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Pages 41835-42004

Federal Register

Wednesday
October 16, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Atlanta, GA, see announcement on the inside cover of this issue.

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Air Traffic Control
Federal Aviation Administration

Aviation Safety
Federal Aviation Administration

Child Welfare
Child Support Enforcement Office

Fisheries
National Oceanic and Atmospheric Administration

Hazardous Materials Transportation
Research and Special Programs Administration

Highways and Roads
Federal Highway Administration

Meat Inspection
Food Safety and Inspection Service

Nuclear Materials
Nuclear Regulatory Commission

Reporting and Recordingkeeping Requirements
Interstate Commerce Commission

Securities
Securities and Exchange Commission

Water Pollution Control
Delaware River Basin Commission

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: Nov. 21; at 1 pm.
Nov. 22; at 9 am. (identical session)

WHERE: Room LP-7,
Richard B. Russell Federal Building,
75 Spring Street, SW., Atlanta, GA.

RESERVATIONS: Deborah Hogan,
Atlanta Federal Information Center.
Before Nov. 12: 404-221-2170
On or after Nov. 12: 404-331-2170

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. The January 1986 Washington, D.C. workshop will include facilities for the hearing impaired. Dates and locations will be announced later.

Contents

Federal Register
Vol. 50, No. 200
Wednesday, October 16, 1985

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

5385 41835
5386 41837
5387 41839
5388 41841
5389 41843

9 CFR

352 41845

10 CFR

40 41852
150 41852

Proposed Rules:

30 41904
40 41904
61 41904
70 41904
72 41904

14 CFR

71 41866

Proposed Rules:

71 41904
73 41904
75 41905
93 41906

17 CFR

240 41867
249 41867

Proposed Rules:

240 41907

18 CFR

Proposed Rules:

410 41908

23 CFR

635 41882

30 CFR

Proposed Rules:

870 41909

40 CFR

799 41885

Proposed Rules:

52 (2 documents) 41909–41912
65 41916
155 41919

42 CFR

400 41886
405 41886
412 41886
420 41886
433 41886
462 41886
466 41886
473 41886
474 41886
476 41886

45 CFR

302 41887
304 41887
305 41887
306 41887

47 CFR

97 41895

49 CFR

173 41895
1002 41899
1241 41899

50 CFR

671 41902
672 41903

Federal Register
Vol. 50, No. 200
Wednesday, October 16, 1985

Presidential Documents

Title 3—

The President

Proclamation 5385 of October 11, 1985

Learning Disabilities Awareness Month, 1985

By the President of the United States of America

A Proclamation

The crowning wonder of our marvelous universe is the human brain. This organ of awesome complexity usually functions so dependably that thoughts can be transmitted from one person to another across the centuries, across the barriers of language, custom, and place. In all our daily transactions, we assume that others will comprehend and respond to the symbols of logic and language that are processed through the instrumentality of the brain.

Yet many Americans do not always find our language, numbers, and symbols natural and logical. They exhibit learning disabilities. In a sense, they are most aware of the deep complexity of our mental processes, for they must struggle to make the connections that, for most of us, are effortless habits.

While science still knows little about the biochemical and structural differences in brain function that may account for the various anomalies we call learning disabilities, our educators are finding alternative methods of teaching which help the learning disabled enjoy a greater use of their mental potential despite the difficulties they may face in reading, calculating, and other forms of mentation and expression. Meanwhile, scientific observation of the difficulties and the successes of learning-disabled persons is helping researchers gain greater understanding of both the learning process and the functioning of the brain.

Awareness of learning disabilities is one of the most important advances in education in recent years. As more and more Americans become aware, our citizens with learning disabilities will have even greater opportunity to lead full and productive lives and to make a contribution to our society.

The Congress, by House Joint Resolution 287, has designated the month of October 1985 as "Learning Disabilities Awareness Month" and has authorized and requested the President to issue a proclamation in honor of this observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of October 1985 as Learning Disabilities Awareness Month, and I call upon all Americans to observe this week with appropriate ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of October, 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. 85-24812
Filed 10-11-85; 4:15 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5386 of October 11, 1985

National Down Syndrome Month, 1985

By the President of the United States of America

A Proclamation

Over the past decade, Americans have become increasingly aware of the accomplishments and the potential of the developmentally disabled. Nowhere has this become more evident than in the changed attitudes and perceptions regarding Down Syndrome.

Just a few short years ago, this condition carried with it the stigma of hopeless mental retardation. There were few options available other than institutionalization or other forms of custodial care. Today, great progress has been made on all fronts. Through advances in medical science, the basis for the condition has been uncovered, raising hopes for eventual prevention. Already, treatment can minimize the effects of the condition and increase the life span of people with Down Syndrome.

Through the efforts of concerned physicians, teachers, and parent groups, such as the National Down Syndrome Congress, programs are being put into place to assure access to appropriate medical treatment, education, rehabilitation, and employment. Such programs can have a dramatic impact on the lives of those with this disorder, respecting their intrinsic worth as individuals and maximizing the contributions they can make to society. These efforts include developing special education classes within the context of mainstream school programs; providing vocational training in preparation for competitive employment in the work force; and preparing young adults with Down Syndrome for independent living.

In addition, parents of babies with Down Syndrome are receiving the education and support they need to understand this condition and acquire new hope for the future of their children. We must work together to increase the awareness of the American public as a whole to the true nature of this condition and dispel the stubborn myths about the degree to which it is disabling.

The Congress, by Senate Joint Resolution 40, has designated the month of October 1985 as "National Down Syndrome Month" and authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of October 1985 as National Down Syndrome Month. I invite all concerned citizens, agencies and organizations to unite during October with appropriate observances and activities directed toward resolution of the condition of Down Syndrome and toward assisting affected individuals and their families to enjoy to the fullest the blessings of life.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of October, 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. 85-24613
Filed 10-11-85; 4:18 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5387 of October 11, 1985

National Lupus Awareness Week, 1985

By the President of the United States of America

A Proclamation

Systemic lupus erythematosus (also known as lupus or SLE) is a potentially serious, complicated, inflammatory connective tissue disease that can produce changes in the structure and function of the skin, joints, and internal organs. More than 500,000 Americans are estimated to have lupus; approximately 90 percent of these are women. One of the most frequent serious disorders of young women, lupus is characterized by periods when the disease is active alternating with periods of remission.

In recent years, the outlook for lupus patients has become progressively brighter as a result of advances from biomedical research. Positive findings have emerged from such diverse projects as studies of the immune system; research on genetic and environmental factors; investigations of hormonal effects; and evaluations of the course and treatment of the disease and its complications. The Federal government and private voluntary organizations have developed a strong and enduring partnership committed to research on lupus. Working together, our objective must be to eradicate lupus and its tragic consequences.

In order for us to take advantage of the knowledge already gained, to increase public awareness of the characteristics and treatment of lupus, and to point up the urgent need for continuing research, the Congress, by Senate Joint Resolution 57, has designated the week beginning October 20, 1985, through October 26, 1985, as "Lupus Awareness Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 20 through October 26, 1985, as Lupus Awareness Week. I urge the people of the United States and educational, philanthropic, scientific, medical, and health care organizations and professionals to observe this week with appropriate ceremonies and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of October, 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. 85-24814
Filed 10-11-85; 4:19 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5388 of October 11, 1985

Myasthenia Gravis Awareness Week, 1985

By the President of the United States of America

A Proclamation

Myasthenia gravis is a harrowing neuromuscular disorder that enfeebles as many as 250,000 of our citizens, most of them in their prime years. It debilitates strength and destroys vigor. Extreme muscle weakness and abnormal fatigue weigh down its victims, sapping their ability to stand, to walk, to pick up a glass and drink from it, and—in critical cases—even to breathe.

Myasthenia gravis can strike anyone at any time. While its exact cause is unknown, scientists have found evidence that a chemical needed to stimulate muscle movement is somehow blocked, leaving muscles unable to contract. Such new knowledge suggests the possibility of one day preventing myasthenia gravis by replenishing the missing chemical and restoring the transmission of nerve impulses. To this end, scientists supported by the Federal government's National Institute of Neurological and Communicative Disorders and Stroke and by private voluntary groups—notably the Myasthenia Gravis Foundation, Inc., and the Muscular Dystrophy Association—are diligently investigating the basic neurological processes that underlie voluntary movement. Studies of immune system function are also underway to help scientists understand why myasthenia gravis patients seem more susceptible than others to infections.

Thanks to previous investigations, several drugs have been developed that can help many myasthenia gravis patients regain muscle strength and resume a fairly normal life. More research is needed, however, to find ways of liberating patients and their families from rigid medication schedules and from the side effects that accompany long-term drug use.

To acquaint the public with the tragedy of myasthenia gravis and the hope that research holds for eliminating this disorder, the Congress, by Senate Joint Resolution 183, has designated the week of October 6, 1985, through October 12, 1985, as "Myasthenia Gravis Awareness Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 6, 1985, as Myasthenia Gravis Awareness Week. I call upon all government agencies, health organizations, communications media, and people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of October, 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. 85-24841
Filed 10-15-85; 10:39 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5389 of October 11, 1985

National Housing Week, 1985

By the President of the United States of America

A Proclamation

A gratifying sign of our continuing economic upswing is the greatly improved housing picture. The strength and ingenuity of private enterprise, the efficiency and liquidity of our capital markets, and sound government policies have brought decent and affordable housing to the overwhelming majority of Americans. The opportunity to own a home or to live in decent rental housing strengthens the family, the community, and the Nation. It gives individual Americans a stake in the local community and encourages responsible political involvement.

Since World War II, the housing industry has made an immense contribution to the economic prosperity of the United States. It has created millions of productive jobs, creating demand for goods and services, and generated billions of dollars in tax revenues.

Shelter is one of the most basic human needs, and therefore encouraging the production of decent affordable housing must be a primary concern at all levels of government. It is, then, fitting to reaffirm our national commitment to livable housing and family home ownership and to recognize the multiple economic benefits engendered by the current housing recovery.

The Congress, by Senate Joint Resolution 197, has designated the week beginning October 6, 1985, through October 13, 1985, as "National Housing Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 6, 1985, as National Housing Week. I call upon the Governors, Mayors of our cities, and people of this Nation to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of October, 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. 85-24842
Filed 10-15-85; 10:40 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 50, No. 200
Wednesday, October 16, 1985

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 352

[Docket No. 83-038F]

Voluntary Inspection of Buffalo

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: On March 18, 1985, the Food Safety and Inspection Service (FSIS) published a proposed rule in the **Federal Register** (50 FR 10778–10784) that would provide for the voluntary inspection of buffalo (American bison) under the Agricultural Marketing Act, as amended. This rule incorporates parts of the Federal meat inspection regulations to permit more flexible options for ante-mortem inspection of buffalo under the voluntary inspection program.

The final rule has three changes from the proposed rule. The first incorporates the recently published final rule concerning the ordering, manufacturing, and control of brands. This was incorporated to enable the Food Safety and Inspection Service to control all brands, including the new triangular brand, used under its supervision. The second change cross references to the meat inspection regulations concerning the handling and disposal of condemned or other inedible products at official establishments. This was included because it was inadvertently omitted from the proposed rule. The third change corrects § 352.6(c) of the proposed rule. This clarifies the applicability of the procedures for withdrawal or denial of services.

This rule allows three alternative locations for inspection personnel to perform ante-mortem inspection of buffalo: (1) In the field in a designated area of an owner's premises; (2) on an appropriate transport vehicle at an official buffalo establishment; and (3) in ante-mortem pens at an official buffalo establishment. The ante-mortem inspection performed on buffalo which is either in the field or on a transport vehicle would be dependent on the adequacy and safety of the particular situation. Humane handling of buffalo during ante-mortem inspection shall be in accordance with the provisions of 9 CFR § 313.2.

The post-mortem inspection procedure would be performed in an official buffalo inspection establishment by a USDA inspector or an inspector of a cooperating State, with the post-mortem disposition determined by the authorized veterinarian. This rule allows the utilization of Federal and State inspection personnel for ante-mortem and post-mortem inspection. A newly designed triangular brand will be used to identify officially inspected and passed carcasses and parts of carcasses of buffalo, and products therefrom under the voluntary inspection program. The triangular brand can be applied by authorized USDA or State employees in an official buffalo inspection establishment. This rule facilitates the sale and export of buffalo carcasses, meat, and meat food products.

EFFECTIVE DATE: November 15, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. John C. Prucha, Assistant Deputy Administrator, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3521.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this final rule is not a "major rule" under Executive Order 12291. This final rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or 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.

Effect on Small Entities

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601) because currently only approximately 6,000 buffalo are slaughtered annually compared to over 33,500,000 cattle slaughtered in fiscal year 1983. It is not expected that the number of buffalo slaughtered annually will substantially increase.

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 0583–0036.

Background

The Agricultural Marketing Act of 1946, as amended, provides the Secretary of Agriculture with the authority to furnish a voluntary inspection service for buffalo (American bison) as well as for other game animals (7 U.S.C. 1622). Under regulations contained in 9 CFR Part 350, the Department provides inspection and certification services for domesticated reindeer and other game animals such as buffalo. These inspection services enable persons to bring game animals to an official establishment for ante- and post-mortem inspection. The inspected and passed game meat is branded with a USDA mark of inspection and can be sold interstate or exported.

The increasing consumer demand for buffalo meat and the increasing number of buffalo being raised for food have prompted buffalo associations to request the adoption of regulations for buffalo that would address specific problems involved in their slaughtering and marketing. The transportation of live buffalo to an official establishment for inspection and slaughter is one of the biggest problems facing buffalo producers. The inherent unpredictable behavior of buffalo during their loading onto a transport vehicle, transporting and unloading at an official establishment has resulted in damage to transport vehicles, fences, pens, and

animals. The damage to ante-mortem pens at an official establishment and the increased risk of personal injury have prevented buffalo from being accepted at many slaughter establishments. There are a few establishments which have anti-mortem pens and facilities especially designed and built for buffalo. However, because of the expense, many slaughter establishments are not willing to provide reinforced pens to accommodate unruly buffalo.

Another problem facing the buffalo industry is having a brand applied to the buffalo carcasses, meat and meat food products that would be readily accepted by the consumer. Most consumers have become accustomed to the USDA brand on the meat they purchase. The Federal brand authorized for use under the Federal Meat Inspection Act may only be applied to carcasses, meat, and meat products of cattle, sheep, swine, goats, and equines that have been inspected in a Federal establishment. State inspected buffalo have a State brand applied to the buffalo meat. Even though State inspected buffalo meat may be sold interstate, many consumers, as well as food businesses, will not buy buffalo meat without the Federal mark of inspection.

Recently, FSIS has been petitioned by the National Buffalo Association and the American Buffalo Association on behalf of the buffalo (American bison) industry for changes in the ante-mortem inspection and slaughter procedures for buffalo under the voluntary inspection program. The petitioners requested that ante-mortem inspection of buffalo be conducted on the owner's premises or outside of a transport vehicle at an official establishment as well as in ante-mortem pens at an official establishment.

Utilization of State and Federal inspectors and the use of contract inspectors were requested for the ante-mortem inspection on buffalo. The Associations also requested a special Federal buffalo brand that could be applied to buffalo meat inspected in an official buffalo inspection establishment.

These requests were the result of the previously mentioned problems inherent to the buffalo industry. To address the voluntary inspection of buffalo specifically, this rule is being adopted. The rule adds a new part to the provisions pertaining to Voluntary Inspection and Certification Service contained in Subchapter B, Chapter III, Title 9, of the Food Safety and Inspection Service regulations.

The rule allows three alternative locations for ante-mortem inspection of buffalo. The first alternative allows ante-mortem inspection to be performed in the field in a designated area of the buffalo producer's premises. The field inspection procedure entails the ante-mortem inspection, stunning and bleeding of the animal. The animal must be handled humanely in accordance with provisions of 9 CFR 313.2. The animal must be bled immediately after stunning. It would then be transported to an official buffalo establishment for post-mortem inspection.

The carcass is required to be ear-tagged with a "U.S. Suspect" tag to identify it. This will provide the post-mortem veterinarian the means to control the post-mortem inspection and disposition of all field ante-mortem inspected buffalo. Tagging the buffalo carcass in the field with a suspect tag, along with post-mortem inspection and disposition by the veterinarian at an official buffalo establishment, is consistent with the current method of handling carcasses that require delayed evisceration. Field ante-mortem inspection would reduce the risks of injury to persons handling buffalo and would eliminate the property damage to transport vehicles, fences and pens.

The second alternative allows ante-mortem inspection to be performed outside of a transport vehicle at an official buffalo establishment. Such ante-mortem inspection allows a buffalo producer with a few buffalo to have ante-mortem inspection performed by an inspector outside the transport vehicle on buffalo that are outside the vehicle. The inspector would be positioned outside the vehicle and provide such service if it can be appropriately and safely performed. The vehicle ante-mortem inspection alternative would enable establishments that do not have reinforced pens to receive a few buffalo for slaughter. The ante-mortem inspected and passed buffalo would be stunned but not bled in the transport vehicle. The carcasses would be immediately taken to the slaughter floor for bleeding and post-mortem inspection.

Ante-mortem inspection performed in the field or outside of a transport vehicle must ensure the safety of inspection personnel and must allow for adequate inspection.

The third alternative allows ante-mortem inspection to be performed in ante-mortem pens at an official buffalo establishment.

The three alternatives are designed to resolve the unique problems involved with the ante-mortem inspection of buffalo. These ante-mortem inspection alternatives would allow more buffalo meat and meat food products to enter the market.

This rule allows the utilization of Federal and cooperating State inspectors to perform all aspects of the inspection service under the provisions of the Talmadge-Aiken Act of September 28, 1962 (7 U.S.C. 450). The utilization of Federal and State inspectors enables a more efficient and economical use of manpower than if Federal inspectors were used exclusively.

This final rule allows the use of a newly designed triangular brand to identify inspected and passed buffalo meat and buffalo meat food products. The Department might possibly decide to use the new triangular brand in the future to identify other species of animals that would be inspected under the voluntary inspection program. The triangular brand may be applied at official buffalo establishments by Federal or State inspectors. The triangular brand readily identifies buffalo meat and meat food products which have been inspected and passed under the voluntary inspection program. The special triangular brand was designed for application to buffalo meat inspected in official buffalo establishments in lieu of the red meat USDA mark of inspection that can only be used in federally inspected establishments under the Federal Meat Inspection Act. The ordering and manufacture of the triangular brand shall be in accordance with the provisions contained in 9 CFR 317.3(c).

Meat and meat food products of buffalo produced under the voluntary inspection service are certified by the Department and carry the mark of Federal inspection. To qualify for this service, the establishment, its facilities and equipment, and its procedures must have to meet certain requirements incorporated from the mandatory meat inspection regulations, and the establishment must be an official buffalo establishment. Therefore, FSIS is incorporating the relevant substantive requirements of the Federal meat inspection regulations into the voluntary buffalo regulations, instead of restating those requirements.

Because the diseases in buffalo parallel diseases found in cattle, the post-mortem inspection procedures for buffalo will remain the same as are currently used for cattle. It is recommended that field-slaughtered buffalo be brought to the plant for post-mortem examination and disposition in the shortest possible time. The establishment of specific time and temperature requirements for buffalo slaughtered in the field is difficult because their carcasses would be

transported different distances under varying climatic conditions. It has been determined, however, that to minimize changes in the carcass which can affect post-mortem examination, disposition and wholesomeness, buffalo slaughtered in the field must be eviscerated and inspected on the day of slaughter. Therefore, field-slaughtered buffalo must be presented for post-mortem inspection on the same day of field slaughter. Regardless of the time elapsed, if, in the judgment of the examining veterinarian, changes have occurred in the carcass which make it unwholesome, the carcass must be condemned.

The provisions for mandatory meat inspection are covered under regulations codified in 9 CFR Parts 301 through 335. This document provides regulations that deal with the administration of voluntary buffalo inspection activities and provides for alternate locations for ante-mortem inspection; incorporates the relevant mandatory meat inspection regulations by reference; and codifies them in Title 9, Chapter III, Subchapter B, of the Food Safety and Inspection Service regulations, as a new Part 352.

Discussion of Comments

Comments on the proposed rule were solicited from interested parties in the March 18, 1985, **Federal Register** (50 FR 10778). The comment period closed on June 13, 1985. During the comment period, the Agency received comments from 4 parties—3 from Agency personnel and 1 from a trade association.

The following are the comments and the Agency's response to each comment:

A. Trade Association

The trade association supported the proposal and believes the proposal is in the best interests of industry and consumers.

B. Agency Personnel

Comments from FSIS personnel included the following questions and concerns:

Comment: "What are the specifics of stunning of buffalo in the field after ante-mortem inspection?"

Response: The stunning of buffalo whether in the field, on a transport vehicle or at an official buffalo inspection establishment must be performed humanely in accordance with the provisions contained in 9 CFR 313.15, 313.16 and 313.30 which state the approved methods for humane handling and slaughtering of food animals.

Comment: "Will there be additional costs for the buffalo producer concerning the field ante-mortem inspection?"

Response: As this is a voluntary inspection service, all costs of providing the service are recoverable by the Agency. The buffalo producer would be required to pay all fees involved in performing field ante-mortem inspection including travel time, per diem, and time required to perform such inspection. These fee requirements are stated in § 352.5 of the rule. In addition, all fees associated with the use of establishment facilities and equipment would be paid by the producer.

Comment: "Many plants have altered their facilities to handle unruly buffalo. If other plants want buffalo inspection, they too can remodel their facilities to accommodate buffalo."

Response: There are only a few plants which have ante-mortem pens and facilities especially designed and built for buffalo. Because of the expense, many slaughter establishments are not willing to provide the necessary reinforced pens and facilities to accommodate unruly buffalo.

This rule would permit alternative methods of ante-mortem inspection and slaughter of buffalo so that establishments could provide producers a facility for post-mortem inspection of buffalo without remodeling to accommodate live buffalo.

