshire Corporation, has formally changed its name to North American Specialty Insurance Company, effective March 26, 1985. The company is listed as an acceptable surety on Federal bonds in 50 FR, 27125, July 1, 1985, under its new name.

A Certificate of Authority as an acceptable surety on Federal bonds, dated July 1, 1985, is hereby issued under sections 9304 to 9308 of Title 31 of the United States Code, to North American Specialty Insurance Company. This new certificate replaces the Certificate of Authority issued to the company under its former name. The Underwriting Limitation of $531,000, established for the company as of July 1, 1985, remains unchanged until the July 1, 1986 revision is published.

Certificates of Authority expire on June 30, each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to Underwriting Limitations, licensing areas, and footnotes containing other information. Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20226, or by calling (202) 634–2319.

Dated: August 12, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85–20269 Filed 8–23–85; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1984 Rev., Supp. No. 34]

Surety Companies Acceptable on Federal Bonds: Termination of Authority; Van Tol Surety Co., Inc.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Van Tol Surety Co., Inc. of Brookings, South Dakota, under sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective June 30, 1985.

The company was last listed as an acceptable surety on Federal bonds at 49 FR 27262, July 2, 1984.

With respect to any bonds currently in force with Van Tol Surety Co., Inc., bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, D.C. 20226, telephone (202) 634–2349.

Dated: August 13, 1985

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85–20270 Filed 8–23–85; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Afghan Media Project; Request for Concept Papers

AGENCY: United States Information Agency.

ACTION: Announcement of request for concept papers.

SUMMARY: The United States Information Agency announces that it is seeking concept papers from qualified applicants interested in participating in the promotion of an independent media service by the Afghan people and in training Afghans in media and media-related fields. Applicants presenting promising concept papers will be invited to submit detailed grant proposals.

DATE: Concept Papers must be received on or before September 25, 1985.

ADDRESS: John Mosher, Director, Office of Program Coordination and Development (P/D), United States Information Agency, Room 550, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: John Mosher, Director, Office of Program Coordination and Development (P/D), United States Information Agency, Room 550, 301 4th Street, SW., Washington, DC 20547, (202) 485–2764).

SUPPLEMENTARY INFORMATION: Under the 1985 Supplemental Appropriations the United States Congress appropriated $500,000 to the United States Information Agency "to promote the development of an independent media service by the Afghan people and to provide for the training of Afghans in media and media-related fields." The Agency contemplates that a major portion of the funds will be given, in the form of one or more grants, to the one or more applicants best able to perform all or a portion of the projected tasks in a timely fashion. The grants shall be made in accordance with Agency authority under the Mutual Educational and Cultural Exchange Act of 1961, as amended, and the United States Information and Educational Exchange Act of 1948, as amended. At this time the Agency is seeking concept papers outlining strategies for achieving project goals. Applicants presenting promising concept papers will be invited to submit detailed grant proposals.

Project Goals

It is the goal of this project to facilitate the collection, development and distribution of credible, objective and timely professional-quality news stories, photographs and television images about developments in Afghanistan in an effort to overcome the substantial obstacles encountered by media representatives in bringing the story to world attention.

Concept Papers should demonstrate an appreciation for the two principal objectives of this project: (1) Immediate efforts to work with existing Afghan information groups to extend facilitative assistance to journalists and bring about increased and improved international coverage of Afghanistan; and (2) training of Afghans in media and media-related fields to develop an independent, self-funded media organization.

Project Tasks

Concept Papers will be judged on their ability to effect the following project tasks:

—Devise and implement a program to encourage improved and increased coverage of the Afghan situation by international print and broadcast journalists including, but not limited to, facilitating their travel, assuring their timely access to developments in Afghanistan, making available video and other Afghan-produced materials and seeking widespread placement for their stories;

—Train and equip a group of Afghan TV cameramen to operate inside Afghanistan to provide credible and timely video coverage of newsworthy developments within the country;

—Undertake the first steps toward creation of an independent Afghan Media Resource Center in proximity to the war zone. This Center should cooperate with, build on and encourage existing local Afghan media talents and resources. The Center should provide appropriate equipment, personnel and training to expand current activities and to promote the collection and dissemination of credible, timely and quality news materials to media elements worldwide;

—Develop a realistic strategy for marketing Afghan-produced materials which will lead to a fee-based funding support for the Center, with possible outcome being a professional, independent and credible Afghan news agency.

Eligibility Requirements

Concept Papers should be specific as to which project tasks or aspects of project tasks the applicant is willing and able to undertake. Applicant must demonstrate expertise in and knowledge of the tasks to be performed. A proven track record on similar projects would be helpful. Applicant must also demonstrate knowledge of the news media and the global media environment and a keen understanding of Afghanistan, its peoples, history and culture. The grant will be administered in accordance with OMB Circular A-110 Uniform Administrative Requirements. Grantees will be expected to comply with OMB Circular A-122 or A-21 governing cost principles.

Dated: August 21, 1985.

Marvin L. Stone,

Acting Director, United States Information Agency.

[FR Doc. 85–20348 Filed 8–23–85; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 165
Monday, August 26, 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

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: August 21, 1985, 50 FR 34034.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: August 27, 1985, 11:00 a.m.

CHANGE IN THE MEETING: Addition of the following item to the closed session:

3. Consideration of proposed plan relative to performance awards for members of the Performance Management and Recognition System.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-20403 Filed 8-22-85; 12:23 pm]

BILLING CODE 6730-01-M

2

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., September 24, 1985.

PLACE: On board MV MISSISSIPPI at City Front, vicinity of Beale Street, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

(1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; and (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 85-20413 Filed 8-22-85; 2:33 pm]

BILLING CODE 3710-GX-M

federal register

Monday
August 26, 1985

Part II

Environmental Protection Agency

40 CFR Part 435

Oil and Gas Extraction Point Source Category, Offshore Subcategory; Effluent Limitations Guidelines and New Source Performance Standards; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 435

[FRL-2719-1]

Oil and Gas Extraction Point Source Category, Offshore Subcategory; Effluent Limitations Guidelines and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulation and request for comments.

SUMMARY: EPA is proposing regulations under the Clean Water Act to limit effluent discharges to waters of the United States from offshore oil and gas extraction facilities. The purpose of this proposal is to establish new source performance standards (NSPS), best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) effluent limitations guidelines for the offshore segment of this industry. After considering comments received in response to this proposal, EPA will promulgate a final rule. This proposal would also amend the current definition of "free oil" and the analytical method of compliance, both of which will apply to BPT as well as BAT, BCT and NSPS.

The Agency has scheduled two technical workshops for State and EPA permit writers. EPA will present and explain the proposed regulation at these workshops. The Agency believes the workshop information will also be of interest to industry representatives and members of environmental and public interest groups.

DATES: The comment period for this proposed rule will begin on September 16, 1985 and end on December 16, 1985. The development documents and rulemaking record for this proposed rule will be available beginning September 16, 1985.

The general public is invited to attend the workshops on September 24–25 in New Orleans, Louisiana, and October 29–30 in Santa Barbara, California. For locations and time please see the ADDRESSES section of this document.

ADDRESSES: Comments should be sent to Mr. Dennis Ruddy, Industrial Technology Division (WH-522), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2402 (Rear of EPA Library). The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying. Technical information and copies of technical documents may be obtained from Mr. Dennis Ruddy at the above address. The economic analysis report may be obtained from Ms. Kathleen Ehrensberger, Economic Analysis Staff (WH-586), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, or call (202) 382-5397. The environmental assessment report may be obtained from Ms. Eleanor Zimmerman, Industrial Technology Division (WH-552), at the above address, or call (202) 382-7126.

The workshops will be conducted at the following locations:

September 24–25, 1985, Sheraton New Orleans Hotel, 500 Canal Street, New Orleans, Louisiana

October 29–30, 1985, Sheraton Santa Barbara Hotel, 1111 East Cabrillo Boulevard, Santa Barbara, California

There will be no pre-registration. On-site registration will begin at 8:30 a.m. The workshops will be conducted from 9:00 a.m. to 4:00 p.m. local time.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Ruddy at the above address, or call (202) 382-7131.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

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XXI. Solicitation of Comments
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XXIV. OMB Review
XXV. List of Subjects in 40 CFR Part 435
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  B. Generic Drilling Fluids List
  C. 126 Priority Pollutants
  D. Major Documents Supporting the Proposed Regulation

Introduction

The Supplementary Information section of this preamble describes the legal authority and background, the technical and economic bases, and other aspects of the proposed regulations. That section also solicits comments on specific areas of interest. Abbreviations, and other terms used in this preamble, generic drilling fluids, priority pollutants, and certain technical, economic and environmental documents used in regulation development are listed in Appendices A through D to this preamble.

These proposed regulations are supported by documents available from EPA. Technical conclusions are detailed in the *Development Document for Proposed Effluent Limitations Guidelines and New Source Performance Standards for the Offshore Segment of the Oil and Gas Extraction Point Source Category* (EPA 440/1-85/0556). The Agency's economic analysis is found in *Economic Impact Analysis of Proposed Effluent Limitations and Standards for the Offshore Oil and Gas Industry* (EPA 440/2-85/003). An environmental analysis is presented in *Assessment of Environmental Fate and Effects of Discharges from Offshore Oil and Gas Operations* (EPA 440/4-85/002).

I. Legal Authority

The regulations described in this notice are proposed under the authority of Sections 301, 304, 306, 307, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 95-217), also called the "Act." These regulations are also proposed in response to the Court Order in *Natural Resources Defense Council, Inc.* v. *Costle*, C.A. No. 79-3442 (D.D.C.) July 7, 1980.

II. Scope of This Rulemaking

The purpose of this rulemaking is to propose standards of performance for new sources and effluent limitations guidelines for existing sources under sections 301, 304, 306, 307 and 501 of the Clean Water Act.

These proposed regulations would apply to discharges from offshore oil and gas extraction facilities, including exploration, development and production operations. These processes and operations comprise the offshore oil and gas extraction segment (Standard Industrial Classification (SIC) Major Group 13).

EPA's 1973 to 1976 rulemaking efforts emphasized the achievement of best practicable control technology currently available (BPT) by July 1, 1977. In general, BPT represents the average of the best existing performances of well known technologies for control of traditional (i.e., "classic") pollutants. BPT for this industrial subcategory limits the discharge of oil and grease in produced water to a daily maximum of 72 mg/l and a thirty day average of 48 mg/l; prohibits the discharge of free oil in deck drainage, drilling fluids, drill cuttings, and well treatment fluids; requires a minimum residual chlorine content of 1 mg/l in sanitary discharges; and prohibits the discharge of floating solids in sanitary and domestic wastes.

This rulemaking aims for the achievement of the best available technology economically achievable (BAT) that will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants. At a minimum, BAT represents the best economically achievable performance in the industrial category or subcategory. Moreover, as a result of the Clean Water Act of 1977, the emphasis of EPA's program has shifted from "classical" pollutants to the control of listed toxic pollutants. The BAT effluent limitations guidelines being proposed today would prohibit the discharge of free oil in drilling fluids, deck drainage, drill cuttings, produced sand and well treatment fluids; prohibit the discharge of drilling fluids that are oil-based or that contain diesel oil; prohibit the discharge of drill cuttings that are contaminated with diesel oil or that are generated with the use of drilling fluids that are oil-based; limit the acute toxicity of drilling fluid discharges to a minimum 96-hr LC-50 (lethal concentration to 50 percent of the test organisms) of 3 percent (30,000 ppm) as measured in the diluted suspended particulate phase (SPP); and limit the discharge of cadmium and mercury in drilling fluids to a maximum of 1 mg/kg, each (whole fluid basis). BAT effluent limitations guidelines for produced water, and for deck drainage, produced sand and well treatment fluids for pollutants other than free oil are being reserved for future rulemaking.

EPA is proposing BCT equal to the previously promulgated BPT effluent limitations guidelines. EPA is, however, reserving BCT effluent limitations guidelines for additional conventional pollutant parameters in deck drainage, drilling fluids, drill cuttings, produced sand, and well treatment fluids for future rulemaking.

New source performance standards are also being proposed today. These proposed standards are the same as the Agency's proposed BAT/BCT effluent limitations guidelines with one exception. EPA is proposing a prohibition on the discharge of produced water from all offshore oil production facilities that are located in or would discharge to shallow water areas as defined in the proposed regulation. Produced water discharges from all other new source offshore facilities engaged in exploration, development, and production activities would be limited to a maximum oil and grease concentration of 59 mg/l (i.e., no single sample to exceed).

III. Summary of Legal Background

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," Section 101(a). To implement the Act, EPA is to issue effluent limitations guidelines, new source performance standards, and pretreatment standards for industry dischargers. These are discussed in detail in the Development Document supporting these proposed regulations. The following is a brief summary:

1. Best Practicable Control Technology Currently Available (BPT). BPT limitations are generally based on the average of the best existing performance by plants of various sizes, ages, and unit processes within the industry or subcategory.

In establishing BPT limitations, EPA considers the total cost of applying the technology in relation to the effluent reduction derived, the age of equipment and facilities involved, the process employed, the engineering aspects of control technologies, process changes, and nonwater quality environmental impacts (including energy requirements) and other factors the Administrator considers appropriate. The total cost of applying the technology is balanced against the effluent reduction. EPA promulgated BPT for the offshore segment of the oil and gas extraction point source category on April 13, 1979 (44 FR 22069). The only portion of the BPT regulation being opened for comment today is the proposed change in definition of "no discharge of free oil" and the method for determining compliance with this limitation. Otherwise, BPT is printed in this proposed rule only for sake of completeness to the reader.

2. Best Available Technology Economically Achievable (BAT). BAT limitations, in general, represent the best existing performance of technology in the industrial category of subcategory. The Act establishes BAT as the principal national means of controlling the direct discharge of toxic and nonconventional pollutants to navigable waters.

The factors considered in assessing best available technology economically achievable (BAT) include the age of equipment and facilities involved, the process employed, process changes, nonwater quality environmental impacts (including energy requirements) and the costs of applying such technology (section 304(b)(2)(B) of the Clean Water Act). At a minimum, the BAT technology level represents the best economically achievable performance of plants of various ages, sizes, processes or other shared characteristics. As with BPT, where the Agency has found the existing performance to be uniformly inadequate, BAT may be transferred from a different subcategory or category. BAT may include feasible process changes or internal controls, even when not in common industry practice.

The required assessment of BAT "considers" costs, but does not require a balancing of costs against pollutant removal benefits (see *Weyerhaeuser* v. *Costle, supra*). In developing the proposed BAT, however, EPA has given substantial weight to the reasonableness of cost. The Agency has considered the volume and nature of discharges expected after application of BAT, the

general environmental effects of the pollutants, and the costs and economic impacts of the required pollution control levels.

Despite this expanded consideration of costs, the primary determinant of BAT is still pollutant removal capability. As a result of the Clean Water Act of 1977, the achievement of BAT has become the principal national means of controlling toxic water pollution.

3. Best Conventional Pollutant Control Technology (BCT). The 1977 Amendment added Section 301(b)(2)(E) to the Act establishing "best conventional pollutant control technology" (BCT) for discharge of conventional pollutants from existing industrial point sources. Conventional pollutants are those defined in Section 304(a)(4) [biochemical oxygen demand (BOD5), total suspended solids (TSS), fecal coliform and pH], and any additional pollutants defined by the Administrator as "conventional" (oil and grease, 44 FR 44501, July 30, 1979).

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other factors specified in section 304(b)(4)(B), the Act requires the BCT limitations be assessed in light of a two part "cost-reasonableness" test, *American Paper Institute* v. *EPA*, 660 F.2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the costs to publicly owned treatment works for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA published its methodology for carrying out the BCT analysis on August 29, 1979 (44 FR 50372). In the case mentioned above, the Court of Appeals ordered EPA to correct data errors underlying EPA's calculation of the first test, and to apply the second cost test. (EPA had argued that the second cost test was not required.)

On October 29, 1982, the Agency proposed a revised BCT methodology. On September 20, 1984, EPA noticed the availability of new data and analyses that it was considering for the development of BCT limitations (49 FR 37046). EPA is today proposing BCT limitations for produced water, deck drainage, drilling fluids, drill cuttings, well treatment fluids, sanitary, domestic and produced sand waste streams. The Agency is reserving BCT coverage of all pollutants except free oil for deck drainage, drilling fluids, drill cuttings, well treatment fluids, and produced sand waste streams pending additional data collection and promulgation of the final methodology for BCT.

4. Pretreatment Standards. No pretreatment standards have been promulgated for the offshore segment of this industry and EPA does not intend to propose pretreatment standards for the offshore segment. This is because the Agency is not aware of any existing or planned indirect dischargers in the offshore segment.

5. New Source Performance Standards (NSPS). The basis for NSPS under Section 306 of the Act is the best available demonstrated technology. New facilities have the opportunity to design the best and most efficient wastewater treatment technologies. Therefore, Congress directed EPA to consider the best demonstrated process changes and end-of-pipe treatment technologies that reduce pollution to the maximum extent feasible.

IV. Prior EPA Regulations

On September 15, 1975, EPA promulgated effluent limitations guidelines for interim final BPT (40 FR 42543) and proposed regulations for BAT and NSPS (40 FR 42572) for the offshore segment of the oil and gas extraction point source category. The Agency promulgated final BPT regulations for the offshore segment on April 13, 1979 (44 FR 22069), but deferred action on the BAT and NSPS regulations.

The Natural Resources Defense Council filed suit on December 29, 1979 seeking an order to compel the Administrator to promulgate final NSPS for the offshore subcategory. In settlement of *NRDC* v. *Costle*, C.A. No. 79-3442 (D.D.C.), the Agency acknowledged the statutory requirement and agreed to take steps to issue such standards. However, because of the length of time that had passed since proposal, EPA believed that examination of additional data and reproposal were necessary. Consequently, the Agency withdrew the proposed NSPS on August 22, 1980 (45 FR 56115). The proposed BAT regulations were withdrawn on March 19, 1981 (46 FR 17567).

This notice serves to propose NSPS, BAT, BCT, and certain amendents to BPT. For convenience to the reader, today's proposed regulation also contains all of the existing BPT limitations applicable to the offshore oil and gas extraction subcategory. With the exception of one proposed amendment to BPT, the existing BPT limitations are not being subjected to comment. The one proposed amendment concerns the prohibition on discharges of free oil, which is discussed below.

Ocean discharge criteria also applicable to this industry segment were promulgated on October 3, 1980 (45 FR 65942) under Section 403(c) of the Act. These guidelines are to be used in making site specific assessments of the impacts of discharges; Section 403 limitations are imposed through Section 402 NPDES permits. Section 403 is intended to prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal.

Offshore oil and gas facilities may also be required to prepare and implement spill prevention control and countermeasure (SPCC) plans under Section 311(j) of the Act. These requirements are set forth at 40 CFR Part 112.

V. Overview of the Industry

A. Industry Profile

The offshore segment of the oil and gas extraction point source category covers those facilities located off the coast of the United States that are engaged in the production of crude petroleum and natural gas, the drilling of oil and gas wells, and oil and gas field exploration services. These facilities, such as exploratory rigs, drilling platforms, and production platforms, are considered offshore if they are located in waters that are seaward of the inner boundary of the territorial seas, as defined in Section 502 of the Act.

There are currently about 3900 platforms producing oil and gas in U.S. offshore waters. This estimate covers all federal and state leased tracts in the Gulf of Mexico and along the coasts of California and Alaska. In 1982 over 405 million barrels of oil and 4.7 trillion cubic feet of gas with a market value of almost $23 billion were produced offshore. These quantities represent 15 percent and 25 percent, respectively, of the total oil and gas produced in the United States. The combined bonus payments and royalties paid to the Federal government for offshore leases totaled almost $10 billion in 1981.

The majority (98 percent) of existing U.S. operations are located in the Gulf of Mexico. However, exploration and development activities are expected to expand in the California, Alaska, and Atlantic Coast regions. For example, large potential petroleum reserves have been discovered at Point Arguello, California and in the Beaufort Sea, Alaska. Results of exploration drilling to

date for the Atlantic outer continental shelf (OCS) areas and the Gulf of Alaska have not demonstrated significant petroleum reserves. The lack of geologic data to confirm the presence of economically recoverable oil or gas make development projections for these areas less certain.

Offshore drilling activity varies from year to year depending on such factors as hydrocarbon market conditions, state and federal leasing programs, reservoir discoveries, and the strategic planning decisions and financial health of companies within the industry. In 1981 there were almost 1500 wells drilled offshore, culminating a steady upward trend throughout the 1970's. The average number for the period 1972–82 is approximately 1100 wells per year. Drilling rig utilization declined in 1982, and activity is not expected to improve significantly for some time, especially with the current downturn in crude oil prices.

EPA estimates that approximately 833 new source oil and gas platforms will be constructed between 1986 and the year 2000 in offshore U.S. waters. Today's proposed regulation distinguishes between oil facilities and gas facilities in the following manner. A gas facility consists of only gas wells. An oil facility consists of one or more oil wells, but could also have gas wells. Definitions in Section 435.11 in today's proposed regulations present these distinctions.

B. Exploration, Development, and Production

Exploration, development, and production activities generate waste discharges that include produced water, deck drainage, drilling fluids, drill cuttings, well treatment fluids, produced sand, and sanitary and domestic wastes.

Exploration activities are those operations involving the drilling of wells to determine the nature of potential hydrocarbon reservoirs. These operations are usually of short duration at a given site, involve a small number of wells and are generally conducted from mobile drilling units. Discharges are composed principally of drilling fluids and drill cuttings.

Development activities involve the drilling and completion of production wells once a hydrocarbon reserve has been identified. These operations usually involve a large number of wells and are typically conducted from a fixed platform. Discharges are composed principally of drilling fluids and drill cuttings.

Production activities begin as each well is completed during the development phase. The production phase involves active recovery of hydrocarbons from producing formations. Development and production activities may occur simultaneously until all wells are completed and reworked. During production, discharges are composed principally of produced water and also drilling fluids and drill cuttings while concurrent development is in progress. The discharge of drilling fluids and drill cutting stops when development and well reworking operations end.

C. Waste Streams

Produced water (brine) is brought up from the hydrocarbon-bearing strata along with produced oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

Drilling fluids (muds) are those materials used to maintain hydrostatic pressure control in the well, lubricate the drill bit, remove drill cuttings from the well, and stabilize the walls of the well during drilling or workover operations.

Drill cuttings are the solids resulting from drilling into subsurface geologic formations, and are bought to the surface of the well in the drilling fluid system.

Deck drainage includes all waste resulting from platform washings, deck washings, rainwater, and runoff from curbs, gutters, and drains including drip pans and work areas.

Well treatment wastes are spent fluids that result from acidizing and hydraulic fracturing operations to improve oil recovery. Workover fluids and completion fluids are also considered to be well treatment wastes.

Produced sand consists of the slurried particles used in hydraulic fracturing and the accumulated formation sands generated during production.

Sanitary wastes originate from toilets and domestic wastes originate from sinks, showers, laundries, and galleys located on drilling and production facilities.

VI. Summary of Methodology

In developing effluent regulations for this industry segment, EPA first studied the industry to determine whether differences in factors such as production methodology, location and type of operation, size and age of facility, and waste constituents require separate limitations and standards for different segments of the category. This study involved an evaluation of how these factors affect raw waste loads, and the identification of raw waste and treated effluent characteristics, including sources and volumes of waste streams. The Agency then determined the waste constitutents, including toxic pollutants, which should be considered for effluent limitations guidelines and standards of performance.

EPA also identified both actual and potential control and treatment technologies that can be applied within each industry segment. The Agency compiled and evaluated both historical and newly generated data on the performance and operational limitations of these technologies. In addition, EPA considered the impacts of these technologies on air quality, solid waste generation, and energy requirements.

The Agency also estimated capital and annual costs associated with each control and treatment alternative. In general, unit process costs were derived by applying data on production and waste characteristics for model facilities to unit costs developed for each control and treatment process. These unit process costs were added together to yield a total cost for each treatment level. The Agency was then able to determine total industry costs, evaluate the costs of applying alternative technologies, and assess the economic impacts of compliance for each regulatory option considered.

Consideration of these factors enabled EPA to classify the various control and treatment technologies as a basis for NSPS, BAT, and BCT regulations. The proposed regulations, however, do not require the application of any particular technology. Rather, they require compliance with effluent limitations and standards representative of the proper operation of these or equivalent technologies.

VII. Data Gathering Efforts

A. Existing Information

After the proposed NSPS were withdrawn in 1980 in accordance with the Court Order in *NRDC* v. *Costle*, the Agency conducted and assessment of existing information related to point source discharges from the offshore segment of the industry. This included profiles of current and projected offshore drilling and production activities, regulatory history and enforcement status, waste characterization, existing and potential control and treatment technologies, and the cost, energy and non-water quality impacts of pollution control. Existing data were assembled through contacts with EPA regional offices, other Federal and State government agencies, industry associations, industry representatives, third party oil transmission pipeline companies, solid waste dump site

operators, drill cuttings washer suppliers, equipment manufacturers, and various technical publications.

B. Additional Data Collection

Several areas were identified that required further study to support the reproposal of effluent limitations guidelines and standards. These included an evaluation of priority pollutant levels in produced water discharges, an evaluation of alternative control and treatment technologies for reducing the discharge of priority pollutants, a characterization of drilling fluids and additives presently in use, an investigation of alternative disposal practices for drilling fluids and drill cuttings, an assessment of the impacts of discharging drilling and production wastes to the marine environment in general, and updated projections on the location, size and configuration of new sources.

C. Sampling and Analytical Programs

The sampling and analysis programs conducted for this rulemaking have focused on produced water and drilling fluids and cuttings, and on the toxic pollutants designated in the Clean Water Act. However, EPA sampled and analyzed wastes in the offshore subcategory for certain conventional and nonconventional pollutants as well as inorganic and organic toxic pollutants. Analyses for priority pollutants were based on a number of the proposed analytical methods (44 FR 69464 (December 3, 1979); 44 FR 75028 (December 18, 1979)). The final analytical methods were published on October 26, 1984 (49 FR 43234).

1. Produced Water

The Agency's initial effort to investigate priority pollutants in produced water consisted of a preliminary screening survey conducted at six production platforms in the Gulf of Mexico during 1980. Results obtained by using the standard procedures proposed by EPA at that time indicated the presence of toxic organics and metals. However, produced waters are brines containing significant concentrations of dissolved salts. The briny nature of this waste stream required the Agency to develop modified or unique analytical methods. Representatives of the Offshore Operators Committee (OOC), the American Petroleum Institute, and EPA cooperated in a joint effort in 1981 to develop analytical protocols to measure toxic pollutants in produced water.

During the first of a two-phase analytical program, produced water samples were collected at two production platforms in the Gulf of Mexico and sent to several Agency and industry laboratories for comparative testing. Final analytical protocols were established employing standards purged from ten percent sodium chloride brines, isotope dilution gas chromatography/mass spectrometry (GCMS) for analysis of volatile organic pollutants, continuous and/or acid/neutral extraction and fused silica capillary column isotope dilution GCMS for analysis of semivolatile organic pollutants, and standard addition flame atomic absorption for metals analysis.

The second phase of the analytical program was conducted with the use of established protocols to confirm the presence and further quantify the concentrations of toxic pollutants in produced water discharges at 30 production facilities in the Gulf of Mexico. Selected conventional and non-conventional parameters were also investigated. Samples were taken of influents to and effluents from produced water treatment systems during visits that ranged from one to three days at individual sites. Strict adherence to specified collection and quality assurance procedures was maintained throughout the program. Additional samples were collected for independent analyses sponsored by the OOC.

Priority pollutant sampling efforts have also been conducted at Alaska and California sites. Produced water samples were collected from both offshore and onshore treatment facilities at Cook Inlet and Prudhoe Bay in Alaska and from three offshore production platforms in California's Santa Barbara Channel.

2. Drilling Fluids

Another program was initiated by the Agency for this rulemaking to evaluate the characteristics of water-based drilling fluids. Such fluids, or muds, include a variety of compositions used as aids in drilling and stabilizing a borehole in the earth.

One objective of this on-going program is to examine the test procedures that are being proposed today as analytical methods applicable to this industrial subcategory for measuring acute toxicity and for detecting the presence of diesel oil in mud discharges. A second objective is to evaluate test results derived from these and other Agency approved analytical procedures in the development of effluent limitations guidelines and standards.

The first phase of this program involved the selection and specification of test muds. The Agency's intent was to select a group of the more commonly used water-based mud formulations for testing purposes. In doing so, the Agency relied upon information gathered during the development of NPDES permits issued in 1978 to operators drilling on leases in the Atlantic Ocean. Eight basic mud types were defined during the Mid-Atlantic Bioassay Program conducted by the Atlantic Ocean permittees in cooperation with EPA Region II and the Offshore Operators Committee (OOC). These eight generic mud types were selected to encompass virtually all water-based muds, exclusive of specialty additives, used on the outer continental shelf. The components of each mud type were identified, and allowable concentration ranges for each component were specified, as presented in Appendix B to this preamble. Bioassay test were conducted as a permit condition, and results of the Mid-Atlantic Program indicated that all eight generic muds demonstrated relatively low toxicity. Under their NPDES permits, operators were allowed to discharge muds that complied with these specifications. This generic fluid concept has been employed by other EPA regional offices in the permitting process.

Since these eight generic mud types were considered to be operationally satisfactory for the majority of offshore drilling situations, the Agency selected the same mud compositions for investigation under the BAT and NSPS regulation development program. However, it was determined that, for regulation development, tests would be more appropriately conducted on mud mixtures with components at the upper limits of the allowable concentrations. Laboratory-prepared muds, based on the eight generic fluid formulations with most components present at the upper limits of allowable concentration, were obtained from the Petroleum Equipment Suppliers Association (PESA) in mid-1983. Samples of these formulations were sent to EPA laboratories for chemical, physical, and biological testing. Bioassay data collected over the post five years by both government and industry sponsored studies on the acute toxicity of drilling fluids were considered unsatisfactory as a basis for establishing effluent limitations because of non-standard testing procedures and a high degree of variability among testing laboratories. The Agency therefore developed a standard method for measuring acute toxicity of drilling fluids for this industrial subcategory (see Appendix 3 of the proposed regulation). Toxicity tests were then conducted at EPA's Environmental

Research Laboratories in Gulf Breeze, FL and Narragansett, RI using the standard bioassay procedure being proposed in today's rulemaking. Analyses for oil content, biochemical oxygen demand, chemical oxygen demand, total organic carbon, and priority pollutants excluding pesticides were also performed at EPA contract laboratories, along with the static sheen test being proposed today (Appendix 1 of the proposed regulation).

To examine the characteristics of oil contaminated muds, the Agency also obtained, through PESA and OOC, samples of two of the generic mud formulations spiked with various amounts of mineral and diesel oils. The two mud types selected were those that are most often used in drilling situations that require oil additives. The same analytical procedures were used to test both the spiked and unspiked formulations.

One drilling fluid constituent that is a focus of concern is diesel oil, which is typically used as the primary component in conventional oil-based drilling fluids, and is a fuel oil readily available offshore for use as a spotting fluid and lubricating agent in water-based muds. Research sponsored by both industry and government agencies has shown that diesel oil contributes significantly to the acute toxicity of such fluids. To add to the information already available in the literature on the chemical makeup of diesel oil, the Agency gathered and tested samples of commercially available diesel fuels and a diesel mud additive from an offshore drilling operation in the Gulf of Mexico. Samples were analyzed for the organic priority pollutant compounds using gas chromatography/mass spectrometry. Gas chromatography methods are also being used to determine the presence of diesel oil in drilling fluids.

The Offshore Operators Committee is also conducting a program to collect data on the organic constituents of diesel and mineral oils used as drilling fluid additives. The Agency is participating in this program which will examine the differences in chemical composition and toxicity between diesel and mineral oil, and evaluate methods for measuring the diesel content of drilling fluids.

Another major constituent of drilling fluid systems is barium sulfate, commonly called barite, a mineral used primarily as a weighting agent to control downhole pressures. Commercial forms of barite can contain various impurities, including toxic metals. To investigate the presence of these contaminants, the Agency obtained samples of barite from four different sources and analyzed them for priority pollutant metals. The Agency intends to continue its survey of the quality and availability of commercial barite stocks.

EPA will continue to evaluate the proposed Drilling Fluids Toxicity Test, Static Sheen Test and the gas chromatography method for detecting the presence of diesel oil. The Agency plans to conduct interlaboratory validation programs before the promulgation of final regulations to determine the precision and accuracy of these methods.

3. Drill Cuttings

The discharge of oil and other mud constituents that adhere to or are mixed with waste cuttings is the primary concern in the drill cuttings waste stream. The data gathered on the quality of mud compositions were used to assess the expected effects of the discharge of contaminated drill cuttings to the ocean. In addition, information was obtained from suppliers of various types of cuttings washer systems on projected washer performance and treatment costs. Selected samples of oil contaminated drill cuttings before and after washing were obtained for screening purposes and tested for the same conventional, nonconventional, and some priority pollutant parameters that were investigated during the drilling fluids program.

4. Other Waste Streams

The Agency did not perform any new sampling or analytical programs for deck drainage, sanitary, domestic, produced sand, and well treatment fluids waste streams. Today's NSPS, BAT, and BCT proposed regulations for these waste streams are based upon information collected during the development of the existing BPT regulations. Effluent limitations and standards for certain toxic, conventional, and nonconventional pollutants are being reserved for certain of these waste streams, as described below, pending additional data collection by the Agency.

D. Environmental Effects Information Collection

The Agency has obtained information from numerous sources regarding the general environmental effects of discharges from offshore oil and gas platforms. In November of 1982, EPA issued a draft report entitled, *Interim Final Assessment of Environmental Fate and Effects of Discharges from Offshore Oil and Gas Operations* which summarized recent literature on the effects of produced water, drilling fluids, drill cuttings, deck drainage and sanitary wastes. The Agency distributed the report for comment to some environmental organizations and industry groups. On April 19, 1983, the Agency met with the Offshore Operators Committee (OOC) in Houston, Texas to discuss their comments on this report.

Subsequent to the issuance of this report, the Agency investigated other data sources on produced water including an API report titled *Effects of Oilfield Brine Effluent on Benthic Organisms in Trinity Bay, Texas* (API Publication No. 4291) and a more recent draft report titled *Ecological Effects of Produced Water Discharges from Offshore Oil and Gas Production Platforms* (API Project No. 248). Other reports on drilling fluids and cuttings were also reviewed which include, *Drilling Discharges in the Marine Environment* by the National Research Council and *Results of the Drilling Fluids Research Program Sponsored by the Gulf Breeze Environmental Research Laboratory, 1976–1984 and Their Application to Hazard Assessment* (EPA Publication 600/4–84–055).

In response to comments on the draft environmental assessment, the Agency has also summarized findings from other field studies pertinent to this regulation in the final environmental assessment. This assessment, titled *Assessment of Environmental Fate and Effects of Discharges From Offshore Oil and Gas Operations*, is included as supporting documentation for today's proposed regulations and supersedes the draft assessment of November 1982. In addition to the discussion of the field studies and other reports, this final assessment discusses the results from the PLUME model which was developed by EPA's Corvallis Environmental Research Laboratory. This model predicts dilution, trap depth and depth of maximum penetration of the produced water discharges.

The Agency has also investigated the following: (1) biocides in use on platforms and rigs; (2) commercial landings of fish and invertebrates and level of effort statistics for the Gulf of Mexico; (3) marine species distributions for the United States; and (4) potential impacts from barite discharges. An EPA report on biocides titled *Biocides in Use on Offshore Oil and Gas Platforms and Rigs* is included in the rulemaking record and referenced in the environmental assessment. The other analyses are also summarized in the final environmental assessment supporting the proposed regulations.

E. Economic Information Collection

The Agency obtained most of the economic data from a variety of secondary sources. Department of the Interior publications provided information on offshore leasing, platform development, production and income. Department of Energy publications were used for information on energy development, production and price. Annual and 10–K reports and industry trade publications were used to construct financial profiles of energy development companies. In addition to the above sources, a number of industry specialists in both the public and private sector provided data and opinions on technical and economic issues.

VIII. Waste Characterization

The major sources of waste generated from offshore exploration, development, and production activities are summarized in Section V. Pollutant parameters of concern include oil content (oil and grease, free oil, oil-based drilling fluids, diesel oil), organic and inorganic priority pollutants, acute toxicity, residual chlorine, and floating solids. The Agency's effort to develop effluent limitations and standards for this rulemaking focused on produced water, drilling fluids, and drill cuttings.

A. Produced Water

Water brought up from hydrocarbon-bearing strata with petroleum liquids and natural gas includes brine trapped with oil and gas in the formation and water injected into the reservoir to increase productivity. Such produced water is the major source of wastewater from offshore production operations. Data from a recent survey by the Offshore Operators Committee indicate that more than 1.5 million barrels per day of produced water were discharged to state and federal waters of the Gulf of Mexico in 1983. The percentage of water in the total fluid production from a reservoir ranges considerably, but generally increases with the age of a well. Although produced water discharge rates vary widely, it has been found that, on the average, gas wells generate considerably less water than do oil wells. Data gathered by the Offshore Operators Committee show that, for the Gulf of Mexico OCS in 1983, the average produced water discharge from a gas production well is about ten percent of that discharged by an oil production well.

Produced water contains an abundance of chlorides and dissolved solids in concentrations several times greater than in seawater. Significant concentrations of oil and grease, suspended and settleable solids, and dissolved hydrocarbons are also present.

The analytical data obtained on the presence and concentration of priority pollutants in produced water confirms the presence of several of these pollutants in both untreated and BPT-treated effluents. The results of EPA's survey of produced water discharges from 30 production platforms in the Gulf of Mexico described above show that, of 88 organic priority pollutants analyzed for, benzene, ethylbenzene, naphthalene, phenol, toluene, and 2,4-dimethylphenol were detected in most if not all of the 79 samples tested. Bis(2-ethylhexyl) phthalate, anthracene, and phenanthrene were found somewhat less frequently, but in more than half of the samples analyzed. Twenty-one of the organic priority pollutants were detected at significantly lower frequencies (less than 30 percent), and 58 of the organic priority pollutants were never detected.

Of the seven priority pollutant metals analyzed in the same study, zinc was the only metal detected at quantifiable levels in the majority of samples (more than 80 percent). Copper, nickel, lead, cadmium, and silver were detected at trace levels at significantly lower frequencies. Chromium was not detected in quantifiable amounts.

During a 1980 survey of 10 production platforms in the Gulf of Mexico sponsored by the Agency's Office of Research and Development, and summarized in a report titled *Oil Content in Produced Brine on Ten Louisiana Production Platforms* (the "Crest" report), several other chemicals were found in produced water. These chemicals include biocides, coagulants, corrosion inhibitors, cleaners, dispersants, emulsion breakers, paraffin control agents, reverse emulsion breakers and scale inhibitors. EPA has determined that most of the biocides registered for use in this industry are not priority pollutants. The priority pollutants identified as active ingredients in biocides registered for use in this industry were acrolein and pentachlorophenol. At the present time no halogenated phenol compounds, such as polychlorinated biphenyls and pentachlorophenol, may be used in any operational activity. This is based on an operating order published by U.S. Geological Survey (see 44 FR 39031).

Analytical results also confirm the findings of the study supporting BPT that significant levels of oil and grease are found in untreated produced water. In the 30-platform study, the median oil and grease removal from produced water by existing treatment systems was estimated at 63 percent. In fact, the Agency determined that, with improved operation and maintenance practices, BPT treatment facilities can achieve measurable additional reductions in oil and grease (see Section X). The effects of BPT treatment on the other chemicals (non-priority pollutants) found in produced water are incidental because the BPT equipment is not designed to remove these chemicals, which are added directly to the production or treatment systems in many instances (biocides, corrosion inhibitors, coagulants, etc). Generally, no measurable reduction in the levels of such chemicals is expected from existing BPT-type treatment systems.

Analytical results were compared to those reported by the Offshore Operators Committee (OOC) from duplicate samples taken at 6 of the 30 offshore platforms sampled by EPA. The quantitative concentrations measured by the industry differed somewhat from those reported by EPA contract laboratories. However, the industry data does confirm the presence of priority pollutants in produced water; that BPT treatment reduces the level of some of these priority pollutants; and that priority pollutants are still being discharged to waters of the United States after existing treatment.

For purposes of determining appropriate limitations and standards, the Agency categorized the pollutants present in produced water waste streams as follows. First, the priority pollutants, organics and metals are "toxic" pollutants being designated as such pursuant to Section 307(a)(1) of the Act. It would be appropriate to set BAT limitations for these pollutants as well as for NSPS. Then the other chemicals, such as those contained in biocides, coagulants, corrosion inhibitors, cleaners, dispersants, emulsion breakers, paraffin control agents, reverse emulsion breakers and scale inhibitors which have not been identified as containing designated "toxic" pollutants, would be considered nonconventional pollutants subject to BAT limitations and NSPS. Any pollutants in these products which have been designated "toxic pollutants" would be subject to BAT and NSPS toxic limitations and standards. Finally, the oil and grease present in produced water would be considered a conventional pollutant subject to BCT limitations and NSPS.

B. Drilling Fluids

Drilling fluids, or muds, are suspensions of solids and dissolved

materials in a base of water or oil that are used in rotary drilling operations to lubricate and cool the drill bit, carry cuttings from the hole to the surface, and maintain hydrostatic pressure downhole. Oil-based drilling fluids are those in which oil, typically diesel, serves as the continuous phase with water as the dispersed phase. Such fluids contain blown asphalt and usually one to five percent water emulsified into the system with caustic soda or quicklime and an organic acid. Silicate, salt, and phosphate may also be present. Oil-based muds are more costly and more toxic than water-based muds, and are normally used only for particularly demanding drilling conditions. In water-based muds, water is the suspending medium for solids and is the continuous phase, whether or not oil is present. Water-based muds are more commonly for use offshore and were focused upon in the development of today's rulemaking.

Drilling fluids are specifically formulated to meet the physical and chemical requirements of a particular well. Mud composition is affected by geographic location, well depth, and rock type, and is altered as well depth, rock formations, and other conditions change. The number and nature of mud components varies by well, and several products may be used at any given time to control the properties of a mud system.

A survey was conducted by the Agency of drilling muds used in recently completed wells in the Gulf of Mexico. Its purpose was to obtain an accurate estimate of the types and quantities of mud components used in current practice. Chemical inventories of base components and specialty additives used downhole were collected for 74 exploratory and development wells drilled offshore since 1981. These wells were representative of drilling activities in 55 lease areas throughout Louisiana state waters, Texas state waters, and federal OCS waters.

Survey findings indicate that four kinds of material, excluding water, account for about 90 percent by weight of all components used, namely barite, clays, lignosulfonates, and lignites. Other components, including lime, caustic soda, soda ash, and a multitude of specialty additives, are used as dictated by well requirements. The quantities of components used were found to vary considerably from well to well, but certain trends were observed. Wells in federal outer continental shelf waters required, on average, more drilling muds and specialty additives than did wells in state waters. Also, exploratory wells required more drilling mud and specialty additives than did development wells. Average total mud consumption for the surveyed wells amounted to 3.1 million pounds per exploratory well and 0.8 million pounds per development well.

Direct discharges of drilling fluids are generally in bulk form and occur intermittently during well drilling. Low volume discharges are made to maintain proper solids levels in mud systems. High volume discharges occur during changes in mud types, for dilution purposes, and when mud tanks are emptied at the end of drilling operations if fluids are not being reused. Such discharges can occur several times while drilling a well, and can total 2,000 barrels or more for each drilling fluid system changeover.

As discussed in Section VII, the Agency selected eight generic, water-based mud types for investigation during the development of today's proposed rulemaking. Chemical, physical, and biological analyses were conducted on laboratory-prepared samples of these eight formulations, both with and without oil additives. Samples were hot-rolled prior to testing to simulate the downhole pressures and temperatures to which spent muds would be subjected.