Comment: "I have inspected well over 100 buffalo at this establishment without anymore problems than beef. Animals have been brought in by many different producers and some from over 200 miles away with little or no difficulty. I believe that live buffalo could and should be transported to the establishment."

Response: The transportation of live buffalo to an official establishment for inspection and slaughter is one of the biggest problems facing buffalo producers. The inherent unpredictable behavior of buffalo during their loading onto a transport vehicle, transporting and unloading at an official establishment has resulted in damage to transport vehicles, fences, pens, and animals. The damage to ante-mortem pens at an official establishment and the increased risk of personal injury have prevented buffalo from being accepted at many slaughter establishments. This rule will provide buffalo producers alternative methods to the traditional method of ante-mortem inspection and slaughter of buffalo and would alleviate the problems listed above.

Comment: Examining buffalo on the producer's premises would not only cause an undue hardship on the producer by charging for extra time, it would cause a much greater hardship on the establishment because the inspector would not be available and the establishment would not be able to slaughter.

Response: The rule would provide more flexible options for ante-mortem inspection under the voluntary inspection program. Therefore, under the voluntary inspection program, the producer has the option to elect to use the traditional method of inspection and slaughter of buffalo or to request the ante-mortem alternatives. Each regional office would assure that the necessary inspection personnel are available for field ante-mortem inspection while maintaining full coverage of all slaughter establishments.

All fees associated with field ante-mortem inspection and slaughter including travel time, per diem and the time required for such inspection will be paid by the buffalo producer. The decision whether to use these alternative procedures with their resulting costs would depend on each producer.

After careful consideration of the comments received in response to the proposed rule, FSIS is adopting the proposal as published with three minor changes: the first incorporates the meat inspection regulations concerning the ordering and manufacture of the new brand; the second incorporates the meat inspection regulations concerning the handling of condemned or other inedible buffalo products at official buffalo establishments; and the third clarifies the applicability of the procedures for withdrawl or denial of service.

List of Subjects in 9 CFR Part 352

Buffalo, Voluntary Inspection

Subchapter B of the Federal meat inspection regulations is amended by adding Part 352 to read as set forth below:

PART 352—BUFFALO; VOLUNTARY INSPECTION

Sec.

Sec.

Authority: 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

§ 352.1 Definitions.

The definitions in § 301.2, not otherwise defined in this part, are incorporated into this part. In addition to those definitions, the following definitions will be applicable to the regulations in this part.

(a) "Act" means the applicable provisions of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087, as amended; 7 U.S.C. 1621 *et seq.*).

(b) "Acceptable" means suitable for the purpose intended and acceptable to the Food Safety and Inspection Service.

(c) "Applicant" means any interested party who requests any inspection service.

(d) "Buffalo" means any American bison or catalo or cattalo.

(e) "Buffalo inspection service" means the personnel who are engaged in the administration, application, and direction of buffalo inspection programs and services pursuant to the regulations in this Part.

(f) "Buffalo producer" means any interested party that engages in the marketing of American bison or catalo or cattalo.

(g) "Catalo" or "Cattalo" means any hybrid animal with American bison appearance resulting from direct crossbreeding of American bison and cattle.

(h) "Condition" means any condition, including, but not limited to, the state of preservation, cleanliness, or soundness of any product or the processing, handling, or packaging which may affect such product.

(i) "Condition and wholesomeness" means the condition of any product, its healthfulness and fitness for human food.

(j) "Field ante-mortem inspection" means the ante-mortem inspection of buffalo away from the official buffalo establishment's premises.

(k) "Field designated area" means any designated area on the applicant's premises, approved by the Regional Director, where field ante-mortem inspection is to be performed.

(l) "Identify" means to apply official identification to products or containers.

(m) "Inspection" means any inspection by an inspector to determine, in accordance with the regulations in this Part, (1) the condition and wholesomeness of buffalo, or (2) the condition and wholesomeness of edible product of buffalo at any state of the preparation or packaging in the official plant where inspected and certified, or (3) the condition and wholesomeness of any previously inspected and certified product of buffalo if such product has not lost its identity as an inspected and certified product.

(n) "Interested party" means any person financially interested in a transaction involving any inspection.

(o) "Official buffalo establishment" means any slaughtering, cutting, boning, curing, smoking, salting, packing, rendering, or similar establishment at which inspection is maintained under the regulations in this Subchapter.

(p) "Official device" means a stamping appliance, branding device, stencil printed label, or any other mechanically or manually operated tool that is approved by the Administrator for the purpose of applying any official mark or other identification to any product or packaging material.

(q) "Official identification" means any symbol, stamp, label, or seal indicating that the product has been officially inspected and/or indicating the condition of the product approved and authorized by the Administrator to be affixed to any product, or affixed to or printed on the packaging material of any product.

(r) "Program" means the Voluntary Buffalo Inspection Program of the Food Safety and Inspection Service.

(s) "Transport vehicle" means any vehicle used to transport buffalo.

(t) "Veterinarian" means by authorized veterinarian of the Program employed by the Department or any cooperating State who is authorized by the Secretary to do any work or perform any duty in connection with the Program.

§ 352.2 Type of service available.

Upon application, in accordance with § 352.3 and § 352.4, the following type of service may be furnished under the regulations in this Part:

(a) Voluntary Inspection Service. An inspection and certification service for wholesomeness relating to the slaughter and processing of buffalo and the processing of buffalo products. All provisions of the Part shall apply to the slaughter of buffalo, and the preparation, labeling, and certification of the buffalo meat and buffalo products processed under this buffalo inspection service.

(b) Only buffalo which have had ante-mortem inspection as described under this Part and which are processed in official buffalo establishments in accordance with this Part may be marked inspected and passed.

(c) Buffalo, buffalo meat and meat food products shall be handled in an official buffalo establishment to ensure separation and identity of the buffalo or buffalo meat and meat food products until they are shipped from the official buffalo establishment to prevent commingling with other species.

§ 352.3 Application by official buffalo establishment for inspection service.

(a) Any person desiring to process buffalo, buffalo carcasses, buffalo meat and meat food products in an establishment under buffalo inspection service must receive approval of such establishment and facilities as an official buffalo establishment prior to the rendition of such service. An application for inspection service to be rendered in an official buffalo establishment shall be approved in accordance with the provisions contained in §§ 304.1 and 304.2, of Subchapter A of this Chapter.

(b) Initial survey. When an application has been filed for buffalo inspection service, the Regional Director or designee, shall examine the establishment, premises, and facilities.

§ 352.4 Application for ante-mortem inspection service in the field.

Any buffalo producer desiring field ante-mortem buffalo inspection service must receive approval of the field ante-mortem designated area from the Regional Director or designee prior to rendition of such service. An application seeking approval of the designated area for ante-mortem inspection shall be obtained from the Regional Director, and completed and submitted to the Regional Director.

(a) An initial application for field ante-mortem buffalo inspection service shall be made by an official buffalo establishment to the Regional Director. Subsequent requests shall be made by the official buffalo establishment on behalf of a buffalo producer to the Regional Director in one of the following manners: (1) telephone, (2) telegraph, (3) mail, or (4) in person as determined by the Regional Director.

(b) Upon receipt of the completed application, the Regional Director or designee shall examine the field ante-mortem designated area and facilities for approval of the designated area.

(c) All fees involved for the approval of the designated area, including but not

limited to any travel, per diem costs, and time required to perform such approval services, shall be paid directly by the applicant to the Regional Director.

§ 352.5 Fees and charges.

(a) Fees and charges for service under the regulations in this part shall be paid by the applicant for the service in accordance with this section.

(b) The fees and charges provided for in this section shall be paid by check, draft, or money order payable to the "Treasurer of the United States" and shall be remitted promptly to the Regional Director upon furnishing to the applicant a statement as to the amount due.

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rate of $18.60 per hour for base time, $21.72 per hour for overtime including Saturdays, Sundays, and holidays, and $35.92 per hour for laboratory service to cover the costs of the service. The applicant shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

(d) Charges may also be made to cover other expenses incurred by the Service in connection with the furnishing of the service.

(e) Fees and charges for any inspection pursuant to a cooperative agreement with any State shall be paid in accordance with the terms of such cooperative agreement.

§ 352.6 Denial or withdrawal of inspection service.

(a) *For miscellaneous reasons.* An application or a request for service may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, any person, without a hearing by the appropriate Regional Director (1) for administrative reasons such as the nonavailability of personnel to perform the service; (2) for the failure of payment for service; (3) in case the application or request relates to buffalo or buffalo products which are not eligible for service under this Part; (4) for failure to maintain the designated area or the plant in a state of repair approved by the Service; (5) for the use of operating procedures which are not in accordance with the regulations of this Part; (6) for alterations of buildings, facilities, or equipment which cannot be approved under the regulations in this Part. Notice of such rejection, denial, or withdrawal, and the reasons therefor, shall promptly be given to the person involved. The applicant or recipient shall be notified of such decision to reject an application or request for service or to deny or withdraw the benefits of the service, and the reasons therefor, in writing in the manner prescribed in 1.147(b) of the rules of practice (7 CFR 1.147(b)), or orally. Such decision shall be effective upon such oral or written notification, whichever is earlier to the applicant or recipient. If such notification is oral, the person making such decision shall confirm such decision, and the reasons therefor, in writing, as promptly as circumstances permit, and such written confirmation shall be served upon the applicant or recipient in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)).

(b) *For disciplinary reasons—Basis for denial or withdrawal.* An application or request for service may be denied, or the benefits of the service may be withdrawn from, any person or entity who, or whose employee or agent in the scope of his employment or agency, (1) has willfully made any misrepresentation or has committed any other fraudulent or deceptive practice in connection with any application or request for service under this Part; (2) has given or attempted to give, as a loan or for any other purpose, any money, favor or other thing of value, to any agent of the Department authorized to perform any function under this Part; (3) has interfered with or obstructed, or attempted to interfere with or to obstruct, any agent of the Department in the performance of his duties under this Part by intimidation, threats, assaults, abuse, or any other improper means; (4) has knowingly represented that any buffalo carcass, or buffalo product has been officially inspected and passed by an authorized inspector under this Part, when it had not, in fact, been so inspected; (5) has been convicted of any felony or of more than one misdemeanor under any law based upon the acquiring, handling, or distributing of adulterated, mislabeled, or deceptively packaged food, or fraud in connection with transactions in food. *Provided*, an application or a request for service made in the name of a person, firm or corporation otherwise eligible for service under the regulations may be denied, or the benefits of the service may be withdrawn, from such a person, firm or corporation in case the service is or would be performed at a location operated by a person, firm or corporation, from whom the benefits of the service are currently being denied or have been withdrawn under this Part; or by a person, firm or corporation having an officer, director, partner, manager or substantial investor from whom the benefits of service under this Part are currently being denied or have been withdrawn under this Part, and who has any authority with respect to the location where service is or would be performed; or in case the service is or would be performed with respect to any buffalo or buffalo product in which any person, firm or corporation, from whom the benefits of service are currently being denied or have been withdrawn under this Part, has a contract or other financial interest.

(c) *Procedure.* (1) An application or request for service may be denied or benefits of the service may be withdrawn by the Secretary, as provided by paragraph (b) of this section, after notice and opportunity for hearing before a designated official of the Department. The Administrator may suspend service under this paragraph without hearing, pending final determination of the matter, when he determines that the public health, interest or safety so requires. The applicant or recipient shall be notified of the Administrator's decision to suspend service, and the reasons therefor, in writing or orally. The Administrator's decision to suspend service under this Part shall be effective upon such an oral or written notification, whichever is earlier, to the applicant or recipient. If such notification is oral, the Administrator shall confirm such decision, and the reasons therefor, in writing, as promptly as circumstances permit, and such written confirmation shall be served upon the applicant or recipient in the manner prescribed in 1.147(b) of Departmental rules of practice (7 CFR 1.147(b)).

(2) The written notification specified in paragraph (c) of this section, which shall constitute the complaint in the proceeding, shall briefly set forth the reason for the denial or withdrawal of service, including allegations of fact which constitute a basis for the action. After the complaint is served upon the respondent, as provided in § 1.147(b) of Departmental rules of practice (7 CFR 1.147(b)), the proceeding shall thereafter be conducted in accordance with rules of practice which shall be adopted for the proceeding.

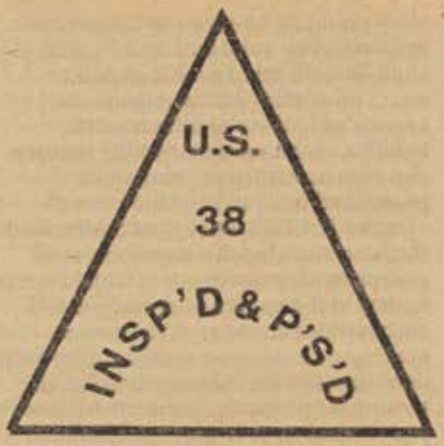
§ 352.7 Marking inspected products.

Wording and form of inspection mark. Except as otherwise authorized by the Administrator, the inspection mark applied to inspected and passed buffalo carcasses, meat or meat food products under this Part shall include wording as follows: "Inspected and Passed by U.S.

Department of Agriculture." This wording shall be contained within a triangle in the form and arrangement shown in this section. The plant number of the official plant shall be included in the triangle unless it appears elsewhere on the packaging material. Ordering and manufacture of the triangle brand shall be in accordance with 9 CFR 317.3(c). The Administrator may approve the use of abbreviations of such inspection mark, and such approved abbreviations shall have the same force and effect as the inspection mark. The inspection mark or approved abbreviation shall be applied under the supervision of the inspector to the inspected and passed edible product, packaging material of such product, immediate container, and shipping container. When the inspection mark or the approved abbreviation is used on packaging material, immediate container or shipping container, it shall be printed on such material or container or on a label to be affixed to the packaging material or container. The name and address of the packer or distributor of such product shall be printed on the packaging material or label. The inspection marks may be stenciled on the container and, when the inspection mark is so stenciled, the name and address of the packer or distributor may be applied by the use of a stencil or a rubber stamp. The name and address of the packer or distributor, if prominently shown elsewhere on the packaging material or container, may be omitted from insert labels which bear an official identification if the applicable plant number is shown.

(a) The inspection mark to be applied to inspected and passed carcasses and parts of carcasses of buffalo, and products as therefrom approved by the Administrator, shall be in the form and arrangement as indicated in the examples below.[1] The plant number of the official; plant shall be set forth if it does not appear on the packaging material or container.

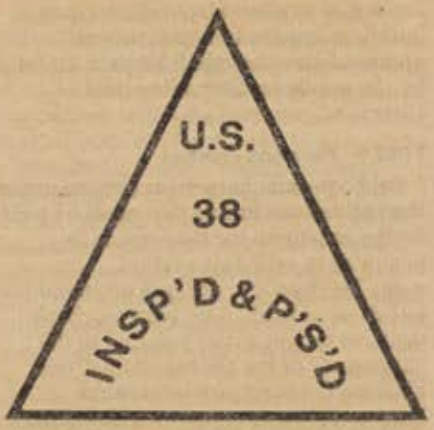
(1) For application to buffalo carcasses, primal parts and cuts therefrom, buffalo livers, buffalo tongues, and buffalo hearts.



(2) For application to buffalo calf carcasses.

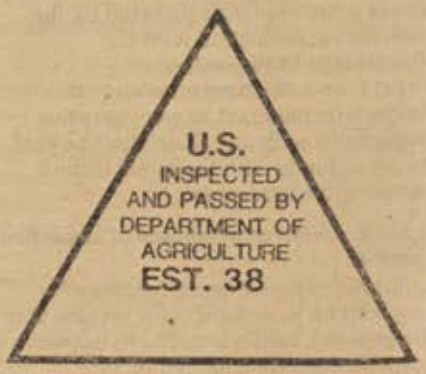
(3) For application to buffalo tails.

(4) For application to burlap, muslin, cheesecloth, heavy paper, or other acceptable material that encloses carcasses or parts of carcasses.



(b) The official inspection mark to be shown on all labels.[1]

(1) For inspected and passed products of buffalo shall be in the following form, except that it need not be of the size illustrated, provided that it is a sufficient size and of such color as to be conspicuously displayed and readily legible and the same proportions of letter size and boldness are maintained as illustrated:



(2) This official mark shall be applied by mechanical means and shall not be applied by a hand stamp.

(3) The official inspection legend described in paragraph (b)(1) of this section shall also be used on shipping containers, bond labels, artificial casings, and other articles with the approval of the Administrator.

[1] The number "38" is given as an example only. The establishment number of the official buffalo establishment where the product is prepared shall be used in lieu thereof.

(c) Any brand, stamp, label or other device approved by the Administrator and bearing any official mark prescribed in paragraph (a) or (b) of this section shall be an official device for purposes of the Act.

§ 352.8 Time of inspection in the field and in an official buffalo establishment.

The official buffalo establishment, on behalf of the applicant, shall notify the Regional Director or designee, in advance, of the hours when such inspection is desired. Inspection personnel shall have access at all times to every part of any field in a designated area of a buffalo producer's premises and/or official buffalo establishment to which they are assigned.

§ 352.9 Report of inspection work.

Reports of the work of inspection carried on within the field in a designated area of a buffalo producer's premises and/or official buffalo establishment shall be forwarded to the Administrator by the ante-mortem inspector. The applicant for such inspection shall furnish to the Administrator such information as may be required on forms provided by the Administrator.

§ 352.10 Ante-mortem inspection.

An ante-mortem inspection of buffalo shall, where and to the extent considered necessary by the Administrator and under such instructions as he may issue from time to time, be made on the day of slaughter of buffalo in one of the following listed ways. Humane handling of buffalo during ante-mortem inspection shall be in accordance with the provisions contained in 9 CFR 313.2. Immediately after the animal is stunned, it shall be shackled, hoisted, stuck and bled.

(a) To be performed on buffalo in the field in a designated area of a buffalo producer's premises.

(1) The field ante-mortem designated area must be approved by the Regional Director or designee prior to rendition of the service.

(2) Any person who desires to receive field ante-mortem inspection must provide:

(i) Notification from an official buffalo establishment to the Regional Director or designee.

(ii) A field ante-mortem designated area.

(iii) A stunning area which is in a condition that minimizes the possibility of soiling the animal when stunned and bled as determined by the inspector.

(iv) A transport vehicle that is as sanitary as practicable as determined by the inspector.

(3) The ante-mortem inspector shall determine the acceptableness and safety of performing field ante-mortem inspection. If, in the opinion of the ante-mortem inspector, an unsafe circumstance exists at the time of field ante-mortem inspection, the service shall be denied.

(4) The ante-mortem inspector shall supervise all phases of field ante-mortem inspection.

(5) In the ante-mortem inspector's opinion, buffalo that appear diseased or have an abnormal condition will not pass ante-mortem inspection and must be withheld from slaughter.

(6) Stunning to render the animal unconscious shall be in accordance with 9 CFR 313.15 or 313.16.

(7) All stunned and bled buffalo shall be tagged with a "U.S. Suspect" tag in an ear by the ante-mortem inspector prior to loading on the transport vehicle.

(8) The transport of intact buffalo carcasses to an official buffalo establishment for post-mortem inspection shall be as expedient as possible, and must be within the same day as field slaughter.

(9) Ante-mortem cards (Form MP 402–2) shall be filled out by the ante-mortem inspector. One copy is to be retained by the ante-mortem inspector. The other copy shall accompany the transport vehicle to the official buffalo establishment and shall be delivered to the post-mortem veterinarian.

(b) To be performed on buffalo that are inside of the transport vehicle at an official buffalo establishment.

(1) The ante-mortem inspector shall remain outside the transport vehicle while performing ante-mortem inspection.

(2) The person requesting transport vehicle inspection must provide a transport vehicle that is as sanitary as practicable and that would safely and thoroughly permit the inspection of buffalo from outside of the transport vehicle as determined by the inspector.

(3) The ante-mortem inspector shall determine the adequacy and safety of performing ante-mortem inspection. If, in the ante-mortem inspector's opinion, the transport vehicle is not adequate or safe to perform ante-mortem inspection, the service shall be denied.

(c) To be performed in pens at official buffalo establishments. The inspection shall be conducted in accordance with the provisions contained in 9 CFR Part 309.

§ 352.11 Post-mortem inspection.

(a) The post-mortem examination must occur in the shortest length of time practicable and on the day that field ante-mortem inspection is performed to minimize the changes in the carcass which can affect the post-mortem examination, disposition and wholesomeness of the carcass and its parts.

(b) The post-mortem veterinarian shall inspect and make the disposition of all incoming "U.S. Suspect" tagged buffalo.

(c) Post-mortem inspection of buffalo shall be conducted in accordance with the provisions contained in 9 CFR Part 310.

§ 352.12 Disposal of diseased or otherwise adulterated carcasses and parts.

This shall be conducted in accordance with the provisions contained in 9 CFR Part 311.

§ 352.13 Handling and disposal of condemned or other inedible buffalo products at official buffalo establishments.

This shall be conducted in accordance with the provisions contained in 9 CFR Part 314.

§ 352.14 Entry into Official Establishments; Reinspection and Preparation of Products.

This shall be conducted in accordance with the provisions contained in 9 CFR 318.1, 318.2, and 318.3.

§ 352.15 Records, Registration, and Reports.

This shall be conducted or maintained in accordance with the provisions contained in 9 CFR 320.1 through 320.7.

§ 352.16 Exports.

This shall be conducted in accordance with the provisions contained in 9 CFR 322.1 through 322.5.

§ 352.17 Transportation.

This shall be conducted in accordance with the provisions contained in Parts 325.1 through 325.21.

§ 352.18 Cooperation of States in Federal Programs.

Under the "Talmadge-Aiken Act" of September 28, 1962 (7 U.S.C. 450), the Administrator is authorized to utilize employees and facilities of States in carrying out Federal functions.

Done at Washington, DC, on September 27, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85–24629 Filed 10–15–85; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40 and 150

Uranium Mill Tailings Regulations; Conforming NRC Requirements to EPA Standards

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing amendments to its regulations governing the disposal of uranium mill tailings. These changes conform existing NRC regulations to the regulations published by the Environmental Protection Agency (EPA) for the protection of the environment from these wastes. The changes also incorporate some of the EPA requirements. Commission plans for the remainder of the EPA requirements dealing with ground-water protection was the subject of a separate rulemaking notice. This action is being taken to comply with the legislative mandate set out in the Uranium Mill Tailings Radiation Control Act (UMTRCA) and the NRC Authorization Act for FY 1983.

EFFECTIVE DATE: November 15, 1985.

ADDRESS: Comments received on the proposed rule as well as the Regulatory Impact Analysis and the Final Environmental Impact Statement prepared by EPA and NUREG–0706 prepared by NRC may be examined at the Commission's Public Docket Room, 1717 H Street NW., Washington, DC between 8:15 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Robert Fonner, Office of the Executive Legal Director, telephone (301) 492–8692, or Kitty S. Dragonette, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427–4300.

SUPPLEMENTARY INFORMATION:

Introduction and Background

The Nuclear Regulatory Commission (NRC) is issuing modifications to its regulations for the purpose of conforming them to generally applicable requirements promulgated by the Environmental Protection Agency (EPA). These EPA requirements, contained in Subparts D and E of 40 CFR Part 192 (48 FR 45926; October 7, 1983), are applicable to the management of uranium and thorium byproduct material and became effective for NRC and Agreement State licensees and license applicants on December 6, 1983. This action modifies previously existing regulations of the Commission to conform them to the EPA requirements and incorporates some of the EPA requirements into the Commission's regulations. The affected Commission regulations are contained in Appendix A to 10 CFR Part 40, which was promulgated in final form on October 3, 1980 (45 FR 65521). Proposed changes were published on November 26, 1984 (49 FR 46418). The comment period originally expired on January 10, 1985 but was extended until February 10, 1985 (50 FR 2293, January 16, 1985).

The action that the Commission will take with respect to the remainder of the EPA requirements, primarily those dealing with groundwater protection, was the subject of an Advanced Notice of Proposed Rulemaking (ANPRM) which requested comment on that subject (49 FR 46425, November 26, 1984). Under section 18(a) of Pub. L. 97–415, the Nuclear Regulatory Commission Authorization Act for fiscal years 1982 and 1983, the Commission was directed to conform its regulations to EPA's with notice and opportunity for public comment.

Overview of Comments on Proposed Rule Changes

Twenty-four commenters responded with 26 sets of comments. Six environmental groups, seven states, two Federal agencies, seven industry representatives, one pro-energy (pro-nuclear) group and one individual responded.

Comments were offered on both general issues and the specific changes set out in the proposed rule. These comments reflected widely diverse views. The general issues addressed were the Commission Authority and Responsibility Statement, procedural and jurisdictional issues, the scope of the rulemaking, the validity and merits of the EPA standard, and other miscellaneous topics.

Commenters on the Commission Authority and Responsibility Statement were divided. The environmental groups and EPA disagreed with all or part of the statement. Industry advocated an alternate approach relying on general agency roles. One state supported the flexibility of the approach described in the Statement.

Procedural and jurisdictional issues raised included industry challenging any conforming action to an EPA standard that is improper on jurisdictional grounds and delaying conforming action until the Tenth Circuit cases are settled. Three commenters challenged the legality of not meeting the six month date to conform and NRC's approach on conforming in two steps.

Comments on the scope of the first step rulemaking included general views that NRC should undertake a completely new rulemaking and make a number of specific additional changes. One environmental group and industry urged NRC to undertake new rulemaking to replace both EPA and NRC rules. Additional conforming changes suggested included tailings cover specifications, reliance on active maintenance, and changes based on the earlier suspension of portions of Appendix A and initial staff recommendations to the Commission. All categories of commenters suggested additional changes to 10 CFR Part 40, Appendix A not related to conforming to the EPA standard.

Virtually all categories of commenters expressed dissatisfaction with the EPA standards in 40 CFR Part 192 as either too lax or too stringent.

A number of other miscellaneous topics were raised including Agreement State implementation of the alternatives provision which tracks the language in section 84c of the AEA.

Comments on the addition of the flexibility provisions of section 84c of the Atomic Energy Act (AEA) to the Introduction of Appendix A generally did not take issue with the addition itself since it paraphrased the law. States and environmental groups expressed concerns about implementation. Some of the industry commenters favored extensive supplemental rulemaking to reduce the burden on licensees to develop alternatives.

Comments on proposed changes to Criterion 1 on the time frame for protection reflected confusion on goals or objectives versus requirements and disagreement on what the times and reliance on active maintenance should be. State and environmental comments urged times greater than the 1,000-year EPA design standard on cover longevity and no reliance on maintenance. Industry favored a 200-year goal and reliance on maintenance.

Comments on the proposed change in Criterion 4 to replace "maximum possible flood" with "Probable Maximum Flood" reflected divergent views on the appropriate design flood to be used in analyses. Environmental commenters favored maximum conservatism and industry advocated less conservative assumptions than either the existing or proposed language.

Proposed changes to Criteria 1, 3, and 5 were all intended to reflect that the EPA standard starts from a premise that no seepage from new or expanded impoundments or degradation of ground

water are allowed and that all ground water is to be protected regardless of quality or use category. Industry strongly opposed protecting non-usable ground water, recommended deferring all ground-water changes, and argued that the EPA ground-water standards are invalid because they fail the Congressional test of comparability to standards for wastes of similar hazard (for example, mining wastes).

Commenters objected to incorporation of the EPA longevity and radon design standards into Criterion 6 in general and opposed specific aspects of the proposed changes. Many of the arguments were directed against the EPA standard as being too lax to adequately protect health and the environment or more stringent than warranted by the risks. Several commenters urged NRC to keep its more restrictive radon limit and 3-meter minimum cover. Industry opposed including any EPA standards for thorium byproduct material.

Several state and environmental commenters objected to the incorporation of the EPA footnote qualifying the longevity and radon standard as a design standard not requiring confirmatory monitoring. Averaging provisions and disregard of the radon from cover materials were also of concern on Criterion 6 changes.

Commenters questioned implementation aspects of the Criterion 8 change to add as low as practicable goals for radon releases during operations. One commenter argued for the current terminology reflected in 10 CFR Part 20 for keeping releases as low as reasonably achievable (ALARA) as the true EPA intent.

A staff analysis of all the comments received is available in the NRC's Public Document Room (PDR). The following discussion summarizes and responds to all comments of major or generic significance and to all comments that prompted additional rule changes.

Commission Authority and Responsibility Statement

The notice included a statement on "Commission Authority and Responsibility." The statement summarized the Commission's policy on the exercise of its responsibility and authority for mill tailings, including the authority to approve site specific alternatives proposed by licensees under section 84c of the AEA.

Comments. Commenters were divided on this issue. The environmental groups and EPA disagreed with the statement. Industry advocated an alternate approach. In industry's view, reliance on the basic requirements of UMTRCA with respect to the jurisdiction of the agencies would be a stronger legal position and would eliminate the need to rely on section 84c. One State supported the statement and the need for NRC and Agreement States to review and approve site specific alternatives to standards without EPA concurrence.

EPA disagreed with NRC's interpretation of section 84c. EPA stated "Section 84c does not confer on NRC authority to approve or employ alternative standards or to substitute its judgment for EPA's regarding the level of protection necessary to protect public health and the environment. Rather it authorizes NRC to approve or employ licensee-proposed alternatives to NRC's own general *implementing* requirements . . ." Further, EPA argued that its standard that requires EPA approval of site specific alternative concentration limits is within its authority, not NRC's under section 84c. In EPA's view, NRC must also establish specific requirements before it can consider alternatives to them. The environmental groups were in basic agreement with EPA.

Response. The Commission conducted an independent review of UMTRCA and the legislative history surrounding this issue.

The Commission reaffirmed that it is authorized under section 84c of the AEA to grant exemptions from EPA's standards without obtaining EPA's concurrence. The basis for this conclusion covers four points:

First is the belief that "specific Commission requirements" can be adopted without a rulemaking proceeding. Section 84a(2) requires the Commission to ensure that tailings are managed in conformance with EPA's standards. Section 84a(2) creates a statutory obligation on the Commission to enforce EPA's standards independent or whether the Commission adopts regulations which would clarify how the Commission would enforce those standards.

Second, section 84c explicitly states that the NRC may approve alternatives which, *to the extent practicable*, would achieve safety levels equivalent to those which would be achieved by compliance with NRC's requirements *and* EPA's standards. Thus, the NRC is authorized to exercise judgment on the level of protection of public health, safety and the environment achieved by a proposed alternative.

Third, UMTRCA does not use the phrase "implementing requirements." Section 84c refers to only "specific requirements adopted and enforced by the Commission." This phrase is clearly intended to include all requirements adopted by the Commission to regulate mill tailings. The source of the adopted requirements is immaterial to the statutory scheme and may include EPA's detailed standards.

Finally, EPA's comment does not effectively respond to the Commission's argument that EPA site specific concurrence in exemptions contradicts the prohibition on EPA's issuance of a permit in section 275b(2) of the AEA.

Comments questioning NRC's motives or intent are offset by the findings required of the Commission in section 84c in order to exercise the flexibility to approve alternatives. Assertion of legal right does not equate to an intent to abuse a right. The AMC jurisdiction issue is addressed in the following section.

The statement on "Commission Authority and Responsibility" is repeated in this notice without change to reaffirm the Commission's position.

Procedural and Jurisdictional Issues

Comment. The American Mining Congress (AMC) presented extensive legal arguments on the EPA/NRC jurisdictional issue. The AMC comments focused on the following legal points: (1) Since its ratification of Reorganization Plan No. 3 of 1970, consistent Congressional policy has been to limit EPA standard setting authority for NRC licensed facilities to "generally applicable standards," meaning standards that are applicable outside site boundaries and that impose no site specific design, engineering or management requirements; (2) Congress, in UMTRCA, adopted the division of jurisdiction between EPA and NRC first established in the 1970 Reorganization Plan; and (3) EPA's standards are not "generally applicable standards" and are therefore beyond the jurisdiction of EPA. Consequently, the EPA standards are a "mere nullity" of no legal force or effect and NRC is not legally bound to conform to the standards.

Response. As noted earlier, the Commission conducted an independent review of UMTRCA and its legislative history. The Commission concluded that EPA generally acted within its jurisdiction and found the AMC arguments flawed. The following points summarize the Commission's findings:

1. Before UMTRCA, EPA, not NRC, had primary authority over both the radiological and non-radiological impacts from uranium mill tailings;

2. During Congressional deliberations over UMTRCA, NRC attempted to reduce substantially EPA's authority over radiological hazards of mill tailings

by limiting it to EPA's "traditional" authority under Reorganization Plan No. 3, i.e., authority to promulgate only generally applicable, non-site specific radiological standards, applicable only outside the boundaries of the tailings sites;

3. EPA opposed the NRC's attempt to transfer to itself EPA's authority to regulate mill tailings. EPA's efforts were partially successful and resulted in a Congressional compromise which precluded EPA from promulgating site specific standards but which did not restrict EPA to standards applicable only outside site boundaries. EPA was also given concurrence authority over NRC regulations for controlling non-radiological hazards.

4. Except for one instance, EPA acted within its jurisdiction under UMTRCA in setting environmental standards for managing radioactive emissions and hazardous chemical wastes from uranium mill tailings; and

5. EPA exceeded its jurisdiction by stating that its concurrence would be required before the NRC could grant site specific case-by-case exemptions from NRC regulations for implementing EPA's standards. The Commission believes that such a concurrence role by EPA also contradicts the 1983 amendment to UMTRCA which added section 84c to the AEA.

Comments. Environmental groups and EPA commented on the legality of not meeting the six-month Congressional mandate to conform by April 1, 1984 and conforming in two steps. Commenters asserted that NRC's action is illegal, that it does not meet the explicit intent of UMTRCA, and that NRC should conform to the ground-water standards in 40 CFR Part 192 immediately. Concern that a four-year rulemaking on ground water delays compliance with EPA's ground-water requirements was expressed. Commenters objected to NRC's position that conforming to EPA's ground-water standards should be combined with developing a rule that fully meets the mandate in section 84a(3) to have general requirements that are comparable to EPA's requirements for similar materials regulated under the Solid Waste Disposal Act. EPA argued that the EPA standards in 40 CFR Part 192 already meet this requirement to be comparable.

Response. While it is true that section 275f(3) of the AEA required the NRC to conform its tailings regulations to EPA's tailings standards by March 30, 1984, immediate conformance is not necessary because the NRC is applying appropriate aspects of 40 CFR Part 192 in individual licensing actions. Section 275d requires the NRC to implement and enforce the EPA standards during the conduct of NRC licensing activities. The Commission's general obligations under section 275d may be implemented in whole or in part by the NRC's conformed regulations promulgated in accordance with section 275f(3). In the absence of revised regulations under section 275f(3), the Commission must apply EPA's standards on a case-by-case basis as determined to be appropriate in each licensing action.

The NRC's responsibility to implement *EPA's* standards in individual licensing actions, independent of whether the NRC's regulations are conformed to those standards, explains why Congress did not attach any consequences to any NRC failure to meet the deadline in section 275f(3). Therefore, until the NRC conforms its regulations, the public health, safety and the environment will be protected by the NRC's case-by-case application of EPA's standards.

The scope and timing of the second-step rulemaking is still under consideration. Comments on the ANPRM are being analyzed. A simple rule change to incorporate the specific ground-water protection provisions of 40 CFR Part 192 is one option being considered.

Comment. One environmental group and industry urged that NRC delay conforming action until the legal challenges to the EPA standard in the Tenth Circuit are settled.

Response. EPA's rules, where consistent with their jurisdiction, must be deemed valid unless and until modified by a court. EPA contends that its rules were issued in accordance with the statutory authority and requirements applicable to those rules. Therefore, EPA contends that its rules have the force of law. Because the Commission does not sit as a reviewing court, it must accept EPA's rules as lawful, unless they are based on an interpretation of statutory authority addressed to the Commission, e.g., section 84c. Thus, absent a judicial decision to the contrary, the Commission must exercise its statutory responsibilities by implementing EPA's standards which do not conflict with the Commission's interpretation of its own statutory authority.

Scope of Rulemaking

Comments. Commenters offered a wide range of views on the scope of the rulemaking. NRC was urged to undertake an independent new rulemaking. An environmental group advocated the complete revision of 10 CFR Part 40, Appendix A, as issued in October, 1980 to provide more protection from radon. Industry argued that NRC must undertake a completely new independent rulemaking to replace both the EPA and NRC rules. Industry asserted that EPA's standards are not adequately supported by analysis relating costs and risks and are outside EPA's jurisdiction and that NRC has provided no analysis establishing that Appendix A of Part 40 requirements are reasonably related in terms of cost, risks, and benefits. A key point in industry arguments was the 1983 (Pub. L. 97-415) addition to section 84a(1) of the AEA requiring the Commission to insure that the management of byproduct material takes ". . . into account the risk to the public health, safety, and the environment, with due consideration of the economic costs and such other factors as the Commission determines to be appropriate." The industry arguments imply that this addition mandates a total reconsideration and revision of NRC rules. Industry also noted the depressed economic state of the industry and early stabilization plans that have resulted since the 1980 rule.

Response. To the extent that commenters have challenged EPA's compliance with section 84a(1), that challenge is not properly before the Commission. As explained above, except for matters of interpretation of the Commission's statutory authority, the Commission must take as legally binding EPA's regulations, unless and until they are modified by a court.

As for the contention that the 1980 regulations did not properly take into account risks and economic costs, the legislative history of section 84a(1) clearly showed that Congress had no intention of requiring the Commission to completely redo the rulemaking on uranium mill tailings.

Section 84a(1) of the Atomic Energy Act of 1954 was amended to explicitly authorize the Commission to consider the risk to public health, safety and the environment with due consideration of the economic costs of its requirements. In explaining this amendment, the Conference Report explicitly eschewed any attempt to require cost-benefit analysis for the 1980 regulations. The Conferees stated:

> The conferees do not intend and specifically oppose by this language affecting any pending litigation or appeal or judicial decisions based on the fundamental missions or responsibilities of the agencies. The conferees note that this language reflects accurately the current regulatory approach of the agencies. The language agreed to by the conferees should not result in any delays in establishment of remedial action standards. EPA, for example, has already advised the conferees that it is considering costs in

formulating its inactive site requirements. *In addition, the NRC has testified before Congress that it, too, took costs into account in promulgating its Uranium Mill Licensing Requirements.* Moreover, in adopting the language, the conferees intend neither to divert EPA and NRC from their principal focus on protecting the public health and safety *nor to require that the agencies engage in cost-benefit analysis or optimization.*

The conferees are of the view that the economic and environmental costs associated with standards and requirements established by the agencies should bear a reasonable relationship to the benefits expected to be derived. This recognition is consistent with the accepted approach to establishing radiation protection standards, and reflects the view of the conferees that, in promulgating such general environmental standards and regulations, EPA and NRC should exercise their best independent technical judgment in making such a determination. At all times, the conferees fully intend that EPA and NRC recognize as their paramount responsibility, protection of the public health and safety and the environment. [H.R. Rep. No. 97–884 (Conference Report), 97th Cong., 2d Sess. 471 (1982) (emphasis supplied).]

Moreover, it would be duplicative for the NRC to consider again risks and costs as part of the process of conforming its requirements to EPA's standards. EPA has already taken risks and costs into account in formulating its standards under section 275b(1). Recognizing that EPA would take these factors into account, the statute explicitly does *not* require the NRC to consider the same factors as part of the conformance process, *see* section 275f(3). This statutory provision, by its simplicity, just emphasizes Congress' intent to make the conformance procedure as straightforward an adoption of the EPA standards as possible.

The Commission views the mandate in section 84a(1) as applying to all aspects of its uranium recovery program. Thus section 84a(1) should be emphasized in Appendix A to make it clear that the NRC will in fact consider risks and economic costs and site specific needs in general. The insert to the Introduction to Appendix A that paraphrases section 84a(1) will explicitly emphasize this point.

The Commission also believes that implementation of "practicable" should be consistent with the intent of section 84a(1) and with the "as low as reasonably achievable" (ALARA) Commission policy stated in 10 CFR Part 20. This point is clarified by paraphrasing 10 CFR 20.1(c) in an addition to the Introduction to Appendix A.

Industry comments on the depressed state of the industry are valid and licensees are faced with early reclamation. However, the Commission believes that this situation only emphasizes the site specific decisions needed and does not support the need for new rulemaking.

Comments. All categories of commenters advocated specific suggestions to expand the scope of the proposed rulemaking. Commenters generally fell into three categories—those advocating: (1) Additional changes needed to conform to the EPA standards, (2) additional changes that would make 10 CFR Part 40 more explicit or more protective of public health, safety, and environment but that are not directly related to conforming to the EPA standards, and (3) additional changes that would make Part 40 less restrictive or would conform Part 40 to the collective intent of Congress expressed in various legislation and hearing records rather than conforming it to the EPA standards. Comments in the first category were considered within the scope of this rulemaking. Comments in the latter two categories will be considered along with comments received on the accompanying ANPRM.

One commenter suggested that the Commission require that design calculations for covers incorporate a design margin to account explicitly for changes in moisture content and porosity, external erosional forces, and internal chemical reactions in order to meet the reasonable assurance provision of the EPA radon and longevity standard over the long term.

Response. The factors identified are important to consider in evaluating expected cover performance. However, these factors are very site specific and represent a level of detail that NRC normally relegates to guidance or procedural documents. The design margin recommended is essentially applied in the staff's use of conservative material parameters in the site specific evaluation of the design of soil and rock covers.

Comment. NRC was urged to add an active monitoring program for tailings stability to the Commission's rules.

Response. Criterion 12 of the Commission's rules has a minimum requirement for annual inspections by the custodial government agency to confirm the integrity of stabilization and the need for any maintenance.

Comment. Industry recommended a number of changes based on the Commission's earlier suspension action. The recommended changes and rationale for action were essentially the same as presented in the suspension notices. Examples include deletion of below grade or equivalent as the prime option in Criterion 3 and deletion of radium content restrictions on cover materials in Criterion 6.

Response. The purpose of this action is to promulgate nondiscretionary conforming changes in order to eliminate conflicts and inconsistencies, add imposed standards and Congressional direction, and make minor editorial or clarifying changes. Industry comments were mainly statements or claims based on what "may not be required" and would require extensive new rulemaking. Therefore, these comments are considered outside the scope of the present action.

Comments on 40 CFR Part 192

Comment. Virtually all categories of commenters offered comments on the validity and merits of the EPA standard. The majority reflected dissatisfaction.

Response. As noted in the accompanying ANPRM (49 FR 46427), the Commission must focus on choices and decisions it must make on actions within its discretion. Until or unless court action sets aside the EPA standards, they are binding on NRC and Agreement State licensees. NRC licensees are faced with two sets of effective regulations that contain conflicting or inconsistent requirements. Under law, NRC must implement and enforce both.

Consistent with the Commission Authority and Responsibility statement, the Commission will not implement and enforce 40 CFR 192.32(a)(2)(v), which requires EPA's concurrence on site-specific NRC alternatives to other requirements under Part 192, because that paragraph is contrary to the Commission's statutory authority under section 84c. The Commission believes that removing conflicts and inconsistencies in the two sets of regulations and using site specific alternative authority to deal with occasional site specific problems represents the best regulatory approach.

Thus, comments on the lawfulness, merits and value of the EPA standards were considered outside the scope of this action and were not a factor in developing this final rule.

Other

Comment. One State questioned how the process of dealing with alternatives using the type of flexibility afforded by section 84c of the AEA would work in Agreement States.