Analtyical results indicate that none of the organic priority pollutants were detected in any of the base generic drilling fluid formulations. However, 10 of the 13 metals on the priority pollutant list were found in detectable quantities in the generic formulations. Cadmium and mercury, in particular, were present in all muds tested, but at levels below 1 mg/kg each.

Bioassay results indicate that the acute toxicity of the generic muds range considerably. No median effects (50 percent mortality) were observed for three of the eight mud types, whereas the most toxic was found to be the potassium/polymer mud. Its suspended particulate phase showed a 96-hr LC–50 of 3 percent by volume (30,000 ppm), as measured by the proposed bioassay test method (Appendix 3 of today's proposed regulation).

Drilling fluid toxicity was found to increase with the addition of mineral oil, and even more so with diesel oil additions. These findings are consistent with results of other research activities conducted at EPA's Environmental Research Laboratory in Gulf Breeze, Florida. The Agency will continue to investigate the toxicity of various mineral oil additives to determine which formulations are operationally adequate substitutes for the more toxic diesel oil and result in the least overall toxicity in generic drilling fluid formulations.

GC/MS analyses of diesel additives to date show the presence of organic priority pollutants, including benzene, toluene, ethylbenzene, naphthalene, and phenanthrene. Limited analyses of mineral oils to date also show the presence of organics, including benzene, naphthalene, phenanthrene, and fluorene.

Static sheen tests were conducted on the generic muds using the proposed methodology. Free oil was not detected in any of the eight base formulations that did not contain oil additives. Sheen tests were also conducted on water-based muds that contained various amounts of mineral and diesel oil. The two generic mud types selected for testing were those that are most often used in drilling situations that require oil additives. Both mineral and diesel oil additions were found to cause sheens on test waters. However, water-based muds with diesel spikes produced sheens at lower spiking concentrations, as low as one percent by volume.

The Agency categorized the pollutants present in drilling fluids waste streams for purposes of determining appropriate limitations and standards. First, the priority pollutants, organics and metals, are "toxic pollutants" being designated as such pursuant to Section 307(a)(1) of the Act. These toxic pollutants include the mercury and cadmium in barite and the organic pollutants listed above which are present in the diesel and mineral oils which may be added to drilling fluids. Also, the large number of specialty additives which may be used can contain priority pollutants or nonconventional pollutants. It would be appropriate to establish BAT limitations as well as NSPS for the toxic and nonconventional pollutants. As discussed in greater detail in Section XI.A.2, the Agency has proposed specific numeric limitations on mercury and cadmium, and a prohibition on the discharge of free oil, oil-based drilling fluids, and diesel oil, which are all considered as "indicators" of toxic pollutants. Second, the oil and grease present in drilling fluids would be considered a conventional pollutant subject to BCT limitations as well as NSPS.

C. Drill Cuttings

When circulating drilling fluid returns to the platform from the well being drilled, it contains drill cuttings that have been cut from the well bore by the bit. These cuttings range from micron-sized to coarse, sand- to pebble-like particles. The cuttings are coated with

drilling fluid. Drilling fluid additives may absorb onto or be absorbed by the cuttings.

The drilling fluid from the well discharges to a rig shale shaker where the cuttings are separated from the drilling fluid. This separation step does not completely remove drilling fluid from the cuttings. Some drilling fluid and additives remain on the drill cuttings. Therefore, the composition of the cuttings will be similar to the drilling fluid except for the downhole formation particles, particle size distribution, and the relative amounts of the various drilling fluid constituents.

Results of recent analyses by EPA contract laboratories on drill cuttings derived from the use of oil-based drilling fluids show oil and grease levels of up to 136,000 mg/kg, chemical oxygen demand (COD) running as high as 270,000 mg/kg, and biochemical oxygen demand (BOD) as high as 8,000 mg/kg. The BOD values are artificially low as a result of the inhibition by oil. In addition, several toxic organic compounds, including naphthalene, acenaphthene, phenanthrene, 4-nitrophenol, N-nitrosodiphenylamine, pyrene, and bis (2-ethylhexyl) phthalate, and 10 of the 13 priority pollutant metals were found in measurable quantities. These data indicate the presence of toxic pollutants in oil-contaminated cuttings, and that organic loadings due to the discharge of such waste streams can be significant.

The Agency's approach to determining the appropriate limitations and standards for drill cuttings is the same as that used for drilling fluids since the drilling fluids that adhere to the drill cuttings are the major concern. The priority pollutants present in the drilling fluids would be controlled by BAT limitations and NSPS that prohibit the discharge of free oil and cuttings from oil-based fluid systems. These limitations serve as indicators of the toxic pollutants that could be present in the drilling fluids adhering to the drill cuttings.

The conventional pollutant "oil and grease" will be subject to a BCT limitation and NSPS prohibiting the discharge of free oil.

D. Deck Drainage

Deck drainage results primarily from precipitation runoff miscellaneous leakage and spills, and washdown of platform or drill ship decks and floors. It often contains petroleum-based oils from miscellaneous spills and leakage of oils and other production chemicals used by the facility. It may also contain detergents from washdown operations and discarded or spilled drilling fluid components. For the reasons described above, the Agency has identified priority pollutant constituents of oil as pollutants of concern and has proposed a no discharge of free oil limitation as both a BAT limitation serving as an indicator toxic pollutants and as a BCT limitation for conventional pollutants.

E. Sanitary Wastes

The volume and concentration of sanitary wastes vary widely with time, facility occupancy, and operational situation. The wastewater primarily contains body waste but, depending upon the sanitary system for the particular facility, other waste may be contained in the waste stream. Usually the toilets are flushed with fresh water but, in some cases brackish or sea water is used.

The concentrations of waste are significantly different from those for municipal domestic discharges, since the offshore operations require regimented work cycles which impact waste concentrations and cause fluctuation in flows. Waste flows have been found to fluctuate up to 300 percent of the daily average, and BOD concentrations have varied up to 400 percent.

Waste flows may vary from zero for intermittently manned facilities to several thousand gallons per day for large facilities. Pollutants of concern are the conventional pollutants fecal coliform and floating solids and are proposed to be regulated for the BCT level of control. Fecal coliform would be controlled by a residual chlorine limitation.

F. Domestic Wastes

Domestic wastes result from laundries, galleys, showers, etc. Waste flows may vary from zero for intermittently manned facilities to several thousand gallons per day for large facilities. Since these wastes do not contain fecal coliform, which must be chlorinated, they must only be ground up so as not to cause floating solids on discharge. Thus, the conventional pollutant of concern is floating solids which is proposed to be regulated for the BCT level of control.

G. Produced Sand

The fluids produced with oil and gas may contain varying amounts of sand and other particles such as scale, which must be removed from lines and vessels. This may be accomplished by opening a series of valves in the vessel manifolds that create high fluid velocity around the valve. The sand is then flushed through a drain valve into a collector vessel or drum. Produced sand may also be removed in cyclone separators when it occurs in appreciable amounts. Produced sand has been reported to be generated at the rate of one barrel per 2,000 barrels of oil.

The sand that is removed from the produced fluids typically has a high oil content. The primary pollutant of concern in produced sand wastes is oil. Therefore, for the reasons discussed above, the Agency has proposed no discharge of free oil as a BAT limitation serving as an indicator of toxic pollutants. The no discharge of free oil is also proposed as a BCT limitation on conventional pollutants.

H. Well Treatment Fluids

Well treatment fluids include chemicals used in acidizing and fracturing operations performed as part of remedial service work on old or new wells. Additionally, the fluids used to "kill" a well so that it can be serviced may create wastes for disposal.

Spent acid and fracturing fluids usually move through the normal production system and through the waste water treatment systems. Therefore, the fluids do not appear as a discrete waste source. However, their presence in the waste treatment system can cause upsets and a higher oil content in the discharged water. Liquids used to kill wells are normally drilling mud, water, or an oil.

Coverage of well treatment fluids for all pollutants except free oil is reserved in this proposed rulemaking pending collection and analysis of sufficient analytical data and information by EPA. However, to the extent any particular offshore facility passes such wastes through the produced water treatment system or commingles it with other regulated wastes streams for discharge, the commingled well treatment fluids would also be subject to the same effluent limitations as for the regulated waste stream(s).

IX. Industry Subcategorization

In many industries, factors which affect the ability of facilities to achieve technology-based limitations vary among groups of facilities. In such cases, EPA will establish different effluent limitations guidelines or standards for the various groups of facilities (i.e., subcategories). Essentially, subcategorization allows the Agency to more precisely tailor the requirements of technology-based limitations to the capacity of a diverse industry.

The oil and gas extraction point source category currently includes five subcategories: offshore, onshore, coastal, agricultural and wildlife water use, and stripper (40 CFR Part 435). Today's proposal covers only the

offshore subcategory. This subcategory is applicable to those facilities engaged in field exploration, drilling, well production, and well treatment in the oil and gas extraction industry which are located in waters that are seaward of the inner boundary of the territorial seas as defined in section 502 of the Act.

The studies in support of previously proposed NSPS and BAT and final BPT regulations for the oil and gas extraction industry concluded that three major factors—geographic location, type of facility, and waste water disposition—are the bases for subcategorization of this industry. (41 FR 44945, 44 FR 22069).

In developing today's proposed NSPS, BAT, and BCT regulations for the offshore segment of this industry, EPA evaluated characteristics of wells, platform waste effluents, available treatment technologies, and platform operations to determine if it was appropriate to modify the BPT subcategorization scheme. EPA found no basis upon which to change the existing subcategorization for the offshore segment. The Agency concluded that the existing single subcategory for the offshore segment was also appropriate for today's proposed NSPS, BAT and BCT regulations. It should be noted that while the Agency determined that it was not necessary to change the existing offshore subcategorization, the proposed NSPS includes different produced water standards based on the type of operation and location of the facility. (See § 435.15 of today's proposed regulations.)

X. Control and Treatment Technologies

A. Current Practice

BPT regulations established for the offshore segment of the industry are focused primarily on the control of the oil content of waste streams that are discharged to the ocean.

1. Produced Water

Existing technologies for the on-site removal of oil and grease from produced water discharges include gas flotation, parallel plate coalescers, loose or fibrous media filtration, gravity separation, and chemical addition to assist oil-water separation. On-site disposal methods from offshore production platforms include free fall discharge to the ocean, discharge below the water surface, and reinjection into a subsurface formation. As an alternative, some production sites transport produced fluids by pipeline to shore facilities for oil-water separation and disposal.

The removal of priority pollutants in BPT treatment systems is a complex phenomenon that has not been fully explored. While the sampling data indicated quantifiable reductions of naphthalene, lead, and ethylbenzene after BPT treatment (i.e., by oil water separator technology), the presence of significant levels of priority pollutants (e.g., naphthalene and ethylbenzene) in all effluent samples demonstrates the limitations of such treatment technologies.

Reinjection is a disposal technique for injection of produced water into a subsurface formation. When reinjection is used for disposal purposes only, the receiving formation may not be the same formation from which produced fluids were extracted. Secondary recovery or pressure maintenance is when produced water (or other fluids) is injected into a producing formation to enhance recovery of hydrocarbons. Reinjection of produced water into a producing formation may serve both purposes, i.e., disposal of produced water and enhanced recovery of hydrocarbons.

Treatment of produced water prior to injection may be necessary and may include oil-water separation and/or filtration to minimize plugging of the receiving formation. (Oil-water separation also serves for recovery of oil as a commercial product.) Also, biocides, corrosion inhibitors and sequestering agents may be added to the water to reduce or prevent scaling and corrosion of the injection equipment. The type and amount of treatment depends primarily on the properties of the receiving formation and wastewater characteristics.

2. Drilling Fluids

Disposal of drilling fluids, as currently regulated by BPT, prohibits the discharge of free oil that would cause a film or sheen upon or a discoloration of the surface of the receiving water. The discharge of drilling fluids is regulated by NPDES permits under section 402 of the Clean Water Act and by Department of the Interior lease sale stipulations under the Outer Continental Shelf Lands Act. Water-based drilling fluids are discharged directly to the oceans unless the fluid has been contaminated with oil. Water-based fluids are discharged at the surface, into the water column, or shunted to the ocean bottom through a pipe. Where water-based drilling fluids are contaminated with oil to the extent that they would cause a sheen upon discharge, current BPT regulations prohibit their discharge; compliance with the prohibition is by transportation of the spent fluids to shore for recovery or land disposal. When oil-based drilling fluids are used offshore, the fluids are not discharged, but are returned to shore for reconditioning and reuse or disposal.

3. Drill Cuttings

Existing practices for the handling of drill cuttings include: (1) on-site disposal of drill cuttings with an oil content that does not cause a sheen on the receiving water; (2) washing of drill cuttings that contain oil at a level that would cause a sheen so that they may be discharged to a receiving water; and (3) transportation to shore for land disposal. Some cases of disposal of muds and cuttings contaminated by oil have been reported in the Gulf of Mexico by the Minerals Management Service (MMS). MMS's District supervisors have issued at least 13 letters since 1980 that list items of non-compliance (INC) involving oil in discharged muds and cuttings. MMS required the responsible operators to clean up the disposal sites where oil was seeping to the ocean surface and causing a sheen.

The cuttings are segregated from the drilling fluid with a shale shaker and associated separation equipment. If the cuttings contain no oil or levels of oil that will not cause a sheen upon discharge, the cuttings are sluiced with sea water to the receiving water. However, if the levels of oil in the cuttings are such that a sheen would occur if the cuttings were discharged to the receiving water, the cuttings are either washed prior to discharge or transported to shore for land disposal.

Various types of cuttings washers are available. The basic process for the washing of cuttings is similar for all cuttings washer systems that were investigated. The process consists of first exposing the cuttings to a washing liquid (water, water plus cleaning chemicals, or solvents). The "washed" cuttings are then processed to remove the working liquid and discharged to the receiving water or transported to shore for land disposal. The washing liquid is then processed to recover the oil washed from the cuttings and reused. Separated oil is directed to the oil-water separation system serving the production wells. Oil-contaminated wash fluids are either reused in the drill cuttings wash process, burned, or transported to shore for disposal.

The greater the sophistication and cost of the cuttings washer system, the more efficient the oil removal. All washer systems investigated were reported to reduce oil content of drill cuttings to less than 10 percent, by weight. The more sophisticated systems using solvents are reported to reduce oil to less than 0.5 percent, by weight. Quantitative information on cuttings

washer performance was not well documented in the information obtained from suppliers.

4. Deck Drainage.

Deck drainage is either collected and treated separately for oil removal by gravity separation or is handled by the produced water treatment system before discharge.

A commonly used treatment technology for removal of free oils from deck drainage is oil-water separation. This is typically a gravity separation process, whereby the waste stream is collected and diverted to a tank, pit, sump pile, or other vessel. Adequate volume is provided in the vessel to provide sufficient detention time for the free oil and water to separate. The oil layer is then removed by decanting or skimming and returned to the production process, and the water layer drawn off for discharge. The majority of platforms in the Gulf of Mexico and offshore California use gravity separation technology on the platform for treatment of deck drainage. Some California platforms pipe deck drainage along with produced water to shore for treatment. Alaska operations typically treat deck drainage wastes on the platform.

Deck drainage treatment systems and systems that handle both produced water and deck drainage operate much more efficiently when good housekeeping and maintenance practices are employed. These include separation of crank case oils from the deck drainage collection system, minimization of spills, discriminate use of detergents, and preventing drilling fluids from entering the deck drainage collection system.

5. Produced Sand

Produced sand wastes are either transported to shore for disposal or are treated by water and/or solvent washes for oil removal to prevent the discharge of free oil.

6. Sanitary Wastes

Sanitary wastes from offshore facilities are usually treated at the source by physical/chemical systems. Facilities that are manned continuously by ten or more people are required to maintain a residual chlorine concentration in the sanitary waste discharge as close to 1 mg/l as possible for disinfection purposes. This chlorine residual is achieved by introducing chlorine in flow dependent amounts. Chlorine is either supplied from commercial sources or may be electrocatalytically generated from seawater. This chlorine requirement is based upon the use of U.S. Coast Guard approved marine sanitation devices (40 CFR Part 140) and is required by the BPT regulations.

7. Domestic Wastes

Domestic wastes at all facilities and sanitary discharges from facilities that are manned intermittently by nine or fewer people must be free of floating solids which is required by the BPT regulations. This is accomplished with the use of shredders or screening devices.

B. Additional Technologies Considered

The Agency considered the following additional control and treatment technologies in the formulation of today's proposed regulations.

1. Produced Water

EPA evaluated each of the following treatment technologies for NSPS. These technologies were considered for implementation at offshore facilities, and onshore where produced water is piped to shore for treatment.

(a) Improved Performance of BPT Technology. EPA evaluated the costs and feasibility of improved performance of existing BPT treatment technologies to determine whether more stringent effluent limitations for oil and grease would be appropriate. This technology would consist of improved operation and maintenance of existing BPT treatment equipment (e.g., gas flotation, coalescers, gravity oil separation), more operator attention to treatment system operation, and possibly resizing of certain treatment system components for better treatment efficiency.

Based upon statistical analysis of effluent data from facilities sampled during the Agency's 30-platform survey, EPA determined that an oil and grease effluent limitation of 59 mg/l maximum (i.e., no single sample to exceed) can be achieved through improved performance of BPT technology. This limitation would supersede the existing 72 mg/l BPT daily maximum (average of four samples in one day). This limitation is supported by information presented in the report titled *Potential Impact of Proposed EPA BAT/NSPS Standards for Produced Water Discharges From Offshore Oil and Gas Extraction Industry*, (January 1984), sponsored by the Offshore Operator's Committee for the Gulf of Mexico. The Agency's analysis of information from this study concluded that at least 75 percent of existing offshore operations in the Gulf of Mexico were already achieving oil and grease levels of 59 mg/l (maximum) or less in produced water. In addition, the Agency analyzed produced water effluent data from available discharge monitoring reports (DMR's) submitted by operators of offshore production facilities in the Gulf of Mexico. The results indicate that at least 60 percent of these facilities are presently achieving an oil and grease concentration of 59 mg/l or less (daily maximum) in produced water discharges. Thus, the Agency concluded that improved BPT performance to achieve greater reduction in oil and grease warranted further consideration in the development of NSPS and BCT for produced water.

(b) Filtration. EPA considered filtration as an add-on technology to BPT. The purpose of filtration is to remove suspended matter, including insoluble oils, from produced water. The filtration process is physical in nature and normally will not remove soluble materials. Because the majority of the priority pollutants in produced water are in solution or in a soluble form, no quantifiable reductions in priority pollutants are effected by filtration technology alone. However, reductions in conventional pollutants such as total suspended solids and oil and grease are expected. These conclusions are supported by analytical results obtained by EPA from sampling filtration systems that treat produced water.

While the Agency determined that filtration is technologically feasible to implement on an industry-wide basis, EPA rejected filtration from further consideration as a BAT treatment alternative because it is not effective in reducing priority pollutant levels. However, because filtration is a feasible technology for controlling conventional pollutants (i.e., oil and grease), the Agency concluded that filtration warranted further consideration in developing NSPS and BCT.

(c) Reinjection. Reinjection technology for produced water typically consists of injecting it under pressure to subsurface strata or formations. Treatment of the waters prior to injection is usually necessary. Such treatment may include removal of free oils and suspended matter by oil-water separation and filtration technologies. The removal of suspended matter prior to injection is usually performed to prevent pressure buildup and plugging of the receiving formation or strata. Biocides and corrosion inhibitors are typically added to the waters to minimize corrosion and scaling of the injection equipment. Reinjection technology results in no discharge to surface waters, i.e., zero discharge.

EPA evaluated this technology for implementation by both existing and new platforms. While EPA found that

reinjection is technologically feasible and economically achievable for implementation by new sources, the Agency currently lacks sufficient information on the technological feasibility and costs of retrofitting this model technology on a national basis for existing facilities. This is due to uncertainty of retrofit requirements for existing platforms, which can include either construction of additions to existing platforms or construction of auxiliary platforms to accommodate injection well slots and other injection equipment.

(d) Carbon Adsorption. EPA considered carbon adsorption as an add-on technology to BPT. The purpose of carbon adsorption would be to reduce the levels of priority organic pollutants in produced water. EPA determined that carbon adsorption is presently technologically infeasible to implement in this industry segment. This is because of the unknown effects that the brine-like nature of produced waters has on the adsorption process, the lack of performance information in either the literature or on a pilot or full-scale basis, and the disproportionately high costs to even attempt to implement this technology on a national basis for this industry segment. Therefore, EPA rejected carbon adsorption from further consideration for NSPS and BAT.

(e) Biological Treatment. Biological treatment of produced water was considered as an add-on technology to BPT. The purpose of biological treatment would be to reduce the levels of priority organic pollutants and oil in produced water. The available literature on the treatment of wastewater containing high dissolved solids levels (such as produced water) indicates severe problems with acclimating and maintaining biological cultures to treat such briny wastes. The dissolved solids (measure of brine content) levels in produced water are significantly higher than levels at which any biologically activated treatment system has been used or even tested. Therefore, EPA rejected bological treatment from further consideration for NSPS and BAT because it is, at present, technologically infeasible to implemeñt on a national basis for this industry segment.

(f) Chemical Precipitation EPA evaluated chemical precipitation as an add-on technology to BPT for the reduction of priority pollutant levels in produced water. Chemical precipitation technology can be effective in removing soluble metallic ions by their conversion to an insoluble form with subsequent removal be sedimentation (settling) or filtration. The Agency evaluated the efficacy of hydroxide (lime) and sulfide precipitation, the two most likely types of chemical treatment for this type of wastewater. The Agency's analytical data on produced water prior to treatment indicated that zinc is the only priority pollutant metal found in the majority of samples of produced water discharges. Hydroxide and sulfide precipitation were determined to effect virtually no removal of zinc from BPT-treated produced water because of the low concentrations of zinc in the BPT effluent. Sulfide precipitation was also found to cause potentially serious problems with its use, including generation of sulfide gases and toxicity of the treatment chemicals. In addition, with the use of chemical precipitation, large settling facilities would be required to effect proper treatment and then the large quantities of sludge generated would have to be disposed. Thus, EPA rejected chemical precipitation from further consideration for NSPS and BAT on a national basis for this industry segment because of operational problems with implementing the technology and nonquantifiable reductions of priority pollutant metals levels in BPT-treated produced water.

2. Drilling Fluids.

EPA evaluated each of the following practices with respect to offshore drilling operations.

(a) Clearinghouse/Toxicity Approach. The concept of generic muds is that operationally satisfactory mud systems can be formulated with constituents that are less environmentally harmfull than many currently used drilling mud components. This concept is based on the stipulation of general, water-based mud types, classified by major components, which are considered acceptable for discharge.

One such approach to the control of drilling fluid discharges during drilling activities was developed cooperatively in the late 1970's by EPA Region II and the Offshore Operators' Committee. Operators working on leases in the Baltimore Canyon had applied to Region II for NPDES permits to discharge drilling wastes. At the time, the Agency grouped all drilling muds into two broad categories, oil-based and water-based, and did not recognize differences among water-based systems. Region II prohibited the discharge of all oil-based drilling fluids, but needed a means of classifying and controlling the discharge of water-based systems which could contain numerous possible combinations of constituents.

As an alternative to requiring each mid-Atlantic permittee to perform bioassay and chemical tests every time a mud discharge occurred, Region II allowed a joint testing program to cover all muds selected for use. Eight generic mud types were identified which encompassed virtually all water-based mud compositions used on the Outer Continental Shelf. (See Appendix B of this preamble). Concentration ranges of various base constituents were specified to allow sufficient flexibility in performance characteristics and operational needs. A bioassay procedure was developed and tests were conducted on samples of field muds representing each of the eight basic mud types. Results of the Mid-Atlantic Bioassay Program indicated that the eight selected mud types demonstrated relatively low toxicity. Operators were then allowed to discharge drilling fluids of the eight types, including certain approved specialty additives, without conducting additional tests. This generic mud concept has since been incorporated into permits issued by other EPA regional offices.

(b) Product Substitution/Toxicity Approach. This option involves a series of product substitutions to reduce or eliminate the discharge of priority pollutants and minimize the toxicity of discharged drilling fluids and additives. Product substitutions include: use of generic (water-based driling fluid base formulations instead of oil-based drilling fluids (as discussed in option (a) above), use of mineral oil instead of diesel oil for lubricity and spotting purposes to reduce the toxic organics content of discharged fluids, use of barite with low to non-existent toxic metals content, and use of low-toxicity specialty additives. This option would also include a toxicity limitation (LC–50) to be achieved when the drilling fluid system is discharged. The toxicity limitation would be based upon the use of water-based drilling fluids to encourage their use.

(c) Zero Discharge. This option is based upon the transport of spent drilling fluids to shore for recovery, reconditioning for reuse, or land disposal. This option would result in no discharge of pollutants to surface waters.

3. Drill Cuttings

EPA evaluated the following treatment technologies with respect to implementation at the facility.

(a) Mechanical Processes. Drill cuttings are typically separated from the drilling fluid in a shale shaker or other similar device. However, quantities of drilling fluid, and oil and additives if used, remain with the separated drill

cuttings. The drilling mud is first loosened from the cuttings either by a pressure spray or by immersion in a tank containing a wash solution and equipped with an agitator. The wash solution may be seawater, a water-based wash solution, or a closed-solvent wash system. Sometimes a detergent is used to facilitate washing of the cuttings. A mechanical separation step usually follows which separates the solids, oils and additives from the wash solution. The separated oil and additives may be returned to the drilling mud system. Wash solutions are recycled, and the washed cuttings are typically discharged overboard.

The performance of cuttings washer systems is measured in terms of residual oil remaining on the cuttings. Most of the washer suppliers claim that the residual oil after washing will be less than 10 percent by weight and no sheen will result from their discharge. One washer supplier provides a system that dries the cuttings after washing to a powder-like form with claimed oil residuals of 0.5 percent or less, by weight.

The mechanical washing process is the most prevalent system in operation in the Gulf of Mexico, off the California Coast and in the North Sea.

(b) Solvent Extraction System. In this process, oil from the cuttings is extracted by a solvent, the cuttings are separated from the solvent wash solution, and discharged to the sea. Oil is separated from the solvent by a proprietary process and the solvent reused.

One supplier of solvent type washer systems claims that residual oil on the cuttings would not exceed 1 percent by weight and it may be possible to reduce the oil content to a maximum of 0.2 percent by weight. No solvent extraction unit is known, as yet, to be in full-scale field operation. Therefore, this technology was not given further consideration at this time.

(c) Vacuum Distillation. Vacuum distillation of cuttings is basically a "mini-refinery" process where the cuttings are ground to a fine powder and fed to a vacuum retort. The retort is heated and a two-stage vacuum pump removes the evaporated water, oil and chemicals. The mixed vapor first flows through a cyclone for solids separation and then to a vapor condenser. The condensed liquid (oil, water and some chemicals) is recycled in the mud system and the cuttings, in the form of solid residues, are discharged overboard.

The washer supplier claims that the amount of oil remaining on the cuttings will be in the range of 100 to 500 ppm, by weight (i.e., less than 0.05 percent).

Three units have been manufactured and sold for use in the United Kingdom. The operational history of this type of unit has not been reported thus far. Therefore, this technology was not given further consideration at this time.

4. Deck Drainage, Sanitary Wastes, Domestic Wastes, Produced Sand

The Agency did not identify any control and treatment technologies other than the current practices discussed above.

5. Well Treatment Fluids

The Agency is reserving coverage of NSPS, BAT and BCT for all pollutants except free oil for this waste stream pending additional data collection and analysis.

XI. Selection of Control and Treatment Options

A. New Source Performance Standards

The basis for new source performance standards under Section 306 of the Act is the best available demonstrated technology. New facilities have the opportunity to design and implement the best and most efficient processes and waste treatment technologies. Therefore, Congress directed EPA to consider the best demonstrated process changes, in-plant controls, and end-of-process control and treatment technologies that reduce pollution to the maximum extent feasible.

The Agency has investigated several control and treatment options as a basis for NSPS to reduce the discharge of pollutants in waste streams generated by the offshore segment of this industry. These options and the rationale for selecting NSPS are presented below for the major waste streams.

1. Produced Water

(a) Control and Treatment Options Considered. EPA evaluated the following three control and treatment options for establishing NSPS for produced water.

OPTION 1

Option 1 would base performance standards on the improved performance of BPT technology. A discharge standard of 59 mg/l (maximum) for oil and grease would result from this option. For the 833 projected new source platforms in the year 2000, this level of technology would result in an annual reduction of 700,000 pounds of oil and grease beyond the allowable BPT discharge level. This option would not result in quantifiable reductions of priority pollutants beyond those achieved by existing BPT-type treatment technologies.

The Agency was unable to develop incremental cost estimates for imposing Option 1 on all new source platforms. This is because the elements of improved operation and maintenance of BPT treatment equipment are very site specific. However, the Agency does believe that, for any particular new source platform, such costs are minimal compared to the installed costs of the BPT equipment and the cost of operation and maintenance to achieve the BPT effluent limitations. Also, new source operators have the opportunity to design for and install the latest equipment as an integrated part of the platform superstructure; therefore they would not be subject to any retrofit expenditures that were incurred by existing platforms to comply with the BPT regulations. Furthermore, the Offshore Operator's Committee report titled *Potential Impact of Proposed EPA BAT/NSPS Standards for Produced Water Discharge From Offshore Oil and Gas Extraction Industry* (January 1984), projects that at least 75 percent of the existing offshore platforms in the Gulf of Mexico are already achieving the 59 mg/l oil and grease limitation with treatment technology designed to achieve compliance with BPT limitations.

OPTION 2

Option 2 would base performance standards on granular media filtration as an add-on technology to BPT. This level of technology would result in additional reductions of conventional pollutants beyond the BPT level of control. Effluent limitations of 20 mg/l monthly average and 30 mg/l daily maximum for both oil and grease and total suspended solids would result from this option. For the 833 projected new source platforms, this option would result in an annualized cost of $275.7 million in the year 2000 (1983 dollars). Investment costs for the 62 platforms expected to be installed in the year 2000 are estimated to be $185.4 million (1983 dollars). These compliance costs are incremental to BPT technology, i.e., they do not include the costs for BPT technology.

This option would result in an annual reduction of 4.2 million pounds of oil and grease beyond the levels allowed under the BPT level of control. Significant reductions of total suspended solids levels are also achieved by granular media filtration. No quantifiable reductions in priority pollutants found in BPT-treated discharges would be achieved by this option.

OPTION 3

Option 3 would require zero discharge, based upon reinjection technology. This level of technology would result in no discharge of pollutants to surface waters.

For the projected 833 new platforms, this option would result in an annualized cost of $487.1 million in the year 2000 (1983 dollars). Investment costs for the 62 platforms expected to be installed in the year 2000 are estimated to be $442.0 million (1983 dollars). These compliance costs are incremental to BPT technology, which may be required ahead of the reinjection system required by this option.

This option would result in an annual reduction of 3.9 million pounds of priority pollutants beyond the discharge levels observed for existing platforms using BPT technology. This option would also result in an annual reduction of 7.0 million pounds of conventional pollutants (oil and grease) beyond the levels allowed under the BPT level of control. Significant reductions of total suspended solids levels are also achieved by this option.

(b) *Selected Option and Basis for Selection.* The option which the Agency is proposing for NSPS is a combination of Options 1 and 3. Option 3, or zero discharge, would be required for all oil production facilities that are located in or would discharge to shallow water areas, i.e., platforms in 20 meters of water or less in the Gulf of Mexico, the Atlantic Coast, and the Norton Basin; in 50 meters of water or less for the California Coast, Cook Inlet/Shelikof Strait, Bristol Bay, and Gulf of Alaska; and in 10 meters of water or less in the Beaufort Sea. The regulatory boundaries for each of these areas are defined in Appendix 4 of today's proposed regulation. The Agency has selected Option 1, improved BPT-treatment technology, which requires compliance with a 59 mg/l limitation for oil and grease (maximum for any single sample), for all oil facilities that are neither located in nor discharge to these shallow water areas, for all gas facilities regardless of location or water depth, and for all exploratory facilities regardless of location or water depth.

This selected option would require an estimated 132 new oil production facilities to meet the zero discharge standard. The other 701 new production facilities would be required to meet an oil and grease standard of 59 mg/l (maximum) based upon improved performance of BPT technology.

In selecting NSPS for produced water, the Agency considered the technical feasibility and industry compliance costs of imposing each of the above three NSPS options. In addition, EPA calculated aggregate industry compliance costs with various combinations of these options based upon platform type and location. The record supporting today's proposal presents the details of these other options.

Because Option 3, which is based on reinjection, is the only treatment technology that EPA found to be both technologically feasible to implement and capable of achieving reductions of all pollutants, including priority pollutants, the Agency focused its evaluation on reinjection. The Agency recognized that, while reinjection is an available and demonstrated technology for controlling the discharge of pollutants in produced water from offshore oil and gas facilities, the Agency also had to consider the costs of implementing such a control option. The estimated total annualized cost for all 833 projected new facilities to implement reinjection of produced water is $487.1 million in the year 2000 (1983 dollars). In light of the statutory mandate to consider cost in establishing NSPS, EPA decided to reject the imposition of this option on all new facilities in the offshore subcategory because of its very high aggregate cost. This prompted the Agency to evaluate limiting the scope of a zero discharge requirement (i.e., reinjection) in order to reduce the total cost.

To analyze possible ways to reduce the total aggregate cost of Option 3, the Agency then developed costs for reinjection based upon the type of facility, i.e., oil platforms or gas platforms. Not imposing a zero discharge requirement on the estimated 537 new source gas platforms would reduce the annualized cost of NSPS Optioin 3 by $217.8 million in the year 2000 (1983 dollars). The Agency decided to exclude all gas platforms from coverage by Option 3 to reduce total aggregate costs.

To confirm this decision, EPA evaluated the characteristics of produced water from oil platforms versus gas platforms. The Agency determined that, while produced water from gas wells exhibits higher concentrations of the priority pollutants then produced water from oil wells (approximately fourfold higher), the typical flow volume of produced water from gas wells is significantly less (approximately 1/15) than that for oil wells. Thus, on a mass basis, discharges of priority pollutants from gas wells are approximately 25 percent of those from oil wells. The higher quantity of priority pollutants discharged from oil platforms compared to gas platforms supports the Agency's decision that deleting gas platforms from a zero discharge requirement to reduce aggregate annualized costs was appropriate. This reduced total annualized costs to $269.3 million (1983 dollars) while continuing to target attention on the discharges of greatest concern.

While total projected annualized costs were reduced, the Agency believed that $269.3 million was still too high and evaluated reducing costs further by limiting the zero discharge option to shallower waters where compliance costs would be less. Facilities in shallow waters generally have the alternative of onshore reinjection which is less costly than reinjection offshore.

The Agency has found that in shallower waters a high percentage of the existing production platforms pipe to shore for treatment rather than treating the produced waters on the platform. The Agency has also determined that the costs of drilling and equipping reinjection wells on land is less costly than drilling reinjection wells at the platform.

The Agency has selected variable depth limits for different offshore areas which represent the shallower waters and which generally allow for the alternative of onshore reinjection by the facility.

Industry data for the Gulf of Mexico indicate that 82 percent of the projected new sources in state waters and 25 percent of the projected new sources in federal waters would pipe produced water to shore for treatment. The data also indicate that about 52 percent of all new sources in 15 meters or less of offshore waters would pipe produced water to shore. The Agency believes this same percentage of platforms in water depths of 20 meters or less could pipe to shore and reinject.

The 20 meter water depth was also selected for the Atlantic Coast. There is no historic trend for production platforms in this area. Therefore, the Gulf of Mexico statistics on the probable practice of onshore reinjection were assumed to be applicable for production facilities in the Atlantic Ocean.

In California, statistics indicate that 60 percent of the active production platforms located in water depths of 50 meters or less pipe to shore for treatment and only eight percent of the facilities in water depths greater than 50 meters pipe to shore for treatment. Based on this data, a depth of 50 meters or less was selected for the California Coast.

The Agency does not have historic data on production platforms for some

parts of Alaska since no offshore production platforms have been constructed to date in those areas. All of the 14 existing production platforms in Cook Inlet are classified in the coastal subcategory. The Agency believes that the Southern Alaskan bathymetry is somewhat similar to California's bathymetry and therefore, a water depth of 50 meters or less is proposed for Southern Alaska since platforms locating in this water depth may choose to pipe produced water to shore for treatment. The Southern Alaska region includes the Bristol Bay/Aleutian Island Chain, Cook Inlet and the Gulf of Alaska. The Agency realizes that some of these areas may not be amenable to piping to shore for reinjection because of seasonal ice formations, glaciers, or unsuitable terrain. However, the Agency believes that piping to shore in shallow waters will occur in areas that are suitable.

For other parts of Alaska, the Agency believes the platforms which locate in the Norton Basin in water depths of 20 meters or less and in the Beaufort Sea in 10 meters or less will have the option of piping to shore for treatment. The water depths are less than the 50 meters selected for Southern Alaska because the harsher climates in these more northern regions would result in a lesser probability of piping to shore for treatment.

The Agency developed a zero discharge option for facilities in 20 meters of water or less in the Gulf of Mexico, the Atlantic Coast and the Norton Basin; for 50 meters of water or less for the California Coast and Southern Alaska including the Aleutian Island Chain; and for 10 meters of water or less in the Beaufort Sea.

EPA then calculated the total costs of this zero discharge option in shallower waters. In the Gulf of Mexico, the agency projects that 124 new platforms will be built in 20 meters of water or less by the year 2000. The Agency estimates annualized costs of a zero discharge standard to be $50.0 million in the year 2000 (1983 dollars). For the California Coast, the Agency projects two new platforms that will be built in 50 meters or less of water and estimates the annualized cost to be $5.5 million (1983 dollars). While six platforms are projected to be built in the shallow waters of the Beaufort Sea, the Agency is not attributing incremental compliance costs to this regulation because existing Department of the Interior and State of Alaska lease stipulations already require zero discharge of produced water. However, these costs are included in the Agency's baseline economic analysis for these proposed regulations. Similarly, no costs are attributed to Atlantic Coast operations because no facilities are projected to be built in 20 meters of water or less by the year 2000. Nonetheless, EPA realizes that development is possible in the Atlantic and has found that reinjection technology is feasible for meeting a zero discharge standard for platforms located in 20 meters of water or less for the Atlantic Coast.

The proposed regulatory option, developed from the variable depth considerations presented above, results in an annualized cost of $55.6 million in the year 2000 (1983 dollars). The annualized costs apply to 128 of the 132 new oil facilities expected to be built between 1986 and the year 2000 which would be subject to this zero discharge requirement. The other six facilities are projected to be located in Alaskan waters and subject to reinjection, but the cost of reinjection is not attributed to this regulation, as described above. The Agency found these costs to be economically achievable. This cost represents the total annualized cost of NSPS. This is because the Agency's selection of improved BPT performance (i.e., 59 mg/l maximum oil and grease) for all facilities not subject to the zero discharge standard would result in negligible costs incremental to BPT.

As explained above, the agency assumes only minimal incremental costs for new sources to meet 59 mg/l oil and grease for produced water. The Agency selected Option 1 (improved BPT) over option 2 (filtration) because the aggregate annualized cost of $275.7 million (1983 dollars) to implement Option 2 is believed to be too high.

The proposed regulatory option would result in an estimated annual reduction of 700,000 pounds of priority pollutants based on discharge levels observed for existing facilities using BPT technology. This option would also result in an annual reduction of 1.3 million pounds of conventional pollutants beyond the discharge levels allowed under the BPT level of control. No decline in energy production is projected to occur from this option.

Both reinjection and improved BPT technology represent the application of the best available demonstrated control technology in the respective areas where they will need to be used to meet the proposed standards. The Agency has thoroughly considered the cost of achieving the proposed standards and concludes that the costs will not be a barrier to future entry into offshore oil and gas exploration, development or production operations. No adverse non-water quality environmental impacts or substantial increases in energy requirements will occur as a result of these proposed regulations.

This proposed option would require produced water from all new exploration facilities regardless of location or water depth to comply with a 59 mg/l maximum oil and grease standard, based upon improved operation of BPT. Because of the short duration of exploratory operations, the small amount of water which is generated during exploratory operations, and the fact that each exploratory well could require the drilling of a reinjection well, the Agency concluded that the cost of a zero discharge requirement for any exploratory operation is too high.

EPA is proposing that development/production facilities that would have to implement zero discharge under this option would have up to 300 days from the commencement of well drilling operations to begin complying with the zero discharge standard. For this purpose, commencement of well drilling operations means the start of borehole drilling for the first development well at an offshore oil facility.

During this 300-day period, any discharges of produced water would have to comply with a 59 mg/l (maximum) oil and grease standard, which is based upon improved performance of BPT technology. This 300-day period is being proposed in order to allow for the use of any dry (non-producing) wells which are suitable for reinjection. It is based upon the time required for the average number of development wells to be drilled before encountering a dry well that could be reworked and equipped for use as an injection well, and the average time to rework and equip the dry well for injection of produced water. If no dry wells become available and are ready for use as injection wells within this period, then compliance with the zero discharge standard would be achieved by drilling and equipping an injection well(s) for use by the 301st day from the commencement of development drilling operations.

The Agency estimates that, typically, less than two percent by volume of the produced water generated over the life of a facility would be discharged during the initial 300-day period. The Agency estimates that the difference in cost between the use of a new injection well and use of a reworked dry well for reinjection is a minimum of $400,000 per facility. The Agency believes that it is reasonable to delay the requirement for

meeting zero discharge by new offshore oil facilties for 300 days from commencement of develoment drilling in order to minimize the expenditure of these substantial costs.

The reasonableness of the Agency's decision to require zero discharge in the shallow waters is confirmed by the Agency's analyses which show that it would provide protection to the most environmentally sensitive marine environments. In reviewing the environmental documents referenced in Section VII.D, the Agency determined that the highest probability of direct environmental effects of produced water discharges is most prevalent in shallower waters. In the Gulf of Mexico, for example, species distribution data provided by the National Oceanic and Atmospheric Administration (NOAA) indicate that water depths of 20 meters or less encompass approximately 88 percent of the nursery areas for selected fish and invertebrates. The Agency projected that 124 new platforms would be built in 20 meters or less of water in the Gulf of Mexico.

The Agency also evaluated the Beaufort Sea, Norton Basin, Cook Inlet, Bristol Bay, and the Gulf of Alaska in Alaska. EPA analyses indicate that a 10-meter isobath (i.e., water depth of 10 meters or less) in the Beaufort Sea; a 20-meter isobath in the Norton Basin; and a 50-meter isobath in Cook Inlet/Shelikof Strait, Bristol Bay, and the Gulf of Alaska would provide substantial protection of valuable life stages for the commercial and subsistence species in each region.

For the California Coast, EPA's analyses indicate that the 50-meter isobath will protect the majority of the designated areas of biological significance. It will also protect most of the known nursery areas.

Along the Atlantic Coast, species distribution data were obtained from NOAA that indicate approximately 83 percent of the nursery areas for the selected fish and invertebrates are encompassed by water depths of 20 meters or less.

A zero discharge requirement for produced water would also achieve control of many nonconventional, toxic pollutants in addition to the 126 listed priority pollutants (See Appendix C of this preamble). An EPA survey of 10 production platforms in Louisiana (the "Crest" report) identified chemicals containing toxic or nonconventional, toxic pollutants in use on the platforms that were either present or likely to be present in produced water. These chemicals include biocides, coagulants, corrosion inhibitors, cleaners, dispersants, emulsion breakers, paraffin control agents, reverse emulsion breakers, and scale inhibitors. Detergents used to clean the platforms were also found in produced water. The Agency is currently collecting additional information on the use and effects of biocides and other chemicals in this industry for consideration in development of the final regulations.