Response. Section 19 of Pub. L. 97–415, the NRC Authorization Act for fiscal years 1982 and 1983, added the following option to section 274o of the

AEA for Agreement States: ". . . the State may adopt alternatives [including, where appropriate, site-specific alternatives) to the requirements adopted and enforced by the Commission for the same purpose if, after notice and opportunity for public hearing, the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety and the environment from radiological and non-radiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator the Environmental Protection Agency in accordance with section 275. Such alternative State requirements may take into account local or regional conditions, including geology topography, hydrology and meteorology."

The Commission must determine that alternative standards adopted by the State achieve the required levels of protection. Further, the Commission must notice the alternatives and provide an opportunity to request public hearing. This additional flexibility to adopt generic or site specific standards is available to the State regardless of the status of the State's regulations.

. The comment does point out that 10 CFR 150.31 should be amended to add the option quoted above. Including the language in Part 150 is not legally required for the State to exercise the option, but the amendment to Part 150 would clarify the situation.

No comments were received on the Regulatory Flexibility Certification or Paperwork Reduction Act Statement in the notice. No specific comments were received on the NEPA discussion under Impact of the Amendments.

Comments on Specific Proposed Modifications to Appendix A 10 CFR Part 40

The proposed rule preamble listed the specific modifications and rationale for each change. The list followed the order of 10 CFR Part 40, Appendix A. In the following analysis, each of the modifications are summarized and addressed. The numbering system from the proposed rule preamble is used.

Introduction

Modification 1.(a). Typographical error and no comments were received.

Modification 1.(b). This proposed change deleted an outdated information submittal requirement associated with the 1980 publication of Appendix A.

Comment. One commenter expressed concern that the deletion would mean that detailed information on licensees' programs showing how they meet the criteria in Appendix A would not be required.

Response. Licensee compliance with Appendix A and the EPA standards is being handled and documented in the routine course of licensing and enforcement activities. A specific or separate submittal is not needed and would represent an unwarranted burden on licensees.

Modification 1.(c). This change would add a paraphrase of the provisions of section 84c of the AEA. The language provides applicants and licensees the opportunity to propose alternatives to the specific requirements of Appendix A.

Comments. Comments on the addition of the flexibility provisions of section 84c to the Introduction generally did not take issue with the addition itself since it paraphrased the law. States and environmental groups expressed concerns about implementation. Some of the industry commenters favored extensive supplemental rulemaking to reduce the burden on licensees to develop alternatives.

Response. The Commission agrees that additional guidance on how to implement the section 84c flexibility may be needed. Generic guidance is difficult to prepare absent experience with specific proposals. NRC has used this flexibility only once. In addition, detailed implementation guidance is normally not included in the Commission's rules. It is developed in more flexible guidance documents.

Criterion 1

Modification 2.(a). This change would delete, "thousands of years," and add the 1,000-year time frame in the EPA design standard. Editorial errors confused the specifics of this modification. The first paragraph of proposed modified Criterion 1 should have read: "In selecting among alternative tailings disposal sites or judging the adequacy of existing tailings sites, the following site features which will determine the extent to which a program meets the broad objective of isolating the tailings and associated contaminants from man and the environment during operations and for 1,000 years thereafter, without ongoing active maintenance, shall be considered."

Comments. Comments on proposed changes to the time frame in Criterion 1 reflected confusion on goals or objectives versus requirements and disagreement on times and reliance on active maintenance. State and environmental comments urged times greater than the 1,000-year EPA design standard on cover longevity and no reliance on maintenance. Industry favored a 200-year goal and reliance on maintenance.

Response. Comments highlighted an important reason for the reactions to the existing language and the proposed change. The first paragraph of Criterion 1 is a statement of a very general goal or objective, not a specific standard or requirement. The proposed change and associated editorial errors compounded the problem. It was intended to prevent misunderstandings due to the reference to thousands of years, not to repeat the specific design standard being added to Criterion 6.

Comments advocating a 200-year goal are directed at the EPA design standard and how it will be implemented in site specific actions. EPA's primary design standard is 1,000 years. Accordingly, the Commission has no discretion to promulgate a different design standard for a shorter period. Nor is the Commission authorized to establish a longer period as a stabilization requirement. The Commission's authority under section 84a(1) must be read in conjunction with the limits on that authority in section 84a(2). Taken together, these provisions authorize the Commission to exercise its discretion within the bounds established by EPA's standards. Further, as a general goal, permanent isolation with no planned reliance on active maintenance is consistent with the findings in the GEIS, the EPA standard and the Congressional intent in section 161x(2) of the AEA that states: ". . . the need for long term maintenance and monitoring . . . will be minimized and, to the maximum extent practicable, eliminated." Because Congress did not flatly prohibit maintenance, NRC may consider it, but the preference for no maintenance is clear.

The first paragraph of Criterion 1 is being clarified to emphasize that it states a goal and not a standard, and to delete any specific time frame. "Shall" is being changed to "should" in the fourth paragraph of Criterion 1 to further emphasize the goal concept.

Modification 2.(b). This change would delete the ground-water modifier "usable" to be consistent with the primary thrust of the EPA standard to protect all ground water.

Comments. State and environmental commenters supported this change and industry opposed it for reasons

discussed under Criterion 5 modifications.

Response. The general goal of the EPA standard is to protect all ground water. The proposed change was not intended to set aside the site specific option to pursue alternate concentration limits which may be based in part on the existing and potential use of the ground water. The existing language in Criterion 1 referring to ". . . isolation of contaminants from usable ground water sources" conflicts with the EPA standard.

Criterion 3

Modification 3.(a). This change would delete the ground-water modifiers "high quality" to be consistent with the primary thrust of the EPA standard.

No new issues were raised on this change.

Criterion 4

Modification 4.(a). This change would delete "maximum possible flood" and insert "Probable Maximum Flood" (PMF).

Comments. Comments on the proposed change in Criterion 4 to replace "maximum possible flood" with "Probable Maximum Flood" reflected divergent views on the appropriate design flood to be used in analysis. Environmental commenters favored maximum conservatism and industry advocated less conservative assumptions than either the existing or proposed language.

Response. The intent of paragraph (a) in Criterion 4 is to require that siting of tailings disposal areas minimize the upstream catchment area to reduce the potential for erosion regardless of the magnitude of the design flood. The modifiers "maximum possible" and "probable maximum" are both inappropriate since this criterion is not intended to discuss design flood requirements. Decisions on design flood requirements will be tied to a necessary showing that the tailings pile will remain stabilized for the 1,000-year period in the EPA longevity standard. In order to emphasize the primary purpose of the requirement, the Commission is replacing "probable maximum flood" with "floods."

Criterion 5

Proposed changes to Criteria 1, 3, and 5 were all intended to reflect that the EPA standard starts from a premise that no seepage from new or expanded impoundments or degradation of ground water are allowed and that all ground water is to be protected regardless of quality or use category.

Comments. Industry strongly opposed protecting non-usable ground water, recommended deferring all ground-water changes, and argued that the EPA ground-water standards are invalid because they fail the Congressional test of comparability to standards for wastes of similar hazard (e.g., mining wastes). EPA made a general comment that more distinction between existing and new sites is needed.

Response. The comments clearly reflect confusion about the status of the EPA ground-water protection standards, the status of 10 CFR Part 40 Appendix A requirements, and the basis for proposing the few changes related to ground-water protection in advance of more comprehensive rulemaking on ground water. As discussed earlier, the EPA standards have been applicable since December 6, 1983. NRC rulemaking is not required to impose the EPA standards. The proposed changes to Appendix A, and Criterion 5 in particular, were all intended to reflect the EPA standard reflects the RCRA ground-water protection strategy and starts from a premise that no seepage from the impoundments or degradation of ground water is allowed and that all ground water is to be protected regardless of quality or use category. The changes were intended to remove language that explicitly conflicted with this basic strategy. They were not intended to fully conform to or to modify the EPA groundwater protection standard in any way.

The EPA comment that the distinction between new and existing sites was not reflected was based on the brief rationale for the proposed change rather than the changes themselves. The rationale did not address the complex site specific options provided under the EPA standard (i.e., the use of site specific alternate concentration limits as the secondary standard). Criterion 5, as modified in this rulemaking does not impact the existing/new site provisions and site specific provisions of 40 CFR Part 192 and no additional changes are warranted on this basis.

Specific clarification of the dual regulatory situation on ground water is needed and an insert at the beginning of Criterion 5 is being added.

Modification 5.(a). This change would delete language implying that seepage to ground water is acceptable if it does not change the use category.

No new issues were raised on this change.

Modification 5.(b). This change would delete language referring to bottom liners of "low permeability."

Comment. Commenters generally raised issues similar to those raised elsewhere on ground water. One commenter opposed this modification on technical grounds and pointed out that no material is totally impermeable and that state-of-the-art liners have permeability ratings on the order of 10^{-12}m/sec.

Response. The observation that in an absolute and theoretical sense even synthetic liners are permeable, is correct. Commission concern is that most people reading the reference to "low permeability" will not consider the absolute or theoretical concept and that most readers would consider clay as low permeability and synthetic materials as impermeable. Deletion of "low permeability" leaves the issue of what type of liners are acceptable to the more specific EPA standards.

Modification 5. (c). This change would delete a reference to potential use category as a standard.

Comments. Commenters questioned implementation aspects. One commenter stated that deletion would leave the issue of degree of groundwater restoration open and another that deletion allows NRC to be more restrictive in degree of restoration than the EPA standard.

Response. Deletion of the requirement to restore to ground water "to its potential use before milling operations began to the maximum extent practicable," does leave the degree of restoration open. The degree of restoration will be determined on a site specific basis in accordance with the EPA ground-water protection standards.

Modification 5.(d). This change would delete references to use category and tailings in contact with ground water.

No significant new issues were raised in comments on this proposed change.

Modification 5.(e). The ground-water modifer "usable" would be deleted.

No significant new issues were raised in comments on this proposed change.

Criterion 6

Modification 6.(a). This change would delete the two picocuries per square meter per second radon flux and minimum 3-meter cover thickness provisions and insert EPA's radon flux and longevity and stabilization standard.

Comments. Commenters objected to incorporation of the EPA longevity and radon design standards into Criterion 6. Many of the arguments were directed against the EPA standard as being too lax to adequately protect health and the environment. On the other hand, many commenters argued that the standards were more stringent than warranted by the risks.

Response. As noted earlier, comments directed at the validity and merits of the EPA standard are considered outside the scope of this rulemaking proceeding.

Comments. Several commenters urged NRC to keep its more restrictive radon limit and 3-meter minimum cover. Commenters urging NRC to keep its more restrictive radon limit argued that the 2 picocurie flux is ALARA, is easily met based on the Department of Energy's (DOE) Title I research experience and is cost effective. Comments urging that the 3-meter requirement be retained based their position primarily on the protection 3 meters of earth affords against erosion and intrusion.

Response. The new issue raised on the radon limit is the reference to Title I research. The DOE Title I research experience compared costs for different types of cover stategies; however these studies did not include analyses which would result in conclusions on the warranted levels of radon releases from covered tailings. To truly investigate whether the meeting of the 2 pCi/m^2s flux criterion is ALARA would require a cost-benefit analysis, which EPA did in promulgting its standard. EPA established the radon flux limit at 20 pCi/m^2s and NRC must conform.

The specific thickness of 3 meters was set to meet a 2 picocurie or twice-background performance criteria and is inconsistent with the higher EPA 20 picocurie flux limit. Alternatives to earth or in conjuction with earth may be adequate to meet the new, higher flux limit. Further, well designed rock covers on the tops and side slopes of reclaimed tailings can provide sufficient erosion and intruder protection so that 3 meters of earth cannot be justified on the basis of the EPA longevity standard. Therefore, the three meter requirement has been deleted as inflexibly inconsistent with EPA's radon flux standard.

Comment. One State objected to including the 200-year minimum longevity requirement based on the small incremental costs and practicality of meeting the longer (1,000-year) time and the longevity of the hazards from tailings.

Response. The 200-year minimum longevity requirement provides relief in those unique reclamation situations where the 1,000-year criterion can be shown to impose too much of a cost hardship. The Commission views the EPA longevity standard to be 1,000 years unless site specific circumstances preclude meeting 1,000 years.

Comment. One State objected to NRC's proposed use of design standards and suggested that NRC rules explicitly require proof that the design has been met by the reclamation actions.

Response. The EPA longevity and radon standard is written as a design standard. Requirements to confirm adequacy of design during and after construction have merit but will be very site and design specific. Normal inspection and enforcement activities would include quality control and compliance with designs approved and specified in license conditions. If unique site circumstances warrant, a requirement to confirm design parameters after the fact is not precluded.

Comments. Three commenters offered clarifying suggestions. They included clarifying the reference to "permanent disposal," defining the term "disposal area," and addressing how the longevity design standard will be implemented. One commenter also suggested that the standard be clarified to make it clear, that to the extent practicable, the cover would still meet the 20 picocurie flux limit at the end of the 1,000-year design period.

Response. The Commission is implementing the suggestion to clarify "permanent disposal" but believes that "disposal area" is adequately addressed in the context of the proposed changes. The suggestion to address implementation would result in a level of detail in the rule normally relegated to NRC guidance documents.

The Commission agrees that the EPA standard is not completely clear that the flux limit is to be met throughout the effective design life to the extent practicable and is clarifying this point.

Comments. Industry opposed including any EPA standards for thorium byproduct material or, if some standard is included, suggested that explicit flexibility for site specific decisions should also be included. Industry also suggested a 50-year stabilization time period for thorium byproduct materials.

Response. The comments opposing incorporation of the EPA standards for thorium byproduct material generally express dissatisfaction with the EPA standard itself. The thorium standards proposed for insertion are already in effect on NRC and State licensees and are nondiscretionary. The EPA standard in 40 CFR 192.42 provides for substitute generic provisions to those in Subpart E, but with EPA concurrence. NRC has the authority to consider and approve site specific alternatives if the finding in section 84c of the AEA can be made.

Modification 8.(b). This change would add the two radon flux modifying footnotes from the EPA standard that specify that no monitoring is required, averaging is allowed, and cover materials do not have to be considered in meeting the flux limit.

Comments. Several State and environmental commenters objected to the incorporation of the EPA footnote qualifying the longevity and radon standard as a design standard not requiring confirmatory monitoring. Averaging provisions and disregard of the radon from cover materials in the footnotes were also of concern.

Response. The footnotes quoted from the EPA standards in 40 CFR Part 192 are necessary to define how EPA intended the longevity and radon standards to be used. The footnotes set the conditions which EPA supported as a reasonable balance of cost and benefit that would be achievable with present state of the art. The practical problems which led EPA to issue a design standard and NRC experience in radon attenuation measurements and calculations convince the Commission that flux monitoring should not be mandated. Measurement of flux levels in the field is difficult and subject to wide variations due to factors such as sensitivity to measurement methods, meteorological variations, nonhomogeneity of the tailings piles, and disturbance of the radon releases by the monitoring process. NRC's current method for providing reasonable assurance that the EPA flux standard will be met focuses on the selection and application of parameters and calculational methodology for radon barrier design. NRC expects to review quality assurance records during construction to assure that the approved design is implemented in the field. The Commission notes that Agreement States can adopt more restrictive standards than EPA or NRC and may mandate monitoring if desired.

NRC experience also supports the need for averaging over the impoundment. The tailings are not homogeneous. As a practical matter, radon transport offsite results in mixing before the public is exposed so that doses are reflected by average values. Details on calculation methods are more appropriate in guidance documents that can be tailored to site specific conditions and track state-of-the-art experience.

Concern about high radium content of cover materials is addressed in the second paragraph of the proposed modified Criterion 6. The second paragraph contains the requirements on low radium content that were already in Appendix A. The footnote only clarifies that the EPA standard applies to the tailings flux through the cover and that

radon from cover materials are not to be included in demonstrating compliance with the 20 picocurie flux.

Modification 6.(c). This change would correct a typographical error and delete the 3-meter requirement.

No new issues were raised on this change.

Modification 6.(d). This change would add the threshold radium levels for applicability of the EPA standard on longevity and control of radon releases.

Comments. One State expressed the view that the provision allowing averaging of radium content over 100 square meters allows highly contaminated small areas to be ignored and is therefore insufficiently protective. Other comments were based on the validity and merits of the EPA standards, particularly the thorium standards.

Response. The proposed language is needed to reflect the conditions under which EPA intended the longevity and radon standard to apply. The modification as proposed would allow NRC to be more restrictive if warranted by site specific conditions. NRC may require some degree of control for areas contaminated above background but below the threshold levels. A rule change is not needed to maintain this option on a site specific basis.

Criterion 8

Modification 7.(a). The change would add the EPA standard on the "as low as practicable" goal for radon releases during operations.

Comments. Commenters questioned implementation aspects of the Criterion 8 change. One commenter argued for the current terminology reflected in 10 CFR Part 20 for keeping releases as low as reasonably achievable (ALARA) as the true EPA intent.

Response. The Commission agrees that EPA's intent was to impose the ALARA principal and that ALARA is more consistent with Commission radiation protection policies as reflected in 10 CFR Part 20. The actual language in a standard has greater legal force than the preamble for the rule, but in this case, since numerical values or other specific provisions are not involved, the Commission has more flexibility in conforming.

Modification 7.(b). These changes would add language from the EPA standard imposing 40 CFR Part 190 equivalent limits for thorium byproduct materials and compliance with 40 CFR Part 440, Subpart C.

Comments. One environmental commenter objected to the "reasonable assurance" language. Industry repeated objections to all the thorium standards. Industry recommended that waiver provisions from a recent EPA rulemaking under the Clean Air Act (50 FR 5190, February 6, 1985) be incorporated into the thorium dose limits. Industry also opposed adding the language requiring compliance with 40 CFR Part 440, Subpart C stating that these regulations are invalid since EPA lacks authority to regulate byproduct material under the Clean Water Act.

Response. The proposed text was quoted verbatim from the EPA standard in 40 CFR Part 192. No deletions or modifications of existing NRC rules are involved. The proposed change incorporates for clarity standards that are already binding on NRC licensees and eliminates the need to refer to 40 CFR Part 192 for any requirements other than ground-water protection. The waiver provisions suggested may have merit in considering site specific situations but are outside the scope of this rulemaking. The Commission sees no merit in arguments that 40 CFR Part 440, Subpart C, is invalid as a standard incorporated by reference into 40 CFR Part 192.

Modification 8. Criteria 2, 7, 9, 10, 11, and 12 are not affected by proposed changes.

Changes to these criteria recommended by commenters are outside the scope of this rulemaking.

Modifications

The Commission is issuing the following modifications to Appendix A to 10 CFR Part 40:

1. Introduction.

(a) In the second sentence of the third paragraph, change "amendability" to "amenability."

(b) Delete the fourth paragraph in its entirety.

(c) Add the following two paragraphs at the end:

"Licensees or applicants may propose alternatives to the specific requirements in this Appendix. The alternative proposals may take into account local or regional conditions, including geology, topography, hydrology, and meteorology. The Commission may find that the proposed alternatives meet the Commission's requirements if the alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with the sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by the requirements of this Appendix and the standards promulgated by the Environmental Protection Agency in 40 CFR Part 192, Subparts D and E."

"All site specific licensing decisions based on the criteria in this Appendix or alternatives proposed by licensees or applicants will take into account the risk to the public health and safety and the environment with due consideration to the economic costs involved and any other factors the Commission determines appropriate. In implementing this Appendix, the Commission will consider "practicable" and "reasonably achievable" as equivalent terms. Decisions involving these terms will take into account the state of technology, and the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to the utilization of atomic energy in the public interest."

2. Criterion 1.

(a) Revise the first paragraph to read:

"The general goal or broad objective in siting and design decisions is permanent isolation of tailings and associated contaminants by minimizing disturbance and dispersion by natural forces, and to do so without ongoing maintenance. For practical reasons, specific siting decisions and design standards must involve finite times (e.g., the longevity design standard in Criterion 6). The following site features which will contribute to such a goal or objective must be considered in selecting among alternative tailings disposal sites or judging the adequacy of existing tailings sites:"

(b) In the second listed item of the first paragraph, delete the word "usable".

(c) In the fourth paragraph delete the word "shall" and insert "should".

3. Criterion 3.

(a) Delete the modifers "high quality" for ground water in the third sentence.

4. Criterion 4.

(a) Revise paragraph (a) by deleting "maximum possible flood" and inserting "floods".

5. Criterion 5.

(a) Add the following paragraph at the beginning:

"Licensees and applicants are reminded that Subparts D and E of 40 CFR Part 192 have been applicable since December 6, 1983. The goal of the EPA standards in 40 CFR Part 192 is nondegradation of all ground water. The primary ground-water standard in 40 CFR 192.32(a)(1), which applies to new or expanded impoundments, does not include consideration of existing or future ground-water quality. The secondary standard in 40 CFR

192.32(a)(2) applies to management of all byproduct material including existing and new or expanded impoundments. In the secondary standard, several ground-water quality criteria are considered, especially in site specific decisions on applications for alternate concentration limits. Criterion 5 supplements and does not conflict with or modify provisions of 40 CFR Part 192. Until or unless the Commission undertakes additional rulemaking as described in the advance notice of proposed rulemaking published in the **Federal Register** on November 26, 1984 (49 FR 46425), licensees and applicants should consult 40 CFR Part 192 for the applicable ground-water protection requirements. In the interim, the Commission is applying appropriate aspects of 40 CFR Part 192 in individual licensing actions on a case-by-case basis through license conditions and orders."

(b) Delete in its entirely the first paragraph beginning "Steps shall be taken . . ." and ending ". . . this objective." and insert the following: "In developing and conducting ground-water protection programs, applicants and licensees shall consider the following:".

(c) In the first listed item under the first paragraph beginning with "Installation of . . ." delete the words "low permeability" as a characteristic of bottom liners.