The regulatory boundaries for each geographic area covered by today's proposed regulations are based on some of the Minerals Management Service (MMS) proposed planning areas for the new 5-year Outer Continential Shelf (OCS) oil and gas leasing program (49 FR 28332, July 11, 1984) which encompass all federal oil and gas lease activities. For the purpose of today's proposed regulations, the regulatory boundaries include the area from the state water boundary that adjoins the MMS planning area boundary landward to the inner boundary of the territorial seas. In addition, the outer (seaward) boundary of each regulatory area is proposed to coincide with the 200-mile Fishery Conservation Zone boundary.

The regulatory areas include the Gulf of Mexico, the Atlantic Coast, the California Coast and portions of Alaskan waters, as presented in Appendix 4 of today's proposed regulations.

2. Drilling Fluids

(a) *Control and Treatment Options Considered.* This section presents the regulatory options considered for NSPS drilling fluids. Because these options are the same as the options considered for BAT, the discussion of costs is presented in the BAT section for drilling fluids. Thus there are no NSPS costs or impact incremental to BAT for drilling fluids.

OPTION 1—TOXICITY LIMITATION

This option would result in the regulation of free oil, oil-based fluids, diesel oil, cadmium, mercury and the toxicity of the discharged drilling fluid. Most of these limitations are achieved by product substitution—specifically, through the use of water-based drilling fluids (i.e., generic muds), low toxicity specialty additives, the use of mineral oil instead of diesel oil for lubricity and spotting purposes, and use of barite with low toxic metals content.

Under this option the discharge of free oil would be prohibited, as in the existing BPT regulation. The discharge of oil-based fluids would also be prohibited. Oil-based fluids typically contain 50 or more volume percent of oil. One method of compliance is substitution with less toxic water-based fluids. Water-based, or generic, drilling fluids, as explained under Option 2 below, can be used in virtually all offshore drilling situations.

The prohibition on the discharge of free oil for BPT effectively prohibits the discharge of oil-based drilling fluids. Therefore, any differential costs incurred to implement substitution of water-based for oil-based fluids is a cost attributable to compliance with BPT requirements. Moreover, in contrast to the BPT regulation, this NSPS option contains an explicit prohibition on the discharge of oil-based fluids in addition to the prohibition on discharges of free oil. The alternative to product substitution, i.e., use of water based mud systems, is to transport the spent mud system to shore for reconditioning, recovery or land disposal.

The prohibition on the discharge of oil-based fluids is included in this option as an "indicator" of the toxic pollutants present in oil-based fluids. The free oil discharge prohibition in BPT originally was imposed to prevent the discharge of oils in amounts that would cause a sheen on receiving waters and this limitation will continue.

The discharge of diesel oil, either as a component in an oil-based drilling fluid or as an additive to a water-based drilling fluid, would be prohibited under this option. Diesel oil would be regulated as a toxic pollutant because it contains such toxic organic pollutants as benzene, toluene, ethylbenzene, naphthalene, and phenanthrene. The method of compliance with this prohibition is to use mineral oil instead of diesel oil for lubricity and spotting purposes. Mineral oil is a less toxic alternative to diesel oil and is available to serve the same operational requirements. Low toxicity mineral oils are also available as substitutes for diesel oil and continue to be developed for use in drilling fluids.

The purpose of the toxicity limitation for any drilling fluids which are to be discharged is to encourage the use of generic or water-based drilling fluids and the use of low-toxicity drilling fluid additives (i.e., product substitution). The basis for the toxicity (LC-50) limitation is the toxicity of the most toxic of the generic fluids discussed in Option 2 below. The most toxic generic fluid is potassium/polymer mud (see Appendix B of this preamble). The imposition of an LC-50 toxicity limitation for all drilling fluids which are to be discharged would allow for use of at least any of the eight generic drilling fluids. Seven of the generic drilling fluids (i.e., all but potassium/polymer mud) could be supplemented with low-toxicity specialty additives and lubricity agents

to meet operational requirements, and should still be able to comply with the LC-50 toxicity limitation prior to discharge. The potassium/polymer drilling fluid probably could not be supplemented with additives that exhibit a toxicity greater than the proposed LC-50 limitation because the LC-50 toxicity limitation is based upon the base formulation of this drilling fluid. However, industry operators and drilling fluid suppliers have indicated that potassium/polymer drilling fluid is seldom used. In drilling situations where there is no substitute for potassium/polymer drilling fluid for operational reasons, such a spent mud system would comply with the proposed LC-50 toxicity limitation (3 percent, diluted suspended particulate phase) only if any required lubricity agents (oils) or specialty additives are no more toxic than the base mud formulation. Such additives are available. However, where the toxicity of the spent mud system exceeds the LC-50 toxicity limitation, the method of compliance with this option would be to transport the spent fluid system to shore for either reconditioning for reuse or land disposal.

The toxicity limitation would apply to any periodic blowdown of drilling fluid as well as to bulk discharges of drilling fluid systems. The term drilling fluid systems refers to the major types of muds used during the drilling of a single well. As an example, the drilling of a particular well may use a spud mud for the first 200 feet, a seawater gel mud to a depth of 1,000 feet, a lightly treated lignosulfonate mud to 5,000 feet, and finally a freshwater lignosulfonate mud system to a bottom hole depth of 15,000 feet. Typically, bulk discharges of 1,000 to 2,000 barrels of spent drilling fluids occur when such mud systems are changed during the drilling of a well or at the completion of a well.

For the purpose of self monitoring and reporting requirements in NPDES permits, it is intended that only samples of the spent drilling fluid system discharges be analyzed in accordance with the proposed bioassay method. These bulk discharges are the highest volume mud discharges and will contain all the specialty additives included in each mud system. Thus, spent drilling fluid system discharges are the most appropriate discharges for which compliance with the toxicity limitation should be demonstrated. In the above example, four such determinations would be necessary.

For determining the toxicity of the bulk discharge of mud used at maximum well depth, samples may be obtained at any time after 80 percent of actual well footage (not total vertical depth) has been drilled and up to and including the time of discharge. This would allow time for a sample to be collected and analyzed by bioassay and for the operator to evaluate the bioassay results so that the operator will have adequate time to plan for the final disposition of the spent drilling fluid system, e.g., if the bioassay test is failed, the operator could then anticipate and plan for transport of the spent drilling fluid system to shore in order to comply with the effluent limitation. However, the operator is not precluded from discharging a spent mud system prior to receiving analytical results. Nonetheless, the operator would be subject to compliance with the effluent limitations regardless of when self monitoring analyses are performed. The prohibition on discharges of free oil, oil-based drilling fluids, and diesel oil would apply to all discharges of drilling fluid at any time.

Cadmium and mercury would be regulated at a level of 1 mg/kg, each, as a maximum value ("not to exceed") on a dry weight basis in any spent drilling fluid system discharge. These two toxic metals would be regulated to control the metals content of the barite component of any drilling fluid discharges. The method of compliance with these limitations is product substitution. This involves use of barite from sources that either do not contain these metals or contain the metals at low enough levels such that resultant levels in discharges of the drilling fluid do not exceed the limitations.

The causes for noncompliance with the specific requirements of this option could include: inability to use a drilling fluid that can meet the proposed toxicity limitation, such as the need for an oil-based mud or a potassium/polymer mud with oil additives because of operational reasons, the need to add lubricity agents or other specialty additives to a mud system to meet particular operational requirements, or the unavailability of barite containing low toxic metals levels. However, as previously noted, BPT effectively prohibits the discharge of oil-based drilling fluids, and less toxic water-based fluids are available substitutes. Although the potassium/polymer mud represents the most toxic water-based fluid allowed for discharge, it is seldom used for offshore drilling purposes. It is also recognized that the availability of barite stocks containing low levels of trace metals could be limited at any given time due to market conditions. For the purposes of today's proposal, the Agency assumed that sufficient sources of such barite do exist and can be directed to offshore drilling use in those cases where an operator intends to discharge drilling fluids. Mineral oil is an available alternative to diesel oil for use as a lubricant or spotting fluid. Although there are specialty additives for which less toxic substitutes have not been identified, the toxicity limitation is applied to the discharge of the entire drilling fluid system, and not to individual components. Thus, the Agency believes that only a limited number of offshore drilling operations would not be allowed to discharge spent drilling fluids due to violation of one or more of the requirements of this option. A conservative estimate is that, at most, ten percent of all spent drilling fluid systems would violate the proposed limitations and would have to be transported to shore to comply with this NSPS option.

OPTION 2—CLEARINGHOUSE APPROACH

Option 2 would provide for the establishment of a national clearinghouse administered by EPA which would serve as a repository for all toxicity and related physical and chemical characteristics of base drilling fluid formulations and additives. This information would be available to operators (as well as the general public) for use in selecting drilling fluid formulations that would likely comply with the established toxicity limitation. The initial list would include the eight generic fluids discussed in Section VIII and presented in Appendix B of this preamble. These fluids are of known composition and toxicity and have been evaluated and listed as acceptable for discharge in NPDES permit actions.

Chemical and toxicity information on new additives and mud formulations would be included in the clearinghouse data base as adequate testing data become available.

OPTION 3—ZERO DISCHARGE

This option would require zero discharge for all drilling fluids, based upon transport of spent drilling fluids to shore for recovery, reconditioning for reuse, or land disposal, or transport to an approved ocean disposal site. This level of technology would result in no discharge of pollutants to surface waters except at approved ocean disposal sites.

(b) Selected Option and Basis for Selection. EPA has selected Option 1 as the basis for proposed new source performance standards for drilling fluids. The proposed standards include the following limitations:

• A prohibition on the discharge of free oil, oil-based drilling fluids, and diesel oil, all considered as "indicators" of priority pollutants.

• A 96-hour LC–50 toxicity limitation on the discharged drilling fluids of no less than 3.0 percent by volume of the diluted suspended particulate phase.

• A maximum limitation (i.e., no single sample to exceed) on the amount of cadmium and mercury in discharged drilling fluids of 1 mg/kg each.

The prohibitions on the discharge of free oil, oil-based drilling fluids, and diesel oil are all intended to limit the oil content in drilling fluid waste streams and thereby control the priority as well as conventional and nonconventional pollutants present in those oils. The pollutants "free oil," "oil-based drilling fluids," and "diesel oil" are each considered to be "indicators" of the priority pollutants present in these complex hydrocarbon mixtures used in drilling fluid systems. These pollutants include benzene, toluene, ethylbenzene, napthalene and phenanthrene. The Agency's primary concern is controlling the priority pollutants in the oils although these prohibitions also will serve to control nonconventional and conventional pollutants. The Agency selected the "indicator" approach as an alternative to establishing limitations on each of the specific toxic and nontoxic pollutants present in these oil-contaminated wastestreams. The sampling and analysis data demonstrate that when the amount of oil, especially diesel, is reduced in drilling fluid, the concentrations of priority pollutants and the overall toxicity of the fluid generally are reduced. The Agency has determined that control of the amount or type of oil present in drilling fluids with limitations on the three "indicators" (free oil, oil-based drilling fluids and diesel oil) will provide a good level of control of the priority pollutants present in drilling fluids. This method of toxic regulation obviates the difficulties and costs of monitoring and analysis if limitations were established for each of the organic priority pollutants present in the drilling fluids. The Agency requests comment on its decision to use these three limitations as "indicators" of priority pollutants. The Agency also requests comment on whether limitations should be established for each of the specific organic priority pollutants present in drilling fluids.

The purpose for the LC–50 toxicity limitation on the discharge of drilling fluids is to reduce the toxic constituents in drilling fluid discharges. While the three indicator limitations on the amount or type of oil present in drilling fluids should significantly reduce the toxic pollutants present in drilling fluids, other additives such as mineral oil or some of the numerous specialty additives may greatly increase the toxicity of the drilling fluid. The toxicity is, in part, caused by the presence and concentration of priority pollutants. By establishing a toxicity limitation, the Agency believes that operators will consider toxicity in selecting additives and select the less toxic alternative. For instance, there can be a broad spectrum in the toxicity of mineral oils. The Agency believes that the Clean Water Act authorizes the Agency to establish a toxicity limitation as an effluent limitation designed to control the chemical or toxic constituents of the discharge. The availability of a wide selection of additives makes product substitution the best available demonstrated technology for complying with the toxicity limitation. The Agency has considered the costs of product substitution and finds them to be acceptable for this industry, resulting in no barrier to future entry. These standards are not expected to have any adverse non-water quality environmental impacts or increase energy requirements. The generic drilling fluids list is a primary basis for both the prohibitions on the discharge of free oil and oil-based drilling fluids and the LC–50 limitation. As discussed in section VIII, EPA has determined, through the NPDES permit process, that the eight generic water-based drilling fluids, whose formulations are presented in Appendix B of this preamble, are adequate for virtually all drilling situations and are less toxic than oil-based drilling fluids. In order for a drilling fluid to be discharged, it must be no more toxic than the proposed LC–50 standard as determined with the Drilling Fluids Toxicity Test presented in Appendix 3 of today's proposed regulation.

Under this option, a drilling fluid can be discharged only if it does not contain additives that would cause its toxicity to exceed the toxicity of the most toxic generic mud. Further, EPA has determined that refined mineral oil is an adequate substitute for diesel oil and is a less toxic alternative to diesel oil. Accordingly, diesel oil would not be an allowable additive, either as a lubricity agent or spotting fluid, to a drilling fluid intended to be discharged. Mineral oil would be allowed as a lubricity agent and spotting agent in the drilling fluid provided that its addition would not cause the toxicity of the discharged drilling fluid, including all other additives, to exceed the proposed LC–50 standard.

The limitations on cadmium and mercury for discharged drilling fluids are intended to control the concentrations of toxic metals in barite, a major component of drilling fluids. As discussed above, these limitations would be met by product substitution, the best available demonstrated technology which is economically achievable.

In addition, the Agency is proposing a different definition of the term "no discharge of free oil" from that promulgated for the BPT regulation (44 FR 22075, April 13, 1979). Also, the test procedure for determining compliance with this prohibition on free oil discharges is proposed to be changed from that used for BPT. This revised test procedure is called the "Static Sheen Test", and is presented in Appendix 1 of today's proposed regulation. The rationale for these proposed changes is the same as that discussed in Section XI.B.

This NSPS option is the same as the proposed BAT option for drilling fluids, as discussed below. Therefore, there are no NSPS compliance costs or impacts incremental to BAT for drilling fluids.

Option 2 was not selected as the basis for NSPS at this time because the Agency does not anticipate such a "clearinghouse" program to be established prior to promulgation of NSPS. Development of listing methodologies and criteria and compilation of an adequate toxicity data base, which is central to the "clearinghouse approach" of Option 2, is estimated to take from three to five years. Such methodologies, criteria and data are essential for full implementation on a nationwide basis. The Agency has begun to investigate the requirements for management of a clearinghouse approach. Upon completion of the investigation and if the Agency establishes such a program, the Agency may decide to propose to amend the approach to NSPS accordingly.

The Agency rejected Option 3, zero discharge, for implementation on a national basis for two major reasons. The Agency believes that the aggregate industry compliance costs of $126.3 million annually (1983 dollars) for transport and land disposal of all spent drilling fluids is too high. In addition, the Agency believes that there may be problems with adequate land availability for disposal of spent drilling fluids under such a zero discharge option. In part, this may be due to existing or future restrictions on the land disposal of drilling fluids under the

requirements of hazardous waste disposal laws.

3. Drill Cuttings

(a) Control and Treatment Options Considered. Option 1 would result in the regulation of free oil, oil-based fluids, and diesel oil in discharged drill cuttings. These limitations, as for the selected option for drilling fluids, are achieved by product substitution. Water-based drilling fluids would be substituted for oil-based fluids and mineral oil would be substituted for diesel oil. These three pollutant parameters would be regulated in a manner identical to that for the same pollutant parameters for drilling fluids Option 1. The rationale for their regulation is also the same as for drilling fluids Option 1 because the constituent of concern in the drill cuttings waste stream is the residual drilling fluid that adheres to the drill cuttings.

Option 2 would be equivalent to Option 1 plus a limitation on the allowable oil content of the discharged cuttings. The oil content limitation of 10 percent maximum by weight would be based upon water/detergent washer technology, as discussed in Section X of this preamble. This "residual oil" limitation would be imposed as an indicator of toxic pollutants, specifically the priority organic pollutants in oils that are added to drilling fluid systems, and to control conventional pollutants in this waste stream.

Option 3 would require zero discharge of all drill cuttings, based upon transport of drill cuttings to shore for land disposal or to an approved ocean disposal site. This option would result in no discharge of pollutants to surface waters except at approved ocean disposal sites.

(b) Selected Option and Basis for Selection. The Agency selected Option 1 as the basis for proposed NSPS for drill cuttings. The requirements of Option 1 are comparable to those of the selected option for drilling fluids.

The Agency did not select Option 2 at this time because it believes that establishing an oil content limitation on drill cuttings may be redundant because the prohibition on the discharge of free oil appears to be a more stringent limitation. While presently demonstrated cuttings washer technology will reduce residual oil content to less than ten percent by weight, the Agency's data base indicates that visible sheen can be caused by as little as one percent oil. Thus, the free oil discharge prohibition may be more stringent than any residual oil limitation that can be presently established with cuttings washer technology that has been demonstrated on a full-scale basis. The Agency will collect and evaluate additional cuttings washer performance data, especially with respect to the use of mineral oil for lubricity and spotting purposes, to establish whether an oil content limitation is more stringent than the prohibition on the discharge of free oil.

The Agency rejected Option 3, zero discharge, because of high aggregate compliance costs and land availability problems as discussed below for drilling fluids BAT Option 3.

4. Deck Drainage

As with BAT/BCT, the Agency is proposing to establish NSPS for deck drainage the same as the BPT level of control. This would result in a prohibition on the discharge of free oil. The technology basis is oil-water separation. The Agency is reserving coverage for all other pollutant parameters and characteristics for deck drainage pending additional data collection and analysis. This additional data will include toxic, nonconventional, and conventional pollutant information and control and treatment technology evaluation.

The method of determining compliance with the free oil prohibition is by the static sheen test discussed earlier and as presented in Appendix 1 of today's proposed regulation. Where deck drainage is collected and treated separately from produced water, the free oil prohibition would apply. However, where deck drainage is commingled and cotreated with produced water, only the effluent limitations for produced water would apply to these two combined waste streams.

Because this proposed standard is equal to BAT/BCT, there are no incremental compliance costs due to NSPS.

5. Sanitary Wastes

The Agency is proposing to establish NSPS for sanitary wastes equal to the BAT/BCT level of control. This would result in: (1) a prohibition on the discharge of floating solids for facilities manned by nine or fewer persons or intermittently manned by any number of persons; and (2) an effluent standard for residual chlorine of 1 mg/l minimum and to be maintained as close as possible to 1 mg/l, for facilities continuously manned by ten or more persons. Because these proposed standards are equal to BAT/BCT, there are no incremental compliance costs due to NSPS.

6. Domestic Wastes

The Agency is proposing to establish NSPS equal to the BCT level of control for domestic wastes. This would result in a prohibition on the discharge of floating solids. Since NSPS would equal BCT, no compliance costs incremental to BCT are associated with this standard.

7. Produced Sand

As with BAT/BCT, the Agency is proposing to establish a prohibition on the discharge of free oil for produced sand NSPS. The technology basis for this standard is water or solvent wash of produced sands prior to discharge, or transport of produced sand to shore for land disposal. The method of determining compliance with the free oil prohibition is by the static sheen test discussed earlier and as presented in Appendix 1 of today's proposed regulation. There are no NSPS compliance costs incremental to the proposed BAT/BCT limitations.

The Agency is reserving coverage for all other pollutant parameters and characteristics for produced sand pending additional data collection and analysis. This additional data will include toxic, nonconventional, and conventional pollutant information and control and treatment technology evaluation.

8. Well Treatment Fluids

The Agency is proposing to establish an NSPS prohibition on the discharge of free oil for well treatment fluids as an "indicator" to reduce or eliminate the discharge of any toxic pollutants in the free oil to surface waters. The method of determining compliance with the free oil prohibition is by the static sheen test discussed earlier and as presented in Appendix 1 of today's proposed regulation. This is equal to the proposed BAT level of control, as discussed below. Therefore, there are no NSPS compliance costs incremental to BAT.

The Agency is reserving NSPS coverage of all other pollutant parameters for well treatment fluids and characteristics pending additional data collection and evaluation. This additional data will include toxic, nonconventional and conventional pollutant information and control and treatment technology evaluation.

B. Best Available Technology

1. Produced Water

The Agency is not proposing BAT effluent limitations for produced water from existing sources at this time. The Agency lacks sufficient information on reinjection and control of biocides and

other chemical usage by existing facilities to properly evaluate the technological feasibility and economic achievability of these options.

The Agency is presently undertaking a data collection effort to obtain industry profile information, retrofit costing information for reinjection, information on the extent of biocide and other chemical use, and associated environmental impacts for existing facilities. Upon analysis of this information, the Agency may propose at a future date a BAT regulatory option of: (1) reinjection based upon water depth or use of biocides and other chemicals; (2) product substitution to require the use of less toxic or persistent biocides and chemicals; (3) establishment of effluent limitations to limit the quantities of biocides and chemicals discharged or an option based upon a combination of these three approaches.

Because BAT is intended to control toxic and nonconventional pollutants, the Agency will not further consider the improved BPT or filtration technologies of options 1 and 2 for existing sources because these technologies primarily control conventional pollutants, and do not effect quantifiable reductions of toxic pollutants.

2. Drilling Fluids

(a) Control and Treatment Options Considered.

OPTION 1—TOXICITY LIMITATION APPROACH

This option is the same as NSPS Option 1 for drilling fluids. It would regulate the discharge of free oil, oil-based fluids, diesel oil, cadmium, mercury and the toxicity of discharged drilling fluids. These limitations are achieved by product substitution through the use of water-based drilling fluids (i.e., generic muds), low toxicity specialty additives, the use of mineral oil instead of diesel oil for lubricity and spotting purposes, and use of barite with low toxic metals content. The purpose and rationale for these effluent standards is the same as that presented above for NSPS.

This option would result in an annual cost of $26.3 million (1983 dollars) for an estimated 1166 wells. These costs are incremental to BPT requirements and are based upon the following: transport of ten percent of all spent drilling fluid systems either to shore for recovery, reuse or land disposal or to an approved ocean disposal site; a 15 percent increase in barite costs due to increased storage and handling costs and increased demand for barite with low toxic metals content; analytical costs associated with the toxicity limitation and the mercury and cadmium effluent limitations; and monitoring costs based on the sampling frequencies presented in Section XII of this preamble. The differential cost of substituting mineral oil for diesel oil (approx. $2.10 per gallon, including storage, for the Gulf of Mexico) is not attributable to the BAT option as an incremental cost to BPT. While BPT does not explicitly prohibit the discharge of diesel oil, the discharge of diesel oil in any significant amounts (i.e., one volume percent or more) would cause a sheen on receiving waters which would violate the BPT prohibition on the discharge of free oil. Therefore, the amount of mineral oil required to comply with a proposed prohibition on the discharge of diesel oil would be minimal, and the associated costs would be minimal.

OPTION 2—CLEARINGHOUSE APPROACH

This option is the same as NSPS Option 2 for drilling fluids. It is based upon the establishment by EPA of a toxicity and chemical data base of drilling fluid formulations and additives that would be used to determine whether drilling fluid systems would likely be acceptable for discharge.

OPTION 3—ZERO DISCHARGE

This option is the same as NSPS Option 3 for drilling fluids. It would require zero discharge for all drilling fluids, based upon transport of spent drilling fluids to shore for recovery, reconditioning for reuse, land disposal, or transport to an approved ocean disposal site. This level of technology would result in no discharge of pollutants to surface waters, except at approved ocean disposal sites.

For the estimated 1166 wells drilled annually, this option would cost $126.3 million (1983 dollars). These compliance costs are incremental to BPT requirements, and reflect barging and monitoring costs.

This option would result in an annual reduction of 6.2 million barrels of drilling fluids to surface waters, except at approved ocean disposal sites.

(b) Selected Option and Basis for Selection. EPA has selected Option 1 as the basis for proposed BAT for drilling fluids. BAT would include the same limitations as NSPS:

- A prohibition on the discharge of free oil, oil-based drilling fluids, and diesel oil, all considered as "indicators" of toxic pollutants.
- A 96-hour LC–50 toxicity limitation on discharged drilling fluids of no less than 3.0 percent by volume of the diluted suspended particulate phase.
- A maximum limitation (i.e., no single sample to exceed) on the amount of cadmium and mercury in the discharged drilling fluids of 1 mg/kg each, dry weight basis.

Options 2 and 3 were rejected for the same reasons as discussed above for NSPS.

As with NSPS, the three discharge prohibitions on oil will serve as "indicators" of toxic pollutants. The Agency believes it is appropriate to establish these prohibitions as BAT toxic limitations. The primary purpose is to control the priority pollutants present in the oils. Control on the oil content of fluids could also be achieved through a numeric limitation on the conventional pollutant "oil and grease." In fact, the Agency has included the prohibition on the discharge of free oil as a BCT limitation in recognition of the complex nature of the oils present in drilling fluids. However, the Agency's decision to establish BAT limitations through the three oil prohibitions was based on the consideration that it would be less difficult and costly to comply with these three "indicator" limitations than numeric limitations on each of the organic priority pollutants present in the oils. This decision to establish limitations on oils as indicators of priority pollutants is consistent with the Agency's listing of "oil and grease" as a conventional pollutant. (44 FR 44501.) In that notice, the Agency explained that "where toxic substances are associated with oil and grease, the Agency may require control at BAT levels. This will be done either by identification of oil and grease as an indicator pollutant or by establishing BAT limitations for the specific toxic pollutant." *Id.* The Agency solicits comments on its decision to establish these indicator pollutant limitations as BAT rather than setting numeric limitations on the specific organic priority pollutants or conventional pollutants. Since the oils would be considered BAT toxic indicators, such limitations would not be subject to Section 301(c) or Section 301(g) modifications.

The LC–50 toxicity limitation and limitations on mercury and cadmium also are appropriate BAT limitations. Compliance with these limitations as well as the three oil prohibitions can be achieved through product substitution. Product substitution is both a technologically feasible and economically achievable means for compliance.

Related to this option, the Agency is proposing to amend the current definition of the term "no discharge of free oil." The current definition of "no

discharge of free oil" defines the term to mean "that a discharge does not cause a film or sheen upon or a discoloration on the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines." This limitation was originally intended to prohibit the discharge of drilling fluids (as well as drill cuttings and well treatment fluids) that, when discharged, would cause a sheen on the receiving water. The limitation was then extended for final BPT regulations to include deck drainage, and the current definition of the term "no discharge of free oil" was established to be consistent with the oil discharge provision of Section 311 of the Act. Technically, however, discharged drilling fluids could be considered "sludge." For this reason, the Agency is proposing to amend the current definition by excluding language that prohibits the deposition of sludge beneath the surface of the receiving water. This would allow the discharge of drilling fluids, provided that other effluent limitations are met.

The amended definition is accompanied by a test procedure for determining compliance with the prohibition on free oil discharges. This test is the "static sheen test" used in definition § 435.11(m) and presented in Appendix 1 of today's proposed regulations. This would apply to the same waste streams that are covered by the existing BPT prohibition, i.e., deck drainage, drilling fluids, drill cuttings, and well treatment fluids.

The compliance monitoring procedure previously required by permits was a visual inspection of the receiving water after discharge. However, since the intent of the limitations is to prohibit discharges containing free oil that will cause a sheen, the method of determining compliance should examine oil contamination prior to discharge. Also, concerns have been raised that the intent of the existing definition of "no discharge of free oil" may be violated too easily for the limitation to be effective. Violations which may result from intentional or unintentional actions include the use of emulsifiers or surfactants, discharges that occur under poor visibility conditions (i.e., at night or during stormy weather), and discharges into heavy seas, which are common on the outer continental shelf. Additionally, concerns have been expressed over the utility of the visual observation of the receiving water compliance monitoring procedure for certain discharges during ice conditions as in Alaskan operations. These include above-ice discharges where the receiving water would be covered with broken or solid ice, and below-ice discharges where the effluent stream would be obscured.

To correct for these monitoring problems, the Agency developed an alternative compliance test, the Static Sheet Test, which is presented in Appendix 1 of today's proposed regulations. The alternative test continues the visual observation for sheen, but provides for inspection before discharge using laboratory procedures. The test is conducted by adding samples of the effluent stream into a container in which the sample is mechanically mixed with a specific proportion of seawater, allowed to stand for a designated period of time, and then viewed for a sheen.

Since the intent of a "no discharge of free oil" limitation is to prevent the occurrence of a sheen on the receiving water, the new test method will prevent the discharge of fluids that will cause such a sheen.

3. Drill Cuttings

(a) Control and Treatment Options Considered.

OPTION 1

Option 1 is the same as NSPS Option 1 for drill cuttings. It would result in the prohibited discharge of free oil, oil-based fluids, and diesel oil in discharged drill cuttings. These limitations, as for the selected option for drilling fluids, are achieved by product substitution. The rationale for these limitations is also the same as for drilling fluids Option 1 because the constituent of concern in the drill cuttings waste stream is the residual drilling fluid that mixes with and adheres to the drill cuttings.

For the estimated 1166 wells drilled annually, this option would result in an estimated annual cost of $8.6 million (1983 dollars) for transport of drill cuttings to shore for land disposal and for effluent monitoring. No investment costs are expected to occur from this option. This option would result in an estimated annual reduction of at least 1.3 million pounds of oil otherwise discharged to surface waters.

OPTION 2

Option 2 is equivalent to Option 1 plus a limitation on the allowable oil content of the discharged cuttings. This option is the same as NSPS Option 2 for drill cuttings. The oil content limitation of 10 percent maximum by weight would be based upon drill cuttings water/detergent washer technology, as discussed in Section XI of this preamble.

OPTION 3

Option 3 would require zero discharge of all drill cuttings, based upon transport of drill cuttings to shore for recovery and reuse or land disposal, or transport to an approved ocean disposal site. This option would result in no discharge of pollutants to surface waters, except at approved ocean disposal sites. This option is the same as NSPS Option 3 for drill cuttings.

For the estimated 1166 wells drilled annually, this option would result in annual effluent monitoring and transport costs of $77.1 million (1983 dollars). This option would result in an annual reduction of 1.7 million barrels of drill cuttings discharged to surface waters.

(b) Selected Option and Basis for Selection. The Agency selected Option 1 as the basis for proposed BAT for drill cuttings. The requirements of Option 1 are comparable to those of the selected option for drilling fluids. This option is based on product substitution which is both a technologically feasible and economically achievable means for compliance by the industry.

The Agency is not selecting Option 2 at this time because it believes, as discussed above for NSPS, that establishing an oil content limitation on drill cuttings may be redundant because the prohibition on the discharge of free oil appears to be a more stringent limitation. The Agency will collect and evaluate additional cuttings washer performance data, especially with respect to the use of mineral oil for lubricity and spotting purposes, to establish whether an oil content limitation is more stringent than the free oil limitation.

The Agency rejected Option 3, zero discharge, because of high aggregate compliance costs and concern for adequate land availability for disposal as discussed above for NSPS.

4. Deck Drainage

The Agency is proposing to establish BAT for deck drainage equal to the BPT level of control. This would result in a prohibition on the discharge of free oil as an "indicator" to reduce or eliminate the discharge of any toxic pollutants in the free oil to surface waters. The technology basis is oil-water separation. BAT compliance costs incremental to BPT consist of additional compliance monitoring expenditures of $1.09 million (1983 dollars) annually, reflecting use of the proposed static sheet test to determine compliance with the prohibition on the discharge of free oil.

The Agency is reserving coverage of all other toxic and nonconventional pollutant parameters and characteristics for deck drainage pending additional data collection and analysis. This additional data will include toxic

pollutant information and control and treatment technology evaluation.

5. Sanitary Wastes and Domestic Wastes

The Agency is not proposing to establish BAT effluent limitations for these waste streams because there have been no toxic or nonconventional pollutants of concern identified in sanitary or domestic wastes.

6. Produced Sand

The Agency is proposing to establish a BAT prohibition on the discharge of free oil for produced sand as an "indicator" to reduce or eliminate the discharge of any toxic pollutants in the free oil to surface waters. The technology basis for this limitation is water or solvent wash of produced sand prior to discharge, or transport of produced sand to shore for land disposal. Because this waste stream is of low volume and because most facilities currently practice either washing or land disposal, the Agency did not attribute any compliance costs to this proposed limitation, except for nominal compliance monitoring expenses to perform the static sheen test to determine the presence of free oil.

The Agency is reserving coverage of all other toxic and nonconventional pollutant parameters and characteristics for produced sand pending additional data collection and analysis. This additional data will include toxic pollutant information and control and treatment technology evaluation.

7. Well Treatment Fluids

The Agency is proposing to establish a BAT prohibition on the discharge of free oil for well treatment fluids as an "indicator" to reduce or eliminate the discharge of any toxic pollutants in the free oil to surface waters. This is equal to the BPT level of control. Therefore, there are no compliance costs incremental to BPT, except for nominal compliance monitoring expenses to perform the static sheen test to determine the presence of free oil.

The Agency is reserving BAT coverage of all other pollutants and characteristics for well treatment fluids pending additional data collection and evaluation. This additional data will include toxic and nonconventional pollutants information and control and treatment technology evaluation.

C. Best Conventional Technology

The 1977 amendments added section 301(b)(4)(E) to the Act, establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Conventional pollutants are those defined in section 304(b)(4)—BOD, TSS, fecal coliform and pH—and any additional pollutants defined by the Administrator as "conventional." On July 30, 1979, EPA designated "oil and grease" as a conventional pollutant (44 FR 44501).

BCT is not an additional limitation; rather it replaces BAT for the control of conventional pollutants. BCT requires that limitations for conventional pollutants be assessed in light of "cost-reasonableness." EPA published proposed rules for BCT on October 29, 1982 (47 FR 49176). These proposed rules set forth a revised procedure which includes two tests to determine the reasonableness of costs incurred to comply with candidate BCT technologies. These cost tests are the "POTW test" and the "industry cost test." On September 20, 1984, EPA published a "notice of data availability" concerning the proposed BCT regulations (49 FR 37046).

1. Produced Water

(a) Control and Treatment Options Considered. EPA examined three treatment options for removing conventional pollutants from produced water in relation to the proposed BCT methodology.

OPTION 1—IMPROVED PERFORMANCE OF BPT

This option would require effluent limitations based on the improved performance of BPT technology. As presented above for NSPS option 1, this level of technology would result in additional reductions of oil and grease beyond the BPT level of control. A discharge limitation of 59 mg/l maximum (no single sample to exceed) for oil and grease would result from this option.

OPTION 2—FILTRATION ON SITE

This option would require effluent limitations based on granular media filtration as an add-on technology to BPT. Filtration equipment would be installed on the platform with the treated effluent being discharged at the platform. This level of technology would result in additional reductions of conventional pollutants beyond the BPT level of control. Effluent limitations of 20 mg/l monthly average and 30 mg/l daily maximum for oil and grease would result from this option.

OPTION 3—FILTRATION ONSHORE

This option is the same as Option 2 except it is applicable to facilities which presently separate produced water from hydrocarbon product at the platform, pipe the produced water to shore for treatment to meet BPT effluent limitations, and discharge the treated effluent to surface waters.

(b) Selected Option and Basis for Selection. The Agency rejected the options presented above and is proposing to establish BCT for produced water at the BPT level of control. This would result in effluent limitations of 48 mg/l monthly average and 72 mg/l daily maximum for oil and grease, based upon oil water separation technologies. The Agency rejected Options 1 through 3 because they all fail the first part of the Agency's proposed BCT cost test (the "POTW test").

For Option 1, the Agency was unable to directly perform the POTW test because the Agency lacks sufficient information to accurately estimate the incremental cost of improved BPT performance (see section XI.A.1(a) above); this cost is necessary in order to perform the POTW test. Therefore, the Agency analyzed this option by determining the maximum dollar expenditure per day that model platforms could incur to implement this option without exceeding the POTW test benchmark.

The maximum cost per pound of conventional pollutant removal whereby the "POTW test" will be passed is presented in the BCT "notice of data availability" referenced above. These maximum costs were used to calculate the total dollars that could be expended at each of the 32 model platforms to comply with this option and still pass the "POTW test." This was accomplished by multiplying the pounds of conventional pollutants that would be removed by BCT Option 1 technology for each of the 32 model platforms used for this study by the benchmark cost per pound presented in the "notice of data availability."

This total cost for each model platform ranged from $0.79 per day for the smallest model platform to $182 per day for the largest model platform. The Agency believes that the cost of implementing Option 1 is minimal, although not as low as the range of daily costs derived by the above procedure. Therefore, the Agency rejected Option 1 because it fails the POTW cost test.

For Options 2 and 3, the Agency calculated compliance costs (incremental to BPT) for each of 32 model platforms and then performed the POTW test for each model size platform. The range in costs per pound of conventional pollutant removed beyond BPT for Options 2 and 3 based on model platform size, is as follows:

	Lowest cost—dollars per pound removed (1980 dollars)	Highest cost—dollars per pound removed (1980 dollars)
Option 2	64	71
Option 3	54	63

These costs were compared with the fourth quarter, 1980 POTW proposed benchmark of $1.04 per pound of conventional pollutant removed. The POTW test failed for Options 2 and 3 for all of the model platforms. Therefore, EPA rejected these options for the BCT level of control. The Agency intends to evaluate reinjection technology for BCT after collection of certain additional technology and cost information (see Section XX) prior to promulgation of the final regulations. The Agency may also re-evaluate the proposed BCT limitations for produced water when the final BCT methodology is promulgated.

2. Drilling Fluids, Drill Cuttings, Deck Drainage and Well Treatment Fluids

With one exception, the Agency is reserving BCT requirements for drilling fluids, drill cuttings, deck drainage and well treatment fluids until final promulgation of the general BCT methodology. The exception is a prohibition on the discharge of free oil. This limitation is equal to the BPT level of control for these waste streams. Therefore, no incremental costs are associated with this proposed BCT limitation. Because BCT is proposed to be equal to BPT, the free oil discharge prohibition will pass any BCT cost test. When the final BCT methodology is promulgated, the Agency may propose to establish BCT limitations for other conventional pollutants for these waste streams. At this time, the Agency is soliciting comment on what pollutants in drilling fluid and drill cuttings waste streams should be considered conventional pollutants. Specifically, the Agency solicits comments on whether the solids components of the fluids and cuttings should be considered total suspended solids.

3. Domestic and Sanitary Wastes

The Agency is proposing BCT coverage for sanitary and domestic wastes equal to the BPT level of control. The Agency is proposing a residual chlorine effluent limitation for facilities continuously manned by 10 or more persons of 1 mg/l maximum and maintained as close to this level as possible in sanitary discharges to control fecal coliform. Residual chlorine is being treated as a BCT parameter because its purpose is to control the conventional pollutant fecal coliform.

The proposed BCT limitation for domestic wastes from all facilities and sanitary wastes from facilities continuously manned by 9 or fewer persons or manned intermittently by any number of persons is "no discharge of floating solids." No compliance costs incremental to BPT are associated with the proposed BCT limitations. Since no additional costs will be incurred these limitations pass the BCT cost tests.

4. Produced Sand

With one exception, the Agency is reserving BCT coverage for produced sand until the promulgation of the final BCT methodology. The Agency is proposing a BCT limitation that would prohibit the discharge of free oil for produced sand discharges. As discussed above for BAT, this limitation would result in negligible compliance costs.

The Agency solicits comment on other pollutants in the produced sand waste stream that should be considered for regulation at the BCT level of control.

D. Best Practicable Technology

As discussed above for NSPS and BAT, the Agency is proposing to amend the definition of the term "no discharge of free oil" and the test procedure for determining compliance with the prohibition of free oil discharges. For consistency, the Agency is proposing the same change to the existing BPT regulations. This change does not affect the conclusion that the current BPT limitation of no discharge of free oil may be met through use of the best practicable control technology currently available and that the costs of that technology are justified by the effluent reduction benefits.

XII. Cost and Economic Impact

A. Treatment Technology Costs

The costs of implementing the treatment options considered for today's proposed regulations were developed through compilation of cost data obtained from equipment manufacturers, the offshore oil and gas extraction industry, cost estimating manuals, and by the application of standard engineering data and cost estimation techniques.

Costs were determined for 32 model platform sizes. Treatment components were sized and costed for each model platform for all treatment options which were considered to be technologically feasible. In addition, a typical or model well depth was established so that cost estimates accounted for situations where well depth affected pollution control costs.

Various assumptions were made on the area required for installation of equipment, cost of new platform space, cost of land used for onshore treatment, and piping and energy costs. The Agency estimated that from 17 to 84 percent of new offshore production facilities covered by this regulation would reinject onshore, depending upon geographic location, e.g., Gulf of Mexico, California, Alaska.

Energy costs were determined based on pumping requirements and treatment facility operation. Natural gas was assumed to be the source of energy to power either electrical generation or prime movers for waste treatment on platforms, with the cost of the natural gas at commercial value. Natural gas was the chosen fuel source because of its availability and because air emissions from natural gas combustion are cleaner than those from diesel fuel. For onshore treatment installations, use of locally generated electrical power was assumed, at commercial rates.

The costs of barging and land disposal were obtained from barge operators, oil industry contacts, and landfill operators. Dry wells were assumed to be available for use as injection wells for produced water. Exhausted production wells were assumed not to be available. However, additional cost savings could be realized by using exhausted production wells for injection of produced water. These assumptions were based on API drilling statistics for the Gulf of Mexico and discussions with state officials.

To determine the installed cost of equipment on platforms, multipliers of 3.5 times the equipment purchase cost were used for skid-mounted equipment and 4.0 times the equipment purchase cost for items shipped loose. These factors were supplied by an engineering consultant to OOC in a report titled *Determination of Best Practicable Control Technology Currently Available to Remove Oil from Water Produced with Oil and Gas*, Brown and Root, Inc., March 1974. EPA solicits comments on the reasonableness of these factors used to estimate installed costs.

Geographical factors were also used to translate the cost from the base location, the Gulf of Mexico (multiplier =1), to Alaska, the California Coast and the Atlantic Coast. The following are the cost multipliers used:

Location	Capital cost multiplier	Applicable to—
Atlantic Coast	1.6	Equipment and wells.
California Coast	1.6	Do.

Location	Capital cost multiplier	Applicable to—
Alaska:		
Norton Basin	3.5	Do.
Beaufort Sea	3.5	Do.
Bristol Bay	3.5	Do.
Gulf of Alaska	3.5	Do.
Cook Inlet/Shelikof Strait.	2.0	Equipment.
Cook Inlet/Shelikof Strait.	2.5	Wells.

EPA also solicits comments on the reasonableness of these cost multipliers.

The Agency did not include potential costs for compliance with the underground injection control (UIC) program administered under the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*). The Agency invites comments and supporting data on the impacts of UIC requirements for onshore reinjection including the costs of complying with these requirements.

None of the technologies studied in the development of these proposed regulations is considered to be innovative. All of the controls described in this preamble and in greater detail in the Development Document have either been used or investigated for use in this industry and do not represent major process changes.

B. Compliance Monitoring Frequencies and Costs

The Agency has estimated compliance monitoring costs for a facility where both development and production operations are being performed. As such, the total monitoring costs presented below are conservative. The BAT compliance monitoring costs for drilling fluids and all sheen tests are the monitoring costs that are incremental to existing BPT monitoring costs.

Waste stream	Analyses	Cost per sample for analysis and labor	Frequency	Cost per month
Produced water	Oil and grease	[1] $40	1/week	$640
Drilling fluids	Bioassay (LC-50)	$1,000	1/month [2]	1,000
	Mercury, total	$50	1/month [2]	50
	Cadmium, total	$50	1/month [2]	50
	Static sheen	$25	3/week	300
Drilling cuttings	do	$25	daily	750
Deck drainage	do	$25	do	750
Produced sand	do	$25	do	750
Well treatment fluids	do	$25	1/month [2]	25
Sanitary M6IM and Domestic wastes	Floating solids	nil	daily	0
Sanitary M10	Residual chlorine	$20	1/month	20

[1] Four samples per determination.
[2] Twice per well.
[3] As needed.

C. Economic Impact

1. Introduction

The Agency's economic impact assessment is set forth in the *Economic Impact Analysis of Proposed Effluent Limitations and Standards of Performance for the Offshore Oil and Gas Industry.* (EPA 440/2-85/003). This report details the investment and annualized costs for the industry as a whole and for facilities covered by the offshore segment. The report also estimates the probable economic effect of compliance costs in terms of prices, Federal and State revenues, production levels, employment, and international trade effects and profitability.

EPA has also conducted an analysis of the cost-effectiveness of alternative treatment technologies that remove toxic pollutants from produced water. The results of this cost-effectiveness analysis are expressed in terms of the incremental removal cost per pound-equivalent, where differences in toxicity among the pollutants found are taken into account through the use of toxic weighting factors. In this analysis, a pound-equivalent is calculated by multiplying the number of pounds of pollutant discharged by a weighting factor for that pollutant. The weighting factor is equal to the water quality criterion for a standard pollutant (copper), divided by the water quality criterion for the pollutant being evaluated. The cost per pound-equivalent removed would be lower when a highly toxic pollutant is removed. This analysis is included in the record of this rulemaking, and is titled *Cost Effectiveness Analysis of Proposed Regulations for the Offshore Oil and Gas Industry.* Copies of this report may be obtained from the economic analysis staff referenced in the Addresses section of this preamble.

2. Impacts

a. Basis of Analysis. The costs and economic impacts associated with today's proposed regulations differ depending on whether drilling or production operations are analyzed. Costs to control drilling related effluents are the same for existing source platforms and for new platforms. Additional costs from production related effluents, however, arise from the zero discharge requirement for certain new source facilities.

Production related effluents at existing facilities would be regulated at the BPT level of control. Also, for existing source production facilities, the proposed regulations would prohibit the discharge of free oil for produced sand discharges. As explained in Section XI.B, no compliance costs are attributed to this proposed limitation, except for nominal compliance monitoring expenses.

The economic analysis of drilling operations is based on the total number of exploratory, delineation and development wells which the Agency expects to be drilled each year. Offshore drilling operations occur primarily in the Gulf of Mexico along the Texas and Louisiana coasts although increasing efforts are being made in offshore California and Alaska, and, to a lesser extent, in the Atlantic. The average number of wells drilled annually over the past ten years is 1166; the total annual footage drilled is 11 million feet. All of the wells drilled for exploratory, delineation, and development purposes are covered by the proposed regulation.

The analysis of production operations is based on the number of platforms projected to be built between 1986 and the year 2000. By the year 2000, new source oil and gas development should have stabilized such that the rate of growth of new facilities should equal the rate of obsolesence of facilities already covered by the regulation. EPA expects 833 new platforms to be built between 1986 and the year 2000. EPA based its estimates for platform and well development on Department of Energy projections of future energy production, Department of Interior historical data, and on industry estimates. Of the 833 new platforms, 132 are expected to be located in water depths that would be subject to the zero discharge requirement for produced water. The remaining platforms would be subject to the oil and grease standard of 59 mg/1 maximum for produced water discharges.

b. Aggregate Impacts and Costs. The combined annualized cost of today's proposed BCT, BAT and NSPS regulations is $91.5 million (1983 dollars) in the year 2000. The capital investment for these proposed requirements is $18.6 million (in 1983 dollars). No price changes will result due to this regulation. No curtailment of oil or gas production is expected. State and Federal lease revenues are expected to decline by $49.1 million in the year 2000

(1983 dollars) if companies reduce their lease bid prices. The effect of reduced bid prices is not expected to exceed 0.1 percent of total revenues for States affected by the proposed option. No employment or international trade effects are projected.

Between 85 to 95 percent of new facility construction is likely to occur on new lease tracts. These operations cannot pass the additional cost of the regulation on to customers in the form of price increases, since the price is determined in a large international market. The operations are expected to pass the additional cost of the regulation on to the State and Federal government in the form of lower lease bids. The Agency's analysis projected the revenue effects on the States and Federal government.

Some new drilling and platform construction is likely to occur on existing lease tracts. These operations must absorb the costs of the regulation, since the costs cannot be passed on in the form of higher prices or lower lease bids.

c. Methodology. The Agency used a net present value analysis to calculate whether offshore development operations could remain profitable after regulatory costs were incurred. Costs and revenues were projected over the life of the model project first based on the existing BPT requirements. Then the regulatory costs were added to these baseline costs to determine if model platforms remained profitable. EPA used 32 model platforms representing operations in the Gulf of Mexico, California Coast, Alaska and the Atlantic Coast. Distinct technical and economic characteristics for facilities in these areas were developed. Costs included in the baseline condition were those associated with leasing, exploration, delineation, development and production operations.

To assess the impact on offshore oil and gas companies, the Agency developed two representative company financial profiles: one for major integrated companies and one for independents. Pre- and post-regulation balance sheets were developed and the effect of the regulatory costs on their financial condition was assessed.

3. Best Conventional Pollutant Control Technology

BCT is either proposed equal to existing BPT requirements or reserved for this proposed rulemaking. No costs or impacts are projected as a result of today's proposal of BCT.

4. Best Available Technology Economically Achievable

Because the Agency is reserving coverage of produced water for BAT, no costs or impacts are projected for the discharge of produced water by existing platforms.

Exploratory, delineation, and development operations will incur a combined cost of $35.9 million annually to comply with the drilling fluids and cuttings limitations (1983 dollars). No capital investment will need to be made to meet these limitations. The costs are based on an estimated annual drilled footage of 11.2 million and include incremental costs of clean barite for drilling fluids as well as monitoring and barging costs. Monitoring and testing costs total $5.0 million and are based on the sampling frequency presented in Part B of this section. Costs of transportation to shore and land disposal total $20.2 million; these costs are expected to occur when drilling fluid discharges exceed either the LC-50 limitation or mercury or cadmium limitations, or when fluids or cuttings discharges would not pass the static sheen test. An estimated 10 percent of all drilling operations are expected to incur transport costs. Barite costs total $10.7 million and are based on an assumed price increase of 15 percent to reflect the combined increased storage and handling costs as well as increases in price of blended barite.

To calculate the decline in the rate of return associated with the BAT limitation, the Agency used the net present value analysis described above but used the BPT requirements as a baseline. The decline in rate of return of the model platforms was approximately 0.1 percent. No curtailment in drilling activities is expected to occur from the proposed requirements. No effect on oil and gas prices, employment or international trade is projected. The Agency finds these costs to be economically achievable for the oil and gas industry.

5. New Source Performance Standards

Incremental costs of compliance with the proposed regulation will arise only from production operations. Control of effluents from drilling operations at new sources is no more stringent than that for existing sources; therefore, no incremental costs are assigned to new sources.

Of the 833 platforms projected to be built between 1986 and the year 2000, 701 would be subject to the proposed 59 mg/l oil and grease standard for produced water. Incremental costs for platforms complying with the 59 mg/l standard are expected to be *de minimis* and, therefore, are considered to be economically achievable. This standard represents improved operation and maintenance of existing BPT treatment technology. An estimated 126 of the other 132 facilities are expected to incur an annualized cost of $55.6 million (1983 dollars) to comply with the zero discharge requirement for produced water. This annualized cost reflects the cost for 124 new platforms operating in the year 2000 in water depths of 20 meters or less in the Gulf of Mexico and two platforms located in 50 meters or less of water for the California Coast. The six platforms projected in 10 meters or less of water in Alaska must comply with an existing zero discharge requirement and are not expected to incur additional costs associated with their produced water effluent. The investment cost for facilities in the year 2000 is $18.6 million (1983 dollars). The investment cost applies to new facilities projected for the year 2000 in the depth coverage areas.

In calculating the costs associated with the zero discharge requirement, the Agency assumed that from 20 to 50 percent of all wells drilled are dry and between 7 and 25 percent of all dry wells are usable for injection. The Agency also assumed that between 17 and 84 percent of the platforms will reinject onshore depending upon distances from shore. The onshore reinjection costs include the drilling of all injection wells necessary to handle produced water volumes. EPA does not expect any of the facilities that are projected to be placed in the depth coverage areas to become unprofitable due to reinjection requirements.

The majority of new facilties will be built in new lease tracts. These operations cannot pass the additional costs of the regulation on to their customers as price increases because they represent only a very small segment of the international market in which prices are determined. However, they are not expected to experience significant declines in profits because they are expected to pass any additional costs of the regulation on to state and federal governments through lower lease prices. Thus, for the majority of new platforms, the impact of the regulations would be to reduce federal and state revenues. The reduction in revenues for the affected states is not expected to exceed 0.1 percent.

For the 5 to 15 percent of new platforms to be constructed on existing lease tracts, the cost of the regulation cannot be passed on as reduced lease bids. As a result, the rate of return for

these operations is expected to decline from 0.4 to 4.5 percent (with an average decline of 1.8 percent).

The Agency projects no net decline in energy production as a result of the zero discharge requirement because the majority of platforms are not expected to experience a change in production levels. Some platforms may shut down a year early and therefore produce less oil than they would have without the regulation. Approximately one-third of the model platforms are projected to shut down early due to an increase in the water/oil ratio in produced water, which will reduce profitability. Those that do are not expected to shut down more than a year early and the resultant decline in production is less than 0.1 percent of total model project production. Platforms able to use waterflooding may benefit from reinjection of produced water. As water is injected into a producing formation, increased pressure causes oil production increases. On balance, these production changes are expected to offset each other.

The Agency projects no employment or international trade effects as a result of this regulation.

XIII. Nonwater Quality Environmental Impact

The elimination or reduction of one form of pollution may aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act require the Agency to consider the nonwater quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, the Agency has considered the effect of these regulations on air pollution, solid waste generation, water scarcity, and energy consumption. This proposal was circulated to and reviewed by Agency personnel responsible for nonwater quality environmental programs. While it is difficult to balance pollution problems against each other and against energy use, the Agency is proposing regulations that it believes best serve often competing national goals.

The following are the nonwater quality environmental impacts associated with today's proposed regulations:

A. Energy Requirements

Additional energy requirements imposed by these regulations are due primarily to the filtration and pumping of produced water into injection wells for those new source facilities subject to the zero discharge standard. The energy requirements for the 132 new source platforms that would be required to reinject produced water total approximately 170 million kilowatt-hours per year. This represents approximately 0.05 percent of the energy content of the produced hydrocarbons from these facilities. Therefore, the small incremental energy requirements for reinjection of produced water will not significantly affect the cost of pollution control, nor will they measurably affect energy supplies.

There are no measurable increases in energy requirements beyond BAT for those new sources that would be subject to improved performance of BPT technology for produced water.

Today's proposed NSPS regulations for waste streams other than produced water and the proposed BAT regulations are based primarily on product substitution techniques and practices that do not involve the expenditure of measureable amounts of energy.

B. Air Pollution

This Agency estimated air pollution from offshore oil and gas platforms in a report titled *Atmospheric Emissions from Offshore Oil and Gas Development and Production*, June 1977 (EPA 450/3–77–026). Emissions of hydrocarbons, hydrogen sulfide, nitrogen oxide and sulfur dioxides are estimated in this report. Presently there are no national standards that directly regulate emissions from offshore oil and gas facilities.

Sources of air pollution include leaks, oil water separators, dissolved air flotation units, painting apparatus, storage tanks and diesel or gas engines for generating power. The following discussion addresses air pollution aspects of the proposed regulations.

When additional pumping is required, due to the application of a particular pollution control technology for produced water, additional air emissions will be created due to the use of fuel to power either electric generators or prime movers. However, the use of gas turbine engines projected for the majority of sites offshore should result in the least emissions to the atmosphere. If treatment facilities are located onshore, power would be obtained from local electric power companies, with no air emissions from on-site power generation.

C. Solid Waste

Operators of offshore platforms could discharge drilling fluids and drill cuttings in accordance with today's proposed regulations and any additional 403(c) considerations. In the majority of situations, drilling fluids and additives can be selected such that they would achieve the effluent limitations. As such, minimal solid waste generation for onshore disposal is expected to result from these regulations.

Section 3001 of the Resource Conservation and Recovery Act (RCRA) presently exempts offshore drilling wastes from compliance with solid waste disposal regulations. Section 3001 of RCRA states that "drilling fluids, produced water, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy shall be subject only to existing state or federal regulatory programs in lieu of Subtitle C [regulation of land disposed hazardous wastes] * * *."

Section 8002 of RCRA prescribes that these exempt waste streams be investigated by the EPA's Office of Solid Waste and that a final determination be made on their status of exemption from RCRA. The Agency is currently preparing a preliminary assessment of these wastes.

Minimal additional solid waste is associated with filtration when used to treat produced water prior to reinjection. The final disposition of the filtration wastes would be in approved land fills, except for platforms in offshore California waters where controlled ocean disposal of drilling wastes may be allowed.

D. Consumptive Water Loss

No consumptive water loss is expected as a result of these regulations.

XIV. New Source Definition

The exploration, development, and production of oil and gas in offshore waters involves operations sometimes unique from normal industrial operations performed on land. The definition section of this regulation includes a definition of "new source" appropriate for this subcategory of the oil and gas industry. While the provisions in the NPDES regulations that define new source (40 CFR 122.2) and establish criteria for a new source determination (40 CFR 122.29(b)) are applicable to this subcategory, two terms, "water area" and "significant site preparation work", are defined in this subcategory-specific new source definition in order to give the terms meanings relevant to offshore oil and gas operations. The special definitions in today's proposed regulations are consistent with § 122.29(b)(1) which provides that § 122.2 and 122.29(b) shall apply "Except as otherwise provided in an applicable new source performance standard." See 49 FR 38048 (September 26, 1984).

Before discussing the two special definitions, a brief discussion follows on the scope of the term "new source" for the offshore oil and gas industry. The term "new source" is applicable to all activities covered by the offshore subcategory. This includes mobile and/or fixed exploratory and development drilling operations as well as production operations. Coverage of all such offshore oil and gas operations is required by Section 306 of the Act.

Section 306(a)(2) defines a "new source" to mean "any source, the construction of which is commenced" after publication of the proposed NSPS if such standards are promulgated consistent with section 306. The Act defines "source" to mean any "facility . . . from which there is or may be the discharge of pollutants" and "construction" to mean "any placement, assembly, or installation of facilities or equipment . . . at the premises where such equipment will be used." The term "source" clearly would include all drilling rigs and platforms as well as production platforms. The breadth of the term "construction," which encompases the concept of "placement" of "equipment" at the "premises," would include the location and commencement of drilling or production operations at an offshore site to be "construction" of a new source. This is a critical distinction. Drilling rigs obviously are moved from site to site for several years. Production platforms are built on shore and transported to an offshore site. The appropriate reading of section 306(a)(5) would not make the date of building the rig or platform determinative of whether the rig or platform was a new source, but rather when the rig or platform was placed at the offshore site where the drilling and production activity and discharge would occur. Therefore, drilling operations that commence after the NSPS are effective, even if performed by an existing mobile rig, would be new sources, coming within the definition of "constructed" by "placement" of "equipment" at the "premises."

Similarly, a mobile drilling rig which carries the drilling equipment would be considered "placed" at the location it anchors for drilling, which would be the "premises." The Agency considers the drilling rig to be the "facility . . . from which there is or may be the discharge of pollutants" within the meaning of Section 306(a)(3). The same reasoning applies to development drilling rigs and structures and production structures, platforms or equipment. The critical determination of whether a source is a "new source" is the date of placement and commencement of operations, not the date the source orginally was built.

The first special term that is defined in these proposed regulations is "water area" as used in the term "site" in § 122.29(b). The term "site" is defined in § 122.2 to include the "water area" where a facility is "physically located" or an activity is "conducted." For the purposes of determining the "site" of new source offshore oil and gas operations, the Agency is proposing to define "water area" to mean the specific geographical location where the exploration, development, or production activity is conducted, including the water column and ocean floor beneath such activities. Therefore, if a new platform is built at or moved from a different location, it will be considered a new source when placed at the new site where its oil and gas activities take place. Even if the platform is placed adjacent to an existing platform the new platform will still be considered a "new source," occupying a new "water area" and therefore a new site.

EPA considered defining "water area" as a larger body of water, such as a lease block area. This alternative was rejected because such an artificial distinction would allow the commencement of many additional oil and gas activities (not considered to be "new sources") in an area merely by virtue of the fact that an existing activity was currently operating in the lease block. This result is inconsistent with the definitions and purpose of Section 306 of the Act. Under Section 306 a "new source" means "*any* source" the construction of which begins after the Agency publishes a NSPS.

The second special term for which EPA is proposing a special definition is "significant site preparation work." As explained above, the date of "placement" of a rig or platform is determinative of when a source is considered to be "constructed." The date of "placement" (i.e., "construction") may be earlier under the provision of 40 CFR § 122.29(b)(4) which defines construction as being commenced when "signifcant site preparation work" has been done at a site. The effect of the proposed definition for "significant site preparation work" is important in determining what individual sources would be considered to have "commenced construction" or commenced "placement" prior to the publication of the NSPS and therefore would not be considered a new source. EPA is proposing to define this term to mean the processes of clearing and preparing an area of the ocean floor for purposes of constructing or placing a development or production facility on or over the site. Therefore, if clearing or preparation of an area for development or production had occurred at a site prior to the publication of the NSPS, then subsequent development *and* production activities at that site would not be considered a new source. The significance of this definition is that exploration activities at a site prior to the effective date of the NSPS are not considered significant site preparation work. Therefore, if only exploratory drilling had been performed at a site, subsequent development and production activities would not be "grandfathered in" as existing sources at the site but rather would be considered "new sources." The Agency does not consider exploratory activities to be "significant site preparation work" because such activities are not necessarily followed by development or production activities at a site. Even when exploratory drilling ultimately leads to drilling and production activities, the latter may not be commenced for months or years after the exploratory drilling is completed. The purpose of this provision is to allow a future source to be considered an existing source if "significant site preparation work," thereby evidencing an intent to establish full-scale operations at a site, had been performed prior to NSPS becoming effective. While a development or production platform would not be built unless an exploratory well had been drilled, exploration wells are drilled at vastly more sites and can precede development by months or years.

Another provision of § 122.29(b)(4) regarding when construction of a new source has commenced, provides that construction has commenced if the owner or operator has "entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time." The Agency is not proposing a special definition of this provision believing it should appropriately be a decision for the permit writer. However, the Agency carefully has considered this provision and is providing the following general guidance concerning the proper application of the provision for the special circumstances of offshore oil and gas activities.

A common practice in the industry is for oil companies to enter into long-term contracts with independent drilling companies. These contracts may require that the drilling company will provide its services for a specified number of wells over a period of months or years. The exact site for the exploratory drilling

services may not be specified. The Agency believes such contracts would appropriately fall within the provision of § 122.29(b)(4)(ii) thereby making the drilling activities under those contracts existing sources, not new sources. Such contracts generally do not or cannot specify the exact site for future exploratory drilling.

The situation generally is not the same for development drilling or production activities. Contracts for these activities usually specify the site where activities are to be conducted or facilities placed. Therefore, a contract that meets the conditions of § 122.29(b)(4)(ii) for an exact site probably would not be considered a new source. However, a general contract for construction or use of a development or production platform with no indication of the location where it would be placed or used would not qualify to make a future selected site for its use an existing source. An opposite result would allow companies to move an existing platform or use old platforms at new sites in shallow water areas thereby avoiding the NSPS zero discharge requirement for produced water. Such a result would be contrary to the purpose of establishing NSPS.

An issue of continuing concern under the Clean Water Act has been whether NSPS must be applied after their proposal or only after their promulgation. Section 306(a)(1) of the Act provides that a "new source" is a source, the construction of which commences after proposal of NSPS if such NSPS are promulgated in accordance with section 306. Section 306(b)(1)(B) requires promulgation within 120 days of proposal. EPA's implementing regulations for direct dischargers provide that a new source means a source, the construction of which commenced either after proposal if the NSPS are promulgated within 120 days of after promulgation in all other cases. Section 122.2.

EPA does not intend that the NSPS for this subcategory shall be effective until they are promulgated unless they are promulgated within 120 days of proposal in which case the effective date would be the date of proposal. Therefore, no source will be considered a "new source" subject to NSPS until the Agency promulgates the NSPS. This decision is consistent with the Agency's definition of "new source" in 40 CFR § 122.2 since for the reasons discussed below the Agency will not be able to promulgate NSPS within 120 days of proposal. While the Agency continues to believe the definition of new source in § 122.2 is appropriate and consistent with the Act, the Third Circuit Court of Appeals has twice in *NAMF* v. *EPA*, 719 F.2d 624, 641 (3rd Cir. 1983) and *Pennsylvania Department of Environmental Resources* v. *EPA*, 618 F.2d 991 (3rd Cir. 1980), held that as a general matter EPA's new source standards shall be applied as of their date of proposal. However, the Court in those cases also recognized that there may be circumstances, such as cases where "substantial changes" may occur between proposal and promulgation that would justify an NSPS effective date as the date of promulgation. See *NAMF* v. *EPA*, 719 F.2d at 643 n.20. The Agency believes that today's proposal is such a case, as discussed below.

First, one of the issues in this rulemaking is the definition of "new source." The Agency has solicited public comment on the proposed definition of new source. The agency's final decision on the definition of new source for this subcategory will be critical to knowing what facilities must comply with the NSPS. Because the proposed definition of NSPS may change upon promulgation, individual dischargers would be unable to determine their status for an extended period of time. This would hinder operational planning during the period.

Second, the proposed standards may change on promulgation. After proposal and prior to promulgation, the Agency will be collecting substantial additional data on the proposed standards and will be reconsidering its decisions. In light of this fact and the substantial number of expected comments, it seems inappropriate to require compliance with the proposed NSPS.

Finally, one of the primary effects of a decision to apply NSPS at the date of proposal would be that the National Environmental Policy Act (NEPA) would apply to the action of issuing the permit for the new source. For new lease areas, the Department of Interior ("DOI") already is preparing environmental impact statements (EIS) that consider the proposed oil and gas operations in the lease areas. EPA has entered into a memorandum of understanding with DOI providing for EPA participation in the EIS process. Therefore, for new federal lease areas, the provisions of NEPA are being applied.

XV. Best Management Practices

Section 304(e) of the Clean Water Act authorizes the Administrator to prescribe "best management practices" ("BMP") to control "plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage." Section 402(a)(1) and NPDES regulations (40 CFR 122) also provide for best management practices to control or abate the discharge of pollutants when numeric effluent limitations are infeasible. However, the Administrator may prescribe BMP's only where he finds that they are needed to prevent "significant amounts" of toxic or hazardous pollutants from entering navigable waters.

In the offshore oil and gas industry there are various types of wastes that may be affected by the application of BMP's in NPDES permits. These include deck drainage and leaks and spills from various sources. The amount of contaminated deck drainage can be decreased considerably if proper segregation is practiced. "Clean" deck drainage should be segregated from sources of contamination. Many sources exist on an offshore platform where leaks or spillages could occur. The areas should be secured so that all leakages and/or spills are contained and not discharged overboard.

Good operation and maintenance practices reduce waste flows and improve treatment efficiencies, as well as reducing the frequency and magnitude of system upsets. Some examples of good offshore operation are:

1. Separation of waste crankcase oils from deck drainage collection systems.

2. Minimization of wastewater treatment system upsets by the controlled usage of deck washdown detergents.

3. Reduction of oil spillage through the use of good prevention techniques such as drip pans and other collection methods.

4. Elimination of oil drainage from pump bearings and/or seals by directing the drainage to the crude oil processing system.

5. If oil is used as a spotting fluid, careful attention to the operation of the drilling fluid system could result in the segregation from the main drilling fluid system of the spotting fluid and the drilling fluid that has been contaminated by the spotting oil. Once segregated, the contaminated drilling fluid can be disposed of in an environmentally acceptable manner.

Proper initial engineering of the various systems is essential to proper operation and ease of maintenance. The use of spare equipment is a requirement for continual operation when breakdowns occur. Selection of proper treatment chemicals,to insure optimum pollutant removals, is essential. Alarms should be provided to make the operator aware of off-normal conditions so corrective action can be taken.

Careful planning, good engineering and a commitment on the part of the operating, maintenance and management personnel are needed to ensure that the full benefits of all pollution reduction facilities are realized.

The Agency solicits comment on whether the final regulation should include best management practices and what substantive areas should be addressed.

XVI. Upset and Bypass Provisions

A recurring issue of concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion", is an unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. It has been argued that an upset provision is necessary in EPA's effluent limitations because such upsets will inevitably occur even in properly operated control equipment. Because technology based limitations require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have disagreed on whether an explicit upset or excursion exemption is necessary, or whether upset or excursion incidents may be handled through EPA's exercise of enforcement discretion. Compare *Marathon Oil Co.* v. *EPA*, 564 F.2d 1253 (9th Cir. 1977) with *Weyerhaeuser* v. *Costle*, 590 F.2d 1011 (D.C. Cir. 1978), and *Corn Refiners Association, et al.* v. *Costle*, 594 F.2d 1223 (8th Cir., 1979). See also *American Petroleum Institute* v. *EPA*, 540 F.2d 1023 (10th Cir. 1976); *CPC International, Inc.* v. *Train*, 540 F.2d 1320 (8th Cir. 1976); and *FMC Corp.* v. *Train*, 539 F.2d 973 (4th Cir. 1976).

A bypass is an act of intentional noncompliance during which waste treatment facilities are circumvented because of an emergency situation. EPA has in the past included bypass provisions in NPDES permits.

The Agency has determined that both upset and bypass provisions should be included in NPDES permits. (See 40 CFR 122.41 (m) and (n), published at 48 FR 14168, April 1, 1983.) The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage. Consequently, permittees in the offshore segment of this industry will be entitled to upset and bypass provisions in NPDES permits. Thus, these proposed regulations do not address these issues.

XVII. Variances and Modifications

Upon the promulgation of final regulations, the effluent limitations for the appropriate subcategory must be applied in all Federal and State NPDES permits thereafter issued to direct dischargers in the oil and gas extraction industry.

For the BPT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. See *E.I. duPont de Nemours and Co.* v. *Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co.* v. *Costle*, supra; *EPA* v. *National Crushed Stone Association, et al.* 449 U.S. 64 (1980). This variance recognizes that there may be factors concerning a particular discharger that are fundamentally different from the factors considered in this rulemaking. This variance clause was originally set forth in EPA's 1973–1976 industry regulations. It is now included in the NPDES regulations and will not be included in specific industry regulations. See the NPDES regulation, 40 CFR 125, Subpart D, 44 FR 32854, 32893 (June 7, 1979), 45 FR 33512 (May 19, 1980), 46 FR 9460 (January 28, 1981), and 47 FR 52309 (November 19, 1982) for the text and explanation of the "fundamentally different factors" variance.

Dischargers subject to BAT and BCT limitations are also eligible for EPA's "fundamentally different factors" variance. In addition, BAT limitations for nonconventional pollutants may be modified under sections 301 (c) and (g) of the Act. Section 301(1) precludes the Administrator from modifying BAT requirements for any pollutants which are on the toxic pollutant list under section 307(a)(1) of the Act.

The economic modification section (301(c)) gives the Administrator authority to modify BAT requirements for nonconventional pollutants for dischargers who file a permit application after July 1, 1977, upon a showing that such modified requirements will: (1) represent the maximum use of technology within the economic capability of the owner or operator; and (2) result in reasonable further progress toward the elimination of the discharge of pollutants.

The environmental modification section (301(g)) allows the Administrator, with the concurrence of the State, to modify limitations for nonconventional pollutants from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that:

(a) Such modified requirements will result at a minimum in compliance with BPT limitations or any more stringent limitations necessary to meet water quality standards;

(b) Such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

Section 301(j)(1)(B) of the Act requires that application for modifications under section 301 (c) or (g) must be filed within 270 days after the promulgation of an applicable effluent guideline. For further details, see 43 FR 40859, September 13, 1978.

XVIII. Relationship to NPDES Permits

The effluent limitations in these regulations will be applied to individual dischargers through NPDES permits issued by EPA or approved State agencies under section 402 of the Act. The preceding section of this preamble discussed the binding effect of this regulation on NPDES permits, except to the extent that variances and modifications are expressly authorized. This section describes several other aspects of the interaction of these regulations with NPDES permits.

One matter that has been subject to different judicial views is the scope of NPDES permit proceedings in the absence of effluent limitations, guidelines, and standards. Under current EPA regulations, states and EPA regions that issue NPDES permits before regulations are promulgated do so on a case-by-case basis on consideration of the statutory factors. See *U.S. Steel Corp.* v. *Train*, 556 F.2d 844, 854 (7th Cir. 1977.) In these situations, EPA documents and draft documents (including these proposed regulations and supporting documents) are relevant evidence, but are not binding in NPDES permit proceedings. (See 44 FR 32854, June 7, 1979.)

Another noteworthy topic is the effect of this regulation on the powers of NPDES permit-issuing authorities. The promulgation of this regulation does not

restrict the power of any permit-issuing authority to act in any manner consistent with law or these or any other EPA regulations, guidelines, or policy. For example, to the extent that State water quality standards or other provisions of State or Federal law require limitation of pollutants not covered by this regulation (or require more stringent limitations on covered pollutants), such limitations must be applied by the permit-issuing authority.

One additional topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which have been considered in developing this regulation. The Agency wishes to emphasize that, although the Clean Water Act is a strict liability statute, the limitation of enforcement proceedings by EPA is discretionary (*Sierra Club* v. *Train*, 527 F.2d 485, 5th Cir. 1977). EPA has exercised and intends to exercise that discretion in a manner that recognizes and promotes good faith compliance efforts and conserves enforcement resources for those who fail to make good faith efforts to comply with the Act.

XIX. Summary of Public Participation

The Agency has had contact with individual companies in the industry and with associations such as the Offshore Operators Committee, the Petroleum Equipment Suppliers Association, the Western Oil and Gas Association, the Alaska Oil and Gas Association, and the American Petroleum Institute during the collection of information and data basic to this proposal. Information supplied by these groups was used in the development of this proposal. The Agency has also met with or received comments from other organizations such as the Natural Resources Defense Council and the Sierra Club. The Agency held meetings on BAT permits based upon best professional judgement and to solicit input from the above groups, the general public, and the states in Denver, Colorado on June 11–12, 1984 and in Santa Barbara, California on July 27–29, 1984.

XX. Alternative Approaches to Regulation

A. Diesel Oil Recovery

During the drilling of a well, the addition of oil ("pill") may be required to free a stuck drill bit or string. The type of oil typically used is diesel oil. This oil, when added, would most likely cause the drilling fluid to exceed effluent limitations for free oil (sheen) and toxicity (LC–50), which would make it unacceptable for discharge. If the portion of the drilling fluid that contains the diesel oil can be segregated from the rest of the drilling fluid system and removed ("pill" removal or recovery), then it could be disposed of in an environmentally acceptable manner. Then the remainder of the spent drilling fluid system has a higher likelihood of meeting the free oil and toxicity limitations and may be acceptable for discharge.

The volume of drilling wastes that must be removed from the drilling fluid system to assure recovery of all spotting fluids is yet to be determined. The Agency is currently developing an information collection program to resolve such technical issues. This information will be considered during development of the final regulations, which could result in the allowable discharge of drilling fluids to which diesel oil pills have been added, provided effective pill removal/recovery practices are implemented. The Agency solicits comments on this approach to the regulation of drilling fluids and drill cuttings.

B. Specific Pollutant Approach

The Agency is considering an alternate approach to the regulation of waste discharges for this industry segment whereby specific pollutants would be limited instead of formulations or compounds. For example, rather than regulating "diesel oil" as a pollutant parameter, one or more of its toxic pollutant constituents would be regulated. For diesel oil this could include benzene, toluene, ethylbenzene, and naphthalene. The Agency will consider this approach when reviewing the comments on the proposed limitations. Those commenters criticizing proposed toxicity limitations or a prohibition on the discharge of diesel oil should address the alternative of specific numeric limitations on the priority pollutant constituents of drilling fluids and additives.

C. Alternatives for Regulating Produced Water Discharges

The Agency is evaluating several alternative approaches to NSPS for produced water other than, or combined with, the water depth basis for reinjection selected for today's proposed regulations.

One alternative approach is to target zero discharge requirements to those platforms which use biocides or other chemicals in their produced water handling systems, regardless of facility type or location. In other words, those facilities that use biocides or other chemicals would be required to meet a zero discharge standard for produced water. Another approach would be to regulate the types and discharge levels of any biocides used as well as other pollutants added to produced water wastestreams. This could be accomplished by meeting a toxicity-based effluent limitation through use of less toxic biocides, i.e., product substitution, or by limiting the quantities of biocides or other chemicals used.

The Agency will be performing an extensive survey on the use and discharge of biocides and other chemicals in produced water by existing offshore facilities in order to evaluate the appropriateness and feasibility of this type of approach. This information will be considered during development of the final regulations. Upon analysis of this information, the Agency may select a final regulatory option for produced water based upon reinjection for facilities that use biocides or other chemicals, product substitution to require the use of less toxic or persistent biocides and chemicals, establishing effluent limitations and standards to limit the quantities of biocides and chemicals, or an option based on a combination of these three approaches.

The Agency is also evaluating the appropriateness of imposing the zero discharge requirement for new source facilities located in the Gulf of Mexico in water depths of less than the 20 meter isobath appearing in today's proposed NSPS regulations. This includes estimating the number, size and type of facilities to be located in such waters, and analysis of differential costs, and amount of pollutants removed compared to the depth bases of today's NSPS proposal for produced water.

The Agency will be performing a tract-by-tract assessment of water depth to obtain NSPS profile and costing information in order to properly characterize this segment of NSPS offshore platforms. This information will be considered during development of the final regulations.

D. Oil Content Limitations

The Agency is considering the establishment of quantitative effluent limitations and standards on oil content, which would replace either the visible sheen or static sheen detection method for determining compliance with the prohibition on discharges of free oil. Such an alternative limitation could apply to deck drainage, drilling fluids, drill cuttings, well treatment fluids, and produced sand waste streams. The Agency solicits comment on this alternative.

XXI. Solicitation of Comments

The Agency invites and encourages comments on any aspect of these proposed regulations, but is particularly interested in receiving comments on the issues listed below, the alternative approaches to regulation discussed in Section XX, and on the "clearinghouse" approach to drilling fluids (NSPS and BAT Option 2). In order for the Agency to evaluate views expressed by commenters, the comments should contain specific data and information to support their views.

1. The Agency does not have adequate information on whether an operator can determine prior to the commencement of production operations whether biocides or other chemicals will be required during such production operations. The Agency is requesting additional information to determine whether an operator can determine in advance of development and production whether it will need biocides or other chemicals. This information will be used to determine whether an operator could plan during design and construction of a new facility for compliance with limitations and standards based upon biocide or other chemical usage.

2. The Agency's information on biocides is based on the registration of various pesticides with EPA's Office of Pesticides. The Agency's approach to determining which biocides are used and quantities of use is presented in the EPA report titled *Biocides in Use on Offshore Oil and Gas Platforms and Rigs*. The Agency is soliciting additional data on the actual use and application rates of biocides. In addition, the Agency invites comments and supporting data on alternatives to biocides for control of bacteria.

3. The Agency's evaluation of various treatment technologies shows that only reinjection of produced water effectively reduces priority pollutant discharges associated with produced water. In particular, EPA concluded that BPT technologies are not effective in reducing priority pollutant levels. The Agency invites comments on the use of other treatment technologies that reduce or eliminate priority pollutants in produced water discharges from offshore operations.

4. The Agency's estimate of new source compliance costs for zero discharge of produced water in the Gulf of Mexico is based on a projection of platforms in depths of 50 feet (approximately 15 meters) and extrapolated to 20 meters. The Agency will be performing tract-by-tract assessments to determine whether a zero discharge requirement for water depths less than the 20 meter isobath would be more appropriate for the Gulf of Mexico. The Agency will also use this information to refine its cost estimates for today's proposed NSPS option for produced water. The Agency invites interested parties to suggest approaches and provide information to perform this assessment.

5. The Agency has limited information on the mercury and cadmium content in foreign and domestic sources of barite. The Agency also has limited data on the effect that blending of different barite sources has on barite metals content. For purposes of its economic analysis supporting today's proposal, the Agency assumed a fifteen percent increase in the price of barite to reflect the additional storage, maintenance, transportation, and monitoring costs associated with providing offshore operations with barite of low toxic metals content. The Agency invites comments and supporting data on the availability of barite with low metals content and the priority pollutant content of barite.

The Agency also has limited information on the heavy metals content of drilling mud clays and additives and seeks to determine whether their toxic metals content warrants regulation on a national basis. The Agency solicits additional information on the concentrations of mercury, cadmium, and other toxic metals in the basic drilling mud clays, such as bentonite, attapulgite and hematite.

6. The Agency intends to prepare cost estimates for the application of add-on technologies for the handling and treatment of produced water, drilling fluids, drill cuttings and deck drainage waste streams from existing offshore oil and gas facilities. In the performance of this work, an important element will be retrofit costs to install new equipment on existing platforms. These costs would include platform addition costs, auxiliary platform costs and equipment rearrangement costs. The Agency solicits such costs, including geographic cost multipliers for use in preparing the estimates. Comments received on the subject should be in a form usable for the intended purpose, with appropriate references to substantiate their bases.

7. The proposed NSPS regulation for produced water is, in part, based on improved operation of BPT treatment to achieve oil and grease levels in the produced water discharge which are lower than BPT levels. The Agency believes that incremental costs beyond BPT to achieve a 59 mg/l maximum oil and grease standard will be minimal but some costs will be realized. The Agency solicits comments on the cost differential to meet the lower oil and grease level, realizing, however, that new sources will not incur retrofit expenses. These costs could include the cost of increased chemical use and more operator labor.

8. In the preparation of capital cost estimates, the Agency used various geographic and location cost multipliers to determine installed equipment costs and to adjust the base costs of facilities (which were prepared for the Gulf of Mexico) to other geographic locations. These other locations are: Atlantic Coast, California Coast, Cook Inlet/Shelikof Strait, Norton Basin, Gulf of Alaska, and the Beaufort Sea. The Agency solicits comments on the accuracy of the factors used, which are presented in Section XII A. of this preamble.

9. During the data gathering programs for the development of today's proposed regulations, the Agency was unable to obtain sufficient information on the oil content of drill cuttings before and after application of cuttings washer technology with which to establish national effluent limitations. While some information was available, the Agency does not believe that the data base is complete enough to be used for the formulation of national regulations. Therefore, the Agency solicits comments, including empirical data, on the oil content of drill cuttings before and after washing. This includes water wash, solvent cleaning and thermal processing technologies. This information is solicited for the use of both diesel oil and mineral oil as lubricity agents or spotting fluids for the drilling of offshore oil and gas wells. In addition, the Agency is considering and solicits comments on the appropriateness of establishing effluent limitations on oil content for drill cuttings in addition to the limitations on free oil, diesel oil and oil-based drilling fluids in the proposed options for NSPS and BAT.

10. The Agency is aware that at least two other processes exist for the treatment and disposal of drilling fluids, namely detoxification and solidification. These are relatively new technologies and, as such, were not considered by the Agency for this proposed rulemaking. The Agency solicits comments on the applicability of these two technologies for the offshore subcategory, and seeks information on cost, energy and nonwater quality aspects of using these techniques to process and dispose of drilling fluid waste streams.

11. The Agency requests comment on all aspects of the static sheen test as presented in Appendix 1 of today's

proposed regulations. The Agency particularly invites comment on the sample volumes, method of observation for sheen, and precision (reproducibility) of the proposed method.

12. The Agency requests comment on all aspects of the diesel oil analytical method as presented in Appendix 2 of today's proposed regulations for use on drilling fluids and drill cuttings waste streams.

13. The Agency requests comment on the appropriateness of establishing a limitation or standard on oil and grease for deck drainage in addition to, or instead of, a prohibition on the discharge of free oil.

XXII. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses of major regulations. The primary purpose of the Executive Order is to ensure that regulatory agencies carefully evaluate the need for taking the regulatory action. Major rules are those which impose a cost on the economy of $100 million a year or more or have certain other economic impacts. This regulation is not a major regulation because its annualized cost of $91.5 million (1983 dollars) is less than $100 million and it meets none of the other criteria specified in paragraph (b) of Executive Order 12291.

XXIII. Regulatory Flexibility Analysis

Pub. L. 96-354 requires EPA to prepare an Initial Regulatory Flexibility Analysis for all proposed regulations that have a significant impact on a substantial number of small entities. This analysis may be done in conjunction with or as part of any other analysis conducted by the Agency. The economic impact analysis described above indicates that there will not be a significant impact on any segment of the regulated population. Additionally, the analysis has determined that none of the oil and gas development companies directly affected by the regulation are small businesses. Therefore, a formal regulatory flexibility analysis is not required.

XXIV. OMB Review

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA responses to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M Street, S.W., Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding Federal holidays.

XXV. List of Subjects in 40 CFR Part 435

Oil and gas extraction, Waste treatment and disposal, Water pollution control.

XXVI. Appendices

Appendix A—Abbreviations, Acronyms, and Other Terms Used in this Notice

Act—The Clean Water Act.

Agency—The U.S. Environmental Protection Agency.

API—American Petroleum Institute.

BAT—The best available technology economically achievable, under Section 304(b)(2)(B) of the Act.

BCT—The best conventional pollutant control technology.

BDT—The best available demonstrated control technology processes, operating methods, or other alternatives, including where practicable, a standard permitting no discharge of pollutants under Section 306(a)(1) of the Act.

BMP—Best management practices under Section 304(e) of the Act.

BOD—Biochemical oxygen demand.

BPT—The best practicable control technology currently available, under Section 304(b)(1) of the Act.

Bypass—An act of intentional noncompliance during which waste treatment facilities are circumvented because of an emergency situation.

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.), as amended by the Clean Water Act of 1977 (Pub. L. 95-217).

COD—Chemical oxygen demand.

Direct discharger—A facility which discharges or may discharge pollutants to waters of the United States.

LC-50—The concentration of a test material that is lethal to 50 percent of the test organisms in a bioassay.

NPDES Permit—A National Pollutant Discharge Elimination System permit issued under Section 402 of the Act.

NRDC—Natural Resources Defense Council.

NSPS—New source performance standards under Section 306 of the Act.

OOC—Offshore Operators Committee.

PESA—Petroleum Equipment Suppliers Association.

Priority Pollutants—The 65 pollutants and classes of pollutants declared toxic under Section 307(a) of the Act. Appendix C contains a listing of specific elements and compounds.

RCRA—Resource Conservation and Recovery Act (Pub. L. 94-580) of 1976, Amendments to Solid Waste Disposal Act.

SPCC—A spill prevention control and countermeasure plan required under Section 311(j) of the Act.

Spot—The introduction of oil to a drilling fluid system for the purpose of freeing a stuck drill bit or string.

TOC—Total organic carbon.

Upset—An unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee.

WOGA—Western Oil and Gas Association.