(d) In the second paragraph beginning "Where ground water impacts . . ." delete the phrase "to its potential use before milling operations began to the maximum extent practicable."

(e) Delete in its entirety the third paragraph beginning "While the primary method of protecting ground water shall be isolated . . ." and ending ". . . from current or potential uses."

(f) In the first sentence of the fifth paragraph beginning "This information must be gathered . . ." delete the word "usable" where it modifies "ground water."

6. Criterion 6.

(a) Delete the first sentence in entirety, beginning with "Sufficient earth cover . . ." and ending with ". . . meter per second.", and in its place insert "In disposing of waste byproduct material, licensees shall place an earthen cover over tailings or wastes at the end of milling operations and shall close the waste disposal area in accordance with a design[1] which provides reasonable assurance of control of radiological hazards to (i) be effective for one thousand years, to the extent reasonably achievable, and, in any case, for at least 200 years, and (ii) limit releases of radon-222 from uranium byproduct materials, and radon-220 from thorium byproduct materials, to the atmosphere so as to not exceed an average[2] release rate of 20 picocuries per square meter per second (pCi/m^{2}s) to the extent practicable throughout the effective design life determined pursuant to (i) above."

(b) Add to Criterion 6 the following two footnotes which accompany the revised first sentence: Footnote (1) "The standard applies to design. Monitoring for radon after installation of an appropriately designed cover is not required," and footnote (2) "This average applies to the entire surface of each disposal area over periods of at least one year, but short compared to 100 years. Radon will come from both uranium byproduct materials and from covering materials. Radon emissions from covering materials should be estimated as part of developing a closure plan for each site. The standard, however, applies only to emissions from byproduct materials to the atmosphere."

(c) In the fifth sentence of the first paragraph, replace "non-soiled" with "non-soil," and replace the words "to reduce tailings covers to less than three meters" with the words "as cover materials."

(d) At the end of Criterion 6, add a new paragraph to read: "The design requirements in this Criterion for longevity and control of radon releases apply to any portion of a licensed and/or disposal site unless such portion contains a concentration of radium in land, averaged over areas of 100 square meters, which, as a result of byproduct material does not exceed the background level by more than: (i) 5 picocuries per gram (pCi/g) of radium-226, or, in the case of thorium byproduct material, radium-228, averaged over the first 15 centimeters (cm) below the surface, and (ii) 15 pCi/g of radium-226, or, in the case of thorium byproduct material, radium-228, averaged over 15-cm thick layers more than 15 cm below the surface.

7. Criterion 8.

(a) At the end of the first full paragraph, add a new sentence to read "During operations and prior to closure, radiation doses from radon emissions from surface impoundments must be kept as low as is reasonably achievable."

(b) Following the third full paragraph of Criterion 8, just before Criterion 8A, insert the following two new paragraphs:

"Milling operations producing or involving thorium byproduct material must be conducted in such a manner as to provide reasonable assurance that the annual dose equivalent does not exceed 25 millirems to the whole body, 75 millirems to the thyroid, and 25 millirems to any other organ of any member of the public as a result of exposures to the planned discharge of radioactive materials, radon-220 and its daughters excepted, to the general environment."

"Uranium and thorium byproduct materials must be managed so as to conform to the applicable provisions of Title 40 of the Code of Federal Regulations, Part 440, Ore Mining and Dressing Point Source Category: Effluent Limitations Guidelines and New Source Performance Standards, Subpart C, Uranium, Radium, and Vanadium Ores Subcategory, as codified on January 1, 1983."

8. Criteria 2, 7, 9, 10, 11, and 12 are not affected by this action.

The Commission is also issuing the following change to 10 CFR Part 150:

9. At the end of § 150.31, a new paragraph (d) is added to read: "In adopting requirements pursuant to paragraph (b)(2) of this section, the State may adopt alternatives (including, where appropriate, site-specific alternatives) to the requirements adopted and enforced by the Commission for the same purpose if, after notice and opportunity for public hearing, the Commission determines that the alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with section 275. Alternative State requirements may take into account local or regional conditions, including geology, topography, hydrology and meteorology."

The Commission is also adopting the standard convention on imposing an obligation or expressing a prohibition. This convention is endorsed by the Office of the Federal Register and is being used in a significant portion of Federal regulatory writing. In this convention, "shall" is used to impose an obligation on an individual or a legal entity capable of performing the required action, "must" is used as the mandatory form when the subject is an inanimate object and "may not" is used to express a prohibition. All of Appendix A now reflects this standard convention.

Commission Authority and Responsibility

Section 84c. of the Atomic Energy Act states that:

> A Licensee may propose alternatives to specific requirements adopted and enforced by the Commission under this act. Such alternative proposals may take into account local or regional conditions, including geology, topography, hydrology and meteorology. The Commission may treat such alternatives as satisfying Commission requirements if the Commission determines that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with section 275.

The Commission historically has had the authority and responsibility to regulate the activities of persons licensed under the Atomic Energy Act of 1954, as amended. Consistent with that authority and in accordance with section 84c. of that Act, the Commission has the discretion to review and approve site specific alternatives to standards promulgated by the Commission and by the Administrator of the Environmental Protection Agency. In the exercise of this authority, section 84c. does not require the Commission to obtain the concurrence of the Administrator in any site specific alternative which satisfies Commission requirements for the level of protection for public health, safety, and the environment from radiological and nonradiological hazards at uranium mill tailings sites. As an example, the Commission need not seek concurrence of the Administrator in case-by-case determinations of alternative concentration limits and delisting of hazardous constituents for specific sites. It should be understood that the proposed conforming regulations deal with the exercise of the Commission's responsibility and authority under the Atomic Energy Act of 1954, solely as regards uranium mill tailings sites and have no broader connotation.

The Commission believes that licensee proposals for alternatives can be an important and effective way to help deal with the problems associated with implementing the new EPA standards. The Commission expects that it may require several years to have its conforming regulations fully in place. It expects to use the flexibility provided by section 84 in the interim to consider and approve alternative proposals from licensees. Section 84c. provides NRC sufficient authority to independently approve alternatives so long as the Commission can make the required determination.

Impact of the Amendments

The Commission's action in issuing these modifications to its regulations in Appendix A to 10 CFR Part 40 is to conform them to the new EPA standards. These changes are for the purpose of avoiding conflicts and inconsistencies between the text of the two rules, and for clarifying previously existing language so as to be compatible with the new requirements. The action taken here by the Commission is a consequence of previous actions taken by the Congress and the EPA, and is legally mandated in section 275b(3) of the Atomic Energy Act of 1954, as amended.

Commission action in this case is essentially nondiscretionary in nature, and for purposes of environmental analysis, rests upon existing environmental and other impact evaluations in the following documents: (1) "Final Environmental Impact Statement for Standards for the Control of Byproduct Materials from Uranium Ore Processing (40 CFR Part 192)," Volumes 1 and 2, EPA 520/1–83–008–1 and 2 (FEIS), September 1983, and (2) "Regulatory Impact Analysis of Final Environmental Standards for Uranium Mill Tailings at Active Sites," EPA 520/1–83–010 (RIA), September 1983, both prepared in support of Subparts D and E of 40 CFR Part 192,[1] and (3) "Final Generic Environmental Impact Statement on Uranium Milling," NUREG–0706, September 1980, prepared in support of Appendix A of 10 CFR Part 40.[2] The Commission believes that these supporting analyses for the EPA standards and the existing Commission regulations provide a more than adequate environmental review for the standards addressed in this rulemaking and that no additional impact analysis is warranted by the conforming actions issued in this final rule. The EPA engaged in and completed a NEPA process with full consideration of environmental concerns, and for the purposes of this rulemaking action, can be viewed as the lead agency.

[1] Single copies of the FEIS and the RIA, as available, may be obtained from the Program Management Office (ANR–458), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, DC 20460; telephone number (703) 557–9351.

[2] Copies of NUREG–0706 may be purchased by calling (202) 275–2060 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082 or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Paperwork Reduction Act Statement

This rule does not contain a new or amended information collection requirement subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0020.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. Therefore, no Regulatory Flexibility Analysis has been prepared. The basis for this finding is that of the licensed uranium mills, only one qualifies as a small entity. Almost all the mills are owned by large corporations. Three of the mills are partly-owned by companies that could qualify as small businesses, according to the Small Business Administration generic small entity definition of 500 employees. However, under the Regulatory Flexibility Act, a small business is one that is independently owned and operated. Because these three mills are not independently owned they do not qualify as small entities.

List of Subjects

10 CFR Part 40

Government contracts, Hazardous materials-transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 150

Hazardous materials-transportation, Intergovernmental relations, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 553, and the Uranium Mill Tailings Radiation Control Act of 1978, as amended, the NRC is issuing the following amendments to 10 CFR Parts 40 and 150.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

1. The authority citation for Part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); secs. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846). Sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)-(3), 40.35(a)-(d), 40.41(b) and (c), 40.46, 40.51(a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 40.25(c) and (d)(3) and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64 and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Appendix A to Part 40 is revised to read as follows:

Appendix A to Part 40—Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material From Ores Processed Primarily for Their Source Material Content

Introduction. Every applicant for a license to possess and use source material in conjunction with uranium or thorium milling, or byproduct material at sites formerly associated with such milling, is required by the provisions of § 40.31(h) to include in a license application proposed specifications relating to milling operations and the disposition of tailings or wastes resulting from such milling activities. This appendix establishes technical, financial, ownership, and long-term site surveillance criteria relating to the siting, operation, decontamination, decommissioning, and reclamation of mills and tailings or waste systems and sites at which such mills and systems are located. As used in this appendix, the term "as low as is reasonably achievable" has the same meaning as in § 20.1(c) of 10 CFR Part 20 of this chapter.

In many cases, flexibility is provided in the criteria to allow achieving an optimum tailings disposal program on a site-specific basis. However, in such cases the objectives, technical alternatives and concerns which must be taken into account in developing a tailings program are identified. As provided by the provisions of § 40.31(h) applications for licenses must clearly demonstrate how the criteria have been addressed.

The specifications must be developed considering the expected full capacity of tailings or waste systems and the lifetime of mill operations. Where later expansions of systems or operations may be likely (for example, where large quantities of ore now marginally uneconomical may be stockpiled), the amenability of the disposal system to accommodate increased capacities without degradation in long-term stability and other performance factors must be evaluated.

Licensees or applicants may propose alternatives to the specific requirements in this Appendix. The alternative proposals may take into account local or regional conditions, including geology, topography, hydrology, and meterology. The Commission may find that the proposed alternatives meet the Commission's requirements if the alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with the sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by the requirements of this Appendix and the standards promulgated by the Environmental Protection Agency in 40 CFR Part 192, Subparts D and E.

All site specific licensing decisions based on the criteria in this Appendix or alternatives proposed by licensees or applicants will take into account the risk to the public health and safety and the environment with due consideration to the economic costs involved and any other factors the Commission determines to be appropriate. In implementing this Appendix, the Commission will consider "practicable" and "reasonably achievable" as equivalent terms. Decisions involved these terms will take into account the state of technology, and the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to the utilization of atomic energy in the public interest.

I. Technical Criteria

Criterion 1—The general goal or broad objective in siting and design decisions is permanent isolation of tailings and associated contaminants by minimizing disturbance and dispersion by natural forces, and to do so without ongoing maintenance. For practical reasons, specific siting decisions and design standards must involve finite times (e.g., the longevity design standard in Criterion 6). The following site features which will contribute to such a goal or objective must be considered in selecting among alternative tailings disposal sites or judging the adequacy of existing tailings sites:

- Remoteness from populated areas;
- Hydrologic and other natural conditions as they contribute to continued immobilization and isolation of contaminants from ground-water sources; and
- Potential for minimizing erosion, disturbance, and dispersion by natural forces over the long term.

The site selection process must be an optimization to the maximum extent reasonably achievable in terms of these features.

In the selection of disposal sites, primary emphasis must be given to isolation of tailings or wastes, a matter having long-term impacts, as opposed to consideration only of short-term convenience or benefits, such as minimization of transportation or land acquisition costs. While isolation of tailings will be a function of both site and engineering design, overriding consideration must be given to siting features given the long-term nature of the tailings hazards.

Tailings should be disposed of in a manner that no active maintenance is required to preserve conditions of the site.

Criterion 2—To avoid proliferation of small waste disposal sites and thereby reduce perpetual surveillance obligations, byproduct material from in situ extraction operations, such as residues from solution evaporation or contaminated control processes, and wastes from small remote above ground extraction operations must be disposed of at existing large mill tailings disposal sites; unless, considering the nature of the wastes, such as their volume and specific activity, and the costs and environmental impacts of transporting the wastes to a large disposal site, such offsite disposal is demonstrated to be impracticable or the advantages of onsite burial clearly outweigh the benefits of reducing the perpetual surveillance obligations.

Criterion 3—The "prime option" for disposal of tailings is placement below grade, either in mines or specially excavated pits (that is, where the need for any specially constructed retention structure is eliminated). The evaluation of alternative sites and disposal methods performed by mill operators in support of their proposed tailings disposal program (provided in applicants' environmental reports) must reflect serious consideration of this disposal mode. In some instances, below grade disposal may not be the most environmentally sound approach, such as might be the case if a ground-water formation is relatively close to the surface or not very well isolated by overlying soils and rock. Also, geologic and topographic conditions might make full below grade burial impracticable: For example, bedrock may be sufficiently near the surface that blasting would be required to excavate a disposal pit at excessive cost, and more suitable alternative sites are not available. Where full below grade burial is not practicable, the size of retention structures, and size and steepness of slopes associated exposed embankments must be minimized by excavation to the maximum extent reasonably achievable or appropriate given the geologic and hydrologic conditions at a site. In these cases, it must be demonstrated that an above grade disposal program will provide reasonably equivalent isolation of the tailings from natural erosional forces.

Criterion 4—The following site and design criteria must be adhered to whether tailings or wastes are disposed of above or below grade.

(a) Upstream rainfall catchment areas must be minimized to decrease erosion potential and the size of the floods which could erode or wash out sections of the tailings disposal area.

(b) Topographic features should provide good wind protection.

(c) Embankment and cover slopes must be relatively flat after final stabilization to minimize erosion potential and to provide conservative factors of safety assuring long-term stability. The broad objective should be to contour final slopes to grades which are as close as possible to those which would be provided if tailings were disposed of below grade; this could, for example, lead to slopes of about 10 horizontal to 1 vertical (10h:1v) or less steep. In general, slopes should not be steeper than about 5h:1v. Where steeper slopes are proposed, reasons why a slope less steep than 5h:1v would be impracticable should be provided, and compensating factors and conditions which make such slopes acceptable should be identified.

(d) A full self-sustaining vegetative cover must be established or rock cover employed to reduce wind and water erosion to negligible levels.

Where a full vegetative cover is not likely to be self-sustaining due to climatic or other conditions, such as in semi-arid and arid regions, rock cover must be employed on slopes of the impoundment system. The NRC will consider relaxing this requirement for extremely gentle slopes such as those which may exist on the top of the pile.

The following factors must be considered in establishing the final rock cover design to avoid displacement of rock particles by human and animal traffic or by natural process, and to preclude undercutting and piping:

- Shape, size, composition, and gradation of rock particles (excepting bedding material average particles size must be at least cobble size or greater);
- Rock cover thickness and zoning of particles by size; and
- Steepness of underlying slopes.

Individual rock fragments must be dense, sound, and resistant to abrasion, and must be free from cracks, seams, and other defects that would tend to unduly increase their destruction by water and frost actions. Weak, friable, or laminated aggregate may not be used.

Rock covering of slopes may be unnecessary where top covers are very thick (on the order of 10m or greater); impoundment slopes are very gentle (on the order of 10 h:1v or less); bulk cover materials have inherently favorable erosion resistance characteristics; and, there is negligible drainage catchment area upstream of the pile and good wind protection as described in points (a) and (b) of this Criterion.

Furthermore, all impoundment surfaces must be contoured to avoid areas of concentrated surface runoff or abrupt or sharp changes in slope gradient. In addition to rock cover on slopes, areas toward which surface runoff might be directed must be well protected with substantial rock cover (rip rap). In addition to providing for stability of the impoundment system itself, overall stability, erosion potential, and geomorphology of surrounding terrain must be evaluated to assure that there are not ongoing or potential processes, such as gully erosion, which would lead to impoundment instability.

(e) The impoundment may not be located near a capable fault that could cause a maximum credible earthquake larger than that which the impoundment could reasonably be expected to withstand. As used in this criterion, the term "capable fault" has the same meaning as defined in section III(g) of Appendix A of 10 CFR Part 100. The term "maximum credible earthquake" means that earthquake which would cause the maximum vibratory ground motion based upon an evaluation of earthquake potential considering the regional and local geology and seismology and specific characteristics of local subsurface material.

(f) The impoundment, where feasible, should be designed to incorporate features which will promote deposition. For example, design features which promote deposition of sediment suspended in any runoff which flows into the impoundment area might be utilized; the object of such a design feature would be to enhance the thickness of cover over time.

Criterion 5—Licensees and applicants are reminded that Subparts D and E of 40 CFR Part 192 have been applicable since December 6, 1983. The goal of the EPA standards in 40 CFR Part 192 is nondegradation of all ground water. The primary ground-water standard in 40 CFR 192.32(a)(1), which applies to new or expanded impoundments, does not include consideration of existing or future ground-water quality. The secondary standard in 40 CFR 192.32(a)(2) applies to management of all byproduct material including existing and new or expanded impoundments. In the secondary standard, several ground-water quality criteria are considered, especially in site specific decisions on applications for alternate concentration limits. Criterion 5 supplements and does not conflict with or modify provisions of 40 CFR Part 192. Until or unless the Commission undertakes additional rulemaking as described in the advance notice of proposed rulemaking published in the Federal Register on November 26, 1984 (49 FR 46425), licensees and applicants should consult 40 CFR Part 192 for the applicable ground-water protection requirements. In the interim, the Commission is applying appropriate aspects of 40 CFR Part 192 in individual licensing actions on a case-by-case basis through license conditions and orders.

In developing and conducting ground-water protection programs, applicants and licensees shall consider the following:

- Installation of bottom liners (Where synthetic liners are used, a leakage detection system must be installed immediately below the liner to ensure major failures are detected if they occur. This is in addition to the ground-water monitoring program conducted as provided in Criterion 7. Where clay liners are proposed or relatively thin, in-situ clay soils are to be relied upon for seepage control, tests must be conducted with representative tailings solutions and clay materials to confirm that no significant deterioration of permeability or stability properties will occur with continuous exposure of clay to tailings solutions. Tests must be run for a sufficient period of time to reveal any effects if they are going to occur (in some cases deterioration has been observed to occur rather rapidly after about nine months of exposure)).
- Mill process designs which provide the maximum practicable recycle of solutions and conservation of water to reduce the net input of liquid to the tailings impoundment.
- Dewatering of tailings by process devices and/or in-situ drainage systems (At new sites, tailings must be dewatered by a drainage system installed at the bottom of the impoundment to lower the phreatic surface and reduce the driving head for seepage, unless tests show tailings are not amenable to such a system. Where in-situ dewatering is to be conducted, the impoundment bottom must be graded to assure that the drains are at a low point. The drains must be protected by suitable filter materials to assure that drains remain free running. The drainage system must also be adequately sized to assure good drainage).
- Neutralization to promote immobilization of toxic substances.

Where ground-water impacts are occurring at an existing site due to seepage, action must be taken to alleviate conditions that lead to excessive seepage impacts and restore ground-water quality. The specific seepage control and ground-water protection method, or combination of methods, to be used must be worked out on a site-specific basis. Technical specifications must be prepared to control installation of seepage control systems. A quality assurance, testing, and inspection program, which includes supervision by a qualified engineer or scientist, must be established to assure the specifications are met.

In support of a tailings disposal system proposal, the applicant/operator shall supply information concerning the following:

- The chemical and radioactive characteristics of the waste solutions.
- The characteristics of the underlying soil and geologic formations particularly as they will control transport of contaminants and solutions. This includes detailed information concerning extent, thickness, uniformity, shape, and orientation of underlying strata. Hydraulic gradients and conductivities of the various formations must be determined.

This information must be gathered from borings and field survey methods taken within the proposed impoundment area and in surrounding areas where contaminants might migrate to ground water. The information gathered on boreholes must include both geologic and geophysical logs in sufficient number and degree of sophistication to allow determining significant discontinuities, fractures, and channeled deposits of high hydraulic conductivity. If field survey methods are used, they should be in addition to and calibrated with borehole logging. Hydrologic parameters such as permeability may not be determined on the basis of laboratory analysis of samples alone; a sufficient amount of field testing (e.g., pump tests) must be conducted to assure actual field properties are adequately understood. Testing must be conducted to allow estimating chemi-sorption attenuation properties of underlying soil and rock.

- Location, extent, quality, capacity and current uses of any ground water at and near the site.

Furthermore, steps must be taken during stockpiling of ore to minimize penetration of radionuclides into underlying soils; suitable methods include lining and/or compaction of ore storage areas.

Criterion 6—In disposing of waste byproduct material, licensees shall place an earthen cover over tailings or wastes at the end of milling operations and shall close the waste disposal area in accordance with a design [1] which provides reasonable assurance of control of radiological hazards to (i) be effective for 1,000 years, to the extend reasonably achievable, and, in any case, for at least 200 years, and (ii) limit releases of radon-222 from uranium byproduct materials, and radon-220 from thorium byproduct materials, to the atmosphere so as to not exceed an average [2] release rate of 20 picocuries per square meter per second (pCi/m^2s) to the extent practicable throughout the effective design life determined pursuant to (i) above. In computing required tailings cover thicknesses, moisture in soils in excess of amounts found normally in similar soils in similar circumstances may not be considered. Direct gamma exposure from the tailings or wastes should be reduced to background levels. The effects of any thin synthetic layer may not be taken into account in determining the calculated radon exhalation level. If non-soil materials are proposed as cover materials, it must be demonstrated that such materials will not crack or degrade by differential settlement, weathering, or other mechanism, over long-term time intervals.