Appendix B—Generic Drilling Fluids List

Type of fluid and base components	Typical concentration range (pound per barrel)
1. Potassium/Polymer Mud:	
Barite	0-450
Caustic soda	0.5-3
Cellulose polymer	0.25-5
Drilled solids	20-100
Potassium chloride	5-50
Seawater or fresh water	(1)
Starch	2-12
Xanthan gum polymer	0.25-2
2. Seawater/Lignosulfonate Mud:	
Attapulgite or bentonite	10-50
Barite	25-450
Caustic soda	1-5
Cellulose polymer	0.25-5
Drilled solids	20-100
Lignite	1-10
Lignosulfonate	2-15
Seawater	(1)
Soda ash/sodium bicarbonate	0-2
3. Lime Mud:	
Barite	25-180
Bentonite	10-50
Caustic soda	1-5
Drilled solids	20-100
Fresh water or seawater	(1)
Lignite	0-10
Lignosulfonate	2-15
Lime	2-20
Soda ash/sodium bicarbonate	0-2
4. Nondispersed Mud:	
Acrylic polymer	0.5-2
Barite	25-180
Bentonite	5-15
Drilled solids	20-70
Fresh water or seawater	(1)
5. Spud Mud (slugged intermittently with seawater):	
Attapulgite or bentonite	10-50
Barite	0-50
Caustic soda	0-2
Lime	0.5-1
Seawater	(1)
Soda ash/sodium bicarbonate	0-2
6. Seawater/Fresh Water Gel Mud:	
Attapulgite or bentonite	10-50
Barite	0-50
Caustic soda	0.5-3
Cellulose polymer	0-2
Drilled solids	20-100
Lime	0-2
Seawater or fresh water	(1)
Soda ash/sodium bicarbonate	0-2
7. Lightly Treated Lignosulfonate Freshwater/Seawater Mud:	
Barite	0-180
Bentonite	10-50
Caustic soda	1-3
Cellulose polymer	0-2
Drilled solids	20-100
Lignite	0-4
Lignosulfonate	2-6
Lime	0-2
Seawater-to-freshwater ratio	(2)
Soda ash/sodium bicarbonate	0-2
8. Lignosulfonate Freshwater Mud:	
Barite	0-450
Bentonite	10-50
Caustic soda	2-5
Cellulose polymer	0-2
Drilled solids	20-100
Fresh water	(1)
Lignite	2-10
Lignosulfonate	4-15
Lime	0-2

(1) As needed.
(2) 1:1 approximately.

Appendix C—126 Priority Pollutants

Acenaphthene
Acrolein
Acrylonitrile
Benzene
Benzidine

Carbon tetrachloride (tetrachloromethane)
Chlorobenzene
1,2,4-trichlorobenzene
Hexachlorobenzene
1,2-dichloroethane
1,1,1-trichloroethane
Hexachloroethane
1,1-dichloroethane
1,1,2-trichloroethane
1,1,2,2-tetrachloroethane
Chloroethane
Bis(2-chloroethyl) ether
2-chloroethyl vinyl ether (mixed)
2-chloronaphthalene
2,4,6-trichlorophenol
Parachlorometa cresol
Chloroform (trichloromethane)
2-chlorophenol
1,2-dichlorobenzene
1,3-dichlorobenzene
1,4-dichlorobenzene
3,3-dichlorobenzidine
1,1-dichloroethylene
1,2-trans-dichloroethylene
2,4-dichlorophenol
1,2-dichloropropane
1,2-dichloropropylene (1,3-dichloropropene)
2,4-dimethylphenol
2,4-dinitrotoluene
2,6-dinitrotoluene
1,2-diphenylhydrazine
Ethylbenzene
Fluoranthene
4-chlorophenyl phenyl ether
4-bromophenyl phenyl ether
Bis(2-chloroisopropyl) ether
Bis(2-chloroethoxy) methane
Methylene chloride(dichloromethane)
Methyl chloride (dichloromethane)
Methyl bromide (bromomethane)
Bromoform (tribromomethane)
Dichlorobromomethane
Chlorodibromomethane
Hexachlorobutadiene
Hexachlorocyclopentadiene
Isophorone
Naphthalene
Nitrobenzene
2-nitrophenol
4-nitrophenol
2,4-dinitrophenol
4,6-dinitro-o-cresol
N-nitrosodimethylamine
N-nitrosodiphenylamine
N-nitrosodi-n-propylamine
Pentachlorophenol
Phenol
Bis(2-ethylhexyl)phthalate
Butyl benzyl phthalate
Di-N-Butyl Phthalate
Di-n-Octyl phthalate
Diethyl Phthalate
Dimethyl phthalate
1,2-benzanthracene (benzo(a)anthracene)
Benzo(a)pyrene (3,4-benzo-pyrene)
3,4-Benzofluoranthene(benzo(b)fluoranthene)
11,12-benzofluoranthene(benzo(b)fluoranthene)
Chrysene
Acenaphthylene
Anthracene
1,12-benzoperylene(benzo(ghi)perylene)
Fluorene
Phenanthrene
1,2,5,6-dibenzanthracene(dibenzo(h)anthracene)
Indeno(1,2,3-cd)pyrene(2,3-o-phenylene pyrene)
Pyrene
Tetrachloroethylene
Toluene
Trichloroethylene
Vinyl chloride (chloroethylene)
Aldrin
Dieldrin
Chlordane (technical mixture and metabolites)
4,4-DDT
4,4-DDE(p,p-DDX)
4,4-DDD(p,p-TDE)
Alpha-endosulfan
Beta-endosulfan
Endosulfan sulfate
Endrin
Endrin aldehyde
Heptachlor
Heptachlor epoxide (BHC-hexachlorocyclohexane)
Alpha-BHC
Beta-BHC
Gamma-BHC(lindane)
Delta-BHC(PCB-polychlorinated biphenyls)
PCB-1242(Arochlor 1242)
PCB-1254(Arochlor 1254)
PCB-1221(Arochlor 1221)
PCB-1232(Arochlor 1232)
PCB-1248(Arochlor 1248)
PCB-1260(Arochlor 1260)
PCB-1016(Arochlor 1016)
Toxaphene
Antimony
Arsenic
Asbestos
Beryllium
Cadmium
Chromium
Copper
Cyanide, Total
Lead
Mercury
Nickel
Selenium
Silver
Thallium
Zinc
2,3,7,8-tetrachloro-dibenzo-p-dioxin (TCDD)

Appendix D—Major Documents Supporting the Proposed Regulation

With the exception of the first document listed in each of the following subsections, all documents are available only for public inspection and copying at Room 2404, U.S. EPA, 401 M St., S.W., Washington, D.C. from 9:00 am to 4:00 pm Monday through Friday, excluding Federal holidays. The first document listed in each section may be obtained by contacting the individuals listed in the Addresses section of this preamble.

Technology and Cost Reports

1. Development Document for Proposed Effluent Limitations Guidelines and New Source Performance Standards for the Offshore Segment of the Oil and Gas Extraction Point Source Category, EPA 440/1-85/0556.

2. Assessment of Existing Data for the Offshore Oil and Gas Extraction Industry, October 6, 1980.

3. Technical Feasibility of Brine Reinjection for the Offshore Oil and Gas Extraction Industry, May, 1981.

4. Sampling and Logistics Plan for EPA Priority Pollutant Sampling Program, Offshore Oil and Gas Extraction Industry, October 5, 1981.

5. Evaluation of Analytical Data Obtained from the Gulf of Mexico Sampling Program, Offshore Oil and Gas Extraction Industry, Volumes I and II, February 4, 1983.

6. Review of Drill Cuttings Washer Systems, Offshore Oil and Gas Extraction Industry, October 14, 1983.

7. Technologies for the Onshore Treatment of Produced Waters from Offshore Oil and Gas Platforms, December, 1983.

8. Results of Laboratory Analyses on Drilling Fluids and Cuttings, April 3, 1984.

9. Acute Toxicity of Eight Laboratory-Prepared Generic Drilling Fluids to Mysids, May, 1984.

10. Acute Toxicity of Suspended Particulate Phase of Drilling Fluids Containing Diesel Fuels, May, 1984.

11. Results of the Drilling Fluids Research Program Sponsored by EPA's Gulf Breeze Environmental Research Laboratory, 1976-1984, and Their Application to Hazard Assessment, EPA-600/4-84-055, June, 1984.

12. Summary of Cost Estimates for Systems to Treat Produced Water Discharges in the Offshore Oil and Gas Industry to Meet BAT and NSPS, June 28, 1984.

13. Application of the Proposed Best Conventional Pollutant Control Technology (BCT) Cost Tests on Produced Water—Offshore Oil and Gas Extraction Industry, June 28, 1984.

14. Cost of Offshore Cuttings Washer Systems, Offshore Oil and Gas Extraction Industry, September 12, 1983, revised June, 1984.

15. Technical Memorandum: Costs of Drill Cuttings Washing and Mud and Cuttings Transportation to Shore and Land Disposal for the Offshore Oil and Gas Industry—Gulf of Mexico, April 1984, revised July 5, 1984.

Environmental Reports

1. Assessment of Environmental Fate and Effects of Discharges From Offshore Oil and Gas Operations, 1984, EPA 440/4-85/002.

2. Analysis of Drilling Muds from 74 Offshore Oil and Gas Wells in the Gulf of Mexico, 1984.

3. Biocides in Use on Offshore Oil and Gas Platforms and Rigs, 1984.

4. 403(c) Determination for Lease Sale No. 52: Background Review, 1984.

Economic Reports

1. Economic Impact Analysis of Proposed Effluent Guidelines and Standards for the Offshore Oil and Gas Industry, EPA 440/2-85/003, 1984.

2. Cost Effectiveness Analysis of Proposed Effluent Guidelines and Regulations for the Offshore Oil and Gas Industry, 1984.

3. Economic Impacts Analysis of the Offshore Effluent Guideline Affecting the Barite Industry, 1984

Dated: August 2, 1985.

Lee M. Thomas,

Administrator.

For the reasons discussed above, EPA proposes to revise 40 CFR Part 435 as follows:

PART 435—OIL AND GAS EXTRACTION POINT SOURCE CATEGORY

Subpart A—Offshore Subcategory

Sec.

435.10 Applicability; description of the offshore subcategory.
435.11 Specialized definitions.
435.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
435.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
435.14 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
435.15 Standards of performance for new sources (NSPS).
Appendix 1—Static Sheen Test
Appendix 2—Analysis of Diesel Oil in Drilling Fluids and Drill Cuttings
Appendix 3—Drilling Fluids Toxicity Test
Appendix 4—Regulatory Boundaries

Authority: Secs 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), and 501, Federal Water Pollution Control Act as amended (the Act); 33 U.S.C. 1251, 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), 1318 and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

Subpart A—Offshore Subcategory

§ 435.10 Applicability; description of the offshore subcategory.

The provisions of this subpart are applicable to those facilities engaged in field exploration, drilling, well production, and well treatment in the oil and gas extraction industry which are located in waters that are seaward of the inner boundary of the territorial seas ("offshore") as defined in section 502 of the Act. This includes offshore facilities that transport wastes to onshore locations for treatment or disposal.

§ 435.11 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "drilling fluid" shall refer to the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure. A water-base drilling fluid is the conventional drilling mud in which water is the continuous phase and the suspending medium for solids, whether or not oil is present. An oil-base drilling fluid has diesel, crude, or some other oil as its continuous phase with water as the dispersed phase.

(c) The term "spent drilling fluid system discharge" shall mean the bulk discharge of an entire drilling fluid system prior to a complete changeover to another drilling fluid system, or at the completion of the drilling of a well.

(d) The term "drill cuttings" shall refer to the particles generated by drilling into subsurface geologic formations and carried to the surface with the drilling fluid.

(e) The term "deck drainage" shall refer to any waste resulting from deck washings, spillage, rainwater, and runoff from gutters and drains including drip pans and work areas within facilities subject to this subpart.

(f) The term "produced water" shall refer to the water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

(g) The term "produced sand" shall refer to slurried particles used in hydraulic fracturing and the accumulated formation sands and scales particles generated during production.

(h) The term "well treatment fluids" shall refer to those fluids used in stimulating a hydrocarbon-bearing formation or in completing a well for oil and gas production, and drilling fluids used in reworking a well to increase or restore productivity.

(i) The term "sanitary waste" shall refer to human body waste discharged from toilets and urinals located within facilities subject to this subpart.

(j) The term "domestic waste" shall refer to materials discharged from sinks, showers, laundries, and galleys located within facilities subject to this subpart.

(k) The term "M10" shall mean those offshore facilities continuously manned by ten (10) or more persons.

(l) The term "M9lM" shall mean those offshore facilities continuously manned by nine (9) or fewer persons or only intermittently manned by any number of persons.

(m) The term "no discharge of free oil" shall mean that waste streams may not be discharged when they would cause a film or sheen upon or a discoloration of the surface of the receiving water, as determined by the Static Sheen Test.

(n) The term "Static Sheen Test" shall refer to the standard test procedure that has been developed for this industrial subcategory for the purpose of demonstrating compliance with the requirement of no discharge of free oil. The methodology for performing the Static Sheen Test is presented in Appendix 1 of this regulation.

(o) The term "Analysis of Diesel Oil in Drilling Fluids and Drill Cuttings" shall refer to the standard test procedure that has been developed for this industrial subcategory for the purpose of determining the presence of diesel oil in drilling fluids and drill cuttings. The methodology for performing this test is presented in Appendix 2 of this regulation.

(p) the term "diesel oil" shall refer to the grade of distillate fuel oil, as specified in the American Society for Testing and Materials' Standard Specification D975-81, that is typically used as the continuous phase in conventional oil-based drilling fluids.

(q) The term "Drilling Fluids Toxicity Test" shall refer to the standard bioassay test procedure that has been developed for this industrial subcategory for the purpose of measuring the toxicity of drilling fluids. The methodology for performing the Drilling Fluids Toxicity Test is presented in Appendix 3 of this regulation.

(r) The term "96-hr LC-50" shall mean the concentration of test material that is lethal to 50 percent of a the test organisms in a bioassay after 96 hours of constant exposure.

(s) The term "exploration facility" shall mean any fixed or mobile structure subject to this subpart that is engaged in the drilling of wells to determine the nature of potential hydrocarbon reservoirs.

(t) The term "development facility" shall mean any fixed or mobile structure subject to this subpart that is engaged in the drilling and completion of productive wells.

(u) The term "production facility" shall mean any platform or fixed structure subject to this subpart that is used for active recovery of hydrocarbons from producing formations.

(v) The term "new source" means any exploratory, development or production facility or activity that meets the definition of "new source" under 40 CFR § 122.2 and meets the criteria for determination of new sources under 40 CFR § 122.29(b) applied consistent with the following definitions:

(1) The term "water area" as used in 40 CFR § 122.29(b)(1)(i) shall mean the water area and ocean floor beneath any

exploratory, development, or production facility where such facility is conducting its exploratory, development or production activities.

(2) The term "significant site preparation work" shall mean the process of surveying, clearing and preparing an area of the ocean floor for the purpose of constructing or placing a development or production facility on or over the site.

(w) The term "gas well" shall refer to any well that produces more than 15,000 cubic feet of natural gas for each barrel of produced petroleum liquids.

(x) The term "oil well" shall refer to any well that produces 15,000 cubic feet or less of natural gas for each barrel of produced petroleum liquids.

(y) The term "gas development and production facilities" shall mean those facilities subject to this subpart that are engaged in the development of or production from gas wells only.

(z) The term "oil development and production facilities" shall mean those facilities subject to this subpart that are engaged in the development of or production from oil wells or oil and gas wells.

(aa) The term "maximum for any one day" as applied to BPT and BCT effluent limitations for oil and grease in produced water shall mean the maximum concentration allowed as measured by the average of four grab samples collected over a 24 hour period that are analyzed separately.

(bb) The term "maximum" as applied to BAT effluent limitations for drilling fluids and to NSPS for produced water and drilling fluids shall mean the maximum concentration allowed as measured in any single sample of the discharged waste stream.

(cc) The term "minimum" as applied to BAT effluent limitations and NSPS for drilling fluids shall mean the minimum 96-hour LC–50 value allowed as measured in any single sample of the discharged waste stream.

§ 435.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available:

Pollutant parameter waste source	BPT Effluent Limitations		
	Oil and grease, mg/l		
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—	Residual chlorine, mg/l. Minimum for any 1 day
Produced water	72	48	NA
Deck drainage	(1)	(1)	NA
Drilling fluids	(1)	(1)	NA
Drill cuttings	(1)	(1)	NA
Well treatment fluids	(1)	(1)	NA
Sanitary:			
M10	NA	NA	(2) 1
M9IM [3]	NA	NA	NA
Domestic [3]	NA	NA	NA

[1] No discharge of free oil.
[2] Minimum of 1 mg/l and maintained as close to this concentration as possible.
[3] There shall be no floating solids as a result of the discharge of these wastes.
NA—Not applicable.

§ 435.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

BAT Effluent Limitations

Waste source	Pollutant parameter or characteristic	BAT effluent limitations
Produced water	[Reserved]	[Reserved]
Deck drainage	Free oil	No discharge.
	[All other pollutant parameters reserved].	
Drilling fluids	Free oil	No discharge.
	Oil-based fluid.	No discharge.
	Diesel oil	No discharge in detectable amounts.
	Toxicity	Minimum 96-hr LC-50 of the diluted suspended particulate phase (SPP) of the drilling fluid shall be 3.0 percent by volume.
	Cadmium	1 mg/kg dry weight maximum in the whole drilling fluid.
	Mercury	1 mg/kg dry weight maximum in the whole drilling fluid.
Drill cuttings	Free oil	No discharge.
	Oil-based fluid.	No discharge.
	Diesel oil	No discharge in detectable amounts.
Sanitary M10.	None	
Sanitary M9IM.	None	
Domestic waste.	None	
Produced sand.	Free oil	No discharge.
	[All other pollutant parameters reserved].	
Well treatment fluids.	Free oil	No discharge.

BAT Effluent Limitations—Continued

Waste source	Pollutant parameter or characteristic	BAT effluent limitations
	[All other pollutant parameters reserved].	

§ 435.14 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

BCT Effluent Limitations

Waste source	Pollutant parameter or characteristic	BCT effluent limitations	
		Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Produced water.	Oil and grease	72 mg/l	48 mg/l.
Deck drainage.	Free Oil	No discharge.	
	[All other pollutant parameters reserved].		
Drilling fluids	Free oil	No discharge.	
	[All other pollutant parameters reserved].		
Drilling cuttings.	Free oil	No discharge.	
	[All other pollutant parameters reserved].		
Sanitary M10.	Residual Chlorine [1]	Minimum of 1 mg/l and maintained as close to this concentration as possible.	
Sanitary M9IM.	Floating solids	No discharge.	
Domestic waste.	Floating solids	No discharge.	
Produced sand.	Free oil	No discharge.	
	[All other pollutant parameters reserved].		
Well treatment fluids.	Free oil	No discharge.	
	[All other pollutant parameters reserved].		

[1] For the control of fecal coliform.

§ 435.15 Standards of performance for new sources (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

(a) For all oil development and production facilities located in or discharging to water depth of 20 meters or less in the Gulf of Mexico, Atlantic Coast, and Norton Basin; water depth of 50 meters or less in the California Coast, Cook Inlet/Shelikof Strait, the Aleutian Island Chain including Bristol Bay and Gulf of Alaska; and water dept of 10 meters or less in the Beaufort Sea as specified in Appendix 4 (Regulatory Boundaries):

NSPS Effluent Limitations

Waste source	Pollutant parameter or characteristic	NSPS effluent limitations
Produced water.		No discharge.[1]
Deck drainage.	Free oil	No discharge.
	[All other pollutant parameters reserved].	
Drilling fluids.	Free oil	No discharge.
	Oil-based fluid.	No discharge.
	Diesel oil	No discharge in detectable amounts.
	Toxicity	Minimum 96-hr LC-50 of the diluted suspended particulate phase (SPP) of the drilling fluid shall be 3.0 percent by volume.
	Cadmium	1 mg/kg dry weight maximum in the whole drilling fluid.
	Mercury	1 mg/kg dry weight maximum in the whole drilling fluid.
Drill cuttings.	Free oil	No discharge.
	Oil-based fluid.	No discharge.
	Diesel oil	No discharge in detectable amounts.
Sanitary M10.	Residual chlorine.	Minimum of 1 mg/l and maintained as close to this concentration as possible.
Sanitary M9M.	Floating solids.	No Discharge.
Domestic waste.	Floating solids.	No discharge.
Produced sand.	Free oil	No discharge.
	[All other pollutant parameters reserved].	
Well treatment fluids.	Free oil	No discharge.
	[All other pollutant parameters reserved].	

[1] Facilities must be in compliance with the no discharge standard no later than 300 days after commencement of development drilling operations. Prior to that date, discharges shall comply with the oil and grease standard of 59 mg/l maximum in § 435.15(b).

(b) For all exploratory facilities and all gas development and production facilities regardless of location, and for all oil development and production facilities located in and discharging to water depth of more than 20 meters in the Gulf of Mexico, Atlantic Coast and Norton Basin; water depth of more than 50 meters in the California Coast, Cook Inlet/Shelikof Strait, the Aleutian Island Chain including Bristol Bay and Gulf of Alaska; and water depth of more than 10 meters in the Beaufort Sea as specified in Appendix 4 (Regulatory Boundaries):

NSPS Effluent Limitations

Waste source	Pollutant parameter or characteristic	NSPS effluent limitations
Produced Water.	Oil and grease.	59 mg/l maximum.
Deck drainage.	Free oil	No discharge.
	[All other pollutants—Reserved].	
Drilling fluids.	Free oil	No discharge.
	Oil-based fluid.	No discharge.
	Diesel oil	No discharge in detectable amounts.
	Toxicity	Minimum 96-hr LC-50 of the diluted suspended particulate phase (SPP) of the drilling fluid shall be 3.0 percent by volume.
	Cadmium	1 mg/kg dry weight maximum in the whole drilling fluid.
	Mercury	1 mg/kg dry weight maximum in the whole drilling fluid.
Drill cuttings.	Free oil	No discharge.
	Oil-based fluid.	No discharge.
	Diesel oil	No discharge in detectable amounts.
Sanitary M10.	Residual chlorine.	Minimum of 1 mg/l and maintained as close to this concentration as possible.
Sanitary M9M.	Floating solids.	No Discharge.
Domestic waste.	Floating solids.	No discharge.
Produced sand.	Free oil	No discharge.
	[All other pollutant parameters reserved].	
Well treatment fluids.	Free oil	No discharge.
	[All other pollutant parameters reserved].	

Appendix 1—Static Sheen Test

1. Scope and Application

This method is to be used as a compliance test for the "no discharge of free oil" requirement for discharges of drilling fluids, drill cuttings, deck drainage, produced sand, and well treatment fluids. Free oil refers to any oil contained in a waste stream that when discharged will cause a film or sheen upon or a discoloration of the surface of the receiving water.

2. Summary of Method

Samples of drilling fluids, deck drainage or well treatment fluids (0.15 mL and 15 mL) and samples of drill cuttings or produced sand (1.5 g and 15 g, wet weight basis) are introduced into ambient seawater in a container having an air to liquid interface area of 1000 cm^2. Samples are dispersed within the container and observations made no more than 1 hour later to ascertain if these materials cause a sheen, iridescence, gloss, or increased reflectance on the surface of the test seawater. The occurence of any of these visual observations will constitute a demonstration that the tested material contains "free oil", and therefore, results in a prohibition on its discharge into receiving waters.

3. Interferences

Residual "free oil" adhering to sampling containers, the magnetic stirring bar used to mix drilling fluids, and the stainless steel spatula used to mix drill cuttings will be the principal sources of contamination problems. These problems should only occur if improperly washed and cleaned equipment are used for the test. The use of disposable equipment minimizes the potential for similar contamination from pipets and the test container.

4. Apparatus Materials and Reagents

4.1 *Apparatus.*

4.1.1 Sampling containers—1 liter polyethylene beakers.

4.1.2 Graduated cylinder—100 mL graduated cylinder required only for operations where predilution of mud discharges is required.

4.1.3 Plastic disposable weighing boats.

4.1.4 Triple beam scale.

4.1.5 Disposable pipets—1 mL and 25 mL disposable pipets.

4.1.6 Magnetic stirrer and stirring bar.

4.1.7 Stainless steel spatula.

4.1.8 Test container—open plastic container whose internal cross-section parallel to its opening has an area of 1000 ± 50 cm^2, and a depth of no more than 30 cm.

4.2 *Materials and Reagents.*

4.2.1 Plastic liners for the test container—Oil free, heavy duty plastic trash can liners that do not inhibit the spreading of an oil film. Liners must be of a sufficient size to completely cover the interior surface of the test container. Permittees must determine an appropriate local source of liners that do not inhibit the spreading of 0.05 mL diesel fuel added to the lined test container under the test conditions and protocol described below.

4.2.2 Ambient receiving water.

5. Calibration

None currently specified.

6. Quality Control Procedures

None currently specified.

7. Sample Collection and Handling

7.1 Sampling containers must be thoroughly washed with detergent, rinsed a minimum of 3 times with fresh water, and allowed to air dry before samples are collected.

7.2 Samples of drilling fluid must be obtained once per day from the active mud pit; the sample volume should range between 200 mL and 500 mL.

7.3 Samples of drill cuttings or produced sand must be obtained from each type of solids control equipment from which discharges occur on any given day prior to addition of any washdown water; samples should range between 200 and 500 grams.

7.4 Samples of deck drainage or well treatment fluids must be obtained from holding facility prior to discharge; the sample volume should range between 200 mL and 500 mL.

7.5 Samples must be tested no later than 1 hour after collection.

7.6 Drilling fluid samples must be mixed in their sampling containers for 5 minutes prior to testing using a magnetic bar stirrer. If predilution is imposed as a permit condition, the sample must be mixed at the same ratio with the same prediluting water as the discharged muds and stirred for 5 minutes.

7.7 Drill cuttings must be stirred and well mixed by hand in their sampling containers

prior to testing, using a stainless steel spatula.

8. Procedure

8.1 Ambient receiving water must be used as the "receiving water" in the test. The test container must have an air to liquid interface area of 1000±50 cm^2. The surface of the water should be no more than 5 cm below the top of the test container.

8.2 Plastic liners shall be used, one per container per test, and discarded afterwards. Some liners may inhibit spreading of added oil; operators shall determine an appropriate local source of liners that do not inhibit the spreading of the oil film.

8.3 Drilling fluid materials, well treatment fluids, or deck drainage must be introduced into the test container 1 cm below the water surface, by pipet, at 0.15 mL and 15 mL. Pipets must be filled and discharged with test material prior to the transfer of test material and its introduction into test containers. The test water-test material mixture must be stirred using the pipet to distribute the test material homogenously throughout the test water. The pipet must be used only once for a test and then discarded.

8.4 Drill cuttings or produced sand should be weighed on plastic weighing boats: 1.5 gram and 15 gram samples must be transferred by scraping test material into the test water with a stainless steel spatula. The weighing boat must be immersed in the test water and scraped with the spatula to transfer any residual material to the test container. The test material must be stirred with the spatula to an even distribution of solids on the bottom of the test container.

8.5 Observations must be made no later than 1 hour after the test material is transferred to the test container. Viewing points above the test container should be made from at least three sides of the test container, at viewing angles of approximately 60° and 30° from the horizontal. Illumination of the test container must be representative of adequate lighting for a working environment to conduct routine laboratory procedures.

8.6 Detection of a "silvery" or "metallic" sheen, gloss, or increased reflectivity; visual color; or iridescence on the water surface shall constitute a demonstration of "free oil." These visual observations include patches, sheets, or streaks of such altered surface characteristics.

Appendix 2—Analysis of Diesel Oil in Drilling Fluids and Drill Cuttings

1. Scope and Application

This method is to be used as a compliance test for detecting the presence of diesel oil in drilling fluids and drill cuttings waste streams. The method involves the separation of diesel fuel from drilling fluid or drill cuttings samples and subsequent qualitative and quantitative analysis by capillary column gas chromatography. The method makes no attempt to chemically identify the individual diesel components but uses a pattern recognition technique for data analysis.

2. Summary of Method

A weighed amount of drilling fluid or drill cuttings is placed in a retort apparatus and distilled according to the retort manufacturer's instructions. The distillate is extracted with methylene chloride, an internal standard is added, and a GC analysis is conducted. Using low attenuation for high sensitivity, a detection of 1 mg/kg of diesel oil in the sample is possible with this method.

The analyst is cautioned that there is no standard diesel fuel oil. The components, as seen by gas chromatography, will differ depending upon the crude source, the date of the diesel production and the producer. In addition, there are three basic types of diesel fuel oils: ASTM Designations No. 1–D, No. 2–D, and No. 4–D. The No. 2–D is most commonly referred to in terms of "diesel fuel." However, No. 2–D is sometimes blended with No. 1–D which has a lower boiling range. Thus it is highly desirable that the sample chromatograms be matched with a reference standard made from the same diesel oil source suspected to be in the sample.

3. Apparatus, Reagents and Materials

3.1 *Apparatus.*

3.1.1 Gas Chromatograph (GC)—A temperature programmable GC equipped with a flame ionization detector.

3.1.2 Integrator—A recording integrator capable of resolving and integrating recorder response peaks.

3.1.3 Chromatographic Column—A borosilicate glass capillary column (WCOT), 30 meter x 0.25 mm ID, coated with Supelco SPB–1 (Bonded SE–30 methyl silicone) with 1.0 μm thickness (Supelco catalog number 2–4029). Other columns may be substituted if they can demonstrate similar and satisfactory results.

3.1.4 Distillation Apparatus—A 20 mL vetort apparatus.

3.1.5 Kuderna—Danish Concentrator—A 500 mL flask, 3-ball Snyder column and a 10 mL (or 15 mL) receiving ampule graduated in 0.1 ml units at the bottom.

3.1.6 Separatory Funnel—A 60 mL separatory funnel with a Teflon stopcock and glass stopper.

3.1.7 Glass Filtering Funnel—A glass filtering crucible holder (Corning 9480 or equivalent).

3.1.8 Centrifuge Tubes—15 mL glass centrifuge tubes.

3.2 *Materials and Reagents.*

3.2.1 Glass Wool—Corning 3950 or equivalent.

3.2.2 Anhydrous Sodium Sulfate—Analytical grade.

3.2.3 Methylene Chloride—Nanograde or equivalent.

3.2.4 Trichlorobenzene (TCB) Internal Standard—Dissolve 1.0 gm of 1,3,5 Trichlorobenzene (Kodak 1801 or equivalent) in 100 mL of Methylene Chloride. Store in glass and tightly cap with Teflon lid liner to prevent solvent evaporation loss.

4. Procedure

4.1 *Sample Preparation.*

4.1.1 Preweigh or tare the retort sample cup and cap to the nearest 0.1 gm. Transfer a well homogenized and representative portion of the material to be tested into the sample cup, filling it to the top. Place the cap on the cup, wipe off the excess material and reweigh. Record the weight of the sample to the nearest 0.1 gm.

4.1.2 Following the retort manufacturer's instructions, distill the sample. The presence of solids in the distillate will require that the distillation be rerun starting with a new portion of sample. Placing more steel wool in the retort expansion chamber, per instructions, will help prevent the solids from going over in the distillation.

4.2 *Gas Chromatography.*

4.2.1 Pour the retort distillate into a 60 mL separatory funnel. Rinse the distillate container with two full portions of methylene chloride into the separatory funnel. Stopper and shake for 1 minute and allow the layers to separate.

4.2.2 Prepare a crucible holder funnel by plugging the bottom with a piece of glass wool and pouring in 1–2 inches of anhydrous sodium sulfate. Wet the funnel with a small portion of methylene chloride and allow it to drain to a waste container.

4.2.3 Place the filter holder into the top of a Kuderna-Danish (K–D) flask equipped with a 10 mL separatory funnel containing the methylene chloride into the K–D flask passing it thorough the filter funnel.

4.2.4 Repeat the methylene chloride extraction twice more, rinsing the centrifuge tube with two through washings each time and draining each extraction into the K–D flask.

4.2.5 Place a Snyder column on the K–D flask and evaporate on a steam bath. Concentrate the sample to a 1.0 mL final volume or until the contents will not concentrate any further and note the final volume. The receiving ampule graduations should be laboratory calibrated for accuracy.

4.2.6 Using a micropipet, transfer equal portions of the sample from the K–D ampule and the TCB internal standard (a 100 μl portion of each is suggested) into a GC injection vial or other suitable container. Mix thoroughly.

4.2.7 Set up the gas chromatograph conditions as follows:

(a) GC—Injector Port and manifold temperature = 275 °C.

(b) Column—A SPB–1, 30 meter column with a nitrogen carrier at 0.2 mL/min, a split ratio of 100:1 and nitrogen make-up (if needed) at 60 cc/min.

(c) Temperature Program—90 °C initial temperature with no hold, 5° per minute to a final temperature of 250 °C; final hold for at least 10 minutes.

(d) Detector—FID with 30 cc/min hydrogen and 240 cc/min air. Set the amplifier range at 10^{-11} amps full scale (X10 on most instruments)

(e) Recording Integrator—Set the chart seed at a minimum of 1 cm/min. Adjust the attenuation during the run as to exclude minor peaks.

4.2.8 Inject 1 μL of the sample containing the internal standard. The TCB will elute at approximately 8.5 minutes into the run and should be approximately 50 percent at full scale at 8×10.

4.2.9 Prepare a reference standard using, if possible, the same diesel oil suspected to be in the sample. Using Table 1 as a guide.

weigh out the appropriate amount of oil into a tared 10 mL volumetric flask and dilute to volume with methylene chloride. Mix equal portions of the reference oil standard and the TCB as outlined in 4.2.6 and analyze using the same GC conditions used for the analysis of the sample.

5. Interpretation of Data

5.1 Compare the sample chromatogram to the chromatogram of the standard. If the sample contains No. 2 diesel oil, the major peaks present in the standard (e.g. those greater than 1 percent of the total integrated area) should also be present in the sample and in the same relative intensity and pattern (see Figure 1).

5.2 Some mineral oil lubricity additives have similar chromatographic patterns to that of diesel oil. The presence of early, smaller peaks from 1 minute (following the sovent peak) to approximately 4 minutes will differentiate between distillates containing only mineral oil and those with No. 2 diesel oil (See Figure 2).

5.3 The use of the TCB internal standard makes it possible to correlate peaks from sample to standard on the basis of Relative Retention Time (RTT). Approximate RRT's are presented in Table 2.

6. Calculation of Results

6.1 Choose those peaks that are applicable as outlined in Section 5; a minimum of 10 peaks should be used. Sum the integrated areas of the chosen peaks in the sample and divide by the integrated area of the Internal Standard in the sample:

$$\frac{\Sigma Aps}{Ais} = RFs$$

where:

ΣAps = Summation of peak areas of interest in sample

Ais = Area of internal standard peak in sample

RFs = Response factor for sample

6.2 Repeat the above process (6.1) for the chosen peaks in the standard:

$$\frac{\Sigma Apr}{Air} = RFr$$

where:

ΣApr = Summation of peak areas of interest in reference standard

Air = Area of internal standard peak in the reference standard

RFr = Response factor for reference standard

6.3 Calculate the mg/kg of diesel oil in the sample as follows:

$$\text{mg/kg Diesel Oil} = \frac{RFs \times Vs \times Cr \times 1000}{RFr \times Gs}$$

where:

RFs = Response factor for sample

RFr = Response factor for reference standard

Vs = Final volume of sample from K-D in mL

Cr = Concentration of reference standard in mg/mL

Gs = Starting weight of sample in grams on a wet weight or whole mud basis.

Note.—This equation does not take into account attenuation changes if they affect the calculated peak areas as reported by the integration.

7. Quality Control

7.1 Each laboratory that uses this method is required to operate a formal quality control program. The minimum requirements of this program consist of an initial demonstration of laboratory capability, the analysis of a retorted No. 2 diesel oil standard as a continuing check on recovery, and duplicate samples for a precision check on performance. The laboratory is required to maintain performance records to define the quality of data that are generated. Ongoing performance checks must be compared with established performance criteria to determine if the results of analyses are within accuracy and precision limits expected of the method.

7.2 In order to demonstrate recovery, a No. 2 diesel oil standard must be subjected to the entire analytical procedure starting with section 4.1. Pipette 1.00 ml of the reference diesel oil into the preweighed or tared retort sample cup and weigh to the nearest 0.1 gram. Place a small plug of steel wool into the cup, cap and proceed with the retort distillation. Calculate the percent recovery of the retorted reference standard to that of a reference standard prepared as specified in section 4.2.9. The percent recovery of the retorted reference standard must fall within 80 to 120 percent recovery. This should be performed on each retort unit utilized before attempting any sample analyses. Reference standards should be run at least once for each batch of samples processed or for every ten samples analyzed.

7.3 The laboratory must analyze duplicate samples for each sample type at a minimum of 20 percent. A duplicate sample shall consist of a well-mixed, representative aliquot of the sample and should be subjected to the entire analytical procedure starting with section 4.1. The relative percent differences (RPD) for duplicates are calculated as follows:

$$RPD = \frac{(D_1 - D_2)}{(D_1 + D_2)/2} \times 100$$

where:

RPD = relative percent difference

D_1 = percent of diesel oil in the first sample

D_2 = percent diesel oil in the second sample (duplicate)

A control limit of ±20 percent for RPD shall be used.

BILLING CODE 6560-50-M

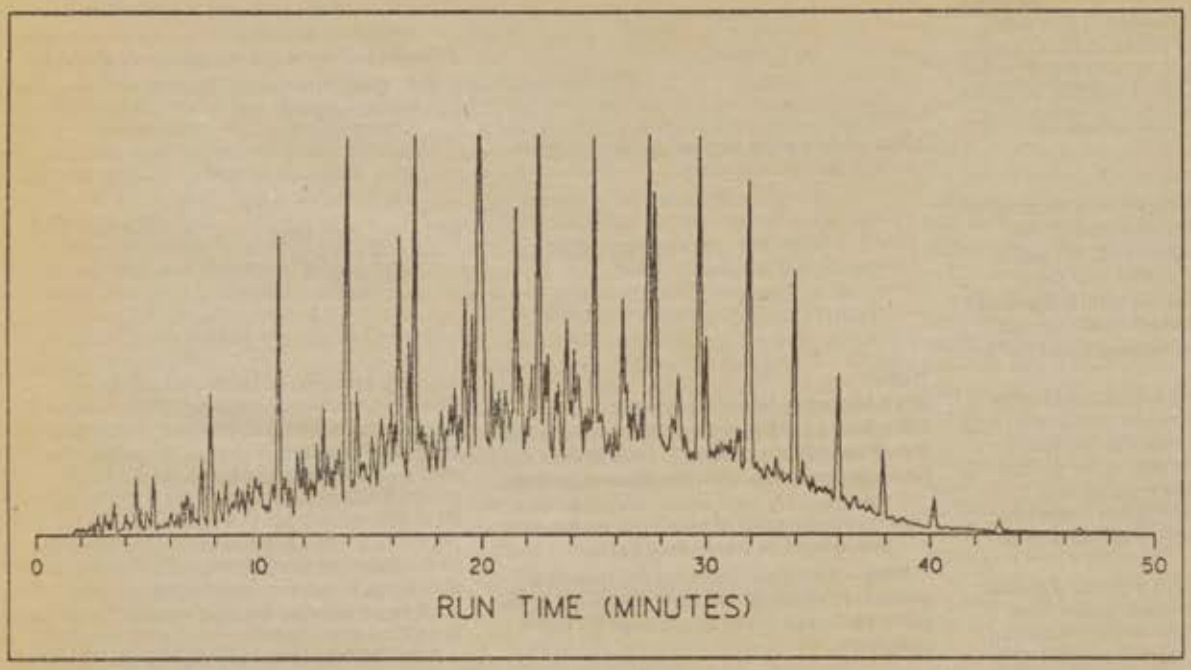


FIGURE 1
CHROMATOGRAM OF NO.2 DIESEL OIL SAMPLE
(NO SOLVENT OR INTERNAL STANDARD PEAKS PRESENT)

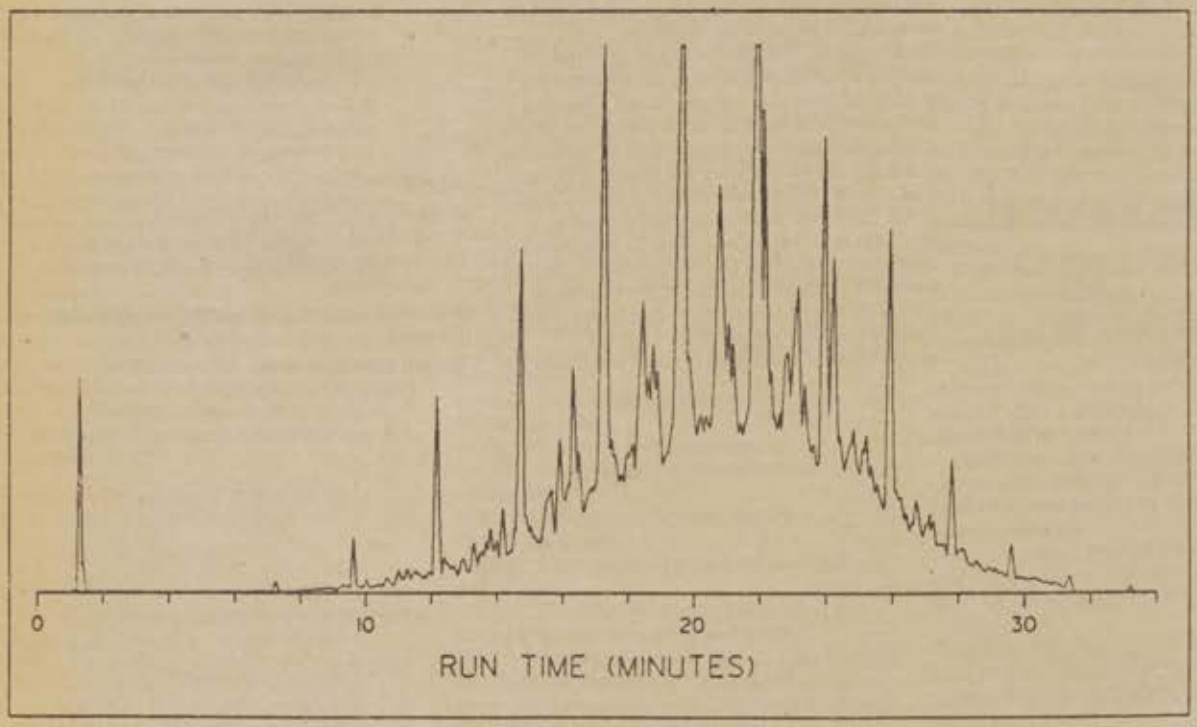


FIGURE 2
CHROMATOGRAM OF MINERAL OIL SAMPLE
250-A

BILLING CODE 6560-50-C

TABLE 1.—PERCENT RANGES OF DIESEL AND STANDARDS

Expected percent diesel in sample	Wt of No. 2-D oil in 10 mL volumetric [1] (g)
5	Use undiluted oil.
1	7.6.
.1	3.0.
0.5	1.5.

[1] Weigh oil to the nearest 0.1 mg.

Table 2

Approximate Relative Retention Times for TCB IS and No. 2-D Diesel Fuel.

1,3,5 Trichlorobenzene Internal Standard = 100

Expected RRT's for Predominate Peaks in No. 2-D Diesel:	
124	231
155	245
179	260
183	273
186	276
188	299
193	324
207	348
216	370
220	

Appendix 3—Drilling Fluids Toxicity Test

I. Sample Collection

The collection and preservation methods for drilling fluids (muds) and water samples presented here are designed to minimize sample contamination and alteration of the physical or chemical properties of the samples due to freezing, air oxidation, or drying.

I-A. Apparatus

(1) The following items are required for water and drilling mud sampling and storage:

a. Acid-rinsed linear-polyethylene bottles or other appropriate noncontaminating drilling mud sampler.

b. Acid-rinsed linear-polyethylene bottles or other appropriate noncontaminating water sampler.

c. Acid-rinsed linear-polyethylene bottles or other appropriate noncontaminated vessels for water and mud samples.

d. Ice chests for preservation and shipping of mud and water samples.

I-B. Water Sampling

(1) Collection of water samples shall be made with appropriate acid-rinsed linear-polyethylene bottles or other appropriate noncontaminating water sampling devices. Special care shall be taken to avoid the introduction of contaminants from the sampling devices and containers. Prior to use, the sampling devices and containers should be thoroughly cleaned with a detergent solution, rinsed with tap water, soaked in 10 percent hydrochloric acid (HCl) for 4 hours, and then thoroughly rinsed with glass-distilled water.

I-C. Drilling Mud Sampling

(1) Drilling mud formulations to be tested shall be collected from active field systems. Obtain a well-mixed sample from beneath the shale shaker after the mud has passed through the screens. Samples shall be stored in polyethylene containers or in other appropriate uncontaminated vessels. Prior to sealing the sample containers on the platform, flush as much air out of the container by filling it with drilling fluid sample, leaving a one inch space at the top.

(2) Mud samples shall be immediately shipped to the testing facility on blue or wet ice (do not use dry ice) and continuously maintained at 4 °C until the time of testing.

(3) Bulk mud samples shall be thoroughly mixed in the laboratory by using a 1,000-rpm high-shear mixer and then subdivided into individual, small wide-mouthed (e.g., one- or two-liter non-contaminating containers for storage.

(4) The drilling muds stored in the laboratory shall have any excess air removed by flushing the storage containers with nitrogen any time the containers are opened. Moreover, the sample in any container opened for testing must be thoroughly stirred by using a 1,000-rpm high-shear mixer prior to use.

(5) Most drilling mud samples may be stored for periods of time longer than 2 weeks prior to toxicity testing, provided that proper containers are used and proper conditions are maintained.

II. Suspended Particulate Phase Sample Preparation

(1) Mud samples that have been stored under specified conditions in this protocol shall be prepared for tests within three months after collection. The SPP shall be prepared as detailed below.

II-A Apparatus

(1) The following items are required:

a. Magnetic stir plates and bars.

b. Several graduated cylinders, ranging in volume from 10 mL to 1L.

c. Large (15-cm) powder funnels.

d. Several 2-L graduated cylinders.

e. Several 2-L large mouth graduated Erlenmeyer flasks.

(2) Prior to use, all glassware shall be thoroughtly cleaned. Wash all glassware with detergent, rinse five times with tap water, rinse once with acetone, rinse several times with distilled or deionized water, place in a clean 10-percent (or stronger) HCl acid bath for a minimum of 4 hours, rinse five times with tap water, and then rinse five times with distilled or deionized water. For test samples containing mineral oil or diesel oil, glassware should be washed with petroleum ether to assure removal of all residual oil.

Note.—If the glassware with nytex cups soaks in the acid solution longer than 24 hours, then an equally long deionized water soak should be performed.

II-B. Test Seawater Sample Preparation

(1) Diluent seawater and exposure seawater samples are prepared by filtration through a 1.0-micrometer filter prior to analysis.

(2) Artificial seawater may be used as long as the seawater has been prepared by standard methods or ASTM methods, has been properly "seasoned," filtered, and has been diluted with distilled water to the same specified 20±2ppt salinity and 20±2°C temperature as the natural seawater.

II-C. Sample Preparation

(1) The pH of the mud shall be measured before use. If the pH is less than 9, if black spots appear on the walls of the sample container, or if the mud sample has a foul odor, that sample shall be discarded. Subsample a manageable aliquot of drill mud from the well-mixed original sample. Mix the mud and filtered test seawater in a volumetric mud-to-water ratio of 1 to 9. This is best done by the method of volumetric displacement in a 2-L, large mouth, graduated Erlenmeyer flask. Place 1,000 mL of seawater into the graduated Erlenmeyer flask. The mud subsample is then carefully added funnel to obtain a total volume of 1,200 mL. (A 200-mL volume of mud will now be in the flask).

The 2-L, large mouth, graduated Erlenmeyer flask is then filled to the 2,000 mL mark with 800 mL of seawater, which produces a slurry with a final ratio of one volume drilling mud to nine volumes water. If the volume of SPP required for testing or analysis exceeds 1,500 to 1,600 mL, the initial volumes should be proportionately increased. Alternatively, several 2-L drill mud/water slurries may be prepared as outlined above and combined to provide sufficient SPP.

(2) Mix this mud/seawater slurry with magnetic stirrers for 5 minutes. Measure the pH and, if necessary, adjust (decrease) the pH of the slurry to within 0.2 units of the seawater by adding 6N HCl while stirring the slurry. Then, allow the slurry to settle for 1 hour. Record the amount of HCl added.

(3) At the end of the settling period, carefully decant (do not siphon) the Suspended Particulate Phase (SPP) into an appropriate container. Decanting the SPP is, one continuous action. In some cases, no clear interface will be present; that is, there will be no solid phase that has settled to the bottom. For those samples the entire SPP solution should be used when preparing test concentrations. However, in those cases when no clear interface is present, the sample must be remixed for five minutes. This insures the homogeneity of the mixture prior to the preparation of the test concentrations. In other cases, there will be samples with two or more phases, including a solid phase. For those samples, carefully and continuously decant the supernatant until the solid phase on the bottom of the flask is reached. The decanted solution is defined to be 100 percent SPP. Any other concentration of SPP refers to a percentage of SPP that is obtained by volumetrically mixing 100 percent SPP with seawater.

(4) SPP samples to be used in toxicity tests shall be mixed for 5 minutes and must not be preserved or stored.

(5) Measure the filterable and unfilterable residue of each SPP prepared for testing. Measure the dissolved oxygen (DO) and pH of the SPP. If the DO is less than 4.9 ppm, aerate the SPP to at least 4.9 ppm which is 65 percent of saturation. Maximum allowable aeration time is 5 minutes using a generic commercial air pump and air stone. Neutralize the pH of the SPP to a pH 7.8±.1 using a dilute HCl solution. If too much acid is added to lower the pH saturated NaOH may be used to raise the pH 7.8±.1 units. Record the amount of acid or NaOH needed

to adjust to the appropriate pH. Three repeated DO and pH measurements are needed to insure homogeneity and stability of the SPP. Preparation of test concentrations may begin after this step is complete.

(6) Add the appropriate volume of 100 percent SPP to the appropriate volume of seawater to obtain the desired SPP concentration. The control is seawater only. Mix all concentrations and the control for 5 minutes by using magnetic stirrers. Record the time; and, measure DO and pH for Day 0. Then, the animals shall be randomly selected and placed in the dishes in order to begin the 96-hour toxicity test.

III. Guidance for Performing Suspended Particulate Phase Toxicity Tests Using Mysidopsis bahia

III–A. Apparatus

(1) Items listed by Borthwick [1] are required for each test series, which consists of one set of control and test containers, with three replicates of each.

III–B. Sample Collection Preservation

(1) Drilling muds and water samples are collected and stored, and the suspended particulate phase prepared as described in Section 1–C.

3–C. Species Selection

(1) The suspended particulate phase (SPP) tests on drilling muds shall utilize the test species *Mysidopsis bahia*. Test animals shall be 3 to 6 days old on the first day of exposure. Whatever the source of the animals, collection and handling should be as gentle as possible. Transportation to the laboratory should be in well-aerated water from the animal culture site at the temperature and salinity in which they were cultured. Methods for handling, acclimating, and sizing test organisms given by Borthwick [1] and Nimmo [2] shall be followed in matters for which no guidance is given here.

III–D. Experimental Conditions

(1) Suspended particulate phase (SPP) tests should be conducted at a salinity of ±2 ppt. Experimental temperature should be 20±2 °C. Dissolved oxygen in the SPP shall be raised to or maintained above 65 percent of saturation prior to preparation of the test concentrations. Under these conditions of temperature and salinity, 65 percent of saturation is a DO of 5.3 ppm. Beginning at Day 0– before the animals are placed in the test containers DO, temperature, salinity, and pH shall be measured every 24-hours. DO should be reported in milligrams per liter.

(2) Aeration of test media is required during the entire test with a rate estimated to be 50-140 cubic centimeters/minute. This air flow to each test dish may be achieved through polyethylene tubing (0.045-inch inner diameter and 0.062-inch outer diameter) by a small, generic aquarium pump. The delivery method, surface area of the aeration stone, and flow characteristics shall be documented. All treatments, including control, shall be the same.

(3) Light intensity shall be 1,200 microwatts/cm ^{2}, using cool white fluorescent bulbs with a 14-hour light and 10-hr dark cycle. This light/dark cycle shall also be maintained during the acclimation period and the test.

III–E. Experimental Procedure

(1) Wash all glassware with detergent, rinse five times with tap water, rinse once with acetone, rinse several times with distilled or deionized water, place in a clean 10 percent HCl acid bath for a minimum of 4 hours, rinse five times with tap water, and then rinse five times with distilled water.

(2) Establish the definitive test concentrations based on the results of a range-finding test. A minimum of five test concentrations plus a control and positive control (reference toxicant) is required for the definitive test. To estimate the LC–50, two concentrations shall be chosen that should give (other than zero and 100 percent) mortality above and below 50 percent.

(3) Twenty organisms are exposed in each test dish. Nytex® cups shall be inserted into every test dish prior to adding the animals. These "nylon mesh screen" holding cups are fabricated by gluing a collar of 363-micrometer mesh nylon screen to a 15-centimeter wide Petri dish with silicone sealant. The nylon screen collar is approximately 5 centimeters high. The animals are placed into the test concentration within the confines of the Nytex® cups.

(4) Individual organisms shall be randomly selected and assigned to treatments. A randomization procedure is presented in Section V of this protocol. Make every attempt to expose animals of approximately equal size. The technique described by Borthwick,[1] or other suitable substitutes, should be used for transferring specimens. Throughout the test period, mysids shall be fed daily with approximately 50 *Artemia* (brine shrimp) nauplii per mysid. This will reduce stress and decrease cannibalism.

(5) Cover the dishes, aerate, and incubate the test containers in an appropriate test chamber. Positioning of the test containers holding various concentrations of test solution should be randomized if incubator arrangement indicates potential position difference. The test medium is not replaced during the 96-hour test.

(6) Observations may be attempted at 4, 6 and 8 hours. They must be attempted at 0, 24, 48, and 72 hours; and, must be made at 96 hours. Attempts at observations refers to placing a test dish on a light table and visually counting the animals. Do not lift the "nylon mesh screen" cup out of the test dish to make the observation. No unnecessary handling of the animals should occur during the 96-hour test period. DO and pH measurements must also be made at 0, 24, 48, 72, and 96 hours. Take and replace the test medium necessary for the DO and pH measurements outside of the Nytex® cups to minimize stresses on the animals.

(7) At the end of 96 hours, all live animals must be counted. Death is the end point, so the number of living organisms is recorded. Death is determined by lack of spontaneous movement. All crustaceans molt at regular intervals, shedding a complete exoskeleton. Care should be taken not to count an exoskeleton. Dead animals might decompose or be eaten between observations. Therefore, always count living, not dead animals. If daily observations are made, remove dead organisms and molted exoskeletons with a pipette or forceps. Care must be taken not to disturb living organisms and to minimize the amount of liquid withdrawn.

IV. Methods for Positive Control Tests (Reference Toxicant)

(1) Sodium lauryl sulfate (dodecyl sodium sulfate) is used as a reference toxicant for the positive control. The chemical used should be approximately 95 percent pure. The source, lot number, and percent purity shall be reported.

(2) Test methods are those used for the drilling fluid tests, except that the test material was prepared by weighing one gram of sodium lauryl sulfate on an analytical balance, adding the chemical to a 100-milliliter volumetric flask, and bringing the flask to volume with deionized water. After mixing this stock solution, the test mixtures are prepared by adding 0.1 milliliter of the stock solution for each part per million desired to one liter of seawater.

(3) The mixtures are stirred briefly, water quality is measured, animals are added to holding cups, and the test begins. Incubation and monitoring procedures are the same as those for the drilling fluids.

V. Randomization Procedure

V–A. Purpose and Procedure

(1) The purpose of this procedure is to assure that mysids are impartially selected and randomly assigned to six test treatments (five drilling fluid or reference toxicant concentrations and a control) and impartially counted at the end of the 96-hour test. Thus, each text setup, as specified in the randomization procedure, consists of 3 replicates of 20 animals for each of the six treatments, i.e., 360 animals per test. Figure 1 is a flow diagram that depicts the procedure schematically and should be reviewed to understand the over-all operation. The following tasks shall be performed in the order listed.

(2) Mysids are cultured in the laboratory in appropriate units. If mysids are purchased, go to Task 3.

(3) Remove mysids from culture tanks (5, 5, 4, and 3 days before the test will begin, i.e. Tuesday, Wednesday, Thursday, and Friday if the test will begin on Monday) and place them in suitably large maintenance containers so that they can swim about freely and be fed.

Note.—Not every detail (the definition of suitably large containers, for example) is provided here. Training and experience in aquatic animal culture and testing will be required to successfully complete these tests.

[1] Borthwick, Patrick W. 1978. Methods for acute static toxicity tests with mysid shrimp (*Mysidopsis bahia*). *Bioassay Procedures for the Ocean Disposal Permit Program*. EPA–600/9–78–010: March.

[2] Nimmo, D.R., T.L. Hamaker, and C.A. Somers. 1978. Culturing the mysid (*Mysidopsis bahia*) in flowing sea water or a static system. *Bioassay Procedures for the Ocean Disposal Permit Program*. EPA–600/9–78–010: March.

(4) Remove mysids from maintenance containers and place all animals in a single container. The intent is to have a homogeneous test population of mysids of a known age (3–6 days old).

(5) For each toxicity test, assign two suitable containers (500-milliliter (mL) beakers are recommended) for mysid separation/enumeration. Label each container (A1, A2, B1, B2, and C1, C2, for example, if two drilling fluid tests and a reference toxicant test are to be set up on one day). The purpose of this task is to allow the investigator to obtain a close estimate of the number of animals available for testing and to prevent unnecessary crowding of the mysids while they are being counted and assigned to test containiers. Transfer the mysids from the large test population container to the labeled separation and enumeration containers but do not place more than 200 mysids in a 500-mL beaker. Be impartial in transferring the mysids; place approximately equal numbers of animals (10–15 mysids is convenient) in each container in a cyclic manner rather than placing the maximum number in each container at one time.

Note.—It is important that the animals not be unduly stressed during this selection and assignment procedure. Therefore, it will probably be necessary to place all animals (except the batch immediately being assigned to test containers) in mesh cups with flowing seawater or in larger volume containers with aeration. The idea is to provide the animals with near optimal conditons to avoid additional stress.

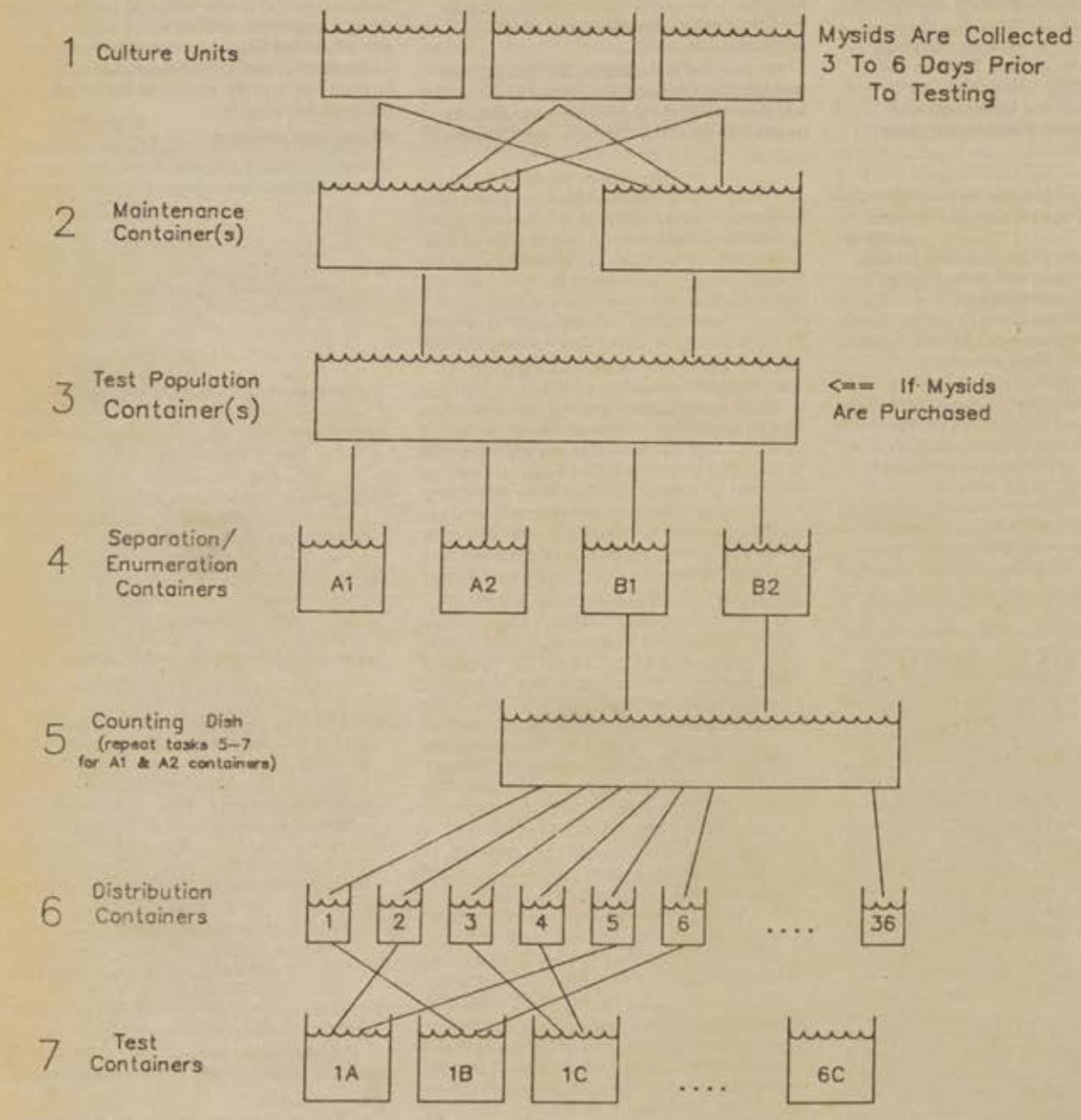
(6) Place the mysids from the two labeled enumeration containers assigned to a specific test into one or more suitable containers to be used as counting dishes (2-liter Carolina dishes are suggested). Because of the time required to separate, count, and assign mysids, two or more people may be involved in completing this task. If this is done, two or more counting dishes may be used, but the investigator must make sure that approximately equal numbers of mysids from each labeled container are placed in each counting dish.

(7) By using a large-bore, smooth-tip glass pipette, select mysids from the counting dish(es) and place them in the 36 individually numbered distribution containers (10-ml beakers are suggested). The mysids are assigned two at a time to the 36 containers by using a randomization schedule similar to the one presented below. At the end of selection/assignment round 1, each container will contain two mysids; and so on until each contains ten mysids.

BILLING CODE 6560-50-M

Figure 1

Mysid Randomization Procedure



BILLING CODE 6560-50-C

EXAMPLE OF A RANDOMIZATION SCHEDULE

Selection/ assignment round (2 mysids each)	Place mysid in the numbered distribution containers in the random order shown
1	8, 21, 6, 26, 33, 32, 1, 3, 10, 9, 4, 14, 23, 2, 34, 22, 36, 27, 5, 30, 35, 24, 12, 25, 11, 17, 19, 26, 31, 7, 20, 15, 18, 13, 16, 29
2	35, 18, 5, 12, 32, 34, 22, 3, 9, 16, 26, 13, 20, 28, 6, 21, 24, 30, 8, 31, 7, 23, 2, 15, 25, 17, 1, 11, 27, 4, 19, 36, 10, 33, 14, 29
3	7, 19, 14, 11, 34, 21, 25, 27, 47, 18, 6, 16, 29, 2, 32, 10, 4, 20, 3, 9, 1, 5, 28, 24, 31, 15, 22, 13, 33, 26, 36, 12, 8, 30, 35, 23
4	30, 2, 18, 5, 8, 27, 10, 25, 4, 20, 26, 15, 31, 36, 35, 23, 11, 29, 16, 17, 28, 1, 33, 14, 9, 34, 7, 3, 12, 22, 21, 6, 19, 24, 32, 13
5	34, 28, 16, 17, 10, 12, 1, 36, 20, 18, 15, 22, 2, 4, 19, 23, 27, 29, 25, 21, 30, 3, 9, 33, 32, 6, 14, 11, 35, 24, 26, 7, 31, 5, 13, 8

(8) Transfer mysids from the 36 distribution containers to 18 labeled test containers in random order. A label is assigned to each of the three replicates [A, B, C] of the six test concentrations. Count and record the 96 hour response in an impartial order.

(9) Repeat tasks 5–7 for each toxicity test. A new random schedule should be followed in Tasks 6 and 7 for each test.

Note.—If a partial toxicity test is conducted, the procedures described above are appropriate and should be used to prepare the single test concentration and control, along with the reference toxicant test.

V–B. Data Analysis and Interpretation

(1) Complete survival data in all test containers at each observation time shall be presented in tabular form. If greater than 10 percent mortality occurs in the control, the experiment shall be repeated. Unacceptably high control mortality indicates the presence of important stresses on the organisms other than the material being tested, such as injury or disease, stressful physical or chemical conditions in the containers, or improper handling, acclimation, or feeding. If 10 percent mortality or less occurs in the control, the data may be evaluated and reported.

(2) A definitive, full toxicity test conducted according to the EPA protocol is used to estimate the concentration that is lethal to 50 percent of the test organisms that do not die naturally. This toxicity measure is known as the median lethal concentration, or LC–50. The LC–50 is adjusted for natural mortality or natural responsiveness. The maximum likelihood estimation procedure with the adjustments for natural responsiveness as given by D.J. Finney, in *Probit Analysis* 3rd edition, 1971, Cambridge University Press, Chapter 7, can be used to obtain the probit model estimate of the LC–50 and the 95 percent fiducial (confidence) limits for the LC–50. These estimates are obtained by using the logarithmic transform of the concentration. The heterogeneity factor (Finney 1971, pages 70–72) is not used. For a test material to pass the toxicity test according to the requirements stated in the offshore oil and gas extraction industry BAT regulation, the lower 95 percent limit for the LC–50 adjusted for natural responsiveness must be greater than 3 percent suspended particulate phase (SPP) concentration by volume unadjusted for the 1 to 9 dilution. Other toxicity test models may be used to obtain toxicity estimates provided the modeled mathematical expression for the lethality rate must increase continuously with concentration. The lethality rate is modeled to increase with concentration to reflect an assumed increase with concentration to reflect an assumed increase in toxicity with concentration even though the observed lethality may not increase uniformly because of unpredictable animal response fluctuations.

(3) The range-finding test is used to establish a reasonable set of test concentrations in order to run the definitive test. However, if the lethality rate changes rapidly over a narrow range of concentrations, the range-finding test may be too coarse to establish an adequate set of test concentrations for a definitive test.

(4) The EPA Environmental Research Laboratory in Gulf Breeze, Florida prepared a Research and Development Report titled *Acute Toxicity of Eight Drilling Fluids to Mysid Shrimp (Mysidopsis bahia)*, May 1984 EPA–600/3–84–067. The Gulf Breeze data for drilling fluid number 1 are displayed in Table 1 for purposes of an example of the probit analysis described above. The SAS Probit Procedure (SAS Institute, Statistical Analysis System, Cary, North Carolina, 1982) was used to analyze these data. The 96-hour LC–50 adjusted for the estimated spontaneous mortality rate is 3.3 percent SPP with 95 percent limits of 3.0 and 3.5 percent SPP with the 1 to 9 dilution. The estimated spontaneous mortality rate based on all of the data is 9.6 percent.

TABLE 1.—LISTING OF ACUTE TOXICITY TEST DATA (AUGUST 1983 TO SEPTEMBER 1983) WITH EIGHT GENERIC DRILLING FLUIDS AND MYSID SHRIMP—FLUID N2=1

Percent concentration	Number exposed	Number dead (96 hrs)	Number alive (96 hrs)
0	60	3	57
1	60	11	49
2	60	11	49
3	60	25	35
4	60	48	12
5	60	60	0

V–C. The Partial Toxicity Test for Evaluation of Test Material

(1.) A partial test conducted according to EPA protocol can be used economically to demonstrate that a test material passes the toxicity test. The partial test cannot be used to estimate the LC–50 adjusted for natural response.

(2) To conduct a partial test, follow the test protocol for preparation of the test material and organisms. Prepare the control (zero concentration), one test concentration (3 percent suspended particulate phase) and the reference toxicant according to the methods of the full test. A range finding test is not used for the partial test.

(3) Sixty test organisms are used for each test concentration. Find the number of test organisms killed in the control (zero percent SPP) in the column labeled X_o of Table 2. If the number of test organisms killed in the control (zero percent SPP) exceeds the table values, then the test is unacceptable and must be repeated. If the number of organisms killed in the 3 percent test concentration is less than or equal to corresponding number in the column labeled X_t then the test material passes the partial toxicity test. Otherwise the test material fails the toxicity test.

TABLE 2.

X_o	X_t
0	22
1	22
2	23
3	23
4	24
5	24
6	25

(4) Data shall be reported as percent suspended particulate phase.

6. References

(1) Borthwick, Patrick W. 1978. Methods for acute static toxicity tests with mysid shrimp (*Mysidopsis bahia*). *Bioassay Procedures for the Ocean Disposal Permit Program*, EPA–600/9–78–010: March.

(2) Nimmo, D.R., T.L. Hamaker, and C.A. Somers. 1978. Culturing the mysid (*Mysidopsis bahia*) in flowing sea water or a static system. *Bioassay Procedures for the Ocean Disposal Permit Program*, EPA–600/9–78–010: March.

(3) American Public Health Association et al. 1980. *Standard Methods for the Examination of Water and Wastewater*. Washington, D.C. 15th Edition: 90–99.

Appendix 4—Regulatory Boundaries

New source offshore oil production facilities located in or discharging to the following areas are subject to the zero discharge standard for produced water, depending upon water depth at the location of the facility or discharge. Unless otherwise stated below, the outer boundary for each designated area is the 200-mile boundary of the Fishery Conservation Zone.

(A) Gulf of Mexico—Water Depth 20 Meters or Less

Extending from the inner boundary of the territorial seas of Eastern Texas, Louisiana, Mississippi, Alabama and Western Florida.

(B) Atlantic Coast—Water Depth 20 Meters or Less

Extending from the inner boundary of the territorial seas offshore of the contiguous states between and including Maine and Florida.

(C) California Coast—Water Depth 50 Meters or Less

2. Central and Northern California: Extending offshore of California and bounded on the north by approximately 42 ° N. latitude and bounded on the south by the U.S.-Mexico boundary.

(D) Alaska

1. Gulf of Alaska—Water Depth 50 meters or less: It is bounded approximately on the west by 151° 55′ W. longitude; thence east along 59° N latitude to 146° W longitude; thence south to 58° N latitude; thence east along 58° N latitude to 147° W longitude, thence south.

2. Cook Inlet/Shelikof Strait—Water Depth 50 Meters or Less: Lies east of 156 ° W. longitude and north of 57° N latitude to the inner boundary of the territorial seas near Kalgin Island.

3. Bristol Bay/Aleutian Range—Water Depth 50 meters or less: (a) North Aleutian Basin: Lies in the eastern Bering Sea northwest of the Alaskan Peninsula and south of 59° N latitude. It is bounded on the west by 165° W. longitude and on the east by the inner boundary of the territorial seas.

(b) St. George Basin—Water Depth 50 meters or less: Lies in the eastern Bering Sea northwest of the Aleutina Islands chain and is bounded on the north by 59° N latitude and on the west by 174° W longitude from 59° N. latitude to 56° N. latitude; thence east to 171° W. longitude, thence south. It is bounded on the east by 165° W. longitude.

4. Norton Basin—Water Depth 20 meters or less: Lies south and southwest of the Seward Peninsula. It is bounded on the south by 63° N. latitude, on the west by the U.S.-Russia Convention Line of 1867, on the north by 65° 34′ N. latitude, and on the east by the inner boundary of the territorial seas.

5. Beaufort Sea—Water Depth 10 meters or less: Lies offshore of Alaska in the Beaufort Sea and the Arctic Ocean. It is bounded on the west by the Mineral Management Service Chukchi Sea planning area, extends eastward to the limit of U.S. jurisdiction, and on the south by the inner bounary of the territorial seas.

To determine water depth at the facility location, reference the most recent nautical charts or bathymetric maps with the smallest scale (highest resolution) available from the National Oceanic and Atmospheric Administration for the area in question. Water depth is the mean lower low water depth indicated on the appropriate map for the location of the facility or discharge. Water depth at the facility is based upon the proposed location of the facility's well slot structure or produced water discharge point.

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Federal Register

Monday
August 26, 1985

Part III

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 324

Research in Education of the Handicapped; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 324

Office of Special Education and Rehabilitative Services; Research in Education of the Handicapped

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations under sections 641–644 of Part E of the Education of the Handicapped Act, as amended by Pub. L. 98–199. The program authorized by sections 641–644 of the Act provides support for research and related activities designed to increase knowledge and understanding of handicapping conditions and teaching, learning, and education-related practices and services for handicapped children and youth. The regulations, among other things, describe the purpose of the program, identify the types of activities that are eligible for support, set forth the process for selecting funding priorities, and describe weighted selection criteria. An appendix to the regulations contains nonbinding guidelines for the preparation of applications.

EFFECTIVE DATE: These regulations will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Glidewell, Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511–M/S 2313), Washington, D.C. 20202; Telephone: (202) 732–1099.

SUPPLEMENTARY INFORMATION: The Research in Education of the Handicapped program, authorized by sections 641–644 of Part E of the Education of the Handicapped Act, supports research, surveys, or demonstration projects, and other activities relating to the educational needs of handicapped children and youth. Under this program, the Secretary makes awards to eligible parties for research and related activities, to assist special education personnel, related services personnel, and other appropriate persons, including parents, in improving the education and related services for handicapped children and youth, and to conduct research, surveys, or demonstrations relating to the education of handicapped children and youth. Research and research-related activities supported under this program shall be designed to increase knowledge and understanding of handicapping conditions and teaching, learning, and education-related practices and services for handicapped children and youth, including physical education and recreation.

The Education of the Handicapped Act Amendments of 1983, Pub. L. 98–199, included amendments to the provisions of section 641. Under section 641(c) of the Act, the Secretary is required to publish proposed research priorities in the **Federal Register** every two years, analyze and consider any public comments received, and then publish final research priorities. In accordance with this authority, a notice of final biennial funding priorities was published on April 5, 1985 (50 FR 13734).

Regulations for this program were published on August 18, 1978 (43 FR 36634), were last amended on June 18, 1981 (46 FR 31997), and are currently codified at 34 CFR Part 324. These final regulations implement Sections 641–644 of the Act, as amended by Pub. L. 98–199, and incorporate the Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78). These regulations are expected to become effective in time to apply to Fiscal Year 1986 awards. Grant awards made in Fiscal Year 1985 will be governed by the current regulations.

A notice of proposed rulemaking for this program was published on March 20, 1985 (50 FR 11356). Certain technical revisions have been made to the selection criteria in §§ 324.31 and 324.32. No substantive changes are intended, and no amendments to the applications are necessary. The comments received in response to this notice and the Secretary's responses are summarized below.

Comment. One commenter recommended that § 324.1(c) and (d) should be combined to avoid redundancy.

Response. No change has been made. This language is taken directly from section 642 of the Act.

Comment. Three commenters recommended that § 324.2(b) be expanded to specifically include the statutory authority for the Secretary to award grants as well as contracts for research and related purposes relating to physical education and recreation for handicapped children.

Response. A change has been made. Language has been added to § 324.2(b) to clarify that the Secretary may also make grants for research and related purposes relating to physical education and recreation for handicapped children.

Comment. One commenter recommended that § 324.30(a) be revised to give priority to three or more types of activities indicated so as to allow for broader access to grants under this section.

Response. No change has been made. Although the Secretary agrees with the intent of the comment, the number of priorities selected for funding in any fiscal year is largely dependent upon the availability of funds for new awards as well as support for continuation projects. Thus, the regulations must be flexible enough to allow for variation in the availability of uncommitted funds from year to year.

Comment. One commenter recommended that § 324.33 include a definition of "research related activities."

Response. No change has been made. Section 641 of the Act specifies illustrative types of research and related activities which can be supported under this program. Authorized activities are specified in § 324.10 of the regulations and are consistent with the definition of "research and related purposes" in section 602(b)13) of the Act.

Comment. One commenter recommended extending the date for report submission after completion of a project from 60 to 90 days.

Response. A change has been made. The Secretary agrees with the recommendation to extend the report deadline to 90 days.

A summary of these final regulations follows.

Subpart A—General.

Section 324.1 describes the basic purpose of the Research in Education of the Handicapped program.

Section 324.2 identifies the parties that are eligible to receive grants.

Section 324.3 lists other regulations that apply to this program.

Section 324.4 incorporates certain EDGAR definitions as well as the definitions of "handicapped children," "related services," and "special education" used in the Assistance to States for Education of Handicapped Children program (34 CFR Part 300). These definitions in 34 CFR Part 300, as well as the definition of "handicapped youth" under Section 602(b) of the Act, are adopted to ensure consistency among programs under the Act.

Subpart B—What Kinds of Projects Does the Secretary Assist Under this Program?

Section 324.10 identifies the types of projects that the Secretary supports. This section identifies the particular

activities authorized under sections 641(a) and 642 of the Act as examples of the kinds of projects that are consistent with the purposes of the Act. This section includes student-initiated and field-initiated activities, in accordance with the legislative history of the Act, which states: "The Committee intends that the field and student initiated research projects and successful model projects be continued." S. Rep. No. 191, 98th Cong., 1st Sess. 25 (1983).

Section 324.11 describes the kinds of research and model projects supported under this program. This information is included to assist applicants in understanding the purpose of the two different types of projects authorized under this part.

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

Sections 324.30 describes the process the Secretary uses to select priorities for funding. This process is consistent with the requirements of section 641(c) of the Act.

Sections 324.31 and 324.32 contain the selection criteria the Secretary uses to evaluate applications and award new grants. The Secretary establishes weighted criteria that reflect the relative importance of the elements of an application in order to ensure that the most promising projects are selected. The Secretary uses different selection criteria for research projects and for model projects to reflect the difference in the nature of those projects. The selection criteria contained in §§ 324.31(b)(3) and (h) and 324.32(b)(3) and (h) are designed to implement the requirement under section 641(b) of the Act that the Secretary shall consider the special education experience of an applicant and the ability of an applicant to disseminate the findings of any project funded under this part.

Subpart E—What Conditions Must be Met by a Grantee?

Section 324.40 describes the content of the project report that must be submitted upon completion of a project. These requirements are necessary to ensure that the project reports will be useful to the persons to whom they are disseminated.

Appendix.

The appendix to Part 324 (Guidelines—Education of the Handicapped Act—Part E) is revoked.

An appendix is attached which contains nonbinding guidance for use by applicants in preparing applications for research and model projects.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. The application procedures in the final regulations will not place undue burdens on small entities submitting applications under this program. The regulations do not impose other burdens that would have a significant economic impact on small entities participating in the program.

To the extent that the regulations affect States and State agencies, they will not have an impact on small entities. States and State agencies are not small entities under the Act.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States. Based on the comments on the proposed rules and the Department's own review, it has been determined that the regulations in this document do not require information that is already being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 324

Education, Education of handicapped, Education—research, Grants program—education, Local education agency, Reporting and recordkeeping requirements, School, State educational agencies.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance No. 84.023, Research in Education of the Handicapped)

Dated: August 19, 1985.

William J. Bennett,

Secretary of Education.

The Secretary revises Part 324 of Title 34 of the Code of Federal Regulations to read as follows:

PART 324—RESEARCH IN EDUCATION OF THE HANDICAPPED PROGRAM

Subpart A—General

Sec.

324.1 What is the Research in Education of the Handicapped Program?
324.2 Who is eligible to apply for an award under this program?
324.3 What regulations apply to this program?
324.5 What definitions apply to this program?
324.5-324.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

324.10 What kinds of projects are authorized under this part?
324.11 What kinds of research and model projects are supported under this part?
324.12-324.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

324.30 How does the Secretary select and announce funding priorities under this program?
324.31 What are the selection criteria for evaluating applications for research projects?
324.32 What are the selection criteria for evaluating application for model projects?
324.33 What are the selection criteria for evaluating research-related activities other than research and model projects?
324.34-324.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Recipient?

324.40 What conditions must be met by a recipient?
324.41-324.49 [Reserved]

Authority: Secs. 641-644 of the Education of the Handicapped Act, as amended by Pub. L. 98-199, 97 Stat. 1372-1374 (20 U.S.C. 1441-1444), unless otherwise noted.

Subpart A—General

§ 324.1 What is the Research in Education of the Handicapped Program?

The purpose of this program is to provide support for—

(a) Research and related activties to assist special education personnel, related servcies personnel, and other appropriate persons, including parents, in improving the education and related services for handicapped children and youth;

(b) Research, surveys, or demonstrations relating to the education of handicapped children and youth;

(c) Research and related purposes relating to physical education or recreation for handicapped children; and

(d) Research, surveys, or demonstrations relating to physical education or recreation for handicapped children.

(20 U.S.C. 1441(a), 1442)

§ 324.2 Who is eligible to apply for an award under this program?

(a) The Secretary may make grants to, or enter into contracts and cooperative agreements with, State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations for the research and related activities authorized under Section 641(a) of the Education of the Handicapped Act.

(b) The Secretary may award contracts to States, State or local educational agencies, institutions of higher education, and other public or nonprofit private educational or research agencies and organizations, and may make contracts with States, State and local educational agencies, institutions of higher education, and other public or private educational or research agencies and organizations for research and related purposes authorized under Section 642 of the Education of the Handicapped Act, relating to physical education or recreation for handicapped children, and to conduct research, surveys, or demonstrations relating to physical education or recreation for handicapped children.

(20 U.S.C. 1441(a), 1442)

§ 324.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in this Part 324.

(b) The Education Department General Administrative Regulations (EDGAR), set out in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions that Apply to Department Regulations); and

(4) Part 78 (Education Appeal Board).

(20 U.S.C. 1441–1444)

§ 324.4 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant
Grantee
Local educational agency
Nonprofit
Private
Project
Project period
Secretary
State educational agency

(20 U.S.C. 1441–1444)

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR 300.5, 300.13, and 300.14:

Handicapped children
Related services
Special education

(20 U.S.C. 1401(a)(1), (16), (17))

(c) *Other definitions.* In addition to the definitions referred to in paragraphs (a) and (b) of this section, the following definition applies to this part: "Handicapped youth" means any handicapped child who—

(1) Is twelve years of age or older; or

(2) Is enrolled in the seventh or higher grade in school.

(20 U.S.C. 1401(b))

§§ 324.5—324.9 [Reserved]

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 324.10 What kinds of projects are authorized under this part?

Research and related activities that may be assisted under this part include, but are not limited to—

(a) The development of new and improved techniques and devices for teaching handicapped children and youth;

(b) The development of curricula which meet the unique educational needs of handicapped children and youth;

(c) The application of new technologies and knowledge for the purpose of improving the instruction of handicapped children and youth;

(d) The development of program models and exemplary practices in areas of special education;

(e) The dissemination of information on research and related activities conducted under this part to interested individuals and organizations;

(f) Research and related activities, surveys, or demonstrations relating to physical education or recreation for handicapped children; and

(g) Student-initiated or field-initiated projects consistent with the purpose of the program, as described in § 324.1.

(20 U.S.C. 1441(a), 1442)

§ 324.11 What kinds of research and model projects are supported under this part?

(a) Research projects supported under this part must be designed to generate knowledge about the education of handicapped children and youth and to translate that knowledge into practical techniques and materials.

(b) Model projects supported under this part must develop and implement innovative educational programs that serve handicapped children and youth either directly or indirectly. These projects must be designed to—

(1) Improve significantly an aspect of the education of handicapped children and youth;

(2) Provide information about the comparative effectiveness of the model being demonstrated;

(3) Continue beyond the award period; and

(4) Provide for dissemination and replication of a successful program.

(20 U.S.C. 1441, 1442)

§§ 324.12–324.19 [Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 324.30 How does the Secretary select and announce funding priorities under this program?

(a) For any fiscal year, the Secretary may give priority to one or more of the types of activities under § 324.10.

(b) Under Section 641(c) of the Education of the Handicapped Act, the Secretary is required to publish proposed research priorities for public comment in the **Federal Register** every two years, not later than July 1. The Secretary is required to publish final priorities for this program not later than 30 days after the close of the comment period.

(c) The Secretary establishes separate competitions for research and model projects for any activity for which the Secretary provides assistance under this part.

(20 U.S.C. 1441(c), 1442)

§ 324.31 What are the selection criteria for evaluating applications for research projects?

The Secretary uses the criteria in this section to evaluate applications for research projects. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;
(ii) An effective plan of management that insures proper and efficient administration of the project;
(iii) A clear description of how the objectives of the project relate to the purpose of the program;
(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and
(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—
(A) Members of racial or ethnic minority groups;
(B) Women;
(C) Handicapped persons; and
(D) The elderly.
(b) *Quality of key personnel.* (10 points)
(1) The Secretary reviews each application to determine the qualifications of the key personnel that applicant plans to use on the project.
(2) The Secretary considers—
(i) The qualifications of the project director (if one is to be used);
(ii) The qualifications of each of the other key personnel to be used in the project;
(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and
(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—
(A) Members of racial or ethnic minority groups;
(B) Women;
(C) Handicapped persons; and
(D) The elderly.
(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.
(c) *Budget and cost effectiveness.* (5 points)
(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.
(2) The Secretary considers the extent to which—
(i) The budget for the project is adequate to support the project activities; and
(ii) Costs are reasonable in relation to the objectives of the project.
(d) *Evaluation plan.* (5 points)
(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

Cross reference: 34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.
(e) *Adequacy of resources.* (5 points)
(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.
(2) The Secretary considers the extent to which—
(i) The facilities that the applicant plans to use are adequate; and
(ii) The equipment and supplies that the applicant plans to use are adequate.
(f) *Importance.* (10 points) The Secretary reviews each application to determine the importance of the project in leading to the understanding of, remediation, or compensation for the problem or issue relating to the education of handicapped children and youth being addressed.
(g) *Impact.* (5 points) The Secretary reviews each application to determine the probable impact of the proposed research and development products and the extent to which those products can be expected to have a direct influence on handicapped children and youth or personnel responsible for their education.
(h) *Organizational capability.* (10 points) The Secretary considers—
(1) The applicant's special education experience; and
(2) The ability of the applicant to disseminate the findings of the project to appropriate groups to ensure that they can be used effectively.
(i) *Technical soundness.* (40 points) The Secretary reviews each application to determine the technical soundness of the research or evaluation plan, including—
(1) The design;
(2) The proposed sample;
(3) Instrumentation; and
(4) Data analysis procedures.

(20 U.S.C. 1441–1442)

§ 324.32 What are the selection criteria for evaluating applications for model projects?