Near surface cover materials (i.e., within the top three meters) may not include waste or rock that contains elevated levels of radium; soils used for near surface cover must be essentially the same, as far as radioactivity is concerned, as that of surrounding surface soils. This is to ensure that surface radon exhalation is not significantly above background because of the cover material itself.

The design requirements in this criterion for longevity and control of radon releases apply to any portion of a licensed and/or disposal site unless such portion contains a concentration of radium in land, averaged over areas of 100 square meters, which, as a result of byproduct material does not exceed the background level by more than: (i) 5 picocuries per gram (pCi/g) of radium-226, or, in the case of thorium byproduct material, radium-228, averaged over the first 15 centimeters (cm) below the surface, and (ii) 15 pCi/g of radium-226, or, in the case of thorium byproduct material, radium-228, averaged over 15-cm thick layers more than 15 cm below the surface.

Criterion 7—At least one full year prior to any major site construction, a preoperational monitoring program must be conducted to provide complete baseline data on a milling site and its environs. Throughout the construction and operating phases of the mill, an operational monitoring program must be conducted to measure or evaluate compliance with applicable standards and regulations; to evaluate performance of control systems and procedures; to evaluate environmental impacts of operation; and to detect potential long-term effects.

Criterion 8—Milling operations must be conducted so that all airborne effluent releases are reduced to levels as low as is reasonably achievable. The primary means of accomplishing this must be by means of emission controls. Institutional controls, such as extending the site boundary and exclusion area, may be employed to ensure that offsite exposure limits are met, but only after all practicable measures have been taken to control emissions at the source. Notwithstanding the existence of individual dose standards, strict control of emissions is necessary to assure that population exposures are reduced to the maximum extent reasonably achievable and to avoid site contamination. The greatest potential sources of offsite radiation exposure (aside from radon exposure) are dusting from dry surfaces of the tailings disposal area not covered by tailings solution and emissions from yellowcake drying and packaging operations. During operations and prior to closure, radiation doses from radon emissions from surface impoundments of uranium or thorium byproduct materials must be kept as low as is reasonably achievable.

Checks must be made and logged hourly of all parameters (e.g., differential pressures and scrubber water flow rates) which determine the efficiency of yellowcake stack emission control equipment operation. It must be determined whether or not conditions are within a range prescribed to ensure that the equipment is operating consistently near peak efficiency; corrective action must be taken when performance is outside of prescribed ranges. Effluent control devices must be operative at all times during drying and packaging operations and whenever air is exhausting from the yellowcake stack. Drying and packaging operations must terminate when controls are inoperative. When checks indicate the equipment is not operating within the range prescribed for peak efficiency, actions must be taken to restore parameters to the prescribed range. When this cannot be done without shutdown and repairs, drying and packaging operations must cease as soon as practicable. Operations may not be re-started after cessation due to off-normal performance until needed corrective actions have been identified and implemented. All such cessations, corrective actions, and re-starts must be reported to the appropriate NRC regional office as indicated in Criterion 8A, in writing, within 10 days of the subsequent restart.

To control dusting from tailings, that portion not covered by standing liquids must be wetted or chemically stabilized to prevent or minimize blowing and dusting to the maximum extent reasonably achievable. This requirement may be relaxed if tailings are effectively sheltered from wind, such as may be the case where they are disposed of below grade and the tailings surface is not exposed to wind. Consideration must be given in planning tailings disposal programs to methods which would allow phased covering and reclamation of tailings impoundments because this will help in controlling particulate and radon emissions during operation. To control dusting from diffuse sources, such as tailings and ore pads where automatic controls do not apply, operators shall develop written operating procedures specifying the methods of control which will be utilized.

Milling operations producing or involving thorium byproduct material must be conducted in such a manner as to provide reasonable assurance that the annual dose equivalent does not exceed 25 millirems to the whole body, 75 millirems to the thyroid, and 25 millirems to any other organ of any member of the public as a result of exposures to the planned discharge of radioactive materials, radon-220 and its daughters excepted, to the general environment.

Uranium and thorium byproduct materials must be managed so as to conform to the applicable provisions of Title 40 of the Code of Federal Regulations, Part 440, "Ore Mining and Dressing Point Source Category: Effluent Limitations Guidelines and New Source Performance Standards, Subpart C, Uranium, Radium, and Vanadium Ores Subcategory," as codified on January 1, 1983.

Criterion 8A—Daily inspections of tailings or waste retention systems must be conducted by a qualified engineer or scientist and documented. The appropriate NRC regional office as indicated in Appendix D of 10 CFR Part 20, or the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, must be immediately notified of any failure in a tailings or waste retention system which results in a release of tailings or waste into unrestricted areas, and/or of any unusual conditions (conditions not contemplated in the design of the retention system) which if not corrected could indicate the potential or lead to failure of the system and result in a release of tailings or waste into unrestricted areas.

II. Financial Criteria

Criterion 9—Financial surety arrangements must be established by each mill operator prior to the commencement of operations to assure that sufficient funds will be available to carry out the decontamination and decommissioning of the mill and site and for the reclamation of any tailings or waste disposal areas. The amount of funds to be ensured by such surety arrangements must be based on Commission-approved cost estimates in a Commission-approved plan for (1) decontamination and decommissioning of mill buildings and the milling site to levels which allow unrestricted use of these areas upon decommissioning, and (2) the reclamation of tailings and/or waste areas in accordance with technical criteria delineated in Section I of this Appendix. The license shall submit this plan in conjunction with an environmental report that addresses the

[1] The standard applies to design. Monitoring for radon after installation of an appropriately designed cover is not required.

[2] This average applies to the entire surface of each disposal area over periods of at least 1 year, but short compared to 100 years. Radon will come from both uranium byproduct materials and from covering materials. Radon emissions from covering materials should be estimated as part of developing a closure plan for each site. The standard, however, applies only to emissions from uranium byproduct materials to the atmosphere.

expected environmental impacts of the milling operation, decommissioning and tailings reclamation, and evaluates alternatives for mitigating these impacts. The surety must also cover the payment of the charge for long-term surveillance and control required by Criterion 10. In establishing specific surety arrangements, the licensee's cost estimates must take into account total costs that would be incurred if an independent contractor were hired to perform the decommissioning and recalmation work. In order to avoid unnecessary duplication and expense, the Commission may accept financial sureties that have been consolidated with financial or surety arrangements established to meet requirements of other Federal or state agencies and/or local governing bodies for such decommissioning, decontamination, reclamation, and long-term site surveillance and control, provided such arrangements are considered adequate to satisfy these requirements and that the portion of the surety which covers the decommissioning and reclamation of the mill, mill tailings site and associated areas, and the long-term funding charge is clearly identified and committed for use in accomplishing these activities. The licensees's surety mechanism will be reviewed annually by the Commission to assure, that sufficient funds would be available for completion of the reclamation plan if the work had to be performed by an independent contractor. The amount of surety liability should be adjusted to recognize any increases or decreases resulting from inflation, changes in engineering plans, activities performed, and any other conditions affecting costs. Regardless of whether reclamation is phased through the life of the operation or takes place at the end of operations, an appropriate portion of surety liability must be retained until final compliance with the reclamation plan is determined.

This will yield a surety that is at least sufficient at all times to cover the costs of decommissioning and reclamation of the areas that are expected to be disturbed before the next license renewal. The term of the surety mechanism must be open ended, unless it can be demonstrated that another arrangement would provide an equivalent level of assurance. This assurance would be provided with a surety instrument which is written for a specified period of time (e.g., 5 years) yet which must be automatically renewed unless the surety notifies the beneficiary (the Commission or the State regulatory agency) and the principal (the licensee) some reasonable time (e.g., 90 days) prior to the renewal date of their intention not to renew. In such a situation the surety requirement still exists and the licensee would be required to submit an acceptable replacement surety within a brief period of time to allow at least 60 days for the regulatory agency to collect.

Proof of forfeiture must not be necessary to collect the surety so that in the event that the licensee could not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration. The conditions described above would have to be clearly stated on any surety instrument which is not open-ended, and must be agreed to by all parties. Financial surety arrangements generally acceptable to the Commission are:

(a) Surety bonds;
(b) Cash deposits;
(c) Certificates of deposits;
(d) Deposits of government securities;
(e) Irrevocable letters or lines of credit; and
(f) Combinations of the above or such other types of arrangements as may be approved by the Commission. However, self insurance, or any arrangement which essentially constitutes self insurance (e.g., a contract with a State or Federal agency), will not satisfy the surety requirement since this provides no additional assurance other than that which already exists through license requirements.

Criterion 10—A minimum charge of $250,000 (1978 dollars) to cover the costs of long-term surveillance must be paid by each mill operator to the general treasury of the United States or to an appropriate State agency prior to the termination of a uranium or thorium mill license.

If site surveillance or control requirements at a particular site are determined, on the basis of a site-specific evaluation, to be significantly greater than those specified in Criterion 12 (e.g., if fencing is determined to be necessary), variance in funding requirements may be specified by the Commission. In any case, the total charge to cover the costs of long-term surveillance must be such that, with an assumed 1 percent annual real interest rate, the collected funds will yield interest in an amount sufficient to cover the annual costs of site surveillance. The total charge will be adjusted annually prior to actual payment to recognize inflation. The inflation rate to be used is that indicated by the change in the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics.

III. Site and Byproduct Material Ownership

Criterion 11—A. These criteria relating to ownership of tailings and their disposal sites become effective on November 8, 1981, and apply to all licenses terminated, issued, or renewed after that date.

B. Any uranium or thorium milling license or tailings license must contain such terms and conditions as the Commission determines necessary to assure that prior to termination of the license, the licensee will comply with ownership requirements of this criterion for sites use for tailings disposal.

C. Title to the byproduct material licensed under this Part and land, including any interests therein (other than land owned by the United States or by a State) which is used for the disposal of any such byproduct material, or is essential to ensure the long term stability of such disposal site, must be transferred to the United States or the State in which such land is located, at the option of such State. In view of the fact that physical isolation must be the primary means of long-term control, and Government land ownership is a desirable supplementary measure, ownership of certain severable subsurface interests (for example, mineral rights) may be determined to be unnecessary to protect the public health and safety and the environment. In any case, however, the applicant/operator must demonstrate a serious effort to obtain such subsurface rights, and must, in the event that certain rights cannot be obtained, provide notification in local public land records of the fact that the land is being used for the disposal of radioactive material and is subject to either an NRC general or specific license prohibiting the disruption and disturbance of the tailings. In some rare cases, such as may occur with deep burial where no ongoing site surveillance will be required, surface land ownership transfer requirements may be waived. For licenses issued before November 8, 1981, the Commission may take into account the status of the ownership of such land, and interests therein, and the ability of a licensee to transfer title and custody thereof to the United States or a State.

D. If the Commission subsequent to title transfer determines that use of the surface or subsurface estates, or both, of the land transferred to the United States or to a State will not endanger the public health, safety, welfare, or environment, the Commission may permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions provided in these criteria. If the Commission permits such use of such land, it will provide the person who transferred such land with the right of first refusal with respect to such use of such land.

E. Material and land transferred to the United States or a State in accordance with this Criterion must be transferred without cost to the United States or a State other than administrative and legal costs incurred in carrying out such transfer.

F. The provisions of this part respecting transfer of title and custody to land and tailings and wastes do not apply in the case of lands held in trust by the United States for any Indian tribe or lands owned by such Indian tribe subject to a restriction against alienation imposed by the United States. In the case of such lands which are used for the disposal of byproduct material, as defined in this Part, the licensee shall enter into arrangements with the Commission as may be appropriate to assure the long-term surveillance of such lands by the United States.

IV. Long-Term Site Surveillance

Criterion 12—The final disposition of tailings or wastes at milling sites should be such that ongoing active maintenance is not necessary to preserve isolation. As a minimum, annual site inspections must be conducted by the government agency retaining ultimate custody of the site where tailings, or wastes are stored to confirm the integrity of the stabilized tailings or waste systems and to determine the need, if any, for maintenance and/or monitoring. Results of the inspection must be reported to the Commission within 60 days following each inspection. The Commission may require more frequent site inspections if, on the basis of a site-specific evaluation, such a need appears necessary due to the features of a particular tailings or waste disposal system.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

3. The authority citation for Part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930 (42 U.S.C. 2073). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 150.20(b)(2)–(4) and 150.21 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 150.14 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 150.16–150.19 and 150.21(b)(1) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 150.31, paragraph (d) is added to read as follows:

§ 150.31 Required for Agreement State regulation of byproduct material.

* * * * *

(d) In adopting requirements pursuant to paragraph (b)(2) of this section, the State may adopt alternatives (including, where appropriate, site-specific alternatives) to the requirements adopted and enforced by the Commission for the same purpose if, after notice and opportunity for public hearing, the Commission determines that the alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety and the environment from radiological and nonradiological hazards associated with the sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with section 275. Alternative State requirements may take into account local or regional conditions, including geology, topography, hydrology and meteorology.

Dated at Washington, DC, this 9th day of October 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-24689 Filed 10-15-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWP-35]

Andersen AFB, Agana, Guam; Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: An amended description to the existing Andersen AFB, Agana, Guam, (lat. 13°34'52" N., long. 144°55'26" E.) Control Zone is necessary as a result of the recent name and identification change of the Agana Very High Frequency Omni-directional Radio Range and Tactical Air Navigational Aid (VORTAC) facility to the Nimitz VORTAC. This action will provide only editorial changes and does not change the actual airspace of the existing Guam Island Andersen AFB, Guam, Control Zone description.

EFFECTIVE DATE: 0901 G.M.T., November 21, 1985.

FOR FURTHER INFORMATION CONTACT: Curtis Alms, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Hawthorne, California 90261; telephone (213) 536-6649.

SUPPLEMENTARY INFORMATION:

History

The Agana VORTAC is used as a reference point in the definition of the Andersen AFB, Agana, Guam, Control Zone. The name of the Agana VORTAC facility is being changed to the Nimitz VORTAC. As a result of this name change, an editorial change to the description of the control zone becomes necessary.

To preclude numerous editorial changes to control zones and transition areas, it has been determined that the use of geographical coordinates as reference points describing control zones and transition areas are more permanent and are not subject to change as names or location of VORTAC facilities.

The Rule

The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to change the description of the Andersen AFB, Agana, Guam, Control Zone using geographical coordinates and delete the Agana VORTAC reference used in the definition. This action does not change the actual airspace of the existing control zone. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA concludes that there is an immediate need for a regulation to reflect the correct description of the Andersen AFB, Agana, Guam, Control Zone. Therefore, I find that notice on public procedure under 5 U.S.C. 553(b) is contrary to the public interest and that good cause exists for making this amendment effective coincident with the charting date of November 21, 1985. Description of the amended control zone is set forth below and depicted on the chart at the end of this document.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration is amending Part 71 of the FAR as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.171 is amended as follows:

Andersen AFB, Agana, Guam—[Revised]

"Beginning at lat. 13°33'20" N., long. 144°46'50" E.; to lat. 13°34'50" N., long. 144°50'30" E.; thence clockwise via the 5-mile radius of Andersen AFB (Lat. 13°34'52" N., long. 144°55'28" E.); to lat. 13°38'00" N., long. 144°58'30" E.; to lat. 13°40'15" N., long. 145°03'20" E.; to lat. 13°37'10" N., long. 145°04'40" E.; to lat. 13°34'40" N., long 144°59'30" E.; thence clockwise via the 5-mile radius of Andersen AFB (lat. 13°34'52" N., long. 144°55'28" E.) to lat. 13°30'30" N., long. 144°54'20" E.; to lat. 13°29'10" N., long. 144°51'30" E.; thence counterclockwise via the 5-mile radius of NAS Agana (lat. 13°28'54" N., long. 144°47'35" E.); to the point of beginning."

Issued in Los Angeles, California on September 26, 1985.

B. Keith Potts,

Acting Director, Western-Pacific Region.

[FR Doc. 85-24590 Filed 10-15-85; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34-22468; File No. S7-20-85]

Adoption of Revisions of Form BD and Related Technical Changes; Adoption of Amendments to Broker-Dealer Successor Rules

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of revisions of a form and related rules.

SUMMARY: The Commission is adopting previously proposed revisions of Form BD. Form BD is the form which is filed by an applicant to become registered as a broker-dealer under Section 15(b) of the Securities Exchange Act of 1934 (the "Act"). The purpose of the revisions to Form BD is to reduce the regulatory burden upon broker-dealers by revising the disciplinary question to remove duplicative information requirements and narrow the scope of that question, and by clarifying the information required to be disclosed on the schedules. These revisions are the result of discussions with the Forms Revision Committee ("Forms Committee") of the North American Securities Administrators Association, Inc. ("NASAA"). The Commission also is making changes to Rule 17a-3 under the Act, in order that the information requested conforms to that required in the revised Form U-4 currently used by states and self-regulatory organizations to register securities salespersons. Finally, the Commission is changing its broker-dealer successor rules so that an amendment to Form BD is required rather than a new complete Form BD.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Lynne G. Masters, Esq. at (202) 272-2848, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

I. Introduction

In November 1983, the Commission adopted a revised Form BD and revised Form BDW, resulting from the continuing efforts of the NASAA Special Committee to Revise Form BD.[1] The purpose of the revisions was to reduce the regulatory burden of duplicative registration requirements on broker-dealers by allowing them to use a single form to register with the states and self-regulatory organizations, as well as the Commission. In addition, the revisions made Form BD and Form BDW compatible with the Central Registration Depository ("CRD"). The CRD provides a computer database that maintains current registration information for every broker-dealer this is a member of the NASD and/or registered with a state that participates in the CRD system.

NASAA subsequently formed the Forms Committee to review Form U-4, the form used by the states and the self-regulatory organizations to register certain associated persons of broker-dealers.[2] The NASAA Forms Committee was advised by representatives of the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange, Inc., the Association of Registration Managers, the Securities Industry Association, representatives from the insurance and commodities industries and the staff of the Commission's Division of Market Regulation, Office of the Executive Director and Office of Applications and Reports Services. In the course of the Forms Committee's review of Form U-4, parallel improvements to Form BD were considered. The participants in the Forms Committee unanimously agreed to implement all of the Form BD changes. The NASAA membership approved the revised Form BD and Form U-4 on April 5, 1985.

The Commission proposed the revisions to Form BD and the related changes to the broker-dealer successor rules on April 26, 1985.[3] The Commission received thirteen comment letters on the proposals. The commentators strongly supported the revisions as reducing the regulatory burden upon broker-dealers without sacrificing investor protection or other regulatory concerns. Some commentators suggested some substantive and technical changes. The substantive changes were not made in order to maintain a uniform form with NASAA. The Commission is adopting the revisions to Form BD, the amendment to Rule 17a-3 and the amendment to Rule 15b1-3 substantially as proposed with some changes.[4] The Commission is also rescinding Rule 15b2-1.

II. Discussion

A. Revisions to Form BD

Most of the changes to Form BD relate to Item 7, which requests information concerning past disciplinary actions.[5] These changes generaly conform to the changes made on Form U-4 for registration of associated persons of broker-dealers and proposed for Form ADV for registration of investment advisers.

In addition, the Commission is amending Schedules A and B of Form BD to clarify that disclosure of the ultimate owner of the applicant is required.

1. The Disciplinary History Question—Item 7

Item 7 of Form BD currently requires that a broker-dealer disclose relevant information about statutory disqualifications and other regulatory concerns. For example, the Item requires disclosure of criminal convictions, as

[1] Rule 15b1-1 requires broker-dealers to apply for registration on Form BD.

[2] Prior to December 1983, Form U-4 was also a Commission form used to register securities salespersons of firms for which the Commission had sole regulatory responsibility ("SECO"). Form U-4 is no longer a Commission form because of the elimination of the SECO program.

[3] Securities Exchange Act Release No. 34-21981, April 26, 1985; 50 FR 19196, May 7, 1985.

[4] The Commission previously proposed an amendment to Rule 15b3-1 which would have required all broker-dealers to file a new Form BD at a specific date. *See* Securities Exchange Act Release No. 20407 (Nov. 22, 1983). The Commission is not adopting such a requirement at this time. The Commission is considering processing Form BD on an electronic basis. Once the Commission determines how to process Form BD electronically, the Commission intends to require a new Form BD from all broker-dealers as part of the conversion process. The Commission anticipates giving broker-dealers sufficient notice before imposing such a requirement. However, we understand that all NASD registered broker-dealers will be required to file the new Form BD with the CRD as part of the conversion of state registration into the CRD system in early 1986. All new broker-dealers which register with the Commission on and after the effective date of the revised form, of course, will be required to complete the new Form BD.

[5] Certain minor technical changes were made to the Commission's Special Instructions for completing Form BD.

well as administrative actions taken against the broker-dealer, its employees, and its affiliates. As currently in effect, Item 7 refers to all employees and thus imposes a substantial burden on broker-dealers, particularly large firms. In addition, certain of the questions in existing Item 7 are extremely broad and request information which may not be directly relevant to an administrative determination to register the firm as an entity.[6]

In order to address these concerns, the Commission proposed several changes in Item 7. First, the Commission proposed to limit the scope of Item 7 to the broker-dealer itself and its control affiliates.[7] The definition of control affiliate would include any employees identified in Schedules A, B or C of Form BD as exercising control and would exclude any "employees who perform clerical, administrative, support or similar functions, or who, regardless of title, perform no executive duties or have no senior policy making authority." Accordingly, a broker-dealer would not be required to answer the disciplinary questions with respect to a registered representative that was not listed on any of the schedules and had no executive duties or senior policy making authority.

The proposed changes also would narrow certain disciplinary questions that have been previously too broad. For example, with respect to license revocation and denial, the revised Form BD would ask only whether the Commission had ever denied, suspended or revoked the applicant's or a control affiliate's registration or restricted its activities, as well as whether any state or other federal regulatory agency or self-regulatory agency ever took such action. In addition, the current Form BD question concerning "any" orders entered against the applicant or any employee would be narrowed to require disclosure of such orders only insofar as they relate to investments or fraud and only with respect to the applicant or a control affiliate.[8]

Finally, the Commission proposed that the questions themselves be drafted in "plain English," not legalese. The Commission believed that the plain English questions would be more understandable and thereby generate more meaningful responses.

The commentators universally supported the Commission's "plain English" version of Item 7. One state securities regulator viewed the changes as

> An improvement for all concerned. The disciplinary questions will be more easily understood by those persons completing the [f]orm and by those persons reviewing the [f]orm.[9]

The proposals were also strongly supported by the New York Stock Exchange, the National Association of Securities Dealers, Inc., the Securities Industry Association, and several broker-dealers.

In light of these comments, the Commission has determined to adopt the changes to Item 7 substantially as proposed. The Form will continue to provide the needed regulatory information regarding the disciplinary history of broker-dealers while at the same time reducing the scope of required disclosure to that directly relevant to the registration of the firm itself. Moreover, the plain English questions will be easier to answer and will result in more useful responses by registrants.

Some of the commentators suggested additional changes to Item 7. After considering these suggestions and input from the NASAA Forms Committee, the Commission has determined not to make any further changes in Item 7 at this time. Certain of the suggested changes, as more fully discussed below, will be the subject of future discussions between the Commission's staff and NASAA.

a. *"Control Affiliate".* As indicated above, the proposed changes limit the scope of Item 7 to the broker-dealer itself and its control affiliates. Some of the commentators stated that broker-dealers might be confused by the use of the word "control affiliate" in Item 7 and the use of the words "control" and "control person" in other parts of the form. Since "control affiliate" is separately defined for purposes of Item 7, we do not believe that the use of this term will be confusing. Accordingly, no change has been made in the term "control affiliate" in Item 7.

As noted above, the Commission defined "control affiliate" on Form BD as "an individual or firm that directly or indirectly controls, is under common control with, or is controlled by the applicant." The definition includes any employees identified in Schedules A, B or C of Form BD as exercising control and excludes any "employees who perform clerical, administrative, support or similar functions." One commentator suggested that the definition of "control affiliate" exclude persons having a decision making position at a control affiliate of the applicant. The Commission has determined that where a person has a decision making position at a control affiliate of an applicant, information regarding that person's disciplinary history is relevant to the registration determination by the Commission or a state securities regulator even where the person involved does not occupy a decision making position at the applicant itself. Accordingly, the Commission has determined not to make the change suggested by the commentator in this area.

b. *Interpretation of "Proceeding".* Proposed Item 7G asks for disclosure of whether "the applicant or a control affiliate [is] now the subject of any proceeding that could result in a 'yes' answer to parts A–F of Item 7." Parts A–F request information with respect to criminal, civil or administrative actions taken against the applicant or any of its control affiliates. One commentator questioned whether "proceeding" included any investigation.

In Securities Exchange Act Release No. 12078 (February 6, 1976),[10] the Commission issued interpretations of the term "proceeding" as used in the comparable question in the disciplinary portion of Form BD then in effect. At that time, the Commission stated:

> For purposes of [the question which requires disclosure of any proceedings in which an adverse decision would result in an affirmative response to the disciplinary Item], the term 'proceedings' includes proceedings brought by the Commission, regulators, and self-regulators and does not include investigations, arrests without convictions, and civil litigation not conducted by a self-regulatory or regulatory body.[11]

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[6] For example, the current Form BD asks whether the applicant or any employee has ever had "any" license, permit, certificate, registration or membership denied, suspended, revoked or restricted—regardless of whether that license is related to investment-related activities.

[7] The Commission defined "control affiliate" as an individual or firm that directly or indirectly controls, is under common control, or is controlled by the applicant.

[8] The Commission defined the term "investment or investment related" as pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association).

[9] See letter dated May 17, 1985, from Beverly Bassett, Securities Commissioner of Arkansas.

[10] 41 FR 7089 (Feb. 17, 1976).

[11] 41 FR 7090. In that release, the Commission indicated that responses were required for all proceedings—public or private. The Commission indicated, however, that:

> . . . an applicant may, if it elects to do so, answer [this item] on Form BD with respect to public proceedings only if it also submits on a separately-bound Schedule D designated as "Schedule D—Private Proceedings" information with respect to private proceedings. If the applicant elects to submit a separately-bound "Schedule D—Private Proceedings" and, by accompanying letter, requests

Continued

The Commission has reviewed its interpretation of the term "proceeding" in light of the proposed changes in Item 7 and has determined to continue that interpretation for use in connection with the revised Form BD. Accordingly, in response to Item 7G, applicants are not required to disclose the pendency of investigations by the Commission or any regulatory body.

c. *Self-Regulatory Rule Violations.* Item 7E(2) as proposed (and as currently in effect) requires reporting of every instance where a broker-dealer has been found to have violated the rules of a self-regulatory organization ("SRO"). One commentator suggested that we change Item 7E(2) in response to administrative practice under Rule 19d-1 under the Act. Rule 19d-1 requires SROs to give notice to the Commission generally where the SRO has taken final disciplinary action against a member. Rule 19d-1 provides, however, an exception to this notice requirement where the disciplinary action is imposed by a national securities exchange and results in either a fine of $1000 or less, or a suspension of floor privileges of a clerical employee for not more than five days for violations of any of its regulations regarding personal decorum on a trading floor. Rule 19d-1 also provides for an abbreviated notice requirement where an SRO takes disciplinary action for violation of an SRO rule other than a decorum violation where the violation has been designated as a minor rule violation pursuant to a plan filed with and declared effective by the Commission, as long as the sanction imposed consists of a fine of $2500 or less.[12]

The Commission has determined to adopt Item 7E(2) as proposed, without the change suggested by the commentator. Disclosure of minor rule violations may indicate a pattern of violative conduct which merits the attention of the Commission and state regulators. Moreover, no mechanism currently exists to ensure that notices of self-regulatory disciplinary actions can be made available to all regulatory organizations through the CRD unless such notices are disclosed by broker-dealers on Form BD. The Commission intends, however, to continue to work with NASAA and the other participants in the CRD system to develop alternative mechanisms to provide information with respect to SRO disciplinary actions to the appropriate regulatory agencies.

d. *Ten Year Limit.* As proposed, Items 7A, 7B(1), and 7D(4) were limited to activity that occurred in the past ten years. Two commentators suggested that all of the questions in Item 7 should be limited to activity that occurred in the past ten years. One commentator suggested that, with respect to corporate or partnership affiliates of the applicant, all the questions in Item 7 should be limited to activity that occurred in the past ten years. Based on section 15(b)(4) and the historical scope of these questions on Form BD, we have not changed the ten year limitation. Form BD continues to require the applicant, and its control affiliates to disclose their entire disciplinary history, except with respect to Items 7A, 7B(1), and 7D(4).

e. *Scope of the word "found".* Commentators also questioned the scope of the word "found" in Item 7, where certain questions require disclosure of court or administrative actions where there has been a finding of particular activities or violative conduct. Although the word "found" is not defined in Form BD, the Commission would consider "found" in connection with agency or court proceedings to require disclosure of all adverse final self-regulatory organization, governmental agency or court actions, including consent decrees, but excluding deficiency letters, examination reports and memoranda of understanding and similar informal resolutions of matters.

f. *Other.* Another commentator suggested that Item 7I be limited to unsatisfied judgments or liens that are unappealable and related to securities or similar activity only. We have adopted Item 7I as proposed because disclosure of whether the applicant broker-dealer is subject to any potential financial problems is necessary. Another commentator suggested that banks be required to disclose in Item 7 only those disciplinary proceedings relevant to the securities business, rather than any "investment-related" proceeding. That commentator further urged the Commission to conform its disclosure of disciplinary proceedings to the disclosure policies of the federal banking regulators. It does not appear necessary or appropriate to provide special treatment on Form BD to banks that are affiliated with broker-dealers.

2. Disclosure of Ultimate Owner

Item 6 of Form BD currently requires disclosure of any person, not named in Item 1 of the Form or the Schedules, that directly or indirectly through agreement or otherwise exercises or has the power to exercise control over the management or policies of the broker-dealer. The Commission is adopting the proposed revisions to Form BD to clarify the disclosure requirements with respect to ownership and control of the broker-dealer. Schedules A and B of Form BD have been changed to make clear that the Schedules request information on the ultimate owners of the applicant.

Schedule A is used by corporate broker-dealers to list officers, directors and owners of varying percentages of the firm's equity shares. Schedule B is used by broker-dealers which are partnerships to list their general partners and certain limited and special partners. The changes make clear in Items 3 and 4 of these Schedules that all intermediate owners, as well as the ultimate owners, of the applicant must be disclosed. Thus, if the broker-dealer is owned by a corporation, disclosure is required of shareholders that own 5% or more of a class of equity security of that corporation. If one of those shareholders is a corporation, similar disclosure would be required of that corporation until the ultimate owner is disclosed. If the broker-dealer is owned by a partnership, disclosure is required of general partners or any limited or special partners who have contributed 5% or more of the partnership's capital. If one of the partners is a corporation, disclosure of all 5% shareholders would be required until the ultimate owner is disclosed. If the intermediate corporation or partnership is subject to the reporting requirements of section 12 or 15(d) of the Act, however, disclosure of that corporations shareholders or partnership's partners is not required.

The NYSE suggested that Schedule A use the term "executive officer" as that term is defined in Rule 3b-7. Rule 3b-7 is broader than the terms currently on Schedule A. Thus, it is not appropriate to conform the definition of executive

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confidential treatment, this Schedule D shall not be part of the public file.

The Commission has determined that permitting confidential treatment for a separately-bound "Schedule D—Private Proceedings" preserves the policy judgment implicit in the determination by the Commission or a regulatory or self-regulatory organization to conduct private proceedings while allowing the Commission and other regulators and self-regulators to evaluate an application for registration in light of all relevant facts.

With respect to the filing of such information with other regulatory bodies, however, the applicant should consult the appropriate state securities administrator to determine the proper method of disclosing the existence and nature of private proceedings in that jurisdiction.

[12] Neither of these exceptions is available, however, where the sanctioned person has sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies at the exchange or SRO with respect to the particular matter or where in the case of a decorum violation, the decorum sanction is imposed at, or results from, a hearing.

officer for purposes of Schedule A to that of Rule 3b–7.

B. Amendments to Rule 17a–3

The Commission is amending Rule 17a–3 to conform the rule to the revised Form U–4 requirements. In this regard, Rule 17a–3(a)(12)(A) is amended to delete the information currently required of any "associated person" in Rule 17a–3(a)(12)(A)(3) regarding his education and the information currently required in Rule 17a–3(a)(12)(A)(4) regarding his reasons for leaving any prior employment within the last ten years. Also, Rule 17a–3(a)(12)(A)(8) is being modified to conform to Form U–4 by requiring information concerning any felony, and any misdemeanor involving investments or an investment-related business, fraud, false statements, or omissions, wrongful taking of property, or bribery, forgery, counterfeiting or extortion committed by the associated person rather than, as is the current practice, requiring information on any crime involving violence or dishonesty or conspiracy to commit certain enumerated offenses.

C. Broker-Dealer Successor Rules

The Commission also is simplifying its broker-dealer successor rules. Section 15(b)(2)(A) of the Act provides that "any application for registration of a broker or dealer to be formed or organized may be made by a broker or dealer to which the broker or dealer to be formed or organized is to be the successor." Rule 15b2–1 permits an existing registered broker-dealer (the predecessor) to file a complete Form BD on behalf of its successor. The successor broker-dealer must then "adopt" the Form BD as its own by filing a statement to that effect within 45 days. Rule 15b1–3 permits a successor broker-dealer to operate on the basis of its predecessor's Form BD for a 75 day period, provided that the successor broker-dealer files a complete Form BD on its own behalf within 30 days of the succession. Paragraph (b) of Rule 15b1–3, however, permits a registered broker-dealer partnership to file an amendment to its Form BD, in lieu of a complete new form, where changes in the membership or composition of the partnership have occurred. The amendment filed by the successor partnership is deemed a new application for purposes of section 15(b)(2)(A) of the Act.

The purpose of the broker-dealer successor rules is to facilitate a smooth transition period when one broker-dealer succeeds to and continues the business of another registered broker-dealer. A broker-dealer succeeds to and continues the business of another broker-dealer when the successor broker-dealer assumes substantially all the assets and liabilities of the predecessor broker-dealer. Accordingly, the successor rules cannot be used by a broker-dealer to eliminate a substantial liability. Nor can they be used by another broker-dealer to activate the registration of a "shell" broker-dealer that does not do any business. The successor rules are used when a broker-dealer changes its date or state of incorporation, or changes its form of doing business, such as a change from partnership to corporation, or changes the composition of a partnership.

Since the successor rules contemplate that the successor broker-dealer will closely resemble the predecessor broker-dealer, the Commission is rescinding Rule 15b2–1 and amending Rule 15b1–3 to provide for succession by amendment. The Commission believes that the amendment process will eliminate unnecessary paperwork and conform the Commission's successor registration process with that of some of the self-regulatory organizations. Amended Rule 15b1–3 requires a successor broker-dealer to file an amendment to the predecessor's Form BD within 30 days of the succession. The amendment would include page 1 of Form BD (the execution page), page 2 (indicating that the applicant is a successor), and any other pages on which changes have been made. In addition, since the amendments would be deemed an application for registration, the successor broker-dealer is required to comply with Rule 15b1–2 and file a "Statement of Financial Condition to be Filed with Application for Registration as a Broker-Dealer."

From time to time, two broker-dealers may wish to succeed to the business of one broker-dealer, for example, when a full-service broker-dealer determines to separate its introducng broker function from its clearing broker function. The staff has treated the two resulting broker-dealers as successors and has required a complete Form BD from each broker-dealer. Since the amendments require only an amendment to Form BD for a succession, only one of the dual successors will file an amendment and the other successor will be required to file a complete Form BD in order to accurately reflect that there are now two broker-dealers. Both the amendment and the new Form BD must be filed within 30 days after the dual succession. The Commission has retained subparagraph (a) of Rule 15bl–3 for dual successions.

III. Certain Findings, Effective Date and Statutory Basis

Section 23(a)(2) of the Act [13] requires the Commission, in adopting rules under the Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has considered the revisions, amendments and rescission in light of the standard cited in section 23(a)(2) and believes that adoption of these changes will not impose any burden on competition not necessary or appropriate in furtherance of the Act.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 605(b), the Chairman certified when the revisions to Form BD and amendments to Rules 15b1–3 and 17a–3 and rescission of Rule 15b2–1 were proposed that these revisions, amendments and rescission, if adopted, would not have a significant economic impact on a substantial number of small entities. No comments were received on the certification.

Statutory Basis

The Securities and Exchange Commission hereby adopts the revisions to Form BD and the amendments to Rules 15b1–3 and 17a–3 and the rescission of Rule 15b2–1 pursuant to its authority under the Act and particularly sections 15(b), 17(a), and 23(a) thereof (15 U.S.C. 78*o*(b), q(a), and w(a)).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Amendments

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) . . . §§ 240.15b1–3 and 240.15b2–1 also issued under 15 U.S.C. 78*o*, 78*q*. § 240.17a–3 also issued under Secs. 2, 17, 23a, 48 Stat. 897, as amended; 15 U.S.C. 78d–1, 78d–2, 78q; secs. 12, 14, 17, 23(a), 48 Stat. 892, 895, 897, 901; secs. 1, 4, 8, 49 Stat. 1375, 1379; sec. 203(a), 49 Stat. 704; sec. 5, 52 Stat. 1076; sec. 202, 68 Stat. 686; secs. 3, 5, 10, 78 Stat. 565–568, 569, 570 580; secs. 1, 3, 82 Stat. 454, 455; secs. 28(c), 3–5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 14, 16, 89 Stat. 117, 118, 137, 155; 15 U.S.C. 781, 78n, 78q, 78w(a).

[13] 15 U.S.C. 78w(a)(2).

2. By revising paragraph (b) of § 240.15b1–3 as follows:

§ 240.15b1–3 Registration of successor to registered broker or dealer.

* * * * *

(b) A Form BD filed by a broker-dealer that is not registered when such form is filed and which succeeds to and continues the business of a predecessor registered broker-dealer, shall be deemed an application for registration filed by the predecessor and adopted by the successor, even though designated as an amendment, if filed within 30 days of the succession and the succession is based on a change in the predecessor's date or state of incorporation, form or organization or change in composition of a partnership and the amendment is filed to reflect these changes.

§ 240.15b2–1 [Removed]

3. By removing § 240.15b2–1.

4. By removing paragraph (a)(12)(i)(*c*) of § 240.17a–3, renumbering paragraphs (a)(12)(i)(*d*) through (a)(12)(i)(*i*) as paragraphs (a)(12)(i)(*c*) through (a)(12)(i)(*h*), and revising newly designated paragraphs (a)(12)(i)(*c*) and (a)(12)(i)(*g*) as follows:

§ 240.17a–3 Records to be made by certain exchange members, broker and dealers.

(a) * * *

(12)(i) * * *

(*c*) A complete, consecutive statement of all his business connections for at least the preceding ten years, including whether the employment was part-time or full-time;

* * * * *

(*g*) A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance or real estate (including, but not limited to, acting or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 249 continues to read as follows:

Authority: The Securities and Exchange Act of 1934, 15 U.S.C. 78a *et seq.*

6. By revising Form BD as described in § 249.501 as shown in the appendix.

Note.—Form BD does not appear in the Code of Federal Regulations.

Dated: September 26, 1985.

By the Commission.

John Wheeler,

Secretary.

Form BD—Uniform Application for Broker Dealer Registration

Instructions for Form BD

1. *Updating*—By law, the applicant must update the Form BD information by submitting amendments whenever the information on file changes. Complete all amended pages in full and circle the number of the item being changed.

2. *Contact Employee*—The individual listed on page 1 as the contact employee must be authorized to receive all compliance information, communications and mailings and be responsible for disseminating it within the applicant's organization.

3. *Format:*

- Attach an execution page (page 1) with original manual signatures to the initial BD filing and each amendment to the Form or Schedules A through D.
- Type all information.
- Give the broker-dealer and date on each page.
- Use only the Form BD and its Schedules or a reproduction of them.

4. *Definitions:*

- Applicant—The broker-dealer applying on or amending this form.
- Control—The power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any individual or firm that is a director, partner or officer exercising executive responsibility (or having similar status or functions) or that directly or indirectly has the right to vote 25 per cent or more of the voting securities or is entitled to 25 per cent or more of the profits is presumed to control that company.
- Jurisdiction—Any non-Federal government or regulatory body in the United States, Puerto Rico or Canada.
- Person—An individual, partnership, corporation or other organization.
- Self-regulatory organization—Any national securities or commodities exchange or registered association, or registered clearing agency.

5. *Schedule A, B and C*—Individuals not required to have a Form U–4 (individual registration) in the CRD who are listed on Schedules A, B or C must attach page 2 of Form U–4. The applicant broker-dealer must appear in U–4 Item 19 or 20. Signatures are not required.

6. *Schedule D*—Schedule D provides additional space for explaining "Yes" answers to Form BD items, but not for continuing Schedules A, B or C. To continue Schedules A, B or C, use copies of the Schedule being continued.

7. *Schedule E*—Schedule E Amendments to report changes in Branch Offices may be submitted without an execution page.

BILLING CODE 8010-01-M

FORM BD PAGE 1 (Execution Page) (revised 4/85)	UNIFORM APPLICATION FOR BROKER DEALER REGISTRATION	OFFICIAL USE

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as a broker-dealer would violate the Federal securities laws and the laws of the jurisdictions and may result in disciplinary, administrative, injunctive or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

☐ APPLICATION ☐ AMENDMENT FIRM CRD NO.: _____

1. Exact name, principal business address, mailing address, if different, and telephone number of applicant:

(A) Full name of applicant (If sole proprietor, state last, first, and middle name) (B) IRS Empl. Ident. No.:

(B) Name under which business is conducted, if different:

(D) If name of business is hereby amended, state previous name:

(E) Firm main address:

(Number and Street) (City) (State) (Zip Code)

Mailing Address, if different:

(F) Telephone Number:

(Area Code) (Telephone Number) (G) CONTACT EMPLOYEE

EXECUTION: For the purpose of complying with the laws of the State(s) I have designated in Item 2 relating to either the offer or sale of securities or commodities, I hereby certify that the applicant is in compliance with applicable state surety bonding requirements and irrevocably appoint the administrator of each of those State(s), or such other person designated by law, and the successors in such office, my attorney in said State(s) upon whom may be served any notice, process or pleading in any action or proceeding against me arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the laws of those State(s) and I do hereby consent that any such action or proceeding against me may be commenced in any court of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect as if I were a resident in said State(s) and had lawfully been served with process in said State(s).

The undersigned, being first duly sworn, deposes and says that he has executed this form on behalf of, and with the authority of, said applicant. The undersigned and applicant represent that the information and statements contained herein, including exhibits attached hereto and other information filed herewith, all of which are made a part hereof, are current, true, and complete. The undersigned and applicant further represent that to the extent any information previously submitted is not amended, such information is currently accurate and complete.

Date Name of Applicant

By: _____
Signature and Title

Subscribed and sworn before me this _____ day of _____, 19____ by _____

My commission expires _____ County of _____ State of _____

This page must always be completed in full with original, manual signature and notarization.
To amend, circle item(s) being amended.

DO NOT WRITE BELOW THIS LINE . . . . FOR OFFICIAL USE ONLY

To amend, circle question numbers amended and file with a completed Execution page (Page 1).