The Secretary uses the criteria in this section to evaluate applications for model project awards. The maximum score for all of the criteria is 100 points.
(a) *Plan of operation.* (10 points)
(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.
(2) The Secretary looks for—
(i) High quality in the design of the project;
(ii) An effective plan of management that insures proper and efficient administration of the project;
(iii) A clear description of how the objectives of the project relate to the purpose of the program;
(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and
(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—
(A) Members of racial or ethnic minority groups;
(B) Women;
(C) Handicapped persons; and
(D) The elderly.
(b) *Quality of key personnel.* (10 points)
(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project;
(2) The Secretary considers—
(i) The qualifications of the project director (if one is to be used);
(ii) The qualifications of each of the other key personnel to be used in the project;
(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and
(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—
(A) Members of racial or ethnic minority groups;
(B) Women;
(C) Handicapped persons; and
(D) The elderly.
(3) To determine personnel qualification, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.
(c) *Budget and cost effectiveness.* (5 points)
(1) The Secretary reviews such application to determine if the project has an adequate budget and is cost effective.
(2) The Secretary considers the extent to which—
(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

Cross-reference: 34 CFR 75.590, *Evaluation by the grantee.*

(2) The Secretary considers the extent to which the methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Importance.* (10 points) The Secretary reviews each application to determine if—

(1) The service delivery problem addressed by the proposed project is of concern to others in the Nation, and;

(2) The importance of the project in addressing the problem or issue.

(g) *Innovativeness.* (15 points)

(1) The Secretary reviews each application to determine the innovativeness of the proposed project.

(2) The Secretary looks for a conceptual framework that—

(i) Is founded on previous theory and research; and

(ii) Provides a basis for the unique strategies and approaches to be incorporated into the model.

(h) *Organizational capability.* (10 points) The Secretary considers—

(1) The applicant's special education experience; and

(2) The applicant's ability to disseminate findings of the project to appropriate groups to ensure that they can be used effectively.

(i) *Technical soundness.* (25 points)

(1) The Secretary reviews each application to determine the technical soundness of the plan for the development, implementation, and evaluation of the model with respect to such matters as—

(i) The population to be served;

(ii) The model planning process;

(iii) Record keeping systems;

(iv) Coordination with other service providers;

(v) The identification and assessment of students;

(vi) Interventions to be used, including proposed curricula;

(vii) Individualized educational program planning; and

(viii) Parent and family participation.

(20 U.S.C. 1441–1442)

§ 324.33 What are the selection criteria for evaluating research-related activities other than research and model projects?

The Secretary uses the criteria in 34 CFR 75.210 *(Selection criteria for a discretionary grant program that does not have regulations)* (to evaluate applications for new awards for research-related activities other than research and model projects.

(20 U.S.C. 1441–1442).

§§ 324.34–324.39 [Reserved]

Subpart E—What Conditions Must Be Met by a Recipient?

§ 324.40 What conditions must be met by a recipient?

Not more than 90 days after the completion of a project assisted under this part, each recipient must submit a report to the Secretary that includes—

(a) An abstract of the project;

(b) For a research project, a description of the research problem and the methodological approach used in the research study; or

(c) For a model project—

(1) A description of the model which permits replication, in part or in whole, by appropriate parties to which it is disseminated; and

(2) A description of the evaluation procedures and findings related to the effectiveness of the model;

(d) A summary of the project findings; and

(e) A statement of the conclusions.

(20 U.S.C. 1441(d))

(Approved by the Office of Management and Budget under control number 1820–0002)

§§324.41–324.49 [Reserved]

Appendix

Note.—This appendix will not be codified in the Code of Federal Regulations.

Guidelines—Research in Education of the Handicapped Program

Part 1—Introduction

Sec.

1.1 Scope of guidelines.

Part 2—Application Information

2.1 Preparation of applications for research projects.

2.2 Preparation of applications for model projects.

Part 1—Introduction

§ 1.1 Scope of guidelines.

The guidelines contained in this document are recommendations and suggestions for meeting legal requirements which apply to Federal assistance under the Education of the Handicapped Act, Part E, sections 641–644. The legal requirements include the Act itself (20 U.S.C. 1441–1444) and applicable regulations (34 CFR Parts 75 and 324). The guidelines are not requirements. However, where the guidelines set forth a permissible means of meeting a legal requirement, the guidelines may be relied upon.

(20 U.S.C. 1441–1444)

Part 2—Application Information

§ 2.1 Preparation of applications for research projects.

It is suggested that project applications include the following features in the order listed:

(a) *Abstract.* A narrative abstract should describe—(1) The problem or issue the project is addressing; (2) the project's goals and products; and (3) the methodology. The overview of the methodology should provide specific detail on the sample, if one is to be used (i.e., number of local educational agencies, number of students, category of exceptionality), and a brief description of the project's design, measurement, and analysis procedures.

(b) *Importance.* This section should present the problem or issue to be addressed. Using previous research findings, the experiences of service providers, and a conceptual framework, the applicant should make a convincing argument for the significance of the need which exists, and the importance of the proposed project in understanding, remediating, or compensating for the problem/issue. This section should also include a description of the expected outcomes. Finally, it should provide a list of procedural objectives which describe the major activities to be implemented during the project and for which detailed explanations and justifications are provided in the subsequent sections of the application.

(c) *Technical Method (Soundness).* This section should provide both a description and justification for the project design, sample, measurement techniques, instrumentation, and data analysis procedures. This section should provide sufficient detail for reviewers to be able to make informed judgments about the soundness of the proposed research procedures. This is the one aspect of the application narrative which is frequently too short. Applicants need to explain and justify their selection of procedures. The relationship between the proposed activities and the proposed duration of the project should also be made apparent in this section.

(d) *Plan of Operation.* This section of the application should provide a management plan which includes—(1) An organizational chart accompanied by a narrative which describes the responsibilities associated with each position; (2) a time line indicating the initiation and completion dates for each major activity; and (3) a person loading chart which indicates, for each major activity, the number of days by person. This section should explicitly describe how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented.

(e) *Evaluation Plan.* This section of the application should describe procedures to assure that the project's activities are being implemented appropriately and that project objectives are being met. Project evaluation procedures should differ from the analysis procedures for the research data described in section (c), *Technical Methods (Soundness).*

(f) *Key Personnel.* This section should identify the person being proposed for each position presented in the management plan and the time commitment allocated to the position. Each person's qualifications should be presented in a manner that shows a clear relationship to the selection criteria for that designated position. This section should also describe procedures for encouraging applications for employment from persons who are members of groups that have been traditionally underrepresented such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly. Finally, a full disclosure of all time commitments should be included for each person listed in the application. These should include both proposed and existing commitments to State, local, or privately-supported activities.

(g) *Adequacy of Resources.* This section should describe the resources, facilities, equipment, and supplies available to the applicant for carrying out the proposed project. It should include a summary of relevant experiences related to the proposed research activity, and it should demonstrate access to and commitment from schools, agencies, or other organizations necessary to carry out the proposed research. This is particularly important regarding access to proposed samples.

(h) *Impact.* This section of the application should be used to make the best case for the potential difference the proposed research could make in addressing the needs developed in the purpose section. The impact statement should consider the contribution the findings or products will make to current understanding, knowledge, and practice.

(i) *Organizational capability.* This section should clearly describe the special education experience of the applicant and how the findings and products will be disseminated to appropriate target groups to ensure that they can be used effectively.

(j) *Budget and Cost Effectiveness.* Instructions in the standard application for Federal assistance (Section E of ED Form 9037) provide guidance in preparing the budget section of the application.

§ 2.2 Preparation of applications for model projects.

It is suggested that project descriptions include the following features, in the order listed:

(a) *Abstract.* A narrative abstract should describe—(1) The service delivery problem the project is addressing; (2) the project's goals and strategies, and (3) the methods. The overview of the methods should provide specific details on the population to be served and the intervention to be used.

(b) *Importance.* This section should present the service delivery problem to be addressed. Using previous research findings, need assessments, and the experiences of service providers, the applicant should make a convincing argument for the significance of the delivery problem to service providers across the Nation.

(c) *Innovativeness.* This section should provide a conceptual framework that is founded on previous theory and research and provides a basis for the unique strategies and approaches that will be used in addressing the identified service delivery problem. This section should also make clear the contribution the proposed findings and products will make in advancing current knowledge, understanding, and practice.

(d) *Technical Method (Soundness).* This section should provide both a description and justification of the project's strategies. Specific information should be provided as to the population to be served, the model planning process, coordination among service providers, the interventions to be used, and parent and family participation. Model projects that will provide direct services to students should also include information as to the identification and assessment of students, record keeping systems, proposed curricula, and individualized educational program planning. This aspect of the application narrative should be detailed enough to make it clear what activities will be carried out in the project. Applicants need to explain and justify their strategies.

(e) *Plan of Operation.* This section of the application should provide a management plan which includes—(1) An organizational chart accompanied by a narrative which describes the responsibilities associated with each position; (2) a time line indicating the initiation and completion dates for each major activity; and (3) a person loading chart which indicates for each major activity the number of days by person. This section should explicity describe how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented.

(f) *Evaluation Plan.* This section should describe the plan and the procedures to evaluate the project, including the effectiveness of the model in educating handicapped students. In particular, procedures should be described for comparing the effectiveness of the model with other service delivery strategies.

(g) *Key Personnel.* This section should identify the person being proposed for each position presented in the management plan and the time commitment allocated to the position. Each person's qualifications should be presented in a manner that shows a clear relationship to the selection criteria for his/her designated position. This section should also describe procedures for encouraging applications or employment from persons who are members of groups that have been traditionally underrepresented such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly. Finally, a full disclosure of all time commitments should be included for each person listed in the application. These should include both proposed and existing commitments to State, local, or privately supported activities.

(h) *Adequacy of Resources.* This section should describe the resources, facilities, equipment, and supplies available to the applicant for carrying out the proposed project. It should include a summary of relevant experiences related to the proposed project, and it should demonstrate access to schools, agencies, or other organizations necessary to carry out the proposed project.

(i) *Organizational capability.* This section should clearly describe the special education experience of the applicant and how the findings and products will be disseminated to

appropriate target groups to ensure that they can be used effectively.

(j) *Budget and Cost Effectiveness.* Instructions in the standard application for Federal assistance (Section E of ED Form 9037) provide guidance in preparing the budget section of the application.

(20 U.S.C. 1441–1444; 34 CFR 324.31–324.32)

[FR Doc. 85–20158 Filed 8–23–85; 8:45 am]

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Federal Register

Monday
August 26, 1985

Part IV

Department of Energy

Energy Information Administration

State-Level Energy End Use, Price, and Expenditures Information; Solicitation of Comments on Data User Needs; Notice

DEPARTMENT OF ENERGY

Energy Information Administration

State-Level Energy End Use, Price, and Expenditures Information; Solicitation of Comments on Data User Needs

AGENCY: Office of Energy Markets and End Use, Energy Information Administration, DOE.

ACTION: Notice of request for comments.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) is initiating a review of the requirements of data users for State-level information on energy end-use, prices, and expenditures. The EIA will use the results of the requirements review in determining which data elements EIA should continue to publish.

The EIA also is soliciting comments from data users on which State-level data they deem to be necessary. The EIA requests that data users identify the specific uses for the data they require, including, if applicable, the statutory mandate.

Any written comments received in response to this notice will be available for public inspection at the DOE Freedom of Information Office, Room 1E-090, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which is believed to be confidential and exempt by law from public disclosure, should submit one complete copy of the document and, if possible, 10 copies from which the information which is believed to be confidential has been deleted. The DOE will make its own determination with regard to the confidential status of the information and treat it according to its determination.

DATE: Comments concerning this notice should be submitted within 60 days of the publication date of the notice.

ADDRESS: Comments should be submitted in writing to: Sue Streett, Office of Energy Markets and End Use, Energy Information Administration, EI-60, MS 1H-053, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Sue Streett, (202) 252-1617.

SUPPLEMENTARY INFORMATION: The EIA currently publishes the *State Energy Data Report* (SEDR) to provide historical time series data on consumption of energy by major end-use sectors and by State. The sectors reported in the SEDR are residential, commercial, industrial, transportation, and electric utilities. Consumption data published in the SEDR include both collected State-level data and calculated State-level estimates. EIA collects state-level consumption data on natural gas and electricity, and when publishing these data in the SEDR, makes minor adjustments for consistency among end-use sectors. In cases where EIA does not collect State-level consumption data, notably petroleum products, the SEDR relies on collected State-level sales, delivery, or distribution data. In general, these data are available directly from EIA collection forms and are adjusted in the SEDR to equal the reported national-level consumption data. In many cases, imputations are made to establish consistency in sectoral definitions or to reflect changes in EIA data collection forms for specific time series. The EIA publishes a companion report titled the *State Energy Price and Expenditures Report* (SEPER) which combines the SEDR consumption estimates with collected and imputed price data to provide annual estimates of energy prices and expenditures by major end-use sector at the State and national levels.

The EIA also conducts periodic surveys of energy consumption within the residential, commercial, and residential transportation sectors. The EIA energy end-use surveys are sent to a small sample of their respective populations and provide statistical data on energy end-use at the national and Census region level. Unlike the SEDR, these data are not available at the State-level. The EIA plans to conduct future energy end-use surveys on a triennial cycle.

The EIA is soliciting comments on the information needs of data users who use State-level information on energy end-use, prices and expenditures. The following questions are provided to focus the discussion on the specific needs for and uses of these data.

Please answer each of the following questions:

1. What are your minimal requirements for information on energy end-use, prices, and expenditures? For what do you use these data? Please be specific.

2. Are data aggregated at regional or national levels sufficient? If State-level data are required, please specify what data are required at State-level and why.

3. Do you require data for specific end-use sectors (such as residential, commercial, industrial, transportation, and electric utilities)? If so, for which ones? For what purpose?

4. With what periodicity do you need State-level energy end-use, price, and/or expenditure data? Is information published less often than once a year sufficient?

5. Do you now use EIA information on State-level energy end-use, prices, and expenditures? Which publications or public use tapes do you use? For what purposes do you use these data?

6. If you have used EIA State-level end-use publications and/or public use tapes, please identify elements of information for which you have no need.

7. If additional State-level end-use information is needed, what is it and how would it be used?

8. EIA continues to evaluate alternate forms of dissemination for its information products. Could you make use of State-level consumption and expenditure information if it were available only on 9 track magnetic tape, 5¼ inch floppy disk, or microfiche? Please specify which you could use.

Comments (excluding those comments DOE has determined are confidential) submitted in response to this notice will become a matter of public record.

Issued in Washington, DC, August 16, 1985.

H.A. Merklein,

Administrator, Energy Information Administration.

[FR Doc. 85-20197 Filed 8-23-85; 8:45 am]

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Federal Register

Monday
August 26, 1985

Part V

Environmental Protection Agency

40 CFR Part 123

National Pollutant Discharge Elimination System Regulations; Noncompliance and Program Reporting; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[OW-FRL 2840-6]

National Pollutant Discharge Elimination System Regulations; Noncompliance and Program Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: On July 23, 1984, EPA proposed revisions (49 FR 29720) to the program reporting requirements for the National Pollutant Discharge Elimination System (NPDES) under section 402 of the Clean Water Act (CWA). This rule applies to EPA Regions and NPDES States. The proposed rule was intended to establish a consistent basis for EPA and State reporting of instances of noncompliance by major dischargers. The proposed regulation described criteria for three reporting formats: the Quarterly Noncompliance Report (QNCR), a second tier of narrative noncompliance reporting, and four options for a quarterly statistical summary of other instances of noncompliance.

On January 24, 1985, EPA published additional information (50 FR 3494) to explain the results of its evaluation of the four options for the statistical summary of other instances of noncompliance. In addition, EPA provided information to clarify the purpose of the QNCR and to distinguish between Category I and Category II instances of noncompliance.

After considering comments submitted on the proposed rule and the notice of additional information, EPA has amended the NPDES regulations and is promulgating the rule in final form today. The final rule describes the format and the instances of noncompliance that must be reported in the QNCR. The rule distinguishes between Category I noncompliance, which is based on specific criteria, and Category II instances of noncompliance which are based on criteria which are harder to quantify but are also of concern to the regulatory agency. Both categories of noncompliance must be reported in the QNCR. Examples of Category II noncompliance are included in the final rule. The final rule also requires a semi-annual statistical summary of other instances of noncompliance.

DATES: This regulation will become effective October 1, 1985, and be used for the QNCR covering the period through December 31, 1985. All enforcement orders issued after October 1, 1985, must be reported on the QNCR in accordance with the requirements of the rule.

In accordance with 40 CFR 23.2 (50 FR 7268, February 25, 1985), these regulations shall be considered issued for purposes of judicial review at 1:00 p.m. eastern time on September 9, 1985. In order to assist EPA to correct any typographical errors, incorrect cross references, and similar technical errors, comments of a technical or nonsubstantive nature on the final regulations may be submitted on or before October 28, 1985.

ADDRESSES: Comments of a technical and nonsubstantive nature should be addressed to: Edward S. Bender, Water Enforcement Division (EN-338), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. The rulemaking record is available at the EPA Public Information Reference Unit, Room 2404 (rear) (PM-213), 401 M Street, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Edward Bender, (202) 475-8331.

SUPPLEMENTARY INFORMATION:

I. Background

On June 7, 1979, EPA promulgated final regulations for the National Pollutant Discharge Elimination System (NPDES) permit program (44 FR 32854; 40 CFR Parts 122-124) under the Clean Water Act (CWA). Section 122.23 of that regulation contained requirements for Quarterly Noncompliance Reports (QNCR) to be prepared and submitted by States approved to administer the NPDES program and by EPA Regions for States not yet approved. These regulations were a revision to previous QNCR requirements. Section 122.23 was retained in substantially the same form in the Consolidated Permit Regulations promulgated May 19, 1980 (45 FR 332901; § 122.18), and the deconsolidated NPDES regulations promulgated April 1, 1983 (48 FR 14146; § 123.45).

The latest, revised regulation (48 FR 14146, April 1, 1983), required the Director to submit quarterly reports of noncompliance with permit conditions by major dischargers. The narrative report, called the QNCR, was to include the following types of noncompliance: Failure to complete the construction elements of a compliance schedule; failure to provide reports; submission of deficient reports; and noncompliance with other permit requirements, such as effluent limitations. Generally, only noncompliance not corrected within a specified period (30 to 90 days) required reporting. Reporting agencies were also required to report other instances of noncompliance by major dischargers in a quarterly statistical summary. Section 123.45 was and continues to be a reporting mechanism and in no way determines what is an NPDES violation.

On July 23, 1984 (49 FR 29720) EPA proposed revisions to the noncompliance reporting requirements for NPDES under the CWA. In addition to requirements for a narrative report of instances of noncompliance, the proposed rule included a requirement for a quarterly statistical summary of other instances of noncompliance. In the July 3, 1984 proposal, EPA presented four options for revising the statistical summary.

During the initial public comment period on this proposed rule (July 23, 1984), several commenters indicated that two aspects of the proposed rule were unclear. These were: (1) The relationship of the QNCR to Agency enforcement policy, guidance or practice; and (2) the requirements for listing instances of noncompliance not defined as Category I in the regulation. EPA published additional information (50 FR 3494, January 24, 1985) to clarify the relationship of the QNCR to Agency enforcement policy, guidance, and practice and to explain the requirements for listing other instances of noncompliance (Category II noncompliance) on the QNCR. The notice also summarized the basis for EPA's recommended option for a statistical summary report.

II. Summary of the Final Rule

The final rule published today describes the requirements for NPDES States and EPA Regions to report instances of noncompliance by major permittes. The reporting requirements in the final rule include the QNCR and a statistical summary of other noncompliance. In the final rule, the QNCR includes two types of noncompliance which must be reported, Category I and Category II. Category I noncompliance involves specific criteria for violations of enforcement orders, compliance schedules, effluent limits, and reporting requirements. Category II noncompliance includes violations of permit conditions which the regulatory agency believes are of substantial concern and do not meet the Category I criteria. The examples of Category II noncompliance include several types of violations that were reported under the previous regulation as well as additional violations mentioned in the additional notice (50 FR 3494, January 24, 1985).

Category II violations are those which are more difficult to quantify.

The format and reporting schedule for the QNCR has not changed significantly in the final rule from the requirements in the previous rule. The final rule also changes the Quarterly Statistical Summary to a Semi-Annual Statistical Summary. EPA will provide guidance to help NPDES States and EPA Regions prepare the QNCR.

III. Response to Public Comments

Twenty-one individuals provided comments on the July 23, 1984 proposal, and six individuals provided comments on the January 24, 1985 notice of additional information. The commenters represented NPDES permittees, industrial trade organizations, environmental interest groups, State agencies, and EPA Regions. In order to assist the reader, comments have been grouped under subjects covered by the regulation. Under each subject area, there is a summary of public comments, EPA's response, and the resolution in the final rule.

A. Purposes of the QNCR

1. Relationship Between QNCR and Agency Enforcement Policy

Comment: Several commenters felt that the proposal failed to accurately discuss the relationship between the QNCR and the Agency's enforcement policies. Specific reference was made to two documents prepared by the Agency which discuss the use of QNCR and other information in developing enforcement responses to instances of permit noncompliance. (See "Policy Framework for State/Federal Enforcement Agreements", June 26, 1984 and "Guidance for Oversight of NPDES Programs", July 6, 1984).

Response: The preamble to the proposed rule stated that "the QNCR is intended to be used solely to track and evaluate the effectiveness of compliance and enforcement activities. The proposal has no impact ". . . upon what is considered a violation, or on whether or what kind of enforcement action will be taken in a given case." Appendix A stated that "the revised QNCR will be used as part of the administrative procedure for screening NPDES self-monitoring data and other data to report instances of noncompliance which are of major concern to the EPA and State regulatory agency." EPA provided clarification on the purpose of the QNCR in an additional notice (50 FR 3494).

The primary purpose of the QNCR has always been to provide information to the Agency by which it could assess the effectiveness of State and EPA Regional compliance activities and thereby best determine how to manage or oversee program activities. In evaluating such activities, EPA thought it more appropriate to focus primarily on patterns of noncompliance rather than on individual instances of noncompliance. Several commenters expressed support for this concept. In addition, EPA uses the QNCR to provide noncompliance information to Congress and the public. One of the main reasons EPA has proposed changes to the QNCR was to ensure that the instances of noncompliance reported on the QNCR were based on consistent criteria (Category I noncompliance) or were identified as having special regulatory concern (Category II noncompliance).

This rule establishes criteria for tracking permit noncompliance and does not establish criteria for selecting enforcement actions. EPA enforcement policy documents may reference the QNCR just as such guidance may refer to other codified reporting requirements. However, this regulation in no way codifies enforcement policy. That policy remains under EPA discretion and is outside of the scope of this rulemaking.

Regardless of whether a violation is listed on the QNCR, any violation of an NPDES permit is a violation of the CWA for which the permittee is liable and for which the Agency encourages some type of enforcement response to be taken. Being listed, or failure to be listed on the QNCR does not itself determine what type of response will be taken. The Office of Water has historically maintained an Enforcement Management System (EMS), which guides EPA Regions and States in responding to instances of noncompliance. Within EMS, an Enforcement Response Guide directs managers to escalate the level of enforcement in response to violations which are persistent, have potential water quality impacts, or recur frequently. As proposed, the QNCR regulation requires reporting of instances of noncompliance which exceed certain thresholds of time, magnitude or frequency of occurrence or which otherwise indicate particular environmental problems. Considering the basic principles of EMS, it is reasonable and likely that these instances of noncompliance will be given priority for resolution.

2. Citizen Suits

Comments: Two commenters expressed concern that the proposed rule could affect the ability of citizens to bring suits for Clean Water Act (CWA) violations because they believed that the new rule would allow States to submit less compliance information to EPA than was required under the old rule.

Response: The final rule will not impair the ability of citizens to bring suit for CWA violations. While the QNCR serves as a routine public disclosure of certain instances of noncompliance, EPA does not believe that it, in any way, limits public access to other compliance data. Furthermore, the preparation of the QNCR and the review of permittee DMRs should not limit or delay the public's access to this information. EPA believes that the final rule is an improvement over the quality and quantity of compliance information that we received in the past.

B. Format and Procedures for Reporting Noncompliance

1. Date of Resolution of Noncompliance

Comment: One commenter suggested that requiring the date of the compliance status review in paragraph (D) of § 124.45(a)(2) of the proposed rule is confusing and may not be useful.

Response: EPA agrees that this requirement as worded in the proposed rule needs clarification. Discharge Monitoring Reports (DMRs) are reviewed on different dates by various States and Regions but for consistency, we believe the QNCR should represent the compliance status for the entire QNCR review period (three to six months). If the noncompliance is resolved during the QNCR review period, the date of resolution and the method of resolution should be shown under the comments column of the report. Therefore, in the final rule the phrase "with the date of the review of the status" has been deleted.

2. Reporting the Same Violation in More Than One Quarter

Comment: Several commenters expressed concern that the proposed rule would require reporting of permit violations in more than one quarter.

Response: These commenters are correct; the Agency is retaining this system in order to monitor resolution of the noncompliance. The previous rule and the final rule (§ 123.45(a)(2)(i)) require that facilities continue to be listed on the QNCR until the instance of noncompliance is shown on at least one QNCR as resolved. Thus, a permittee with Category I or Category II noncompliance could be listed on more than one QNCR. If the permittee had no additional violations, the first QNCR would show the permittee in noncompliance, and the second QNCR

could list the permittee as returned to compliance or resolved.

3. Reporting Noncompliance Which Involves Mitigating Factors

Comment: Several commenters expressed concern that the States and Regions might report instances of noncompliance that involved some extenuating circumstances. They recommended that EPA exclude specific instances of noncompliance from the QNCR such as violations of permit limits when the limits were set near the analytical detection limit and violations which were attributable to an excusable bypass or upset conditions.

Response: EPA believes that the regulation should include these instances of noncompliance in the QNCR but that mitigating circumstances should be evaluated on a case-by-case basis. The format of the QNCR allows the regulatory agency to explain any special circumstances. The permittee must meet any NPDES permit limit. The NPDES permit usually requires that the permittee notify the regulatory agency and submit a noncompliance report for any violation. At the same time, the permittee should advise the regulatory agency why the violation occurred and what has been done to resolve the instance of noncompliance. Where the regulatory authority is aware of special circumstances, it should explain these circumstances on the QNCR. These circumstances may affect the compliance status of the permittee, but EPA intends that all instances of noncompliance which meet the criteria for Category I or Category II noncompliance must be reported on the QNCR (see § 123.45(a)(1)(i)(A)). In using this approach, the regulatory agency can consider other mitigating factors which may relate to a violation. EPA noted earlier that it intended to consider this type of approach (48 *FR* 11840).

4. Only Reporting Noncompliance of Federally-Designated Major Permittees

Comment: One commenter wanted the Agency to make clear whether only permittees federally-designated as major permittees should be listed on the QNCR. Another commenter suggested that the Agency should track non-major permittees.

Response: The QNCR covers instances of noncompliance by major permittees. EPA maintains a list of major permittees. Some States use different definitions of major permittees or include more permittees on a list of majors. For purposes of the QNCR, EPA is interested in compliance information for Federally-designated major permittees. If States or Regions wish to include information on other permittees, it should be submitted in a companion report with the QNCR. Minor permittee compliance is covered in a separate annual report.

5. Generation of the QNCR From Automated Data Bases

Comment: Several commenters requested additional information about State and EPA use of an automated data base to prepare the QNCR.

Response: The Permit Compliance System (PCS) is the national data base for NPDES permit and compliance information. As discussed in the proposal, EPA has used this system to produce portions of the Quarterly Noncompliance Report (QNCR) and EPA Management Reports. States are strongly urged to use PCS directly. If States do not use PCS directly, the States must submit necessary information to EPA in a timely manner and in a form suitable for data entry (e.g., preprinted Discharge Monitoring Reports, through an interface). Instances of Category I noncompliance can be identified automatically for the QNCR. This automation would reduce the current manual reporting burden and promote reporting consistency nationwide.

C. Category I Noncompliance

The proposed rule included an Appendix A "Criteria for Noncompliance Reporting in the NPDES Program." This appendix was developed by the EPA Regional compliance managers and reviewed by States. Criteria were established for four types of violations which are readily-quantifiable: violations of enforcement orders, violations of compliance schedules, violations of effluent limits, and violations of reporting requirements. These violations, which are based on specific criteria, are Category I noncompliance. The previous regulation only specified criteria for violations of compliance schedules and reporting requirements (both 30 days).

1. Violations of Enforcement Orders

Comment: EPA proposed to require that any violation of an enforcement order, other than a violation of a compliance schedule or report, be listed on the QNCR. Two commenters stated that this exception is inconsistent with EPA's intent to closely track violations of enforcement orders.

Response: EPA disagrees and will continue to use distinct criteria for reporting (1) violations of compliance schedules (paragraph (a)(2)(ii)(B)), (2) violations of reporting requirements (paragraph (iii)(C)), and (3) all other violations of enforcement orders (paragraph (a)(2)(ii)(A)). In addition, all enforcement orders issued after October 1, 1985, will be considered as "current enforcement orders" and tracked in a special section of the QNCR as provided in § 123.45 (a)(2)(i)(B). When a permittee has failed to comply with the order issued before October 1, 1985, the permittee will also be tracked as a current enforcement order. EPA believes that these provisions will result in consistent tracking of compliance with enforcement orders.

EPA will encourage permittees to report progress in a timely fashion by listing permittees on the QNCR that have not submitted compliance schedule progress reports within 30 days of the due date. In this manner, EPA will closely monitor permittee progress as required by the compliance schedule.

2. Violations of Compliance Schedules—The 90 Day Threshold

Comment: Most comments on the July 23, 1984 proposal supported the criteria which only require reporting when a permittee has missed a compliance schedule milestone by 90 days instead of the 30 days in the previous rule. However, two commenters said that the 90 day period was too long for an instance of noncompliance with a final compliance date. Under the previous rule, 30 days was applied to violations of all compliance schedule requirements (including milestones and reports) regardless of the purpose of the compliance schedule.

Response: EPA does not believe that delays of less than 90 days in achieving compliance schedule milestones warrant listing on the QNCR. EPA intends that the 90 day period apply for all schedule milestones for constructing additional treatment facilities or for implementing new permit requirements. The 90 day criterion applies to schedules established in an enforcement order or in a permit. EPA will encourage Regions and States to establish construction schedules which include dates, as a minimum, for starting construction, completing construction, and attaining operational levels (final compliance). Violations of these milestones by 90 days or more will be tracked as instances of Category I noncompliance because they will occur in all construction schedules. Violation of all other compliance milestones by 90 days or more must also be reported. However, because the number and types of milestones will vary with the compliance requirements and the schedule, these other violations will be reported as instances of Category II noncompliance. States and Regions

should be sure that the enforcement orders contain at least one enforceable schedule milestone for every six month period of the schedule.

3. Violation of Compliance Schedules—Acceptable Progress

Comment: Two commenters stated that the concept of acceptable progress used to evaluate compliance schedule violations by Federally-funded POTWs should also apply to non-municipal permittees.

Response: In the final rule, EPA has dropped the definition of acceptable progress. Instead all compliance schedule violations which persist for 90 days or longer must be listed, regardless of the type of permittee. EPA believes that this definition is easier for the regulatory agency to apply and understand than the more subjective term "acceptable progress". In addition, EPA has stated in its National Municipal Policy that POTWs are required to comply with their permit as soon as possible but not later than July 1, 1988, and that compliance with construction schedules should not be based on the availability of Federal funds.

4. Reporting Violations

Comment: Most commenters supported the proposal to report delinquent Discharge Monitoring Reports (DMRs) on the QNCR when delinquent by 60 days as opposed to the 30 day period in the previous rule. However, one commenter expressed concern because he believes that submitting self-monitoring data is the foundation of the NPDES program and that the proposal would undermine the requirements for timely reporting. One approved NPDES State also noted that the change to 60 days would mean that a DMR reporting violation which occurred in the last month of the quarter, would not be shown on the QNCR until the following quarter. This is because a QNCR must be prepared and submitted by States and EPA Regions to EPA Headquarters within 75 days after the quarter ends. Routinely, DMRs for the last month of the quarter must be submitted to the permit issuing agency (State or EPA Region) within 30 days after the quarter ends. Based on the proposed rule, a DMR would be considered overdue 60 days after the due date or 90 days after the end of the quarter. That date is 15 days after the QNCR should be submitted.

Response: EPA agrees that timely submission of self-monitoring data and other reports is important. EPA also wants to encourage the reporting of delinquent reports on the QNCR in the quarter the violation occurs. EPA believes that the shorter time period will encourage permittees to submit DMRs and other reports to the regulatory agency on schedule. Therefore, EPA will retain the 30 day period in the existing rule as recommended. This 30 days applies to all reports required by the permit and compliance schedules issued in conjunction with permits.

For program management purposes, EPA will classify POTW pretreatment reports (e.g., annual status reports and removal credit reports), DMRs and the compliance schedule progress report for attaining an operational level or final compliance which are delinquent by 30 days or more as an instance of Category I noncompliance. All other reports required by the permit or compliance schedule which are late by 30 days or more will be called Category II noncompliance.

5. Violations of Monthly Average Permit Limits

The proposed rule states that EPA believes that violations of effluent limits should be reported if they exceed the permit limit by a certain magnitude and/or occur at certain frequencies. EPA proposed criteria for monthly average violations that were: (1) Chronic, four exceedances of a monthly average in a six month period, regardless of the magnitude of the violation, and (2) based on both magnitude of the violation and its frequency of occurrence (twice in a six month period) (referred to as Technical Review Criteria). Two TRCs were proposed: 1.4 times the permit limit for Group I pollutants and 1.2 times the permit limit for Group II pollutants (see Appendix A).

a. Groups of Pollutants

Comment: One commenter noted that the list of parameters in Appendix A is incomplete.

Response: Appendix A included tables which showed the Technical Review Criteria for the two groups of pollutants. Group I includes mostly conventional types of pollutants and Group II other types of toxic and nonconventional pollutants. A detailed list was not included in the proposal because there are over eight hundred different parameters which may have permit limits and it was expected that new parameters may be added from time to time. Instead, EPA provided a list of general types of pollutants for each group. EPA will provide a detailed list to the States and Regions in guidance for preparing the QNCR. Several parameters were not included in either group because their evaluation would be based on water quality or public health concerns which are site specific. These parameters include pH, color, temperature, dissolved oxygen, pathogenic organisms and fecal coliform, and would be listed when appropriate as Category II noncompliance. Total residual chlorine was included in Group II because EPA has special concerns about exceedances of chlorine limitations.

b. Magnitude and/or Duration

Comment: EPA received several comments on the proposed criteria for defining monthly average effluent violations which must be reported on the QNCR (49 FR 29723, Appendix A). Most commenters expressed support for the concept that criteria for reporting effluent violations should be based on the magnitude and/or duration of the violation. However, some commenters urged that the EPA consider a statistical basis for establishing the frequency and magnitude criteria. These commenters provided data on the statistical estimates of variability associated with different analytical measurements, monitoring frequencies, and number of parameters in the permit. They then suggested that EPA use these different reporting thresholds in lieu of the proposed technical review criteria. Other commenters suggested that there was no basis for setting any reporting thresholds above the actual permit limits.

Response: EPA acknowledges that a variety of valid bases could have been used to set thresholds for mandatory reporting. EPA has previously used a TRC as part of the Enforcement Management System guide to identify violations that need technical review. EPA chose the TRCs to provide simple criteria that could be applied to effluent data without requiring additional information on production levels, monitoring frequencies, analytical methods, or the basis for the limit. In addition, EPA performed further analysis of the relationship of the TRC to absolute compliance in order to develop a recommendation for the statistical summary (50 FR 3494). As a result, EPA believes that the TRC can be used to prepare the QNCR and that it will provide useful and verifiable information.

EPA has reviewed the suggestions of commenters for establishing statistically-based criteria. The suggestions included developing equations that would require extensive data on such factors as the variability associated with sample collection, sample analysis, and treatment plant operation for each discharge by a

permittee. In most cases, the data required to apply the statistical criteria are not available for each permittee. EPA does not believe that the time and effort that would be required for permittees to develop this information and for the regulatory agencies to evaluate it, will improve the quality of the QNCR.

Like all changes from the previous QNCR rule, these multiplier thresholds do not create new permit limits. The only purpose of these thresholds is to moderate reporting burdens while still providing enough information to evaluate the vitality of State and Regional enforcement activities. EPA believes that the proposed criteria are easier to apply to all violations and easier for the public and permittee to understand than any of the suggestions offered by commenters. Therefore, we have maintained the criteria for reporting chronic and TRC violations in the final rule.

One commenter inquired about the relationship between a "well-operated treatment plant" and the technical review criteria. EPA intends no relationship between the TRC thresholds for effluent violations and the notion that a "well-operated treatment plant" varies somewhat in performance and may exceed its permit limit some percent of the time. The TRC is merely a criterion that defines effluent violations which must be reported on the QNCR. EPA used the concept of a "well-operated treatment plant" to establish some regulatory limits for the Best Available Technology Economically Achievable (BAT) (see examples 48 FR 32469 and 48 FR 11839) that ensure that the plant operates and maintains the proper technology. Variations in measurements due to analytical methods, treatment system operation, and other sources inherent in this data set, are already considered in the development of the BAT limitation. In fact, EPA noted that "sound regulatory policy dictates that [BAT] levels be chosen that lessen the necessity for analytical disputes without setting the limits so high that inadequate treatment is allowed" (48 FR 11839). The TRC is not intended to be an additional allowance for variability in treatment or effluent monitoring, rather it represents one characteristic (magnitude) of effluent violations which EPA considers to be of concern and serves as a threshold for mandatory reporting of effluent violations.

D. Category II Noncompliance

On January 24, 1985 (50 FR 3494), EPA noted that Category I violations were based on objective criteria and easily set to ensure more consistent, uniform reporting. The Agency recognized that Category I did not include other potentially important violations of permit conditions because of the difficulty in developing quantifiable definitions or thresholds. EPA proposed making such violations a separate category for reporting purposes (Category II) and provided examples of Category II violations.

1. Definition and Need for Consistency

Comment: A number of commenters expressed concerns over language which allowed States to use discretion to report other instances of noncompliance in Category II. They noted that discretion would cause inconsistencies and should be avoided or eliminated. Another commenter noted that EPA had not properly defined examples that would fit in this second category.

Response: EPA stated in the proposal and continues to believe that States should have the ability to add any instances of noncompliance which they believe are of concern and maintains this system in § 123.45(a)(2)(iii)(G). EPA is also interested in establishing consistency. After reviewing comments, the final rule was reorganized to provide examples of Category II noncompliance and to clarify that the reporting of instances of noncompliance which fit these examples is mandatory. Category II noncompliance includes violations which have the potential or have actually caused an adverse water quality impact, and other violations which are of concern. EPA believes that both categories of noncompliance are important and must be reported. EPA will maintain the consistency of the QNCR statistics by requiring that the reporting agency identify the subparagraph which is the primary basis for listing the instances of noncompliance.

2. Violations Which May Have Adverse Water Quality or Human Health Impacts—Spills

Comment: One commenter believed that spills should be related to reportable quantities specified under section 311 if they were to be reported on the QNCR.

Response: This commenter inferred that EPA's concern over spills of carcinogenic, radioactive, or mutagenic substances is tied to violations of section 311 of the Clean Water Act. It is not EPA's intention to limit the universe of violations reportable under § 123.45(a)(2)(iii)(A) of the final rule to spills, and thus, the Agency has removed this specific language concerning spills that was in the proposal. Any discharge or spill which constitutes an NPDES violation and may have an adverse water quality or human health impact should be reported under this provision.

3. Oil Sheens and Other Violations Which May Have Adverse Human Health Impact

Comment: One commenter indicated that the example "oil sheens" was not appropriate for listing on the QNCR because of the de minimus impact on the environment.

Response: For the purposes of section 311(b) an "observable oil sheen" has been determined to be harmful and thus EPA will retain this example under Category II. EPA will also add to the examples, violations which may cause beach closings, public health warnings or restrict beneficial uses such as contact recreation, drinking water, or consumption of fish and shellfish.

4. Pretreatment Violations

Comment: Several commenters expressed concern over the limited information that the proposed rule would require for violations of pretreatment requirements. It was suggested that the QNCR should be used to track other violations by industrial users such as violations of categorical standards, local pretreatment standards, and reporting requirements.

Response: The QNCR is prepared from Discharge Monitoring Reports and other information which relates to major permittees. EPA is currently developing guidance for reporting and evaluating pretreatment violations. The immediate concerns of EPA regarding pretreatment are the development, approval, and implementation of POTW pretreatment programs. POTW permit violations which may be related to inadequate industrial pretreatment, and industrial user violations of Federal standards.

Where the NPDES permit contains the requirements for a major permittee to develop and implement a local pretreatment program, violations of these requirements can be tracked as an instance of noncompliance in the QNCR. Violations of pretreatment requirements by indirect discharges could be reported to a control authority (a major POTW permittee) and in turn to a State or EPA Regional Approval Authority. EPA does not believe that the QNCR can adequately track violations of pretreatment requirements by indirect dischargers as they are not NPDES permittees. However, where such violations are known to have occurred and the regulatory agency believes they

are related to Category I or Category II noncompliance by the POTW permittee, the name and violation of the industrial user should be shown under comments related to the permit violation.

The final rule will require that POTW violations of pretreatment requirements be reported as Category II noncompliance. However, EPA wants its Regions and NPDES States to include delinquent POTW annual reports as Category I noncompliance (using the criterion of 30 days). EPA will issue guidance on how to evaluate POTW compliance for other pretreatment requirements.

F. Additional Narrative Reporting

The proposal for a second tier of narrative reporting was intended to evaluate the effect of the Technical Review Criteria.

Comment: Several commenters thought that this requirement would be burdensome to the reporting agency.

Response: EPA agrees and believes that further subdivision and categorization of instances of noncompliance would be administratively complex and unnecessarily confusing. Therefore, the final rule does not include a second tier of narrative reporting.

G. Statistical Summary

The proposed rule included four options for revising the statistical summary of other instances of noncompliance by major dischargers. The existing regulations (48 *FR* 14146) require that all instances of noncompliance not otherwise identified on the QNCR be reflected in the statistical summary. On January 24, 1985, EPA presented a summary of its analysis of the four options. EPA proposed to define the criteria as two or more violations of the same monthly average limit by any amount in a six month period and require the report twice each year.

Comment: Several commenters suggested that the statistical summary may be of limited value and that it may be difficult to generate without automated data systems. Another commenter objected to limiting the instances of noncompliance that would be included in the statistical summary. They also indicated the name should not be changed from a statistical summary to a numerical summary.

Response: EPA believes that the revised statistical summary will provide useful information for determining trends and studying patterns of noncompliance with only a marginal increase in resource burdens. EPA explained in the January 24, 1985 notice that the statistical (numerical) summary would assist the Agency in conducting mid-year reviews of NPDES State enforcement activities and that it could be used to evaluate the Category I criteria. EPA is currently working with States and Regions to enter all DMR data into the Permit Compliance System (PCS, the National NPDES data base). Currently, some States are entering data into PCS. In those cases, EPA Headquarters can obtain the statistical summary directly from PCS and no separate statistical summary report will be required from the State or EPA Region.

IV. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation does not satisfy any of the criteria specified in section (b) of the Executive Order and, as such, does not constitute a major rulemaking. This regulation was reviewed by the Office of Management and Budget.

V. Paperwork Reduction Act

The information collection requirements contained in this rule was approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB Control Number 2040–0082.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No analysis is required, however, where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's final rule will have no effect upon small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that this final rule will not have a significant impact on a substantial number of small entities

List of Subjects in 40 CFR Part 123

Hazardous materials, Reporting and record keeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Penalties, Confidential business information.

Dated: August 8, 1985.

Lee M. Thomas,

Administrator.

Therefore, 40 CFR Chapter I, Part 123 is amended as follows:

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for Part 123 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 123.45 is amended by revising the introductory text and paragraph (a), redesignating paragraphs (b) and (c) as (c) and (d), adding a new paragraph (b), adding a new OMB control number, and adding Appendix A to the section as follows:

§ 123.45 Noncompliance and Program Reporting by the Director.

The Director shall prepare quarterly, semi-annual, and annual reports as detailed below. When the State is the permit-issuing authority, the State Director shall submit all reports required under this section to the Regional Administrator, and the EPA Region in turn shall submit the State reports to EPA Headquarters. When EPA is the permit-issuing authority, the Regional Administrator shall submit all reports required under this section to EPA Headquarters.

(a) *Quarterly reports.* The Director shall submit quarterly narrative reports for major permittees as follows:

(1) *Format.* The report shall use the following format:

(i) Provide a separate list of major NPDES permittees which shall be subcategorized as non-POTWs, POTWs, and Federal permittees.

(ii) Alphabetize each list by permittee name. When two or more permittees have the same name, the permittee with the lowest permit number shall be entered first.

(iii) For each permittee on the list, include the following information in the following order:

(A) The name, location, and permit number.

(B) A brief description and date of each instance of noncompliance for which paragraph (a)(2) of this section requires reporting. Each listing shall indicate each specific provision of paragraph (a)(2) (e.g., (ii)(A) thru (iii)(G)) which describes the reason for reporting the violation on the quarterly report.

(C) The date(s), and a brief description of the action(s) taken by the Director to ensure compliance.

(D) The status of the instance(s) of noncompliance and the date noncompliance was resolved.

(E) Any details which tend to explain or mitigate the instance(s) of noncompliance.

(2) *Instances of noncompliance by major dischargers to be reported—*(i) *General.* Instances of noncompliance, as defined in paragraphs (a)(2)(ii) and (iii) of this section, by major dischargers shall be reported in successive reports until the noncompliance is reported as resolved (i.e., the permittee is no longer violating the permit conditions reported as noncompliance in the QNCR). Once an instance of noncompliance is

reported as resolved in the QNCR, it need not appear in subsequent reports.

(A) All reported violations must be listed on the QNCR for the reporting period when the violation occurred, even if the violation is resolved during that reporting period.

(B) All permittees under current enforcement orders (i.e., administrative and judicial orders and consent decrees) for previous instances of noncompliance must be listed in the QNCR until the orders have been satisfied in full and the permittee is in compliance with permit conditions. If the permittee is in compliance with the enforcement order, but has not achieved full compliance with permit conditions, the compliance status shall be reported as "resolved pending," but the permittee will continue to be listed on the QNCR.

(ii) *Category I noncompliance.* The following instances of noncompliance by major dischargers are Category I noncompliance:

(A) Violations of conditions in enforcement orders except compliance schedules and reports.

(B) Violations of compliance schedule milestones for starting construction, completing construction, and attaining final compliance by 90 days or more from the date of the milestone specified in an enforcement order or a permit.

(C) Violations of permit effluent limits that exceed the Appendix A "Criteria for Noncompliance Reporting in the NPDES Program".

(D) Failure to provide a compliance schedule report for final compliance or a monitoring report. This applies when the permittee has failed to submit a final compliance schedule progress report, pretreatment report, or a Discharge Monitoring Report within 30 days from the due date specified in an enforcement order or a permit.

(iii) *Category II noncompliance.* Category II noncompliance includes violations of permit conditions which the Agency believes to be of substantial concern and may not meet the Category I criteria. The following are instances of noncompliance which must be reported as Category II noncompliance unless the same violation meets the criteria for Category I noncompliance:

(A) (*1*) Violation of a permit limit;

(*2*) An unauthorized bypass;

(*3*) An unpermitted discharge; or

(*4*) A pass-through of pollutants which causes or has the potential to cause a water quality problem (e.g., fish kills, oil sheens) or health problems (e.g., beach closings, fishing bans, or other restrictions of beneficial uses).

(B) Failure of an approved POTW to implement its approved pretreatment program adequately including failure to enforce industrial pretreatment requirements on industrial users as required in the approved program.

(C) Violations of any compliance schedule milestones (except those milestones listed in paragraph (a)(2)(ii)(B) of this section) by 90 days or more from the date specified in an enforcement order or a permit.

(D) Failure of the permittee to provide reports (other than those reports listed in paragraph (a)(2)(ii)(D) of this section) within 30 days from the due date specified in an enforcement order or a permit.

(E) Instances when the required reports provided by the permittee are so deficient or incomplete as to cause misunderstanding by the Director and thus impede the review of the status of compliance.

(F) Violations of narrative requirements (e.g., requirements to develop Spill Prevention Control and Countermeasure Plans and requirements to implement Best Management Practices), which are of substantial concern to the regulatory agency.

(G) Any other violation or group of permit violations which the Director or Regional Administrator considers to be of substantial concern.

(b) *Semi-Annual Statistical Summary Report.* Summary information shall be provided twice a year on the number of major permittees with two or more violations of the same monthly average permit limitation in a six month period, including those otherwise reported under paragraph (a) of this section. This report shall be submitted at the same time, according to the Federal fiscal year calendar, as the first and third quarter QNCRs.

* * * * *

(Approved by the Office of Management and Budget under Control Number 2040-0082)

Appendix A to § 123.45—Criteria for Noncompliance Reporting in the NPDES Program

This appendix describes the criteria for reporting violations of NPDES permit effluent limits in the quarterly noncompliance report (QNCR) as specified under § 123.45(a)(2)(ii)(c). Any violation of an NPDES permit is a violation of the Clean Water Act (CWA) for which the permittee is liable. An agency's decision as to what enforcement action, if any, should be taken in such cases, will be based on an analysis of facts and legal requirements.

Violations of Permit Effluent Limits

Cases in which violations of permit effluent limits must be reported depend upon the magnitude and/or frequency of the violation. Effluent violations should be evaluated on a parameter-by-parameter and outfall-by-outfall basis. The criteria for reporting effluent violations are as follows:

a. Reporting Criteria for Violations of Monthly Average Permit Limits—Magnitude and Frequency

Violations of monthly average effluent limits which exceed or equal the product of the Technical Review Criteria (TRC) times the effluent limit, and occur two months in a six month period must be reported. TRCs are for two groups of pollutants.

Group I Pollutants—TRC = 1.4
Group II Pollutants—TRC = 1.2

b. Reporting Criteria for Chronic Violations of Monthly Average Limits

Chronic violations must be reported in the QNCR if the monthly average permit limits are exceeded any four months in a six-month period. These criteria apply to all Group I and Group II pollutants.

Group I Pollutants—TRC = 1.4

Oxygen Demand

Biochemical Oxygen Demand
Chemical Oxygen Demand
Total Oxygen Demands
Total Organic Carbon
Other

Solids

Total Suspended Solids (Residues)
Total Dissolved Solids (Residues)
Other

Nutrients

Inorganic Phosphorus Compounds
Inorganic Nitrogen Compounds
Other

Detergents and Oils

MBAS
NTA
Oil and Grease
Other detergents or algicides

Minerals

Calcium
Chloride
Fluoride
Magnesium
Sodium
Potassium
Sulfur
Sulfate
Total Alkalinity
Total Hardness
Other Minerals

Metals

Aluminum
Cobalt
Iron
Vanadium

Group II Pollutants—TRC = 1.2

Metals (all forms)

Other metals not specifically listed under Group I

Inorganic

Cyanide
Total Residual Chlorine

Organics

All organics are Group II except those specifically listed under Group I.

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Monday
August 26, 1985

Part VI

Department of Energy

48 CFR Part 902 et al.

Acquisition Regulation; Miscellaneous Amendments; Proposed Rule

DEPARTMENT OF ENERGY

48 CFR Parts 902, 904, 913, 915, 917, 919, 925, 952, 970, and 971

Acquisition Regulation; Miscellaneous Amendments

AGENCY: Department of Energy.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule is to amend the Department of Energy Acquisition Regulation (DEAR) to clarify certain policies and to reflect current procedures. These amendments concern updating documentation, use of standard and optional forms instead of Departmental forms, updating Source Evaluation Board (SEB) procedures, expanding existing guidance on interagency acquisition, prenegotiation objectives, price negotiation memorandum, clarification and guidance regarding the small business subcontracting program, instructions for construction contracts, and updating solicitation provisions and contract clauses.

DATE: Written comments should be submitted no later than September 25, 1985.

ADDRESS: Comments should be addressed to the Department of Energy, Procurement Policy Branch, Pamela Bolling, MA–421.1, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Pamela Bolling, Procurement Policy Branch, (MA–421.1), Procurement and Assistance Management Directorate, Washington, D.C. 20585, (202) 252–8251

Paul J. Sherry, Office of the AGC for Procurement and Financial Incentives, GC–43, Washington, D.C. 20585, (202) 252–1526

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Paperwork Reduction Act
D. National Environmental Policy Act
E. Public Hearing
III. Public Comments

I. Background

Under section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), the Secretary of the Department is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in that position. Accordingly, the Department of Energy Acquisition Regulation (DEAR) was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR Chapter 9.

The purpose of this rulemaking is to revise the DEAR, as necessary, to conform with the Federal Acquisition Regulation (FAR) which is codified at 48 CFR Chapter 1. As a result, the following are affected: Correction to section 902.100, "Definitions." Subsection 904.601–70, "Procurement and Assistance Data System (PADS)," is revised. A new subsection 913.505–1, "Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule—Continuation" is added and 913.505–2, "Agency order forms in lieu of Optional Forms 347 and 348," is removed. Subpart 915.6 "Source Selection", is revised to add a new section 915.608, "Proposal evaluation," to increase the threshold of applicability from $5 million to $10 million and exempt certain types of actions in section 915.612, "Formal source selection" and 915.613 "Alternative source selection procedures," respectively. Revise section 917.504, "Ordering procedures" and subsection 917.505–70, "Methods of financing employed by DOE" and 917.505–71, "Cost reimbursement standards." Section 919.501, "General" is revised. A new Subpart 919.6, "Certificates of Competency and Determinations of Eligibility" is added. A new subsection 919.705–2, "Determining the need for a subcontracting plan" is added; and subsection 919.705–5, "Awards involving subcontracting plan" is revised. Subpart 925.2, "Buy American Act—Construction Materials" is revised to add a new section 925.205, "Solicitation provision and contract clause." Subsections 925.204–2, "Security requirements," 952.209–72, "Organizational conflicts of interest—special clause," 952.212–70, "Rated or authorized controlled material orders for energy programs," 952.212–71, "Priorities, allocations, and allotments for energy programs," are revised. Subsection 952.219–9, "Small business and small disadvantaged business subcontracting plan" is revised to clarify submission of standard form. A new 952.225–70," Buy American Act Notice," is added. Subsection 970.0404–4, "Contract clauses," is revised. Subpart 970.19, "Small Business and Small Disadvantaged Business Concerns," is amended to revise section 970.1901, "General." A new subsection 970.5204–4, "Additional work, defense classified/unclassified," is added. Subsection 970.5204–13, "Allowable costs and fixed-fee (CPFF management and operating contracts)," 970.5204–22, "Contractor procurement," and 970.5204–33, "Priorities, allocations and allotments" are revised. Section 971.103, "Documentation submittals" is revised.

II. Procedural Requirements

A. Review Under Executive Order 12291

Inasmuch as this proposed rule relates to agency management of the procurement function, the OMB clearance procedures set forth in Executive Order 12291 (February 17, 1961) and OMB Circular 85–7 (December 17, 1984) are not applicable.

B. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services or other direct economic factors. It will not have any indirect economic consequences such as stimulating or retarding new construction either. DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed on the public by this proposed rulemaking. Accordingly, no OMB clearance is required by section 350(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*), or OMB's implementing regulations at 5 CFR Part 1320.

D. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C 432 *et seq.* 1976), or the Council on Environmental Quality regulations (40 CFR Parts 1020), and therefore does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to

Pub. L. 95–91, the DOE Organization Act, the Department does not plan to hold a public hearing on this proposed rule.

III. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DEAR amendments set forth in this notice.

All written comments received will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule.

List of Subjects in 48 CFR Parts 902, 904, 913, 915, 917, 919, 925, 952, 970 and 971

Government procurement.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC on August 16, 1985.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 902—[AMENDED]

1. The authority citation for Part 902 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

2. Section 902.100 is amended by revising paragraph (e) of the "Procurement Executive" definition; and, by revising the definition for the "Senior Program Official" to read as follows:

902.100 Definitions.

* * * * *

(e) Exercise priorities authority on behalf of the agency, in accordance with the provisions of the Defense Production Act of 1950 (50 U.S.C. App. 2071, *et seq.*), Defense Priorities and Allocations System Delegation 2, dated June 21, 1984, and applicable policies and regulations; and the Energy Conservation and Policy Act, Pub. L. 94–164.;

* * * * *

"Senior Program Official" is any of the individuals appointed as Assistant Secretaries or Directors of DOE staff offices.

PART 904—[AMENDED]

3. The authority citation for Part 904 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

4. Subsection 904.601–70 is amended by revising paragraph (b)(3)(ii) to read as follows:

904.601–70 Procurement and Assistance Data System (PADS).

* * * * *

(b) * * *

(3) * * *

(ii) On a summary basis, by completion and submission of Standard Form 281, FPDS—Summary of Contract Actions of $10,000 or less. Summary reports shall be submitted within 25 calendar days after the end of each Federal fiscal quarter.

* * * * *

PART 913—[AMENDED]

5. The authority citation for Part 913 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

6. Subpart 913.5 is amended by adding a new subsection 913.505–1 and removing subsection 913.505–2. As revised, Subpart 913.5 reads:

Subpart 913.5—Purchase Orders

913.505–1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation.

(a)(2) Optional Forms 347 and 348 shall be used for purchase orders using small purchase procedures. The form shall not be used as the contractor's invoice.

(b)(2) The addendum of applicable clauses, DOE Supplement 319 as provided to contracting activities by the Office of Policy, Procurement and Assistance Management Directorate, shall be used with each Optional Form 347.

PART 915—[AMENDED]

7. The authority citation for Part 915 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

8. Subpart 915.6 is amended by adding a new section 915.608. Section 915.612 is amended by revising paragraph (a) and adding a new paragraph (b); the existing paragraph 915.612(b) is redesignated as paragraph 915.612(g); paragraphs 915.612(c)(1) through (3) are redesignated as paragraphs 915.608(c)(1) through (3); paragraph 915.612(d) is redesignated as paragraph 915.608(c)(4); paragraph 915.612(e) is revised and redesignated as paragraph 915.612(h) and paragraph 915.612(q) is redesignated as paragraph 915.608(d). Section 915.613 is amended by revising the existing paragraph. Section 915.608, as added, and sections 915.612 and 915.613, as revised, read as set forth below:

Subpart 915.6—Source Selection

915.608 Proposal evaluation.

(c) In selections other than where price is the determining factor, the evaluation procedures set forth in (c)(1), (2), and (3) below should be considered.

(1) *Technical evaluation.* Generally, the contracting officer must rely on scientific and engineering personnel for assistance in reviewing proposals from a technical point of view. It is imperative, therefore, that technical evaluations and findings be fully documented and reviewed by responsible personnel. The report shall reflect the scoring and ranking of the proposals. The report shall also include a narrative evaluation specifying the strengths and weaknesses of each proposal, and any reservations or qualifications that might bear upon the selection of sources for negotiation and award. Concrete technical reasons supporting a determination of unacceptability with regard to any proposal shall be included. After evaluation and preparation of written and signed evaluation findings by the technical evaluators, such evaluations and proposals shall be returned to the contracting officer or authorized representative, and maintained as a permanent record in the contract file.

(2) *Business and management evaluation.* Management capabilities of the offeror to perform the required work in a timely manner must be appraised. In making this appraisal, the following factors, as appropriate, and as stated in the solicitation must be considered: the company's management organization; past performance; reputation for reliability; availability of required facilities; cost controls; ability to control, maintain, and account for any property provided by the Government; the offeror's willingness to devote its resources to the proposed work with appropriate diligence; and other pertinent administrative and business information that may have been requested in the solicitation, such as certifications and representations.

(3) *Price/cost determinations.* Each proposal requires some form of price/cost analysis. The evaluation should consider items such as categories and amounts of labor, indirect costs,

materials, travel, computer time, as well as information with regard to the contractor's past cost performance, including contracts or subcontracts for like services or supplies. The contracting officer must exercise judgment in determining the extent of analysis in each case and any desire to obtain assistance from personnel trained in this discipline.

(4) *Advisors.* Personnel from the DOE, other Government agencies, consultants, and contractors including those who operate or manage Government-owned facilities may be used in the evaluation process as advisors when their services are necessary and available. When personnel outside the Government, including those of contractors who operate or manage Government-owned facilities, are used as advisors, approval and disclosure procedures as required by 927.7000 shall be followed. In all instances, such personnel will be required to comply with DOE conflict of interest regulations and nondisclosure of information requirements.

(d) Revised proposals are evaluated, selection is made, and negotiations may be conducted with the selected offeror but only to definitize a final agreement on price, terms, and conditions, etc. No factor which could have had any effect on the selection process may be changed after the common cut-off date for discussions.

915.612 Formal source selection.

(a) Formal source selection procedures apply to those negotiated competitive acquisitions of $1 million through $10 million (unless the Procurement Executive determines that the provisions of 915.613 are applicable), and to those negotiated competitive acquisitions in excess of $10 million that are not subject to the provisions of 915.613. Acquisitions of less than $1 million will be conducted using less formal source evaluation and selection procedures.

(b) Notwithstanding FAR 15.612(b) the contracting officer shall perform the functions relating to the source selection authority without need for formal appointment unless a determination is made to designate some other official as the source selection authority. Any such designation shall be made only with the approval of the Procurement Executive.

(g) The contracting officer may form teams to evaluate the technical, business and management, and cost aspects of proposals. When teams are used, each will function independently of the other and report its findings to the contracting officer. When it is necessary to obtain the services of advisors to assist in the evaluation process, the procedures set forth in 915.608(c)(4) will be used. The contracting officer will discuss those findings with the teams (or representatives thereof) separately or together, as may be more helpful. The contracting officer will negotiate and execute the contractual instrument, using, in many cases, some of the same specialists who participated in earlier evaluations and discussions. Part 971 sets forth administrative requirements for the review and approval of certain contract actions.

(h) It is within the discretion of the Source Selection Official to select multiple offerors from those within the competitive range for negotiation and to direct that discussions be reopened with those offerors and that best and final offers be obtained on the basis of fully definitized contract documents executed by the offerors. The contracting officer should seek correction of each offeror's correctable weaknesses using only technical and other information which the Government is entitled to use for this purpose. At the conclusion of discussions, a final common cut-off date which allows a reasonable opportunity for submission of best and final offers shall be established and all participants notified.

915.613 Alternative source selection procedures.

Source Evaluation Board (SEB) procedures shall be used for all negotiated competitive prime acquisitions expected to exceed $10 million, except acquisitions for architect-engineer services, fixed-price acquisitions and acquisitions for which selections will be based solely on a published predetermined formula or on lowest price, and acquisitions specifically waived by the Procurement Executive. The appropriate procedures i.e., construction, architect-engineer, sealed bidding, etc., shall be used for those acquisitions in excess of $10 million that are not subject to this section. Guidance regarding the designation and operation of an SEB is set forth in the Acquisition Regulations Handbook—Source Evaluation Board (DOE/MA-0154). The source selection official shall be as determined by the applicable DOE directive.

9. Subpart 915.8 is amended by adding a new section 915.807 and by adding a new paragraph (a) and subparagraphs (11) through (15) to section 915.808 to read as follows:

Subpart 915.8—Price Negotiation

915.807 Prenegotiation objectives.

(d) The Head of the Contracting Activity shall assure that all prenegotiation objectives and proposed actions are documented in accordance with the requirements of FAR 15.807 and this 915.807. The degree of documentation should be commensurate with the complexity and dollar value of the procurement. For those procurement actions of $250,000 and above the contracting officer shall prepare a written prenegotiation plan which shall include prenegotiation objectives for price and other contract requirements, as appropriate. The prenegotiation plan required by this section shall be included as section I of the price negotiation memorandum at 915.808. The prenegotiation plan should include, to the extent applicable, the information cited below.

Prenegotiation Plan

(1) *General.*

(a) Procurement request number, and solicitation number, and contract number.

(b) Contractor(s) involved in the negotiation. Include address and location where effort is to be performed.

(c) Brief description of the work to be performed. (Reference to statement of work is not sufficient)

(d) Type of solicitation (RFP, PON, PRDA, etc.) pursuant to type of contract being awarded.

(e) Period of performance/delivery schedule.

(f) Proposed funding schedule for term of contract.

(2) *Prior Procurement History.*

(a) Names of previous contractors, if previous awards made for same or similar work to be performed.

(b) Contract number(s) and date(s) of award.

(3) *Solicitation data.*

(a) Summary of selection process used, including number of firms solicited, proposals received, competitive range, name of selection official if SEB was used.

(b) If noncompetitive, basis for approval and name and title of person approving the justification.

(c) Discuss what considerations were given to socio-economic requirements.

(4) *Advisory reports.* Identify, by title, and date, the advisory reports received in support of the negotiations, i.e., audit reports, technical evaluation reports, cost or price analysis reports, and any other advisory reports used in preparing the prenegotiation objectives.

(5) *Pricing objectives.*

(a) A schedule showing the elements of the proposer's cost proposal, recommended adjustments (auditor, technical evaluation, etc), and the negotiator's pricing objectives in columnar form.

(b) Discussion of how previous procurements impact the pricing objectives of the instant procurement.

(c) Appropriate comments justifying the negotiation objective for each element of cost. In discussing the DOE's objectives indicate the position of advisory reports, if

requested, and the proposed treatment of such advice/comments.

(d) The extent of subcontracting; justification for subcontract price(s) provided by the prime contractor and the justification as viewed by the DOE negotiator.

(e) Discussion of whether and to what extent, negotiation will be based on actual costs expended.

(f) Discussion of any special pricing techniques and the rationale for their use.

(g) Discussion of how the DOE's objective for fee and profit was established, including a copy of the weighted guideline analysis, if used. For construction contracts and construction management contracts; discuss how the profit or fee objective was established in accordance with the requirements of 915.971.

(h) Discussion of incentive arrangements, cost or technical, if applicable (i.e., share ratios, ceiling price, minimum/maximum fees).

(i) Discussion of the treatment given to facilities capital cost of money, if applicable, in establishing the fee/profit objective.

(j) A summary statement regarding the reasonableness of the total price objective and appropriate discussion of the considerations used to determine the reasonableness of price.

(6) *Other issues and factors.*

(a) Discuss any proposed special provisions.

(b) Identify any anticipated deviations to regulations and the required approvals.

(c) Identify any unusual features of the Statement of Work.

(d) If applicable, identify any solicitation provisions which have been challenged by the offeror.

(e) Indicate if the Consolidated List of Debarred, Suspended, and Ineligible Contractors has been reviewed.

(f) Discussion of whether the contractor has an approved purchasing and accounting system.

(g) Discuss any unique or peculiar features of the contract; e.g., cost sharing, facility ownership, options, etc.

(h) Discuss any deviations to regulations or exceptions suggested by offeror and discuss proposed disposition.

(i) Discuss any results of pre-award surveys of the bidder's/offeror' sfinancial, accounting and other management systems.

915.808 Price negotiation memorandum.

(a) The Head of the Contracting Activity shall assure that all contract actions are adequately documented and shall establish internal review requirements therefore. While documentation may be simplified for lesser dollar value acquisitions, the basic requirement for documenting prenegotiation objectives and negotiation summaries shall be maintained in order to promote the discipline of adequate preparation for negotiations and supervisory review. For acquisitions of $250,000 and above the price negotiation memorandum (PNM) shall be divided into two major sections: Section I, the prenegotiation plan and Section II, the post negotiation summary. The prenegotiation plan prepared in accordance with 915.807 shall document the negotiation objectives established prior to the start of formal negotiations. The post negotiation summary shall discuss the results of the negotiations leading to a final agreement, and in a general sense provide the results of the negotiation in terms of the extent to which prenegotiation objectives were met. In addition to the items listed at FAR 15.808 the following shall also be addressed in the PNM.

(11) Date and location of negotiations.

(12) Discussion of any issues raised during negotiations that were not addressed in the prenegotiation position.

(13) In the event the pricing or other contract terms cannot be justified to the satisfaction of the contracting officer but award is recommended because of compelling programmatic considerations, the PNM must fully document the efforts to obtain a more satisfactory agreement, including the extent to which the matter was escalated within DOE and the contractor's organization. The file must also show what consideration was given to alternate sources or other short or long term alternatives (See FAR 15.803(d)).

(14) Indicate the date on which agreement was reached on the price, and the date of the certificate of current cost or pricing data was signed, if applicable.

(15) Explain why the total price or estimated cost and fee are considered fair and reasonable if there was significant departure from the prenegotiation objectives.

* * * * *

PART 917—[AMENDED]

10. The authority citation for Part 917 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254).

11. Subpart 917.5 is amended by revising section 917.504 by removing paragraph (b) and inserting a new paragraph (b); by removing subparagraphs 917.504(b) (1) through (6) and inserting a new subparagraph 917.504(b) (6) through (14); revise 917.505-70 by completely revising the title and text; and by revising 917.505-71 by removing paragraphs (b) and (c) and inserting new paragraphs (b) through (e). Sections 917.504 and 917.505-70 are revised; § 917.505-71 is amended by revising paragraphs (b) and (c) and adding paragraphs (d) and (e) to read as follows:

Subpart 917.5—Interagency Acquisition Under the Economy Act

917.504 Ordering procedures.

(b) The DOE Form 1270.1, Order for an Interagency Acquisition, shall be used for an interagency acquisition. The order shall include an attachment, if necessary, addressing as a minimum the items listed at FAR 17.504(b) and the following:

(6) The parties to the interagency acquisition.

(7) Order number and/or modification number.

(8) Period covered by the interagency acquisition or duration of the order.

(9) Cost estimate of the project or order and the amount of funds to be provided by DOE including (i) the total estimated cost of the work for the period of time specified in the order; (ii) the capital equipment, if any, approved for acquisition under the acquisition; and (iii) limitations, if any, on the reimbursement of costs by DOE. If DOE participates with another agency or agencies in sponsoring a project, the amount of contribution to be made by each agency and the basis for distributing the costs incurred shall be specified.

(10) Termination provisions that allow the DOE to terminate the order upon 30 days written notice to the servicing agency. In the event of a termination, the DOE may reimburse the servicing agency for costs actually incurred to the effective date of termination and for any commitments extended beyond the termination date (but not exceeding the expiration date of the order) that the servicing agency is unable to cancel.

(11) Appropriate patent provisions which recognize DOE's mission of achieving widespread availability and competitive commercial utilization of the benefits of DOE-funded research, development, and demonstration activities. Specific wording will vary depending on the agency and acquisition involved and must be obtained from the cognizant DOE patent counsel.

(12) Reporting requirements and technical data provisions, if appropriate, which require technical reports prepared under the order be freely exchanged and made available for public sale, unless classified. A minimum of two copies of technical reports must be sent to the DOE Technical Information Center (TIC), P.O. Box 62, Oak Ridge, TN 37830.

(13) Financial reports as determined by the contracting officer.

(14) Security provisions of 952.204, if appropriate, for those interagency acquisitions requiring access to/or generating classified information. (Revisions to the DEAR clauses will be required to effect the appropriate relationship between the servicing agency and the DOE.)

917.505-70 Reimbursement by DOE.

(a) Payment methods to reimburse the servicing agency shall be specified in the interagency acquisition. Such specified payment methods shall be coordinated with the servicing finance officer to ensure that they are consistent with current Department of Treasury Regulations as implemented by DOE.

917.505-71 Cost-reimbursement standards.

(a) * * *

(b) Direct cost are the costs that can be directly identified with work under the acquisition. Examples of such costs are salaries and wages, technical services, materials, travel, transportation, communications, and any facilities and equipment expressly approved for purchase under the interagency acquisition.

(c) Indirect costs shall be limited to the properly allocable portion of costs that cannot be charged directly to the work, but can be shown as mutually benefiting the effort covered by the interagency agreement as well as other work of the servicing agency. Justification for any such charges shall be required, and the basis of allocation must be reasonable. Where interagency acquisitions are entered into under authority of Section 601 of the Economy Act of 1932, the servicing agency's charge for any indirect costs may include appropriately allocable charges for "general administration" or "central agency overhead," but only to the extent specified in the acquisition.

(d) The servicing agency shall be responsible for maintenance, safeguarding, control, and accounting of capital equipment (items of equipment expected to have an extended period of service, generally a year or more and generally of $1,000 or more) in a manner satisfactory to the DOE. The DOE reserves the right of first refusal for any capital equipment acquired under the interagency acquisition at completion or termination of the interagency acquisition.

(e) Unless authorized by the contracting officer in advance, the servicing agency shall not be reimbursed for the acquisition or condemnation of real property or any facility or plant construction or expansion.

PART 919—[AMENDED]

12. The authority citation for Part 919 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254).

13. Subpart 919.5 is amended by revising 919.501 by removing paragraph (c) and inserting a new paragraph (c) and adding a new paragraph (g). Section 919.501 as revised, reads as follows:

Subpart 915.5—Set Asides for Small Business

919.501 General

(c) The Department has established an internal comprehensive review and screening process for acquisitions exceeding $10,000. The review is intended to enhance the prospect of participation by small business, small disadvantaged business, and women-owned small business concerns.

(g) The policy prescribed by FAR 19.501(g), which requires that a product or service acquired by a successful small business set-aside shall continue to be acquired on a set-aside basis, is applicable to DOE. The small and disadvantaged business specialist at a contracting activity shall maintain a list of such small business set-aside awards.

14. A new Subpart 919.6 is added to read as follows:

Subpart 919.6—Certificates of Competency and Determinations of Eligibility 919.602 Procedures

919.602-1 Referrals.

(a)(2) The contracting officer shall coordinate with the small and disadvantaged business specialist and the SBA procurement center representative prior to referring a determination of nonresponsibility of a small business to the SBA Regional Office.

15. Subpart 919.7 is amended by adding a new subsection 919.705-2; and by adding a new paragraph (a)(5) to subsection 919.705-5 to read as follows:

Subpart 919.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

919.705-2 Determining the need for a subcontracting plan.

(a) It is the policy of the DOE to comply with the spirit as well as the statutory requirements of Pub. L. 95-507. Therefore, options shall be considered in determining whether a contract should be required to have a subcontracting plan. Further, if the contracting officer has reason to believe that a contract will ultimately exceed $500,000, even though not priced at time of award, a subcontracting plan should be secured prior to the time of the initial award. Examples of such actions are contracts for basic research, including special research contracts awarded pursuant to 917.71, which may fund a portion of a project under the initial award, with any subsequent research funded by contract modification, and it is known or expected at time of award that the total contract value will most likely exceed $500,000. In such cases a subcontracting plan shall be obtained prior to the time of the initial award and included in the contract; that plan should then be modified, as appropriate, through the life of the contract.

(b) A subcontracting plan is generally not obtained from an offeror until selection of an awardee except in those cases where a plan is requested of all firms in a competitive range (see FAR 19.705-2(d)). When it is determined that a subcontracting plan is required in accordance with FAR 19.705-2, the contracting officer shall request development and submission for approval of a subcontracting plan which includes all of the elements listed in the contract clause at FAR 52.219-9 or to certify in writing that a subcontracting plan is not required because subcontracting opportunities do not exist.

(c) A copy of the determination required by FAR 19.705-2(c) shall be provided, prior to award, to the small and disadvantaged business specialist at the contracting activity.

919.705-5 Awards involving subcontracting plan.

(a)(5) Ensure that an acceptable plan is incorporated into and made a material part of the contract by including in every contract with a plan a provision which either incorporates the approved plan by reference into the contract, or makes the plan an attachment to, and thus a part of, the contract. Subsequent revisions to a plan, i.e., revised goals or other changes maybe incorporated by reference on approval of the contracting officer. The subcontracting plan must be included in the official contract file when the plan is incorporated into the contract by reference.

* * * * *

PART 925—[AMENDED]

16. The authority citation for Part 925 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and section 644

of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254).

17. Subpart 925.2 is amended by adding a new section 925.205 to read as follows:

Subpart 925.2—Buy American Act—Construction Materials

925.205 Solicitation provision and contract clause.

Solicitations for construction in the United States shall include the solicitation provision at 952.225-70.

PART 952—[AMENDED]

18. The authority citation for Part 952 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254).

19. Subpart 952.2 of the Table of Contents is amended by correcting the entry for "952.261-7 Allowable cost and payment." to read "952.216-7 Allowable cost and payment."

20. Subsection 952.204-2 is amended by revising the first sentence in paragraph (a) of the Security clause, and revising a parenthetical reference, "42 U.S.C. 2100 *et seq.*" to read "42 U.S.C. 2011 *et seq.*" in paragraph (i) of the same clause as set forth below:

952.204-2 Security requirements.

* * * * *

Security (Apr. 1984)

(a) *Responsibility.* It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. * * *

(i) * * * (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*; 18 U.S.C. 793 and 794; and Executive Order 12356.)

* * * * *

21. Subsection 952.209-72 is amended by revising paragraph (b)(2)(iii) of the Organizational Conflicts of Interest—Special Clause to read as follows:

952.209-72 Organizational conflicts of interest—special clause.

* * * * * *

Organizational Conflicts of Interest—Special Clause (Apr. 1984)

* * * * *

(b) * * *

(iii) The contractor shall have, subject to patent, data, and security provisions of this contract, the right to use technical data it first produces under this contract for its private purpose provided that, as of the date of such use, all reporting requirements of this contract have been met.

* * * * *

22. Subsection 952.212-70 is amended by completely revising the title and text. As revised, it reads as follows:

952.212-70 Rated orders for energy programs.

As prescribed in 912.304(a), insert the following provision in solicitations that will result in the award of a rated contract for DOE atomic energy programs:

Rated Orders (Atomic Energy) (Oct. 1984)

Contracts or purchase orders awarded as a result of this solicitation shall be assigned a /—/ DO-Rating; /—/ DX-Rating; in accordance with Defense Priorities Allocations System Regulation. (Contracting officer check appropriate box or boxes.)

Alternate I: As prescribed in 912.304(d), insert the following provision in solicitations that may result in a rated contract for authorized energy programs:

Rated Orders (Domestic Energy Supplies) (Oct. 1984)

Contracts or purchase orders awarded as a result of this solicitation may be eligible for priorities and allocations support in accordance with 10 CFR 216 and section 101(c) of the Defense Production Act of 1950, as amended.

23. Subsection 952.212-71 is revised to read as follows:

952.212-71 Priorities, allocations, and allotments for energy programs.

As prescribed in 912.304(b), insert the following clause in orders and contracts that are placed in support of authorized DOE atomic energy programs:

Priorities, Allocations, and Allotments (Atomic Energy) (Oct. 1984)

The Contractor shall follow the provisions of Defense Priorities and Allocations System (DPAS) Regulation (see 15 CFR Parts 350) and all other applicable regulations and orders of the DPAS in obtaining controlled materials and other products and materials needed to fill this contract.

Alternate I: Certain contracts may be eligible for priorities and allocations support as described in 912.302 if their purpose is to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis. Guidance is provided by DOE Publication PR-0042, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1980, as it may from time to time be revised. If the purpose of the contract is to maximize domestic energy resources, include the following clause:

Priorities, Allocations, and Allotments (Domestic Energy Supplies) (Oct. 1984)

(a) This contract may be eligible for priorities and allocations support, as provided for by section 101(c) of the Defense Production Act of 1950, as amended by the Energy Policy and Conservation Act (Pub. L. 94-163, 42 U.S.C. 6201 *et seq.*) if its purpose is to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis with the decision being jointly made by the Departments of Commerce and Energy.

(b) DOE Regulations regarding Material Allocation and Priority Performance under Contracts or Orders to Maximize Domestic Energy Supplies can be found at Part 216 of Title 10 of the Code of Federal Regulations (10 CFR Part 216).

(c) Additional guidance is provided by DOE Publication PR-0042, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1980, as it may from time to time be revised. Copies may be obtained by written request to: Department of Energy Technical Information Center (TIC), Post Office Box 62, Oak Ridge, Tennessee 37830.

952.219-9 [Amended]

24. In subsection 952.219-9, paragraph (d)(10)(iii) of the clause is amended by inserting ", not later than the 25th day of the succeeding month," after "submit" in the phrase "submit standard form (SF) 294 only", and by inserting "current" after the phrase "on a quarterly basis".

25. A new subsection 952.225-70 is added to read as follows:

952.225-70 Buy American Act Notice.

In accordance with 925.205, insert the following provision in solicitations for construction to be performed within the United States:

Buy American Act Notice (Jun. 1984)

(a) The Buy American Act (41 U.S.C. 10) generally requires that only domestic construction material be used in the performance of this contract (see the clause entitled "Buy American Act—Construction Materials"). This requirement does not apply to the following construction materials: (List excepted material or indicate "none.")

(b) Offers based on the use of other foreign construction material may be acceptable for award if the Government determines that—

(1) Comparable domestic construction material in sufficient and reasonably available commercial quantities, and of a satisfactory quality, is unavailable; or

(2) Use of comparable domestic construction material is impracticable or would unreasonably increase the cost.

(c) When an offer is based on the use of one or more other foreign construction materials the offer shall include data clearly demonstrating, for each particular foreign construction material, that the cost thereof, plus 6 percent, is less than the cost of comparable domestic construction material. The cost of other foreign construction material shall be computed as including all cost of delivery to the construction site, and the cost of other foreign construction material shall also include any applicable duty (whether or not a duty-free entry certificate may be issued).

(d) For evaluation purposes, the Government shall add to the offer 6 percent of the cost of the foreign construction material qualifying under paragraph (c) above.

(e) When offering other foreign construction material, offerors may also offer, at stated prices, any available comparable domestic construction material, in order to avoid the possibility that failure of a foreign construction material to be acceptable under this provision will cause rejection of the entire offer.

PART 970—[AMENDED]

26. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254).

27. Subsection 970.0404-4 is amended by revising paragraph (a)(1) and by removing paragraph (a)(2) and including the reference in the revised (a)(1); and adding a new (a)(2). As revised paragraphs (a) (1) and (2) read as follows:

970.0404-4 Contract clauses.

(a) * * *

(1) *Security and Classification, 970.5204-1.* This clause is required in contracts under section 41 (ownership and operation of production facilities) of the Atomic Energy Act of 1954, as amended; and all management and operating contracts which involve classified information.

(2) *Additional Work, Defense Classified/Unclassified, 970.5204-4.* This clause is required in all management and operating contracts.

* * * * *

28. Subpart 970.19 is amended by revising paragraph (a) in section 970.1901 and adding a new paragraph (i) as follows:

Subpart 970.19—Small Business and Small Disadvantaged Business Concerns

970.1901 General.

(a) The policies and procedures in the following FAR sections and subpart shall be applied to the acquisition activities of management and operating contracts: 19.301, 19.302, 19.502-2, 19.502-3, 19.508(b), 19.508(c), 19.508(d), and 19.7.

* * * * *

(i) Management and operating contracts shall include a subscontracting plan which is effective for the life of the contract. Goals for the contract shall be negotiated annually when revised funding levels are determined. The plan should include provisions for revising the goals or any other sections of the plan. Such revisions shall be in writing, approved by the contracting officer, and shall be specifically made a material part of the contract.

29. A new subsection 970.5204-4 is added to read as follows:

970.5204-4 Additional work, defense classified/unclassified.

The contractor agrees to accept any work assignments which fall within the general scope of the contract for work of a national defense nature, whether such work is classified or unclassified.

30. Subsection 970.5204-13 is amended by revising paragraph (d)(15) of the clause to read as follows:

970.5204-13 Allowable costs and fixed-fee (CPFF management and operating contracts).

* * * * *

(d) * * *

(15) Establishment and maintenance of bank accounts in connection with the work hereunder, including, but not limited to, service charges, the cost of disbursing cash, necessary guards, cashiers, and paymasters, if payments are made by check, facilities and arrangements for cashing checks may be provided without expense to the employees, subject to the approval of the contracting officer.

* * * * *

31. Subsection 970.5204-22 is amended by revising "Note A" to read as follows:

970.5204-22 Contractor procurement.

* * * * *

Note A.—When appropriate, the words, "if required by the contracting officer," may be inserted in the third sentence of paragraph (a) after the first use of the word "shall."

* * * * *

32. Subsection 970.5204-33 is revised to read as follows:

970.5204-33 Priorities, allocations, and allotments.

(a) The following clause shall be used in management and operating contracts for military and atomic energy production and directly related activity, where the programs have been authorized pursuant to the Atomic Energy Act of 1954, as amended.

Priorities, Allocations, and Allotments (Oct. 1984)

The contractor shall follow the rules, regulations, and procedures of the Defense Priorities and Allocations System Regulation and all other applicable regulations and orders of the International Trade Administration, Department of Commerce, in obtaining controlled materials and other products and materials needed for contract performance.

(b) Management and operating contracts may be eligible for priorities and allocations support if their purpose maximizes domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis. Guidance is provided by DOE Publication PR-0042, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1980, as it may from time to time be revised. If the purpose of the contract is to maximize domestic energy resources, include the following clause:

Priorities, Allocations, and Allotments—Special Clause (Oct. 1984)

This contract may be eligible for priorities and allocations support as provided for by section 101(c) of the Defense Production Act of 1950, as amended by the Energy Policy and Conservation Act (Pub. L. 94-163, 42 U.S.C. 6201 *et seq.*) if its purpose is to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis with the decision being jointly made by the Departments of Commerce and Energy.

DOE regulations regarding material allocation and priority performance under contracts or orders to maximize domestic energy supplies can be found at Part 216 of Title 10 of the Code of Federal Regulations (10 CFR Part 216).

Additional guidance is provided by DOE Publication PR-0042, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1980, as it may from time to time be revised. Copies may be obtained by written request to: Department of Energy, Technical Information Center (TIC), Post Office Box 62, Oak Ridge, Tennessee 37830.

PART 971—[AMENDED]

33. The authority citation for Part 971 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254).

34. Section 791.103 is amended by adding new paragraphs (a) (3) and (4) to read as follows:

971.103 Documentation submittals.

(a) * * *

(3) *Prior to an advertised award.*

(i) Four copies of the successful bid

(ii) Copy of proposed contract

(iii) Record of bid opening and selection

(iv) Copy of the solicitation

(4) *After completing an advertised award.*

(i) Four copies of the award memorandum which documents that the award was made to the responsible, responsive bidder whose bid is most advantageous to the Government, price and other factors considered as provided in FAR 14.407.

(ii) One copy of any other documents the contracting officer believes would benefit the Headquarters review. (List of documents required for contract file are cited at FAR 4.803(a).)

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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CFR CHECKLIST

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Title	Price	Revision Date
1, 2 (2 Reserved)	$5.50	Apr. 1, 1985
3 (1984 Compilation and Parts 100 and 101)	7.50	Jan. 1, 1985
4	12.00	Jan. 1, 1985
5 Parts:		
1-1199	13.00	Jan. 1, 1984
1-1199 (Special Supplement)	None	Jan. 1, 1984
1200-End, 6 (6 Reserved)	7.50	Jan. 1, 1985
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900-999	14.00	Jan. 1, 1985
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8	7.50	Jan. 1, 1985
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10 Parts:		
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200-399	9.50	Jan. 1, 1985
400-499	12.00	Jan. 1, 1985
500-End	14.00	Jan. 1, 1985
11	7.50	Jan. 1, 1985
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60-139	13.00	Jan. 1, 1985
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1200-End	8.00	Jan. 1, 1985
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