FORM BD Page 2 Applicant Name: _____ | OFFICIAL USE

Date: _____ Firm CRD No.: _____

2. To be registered with the following: (designate) "1" Initial Registration, "2" Pending, "3" Already Registered. If any license, registration or membership listed herein is of a restricted nature, explain fully on Schedule D.

☐ SECURITIES & EXCHANGE COMMISSION

SRO: ☐ ASE ☐ BSE ☐ CBOE ☐ CSE ☐ MSE ☐ NASD ☐ NYSE ☐ PHLX ☐ PSE ☐ OTHER (Specify) _____

JURISDICTION:

☐ AL	☐ AK	☐ AZ	☐ AR	☐ CA	☐ CO	☐ CT	☐ DE	☐ DC	☐ FL	☐ GA	☐ HI	☐ ID
☐ IL	☐ IN	☐ IA	☐ KS	☐ KY	☐ LA	☐ ME	☐ MD	☐ MA	☐ MI	☐ MN	☐ MS	☐ MO
☐ MT	☐ NE	☐ NV	☐ NH	☐ NJ	☐ NM	☐ NY	☐ NC	☐ ND	☐ OH	☐ OK	☐ OR	☐ PA
☐ RI	☐ SC	☐ SD	☐ TN	☐ TX	☐ UT	☐ VT	☐ VA	☐ WA	☐ WV	☐ WI	☐ WY	☐ PR

3. Date of formation _____ Place of filing _____ for:

☐ Corporation - Complete Schedule A ☐ Partnership - Complete Schedule B ☐ Sole Proprietorship - Complete Schedule C

☐ Other (specify) _____ Complete Schedule C

4. If applicant is a sole proprietor, state full residence address and social security number.

Social Security No.: _____

(Number and Street) _____ (City) _____ (State) _____ (Zip Code) _____

5. Is applicant a successor to a registered broker-dealer? YES ☐ NO ☐

If "yes," explain on Schedule D. . . . . .

If "yes," state:

(a) Date of Succession _____

(b) Full name, IRS Empl. Ident. No., SEC File No. and Firm CRD No. of predecessor broker-dealer

Name: _____

IRS Empl. Ident. No. _____ FIRM CRD No.: _____

SEC File Number: _____

6. (a) Does any person not named in Item 1 or Schedules A, B or C, directly or indirectly through agreement or otherwise, exercise or have the power to exercise control over the management or policies of applicant? . . . . . YES ☐ NO ☐ 1

(If "yes," state on Schedule D the exact name of each person (if individual, state last, first, and middle names) and describe the agreement or other basis through which such person exercises or has the power to exercise control.)

(b) Is the business of applicant wholly or partially financed, directly or indirectly, by any person not named in Item 1, or Schedules A, B or C, in any manner other than by: (1) a public offering of securities made pursuant to the Securities Act of 1933; (2) credit extended in the ordinary course of business by suppliers, banks and others; or a satisfactory subordination agreement, as defined in Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240. 15c3-1)? YES ☐ NO ☐ 2

(If "yes," state on Schedule D the exact name (last, first, middle) of each person and describe the agreement or arrangement through which such financing is made available, including the amount thereof.)

To amend, circle question numbers amended and file with a completed Execution page (Page 1).

FORM BD Page 3

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

7. ***Definitions***

- **Control affiliate** – An individual or firm that directly or indirectly controls, is under common control with, or is controlled by the applicant. Included are any employees identified in Schedules A,B or C of this form as exercising control. Excluded are any employees who perform clerical, administrative, support or similar functions; or who, regardless of title, perform no executive duties or have no senior policy making authority.
- **Investment or investment-related** – Pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association).
- **Involved** - Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

A. In the past ten years has the applicant or control affiliate been convicted of or plead guilty or nolo contendere ("no contest") to:

(1) a felony or misdemeanor involving:
investments or an investment-related business,
fraud, false statements or omissions,
wrongful taking of property, or
bribery, forgery, counterfeiting or extortion? . . . . . YES ☐ NO ☐ 3

(2) any other felony? . . . . . YES ☐ NO ☐ 4

B. Has any court:

(1) In the past ten years enjoined the applicant or a control affiliate in connection with any investment-related activity? . . . . . YES ☐ NO ☐ 5

(2) ever found that the applicant or a control affiliate was involved in a violation of investment-related statutes or regulations? . . . . . YES ☐ NO ☐ 6

C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:

(1) found the applicant or a control affiliate to have made a false statement or omission? . . . . . YES ☐ NO ☐ 7

(2) found the applicant or a control affiliate to have been involved in a violation of its regulations or statues? YES ☐ NO ☐ 8

(3) found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? . . . . . YES ☐ NO ☐ 9

(4) entered an order denying, suspending or revoking the applicant's or a control affiliate's registration or otherwise disciplined it by restricting its activities? . . . . . YES ☐ NO ☐ 10

D. Has any other Federal regulatory agency or any state regulatory agency:

(1) ever found the applicant or a control affiliate to have made a false statement or omission or been dishonest unfair, or unethical? . . . . . YES ☐ NO ☐ 11

(2) ever found the applicant or a control affiliate to have been involved in a violation of investment regulations or statutes? . . . . . YES ☐ NO ☐ 12

(3) ever found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? . . . . . YES ☐ NO ☐ 13

(4) in the past ten years entered an order against the applicant or a control affiliate in connection with investment-related activity? . . . . . YES ☐ NO ☐ 14

(5) ever denied, suspended, or revoked the applicant's or a control affiliate's registration or license, prevented it from associating with an investment-related business, or otherwise disciplined it by restricting its activities? YES ☐ NO ☐ 15

(6) ever revoked or suspended the applicant's or a control affiliate's license as an attorney or accountant? . . . . . YES ☐ NO ☐ 16

To amend, circle question numbers amended and file with a completed Execution page (Page 1).

FORM BD Page 4

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

E. Has any self-regulatory organization or commodities exchange ever:

(1) found the applicant or a control affiliate to have made a false statement or omission or been dishonest, unfair or unethical? YES ☐ NO ☐ 17

(2) found the applicant or a control affiliate to have been involved in a violation of its rules? YES ☐ NO ☐ 18

(3) found the applicant or a control affiliate to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked or restricted? YES ☐ NO ☐ 19

(4) disciplined the applicant or a control affiliate by expelling or suspending it from membership, by barring or suspending its association with other members, or by otherwise restricting its activities? YES ☐ NO ☐ 20

F. Has any foreign government, court, regulatory agency, or exchange ever entered an order against the applicant or a control affiliate related to investments or fraud? YES ☐ NO ☐ 21

G. Is the applicant or a control affiliate now the subject of any proceeding that could result in a "yes" answer to parts A-F of this item? YES ☐ NO ☐ 22

H. Has a bonding company denied, paid out on, or revoked a bond for the applicant? YES ☐ NO ☐ 23

I. Does the applicant have any unsatisfied judgments or liens against it? YES ☐ NO ☐ 24

J. Has the applicant or a control affiliate of the applicant ever been a securities firm or a control affiliate of a securities firm that has been declared bankrupt, had a trustee appointed under the Securities Investor Protection Act, or had a direct payment procedure initiated? YES ☐ NO ☐ 25

Item 7 Instructions

If a "yes" answer on Item 7 involves:

- the applicant broker-dealer, or an individual without a Form U-4 (individual registration) in the CRD, give the details on Schedule D.
- an individual with a Form U-4 (individual registration) in the CRD, attach any necessary U-4 amendments to the Form BD. The CRD will update the U-4 and BD.

For each "yes" to Item 7, give the following details of any court or regulatory action:

- the broker-dealer and individuals named,
- the title and date of the action,
- the court or body taking the action, and
- a description of the action.

8 Does applicant:

(a) Have any arrangement with any other person, firm or organization under which:

(1) Any of the accounts or records of applicant are kept or maintained by such person, firm, or organization? YES ☐ NO ☐ 26

(2) Such other person, firm or organization (other than a bank or satisfactory control location as defined in paragraph (c) of Rule 15c3-3 under the Securities Exchange Act of 1934, 17 CFR 240. 15c3-3) holds or maintains funds or securities of applicant or of any of its customers? YES ☐ NO ☐ 27

(b) Have any arrangements with any other broker or dealer under which applicant refers or introduces customers to such other broker or dealer? YES ☐ NO ☐ 28

(If the answer to any question of Item 8 is "yes," furnish as to each such arrangement the full name and principal business address of the other person, firm, or organization, and the summary of each such arrangement on Schedule D.)

9. Does applicant control, is applicant controlled by, or is applicant under common control with, directly or indirectly, any partnership, corporation, or other organization engaged in the securities or investment advisory business? YES ☐ NO ☐ 29

(If "yes," state full name and principal business address of such partnership, corporation, or other organization and describe the nature of control on Schedule D. See instructions for definition of control.)

To amend, circle question numbers amended and file with a completed Execution page (Page 1).

FORM BD Page 5 Applicant Name: _____ OFFICIAL USE

Date: _____ Firm CRD No.: _____

10. Check types of business engaged in (or to be engaged in, if not yet active) by applicant. Do not check any category which accounts for or is expected to account for less than 10% of annual revenue from the securities or investment advisory business.

(a)	Exchange member engaged in exchange commission business	☐ EMC
(b)	Exchange member engaged in floor activities	☐ EMF
(c)	Broker or dealer making inter-dealer markets in corporate securities over-the-counter	☐ IDM
(d)	Broker or dealer retailing corporate securities over-the-counter	☐ BDR
(e)	Underwriter or selling group participant (corporate securities other than mutual funds)	☐ USG
(f)	Mutual fund underwriter or sponsor	☐ MFU
(g)	Mutual fund retailer	☐ MFR
(h)	U.S. government securities dealer	☐ GSD
(i)	Municipal securities dealer	☐ MSD
(j)	Municipal securities broker	☐ MSB
(k)	Broker or dealer selling variable life insurance or annuities	☐ VLA
(l)	Solicitor of savings and loan accounts	☐ SSL
(m)	Real estate syndicator	☐ RES
(n)	Broker or dealer selling oil and gas interests	☐ OGI
(o)	Put and call broker or dealer or option writer	☐ PCB
(p)	Broker or dealer selling securities of only one issuer or associated issuers (other than mutual funds)	☐ BIA
(q)	Broker or dealer selling securities of non-profit organizations (e.g., churches, hospitals)	☐ NPB
(r)	Investment advisory services	☐ IAD
(s)	Broker or dealer selling tax shelters or limited partnerships	☐ TAP
(t)	Other (give details on Schedule D)	☐ OTH

		YES	NO	
11. (a)	Does applicant effect transactions in commodity futures, commodities or commodity options as a broker for others or dealer for its own account?	☐	☐	30
		YES	NO	
(b)	Does applicant engage in any other non-securities business? (If 'yes,' describe each other business briefly on Schedule D.)	☐	☐	31

To amend, complete the schedule in full in accordance with the instructions below and file with a completed Execution page (Page 1).

OFFICIAL USE

Schedule A of FORM BD

(revised 4/85)

FOR CORPORATIONS

Applicant Name _____

(Answers in response to ITEM 3 of FORM BD) Date: _____ Firm CRD No.: _____

1. This form requests information on the owners and executive officers of the applicant.
2. Please complete for:
   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, director, and individuals with similar status or functions, and
   (b) every person who is directly, or indirectly through intermediaries, the beneficial owner of 5% or more of any class of equity security of the applicant.
3. If a person covered by 2(b) above owns applicant indirectly through intermediaries, list all intermediaries and below them, if they are not public reporting companies under Sections 12 or 15(d) of the Securities Exchange Act of 1934 but are:
   (a) **corporations**, give their shareholders who own 5% or more of a class of equity security, or
   (b) **partnerships**, give their general partners or any limited special partners who have contributed 5% or more of the partnership's capital.
4. (If the intermediary's shareholders or partners listed under 3 above are not individuals, continue up the chain of ownership listing their 5% shareholders, general partners, and 5% limited or special partners until individuals are listed.)
5. Ownership codes are: NA - 0 up to 5% B - 10% up to 25% D - 50% up to 75%
   A - 5% up to 10% C - 25% up to 50% E - 75% up to 100%
6. Asterisk (*) names reporting a change in title, status, stock ownership, partnership interest, or control. Double asterisk (**) names new on this filing.
7. Check "Control Person" column if person has "control" as defined in the instructions to this form.
8. Applicants indicating an options business in item 10 must enter "SROP" for their Senior Registered Options Principal and "CROP" for their Compliance Registered Options Principal in the "Title or Status" column.

FULL NAME Last	First	Middle	Beginning Date Mo.	Yr.	Title or Status	Ownership Code	Control Person	CRD Number or, if none, Social Security Number	Official Use Only
									01
									02
									03
									04
									05
									06
									07
									08
									09
									10
									11
									12

List below names reported in the most recent previous filing under this item that are being deleted;

FULL NAME Last	First	Middle	Ending Date Mo.	Yr.	CRD Number or, if none, Social Security Number

To amend, complete the schedule in full in accordance with the instructions below and file with a completed Execution page (Page 1).

OFFICIAL USE

Schedule B of FORM BD

(revised 4/85)

FOR PARTNERSHIPS

Applicant Name _____

(Answers in response to ITEM 3 of FORM BD.) Date: _____ Firm CRD No.: _____

1. This form requests information on the owners and executive officers of the applicant.
2. Please complete for all general partners and those limited and special partners who have contributed directly, or indirectly through intermediaries, 5% or more of the partnership's capital.
3. If a person owns applicant indirectly through intermediaries, list all intermediaries and below them, if they are not public reporting companies under Sections 12 or 15(d) of the Securities Exchange Act of 1934 but are:
   (a) corporations, give their shareholders who own 5% or more of a class of equity security, or
   (b) partnerships, give their general partners or any limited special partners who have contributed 5% or more of the partnership's capital.
4. (If the intermediary's shareholders or partners listed under 3 above are not individuals, continue up the chain of ownership listing their 5% shareholders, general partners, and 5% limited or special partners until individuals are listed.)
5. Ownership codes are: NA - 0 up to 5% B - 10% up to 25% D - 50% up to 75%
   A - 5% up to 10% C - 25% up to 50% E - 75% up to 100%
6. Asterisk (*) names reporting a change in title, status, stock ownership, partnership interest, or control. Double asterisk (**) names new on this filing.
7. Check "Control Person" column if person has "control" as defined in the instructions to this form.
8. Applicants indicating an options business in item 10 must enter "SROP" for their Senior Registered Options Principal and "CROP" for their Compliance Registered Options Principal in the "Title or Status" column.

FULL NAME Last	First	Middle	Beginning Date Mo.	Yr.	Title or Status	Ownership Code	Control Person	CRD Number or, if none, Social Security Number	Official Use Only
									01
									02
									03
									04
									05
									06
									07
									08
									09
									10
									11
									12

List below names reported in the most recent previous filing under this item that are being deleted:

FULL NAME Last	First	Middle	Ending Date Mo.	Yr.	CRD Number or, if none, Social Security Number

To amend, complete the schedule in full in accordance with the instructions below and file with a completed Execution page (Page 1).

Schedule C of FORM BD

(revised 4/85)

FOR APPLICANTS OTHER THAN PARTNERSHIPS AND CORPORATIONS

OFFICIAL USE

Applicant Name: _____

(Answers in response to ITEM 3 of FORM BD.) Date: _____ Firm CRD No.: _____

1. This form requests information on the owners and executive officers of the applicant.
2. Please complete for each person, including trustees, who participates in directing or managing the applicant.
3. Give each listed person's title or status, and describe the nature of their authority and their beneficial interest in applicant. Sole proprietors must be identified in the "Title or Status" column.
4. Asterisk (*) names reporting a change in title, status, stock ownership or partnership interest. Double asterisk (**) names new on this filing.
5. Applicants indicating an options business in item 10 must enter "SROP" for their Senior Registered Principal and "CROP" for their Compliance Registered Options Principal in the "Title or Status" column.

FULL NAME Last	First	Middle	RELATIONSHIP Beginning Date Mo.	Yr.	Title or Status	CRD Number or, if none, Social Security Number	Description of Authority and Beneficial Interest

List below names reported in the most recent previous filing under this item that are being deleted:

FULL NAME Last	First	Middle	Ending Date Mo.	Yr	CRD Number or, if none, Social Security Number

When amending Form BD, provide complete detail for the item(s) being amended. File with a completed Execution page (Page 1).

OFFICIAL USE

Schedule D of FORM BD

(revised 4/85)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

(Use this Schedule to report details of affirmative responses to questions on Form BD.)

Item of Form (Identify)	Answer

Schedule E of FORM BD

(revised 4/85)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

INSTRUCTIONS FOR SCHEDULE E: Initial filings must include report of all business locations other than the main office. Amendments must include only those branch offices to be added or amended. Complete addresses, including zip code, are to be listed at all times.

Use the following codes in the Nature of Change Column:

To request registration of a new branch office, enter "A".

To report a branch office closing, enter "B".

To report a change of address list the old address immediately followed by the new address; enter "C" next to the old address and "D" next to the new address.

To report a change in supervisor, enter "S".

Place one asterisk (*) under the OSJ column to report designation of a branch as an office of supervisory jurisdiction.

Place a double asterisk (**) under the OSJ column to eliminate designation of a branch as an office of supervisory jurisdiction.

Complete Address of Branch Office	Name and CRD No. of Supervisor	OSJ	Nature of Change	Effective Date

BILLING CODE 8010-01-C

Special Instructions for Completing or Amending Form BD, Uniform Application for Registration as a Broker-Dealer, With the U.S. Securities and Exchange Commission

How and Where To File

File Form BD and its schedules in triplicate with the Securities and Exchange Commission, Washington, D.C. 20549. Manually sign and notorize all three copies on the execution page. Keep a copy. Duplicated copies may be filed if manually signed. Copies must be made on standard size white paper, in the same size as the original.

Form BD Initial Filings—Required Statements

Rule 15b1–2 requires filing with each initial Form BD application two copies of special statements on financial condition, capital contribution, facilities, and first-year funding. (See Securities Exchange Act Release No. 9594, May 12, 1972.)

Successor Registration

A successor broker-dealer succeeds to and continues the business of a predecessor broker-dealer. Rule 15b1–3 requires a successor broker-dealer to amend the predecessor broker-dealer's Form BD within 30 days. The amendment must indicate on page 2 of the form that the applicant is a successor and must contain the statement on financial condition required by Rule 15b1–2 for Form BD initial filings. (See Securities Exchange Act Release No. 34–22468, Sept. 26, 1985.)

Prohibited Broker-Dealer Names

United States Code Title 18 section 709 makes a criminal offense of using the words "national," "Federal," "United States," "reserve," or "Deposit Insurance" in the name of a person or organization in the brokerage business, unless otherwise allowed by Federal law. If these words are used in the applicant's name, include an opinion of counsel with the Form BD explaining why the words are permitted.

[FR Doc. 85–24221 Filed 10–15–85; 8:45 am]
BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

Participation in Contract Claim Awards and Settlements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This final rule revises the existing contract claim regulation found in 23 CFR 635.120. The rule provides more specific and clarifying guidance concerning the extent to which Federal-aid highway funds may participate in awards and settlements of Federal-aid highway contract claims brought by private contractors against State highway agencies (SHA's). The revised regulation will make participation determinations more consistent from State to State and will clarify what is necessary for the SHA to provide to the FHWA in support of its request for participation.

EFFECTIVE DATE: November 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. P. E. Cunningham, Chief Construction and Maintenance Division, (202) 426–0392, or Mr. Hugh T. O'Reilly, Office of the Chief Council, (202) 426–0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: Under the Federal-aid highway program, 23 U.S.C. 101 et seq., construction of Federal-aid highways is generally performed by State highway agencies through private contractors. The FHWA reimburses the States for a statutory pro rata share of the construction costs that are incurred. In the course of construction, disputes between the contractor and the State's administering agency may occur. The contractors may allege that unanticipated costs were or must be incurred, and attribute the cause to matters that were under State control. For example, contractors may argue that agency administrators required them to perform work that was not contemplated by the plans and specifications, or that subsurface conditions were encountered which materially differed from those represented in the contract. Often, such disputes are resolved informally at the project level. Where the SHA initially denies liability, State law generally provides a forum for resolution of these claims. State courts, administrative boards, arbitration panels, or other tribunals may hear and decide them, or they may be settled by the parties in lieu of such proceedings.

Under a project agreement with the SHA, entered into under 23 U.S.C. 110, the FHWA agrees to reimburse the State for the estimated Federal share of the construction costs incurred, based upon a prescribed statutory rate, see 23 U.S.C. 120. State highway agencies will often request the FHWA to reimburse them for a portion of the contract claim payments they must make to a contractor, on the basis that such payments reflect a cost of construction.

It has been recognized that the FHWA has no inherent contractual obligation to participate in any and all contract claim settlements, "Louisiana Department of Highways v. United States," 604 F.2d 1339 (Ct.Cl., 1979). In "Commonwealth of Pennsylvania, Department of Transportation v. United States," 643 F.2d 758 (Ct.Cl., 1981), the former United States Court of Claims further found "proper" FHWA's requirement that unbudgeted settlements costs must be "reasonable" in order to be eligible for Federal participation. That court also concluded that the ultimate burden of demonstrating that the actual costs involved were "reasonable" resides with the State.

The regulation currently governing the participation of the FHWA in contract claim awards and settlements is 23 CFR 635.120. This provides in full as follows:

> The eligibility for, and extent of, Federal-aid participation in claim awards made by the State to Federal-aid contractors on the basis of arbitration board awards or State court judgments shall be determined on a case-by-case basis. Generally, the criteria for establishing Federal-aid participation in claims and resultant settlements is the extent to which such settlements are grounded in contract provisions and specifications and actual costs incurred. Where legal issues arise in the course of resolving a claim, any data submitted for consideration shall include a brief from the legal counsel for the State setting forth the basis for determining the extent of the State's liability for the claim under local law.

This regulation, published in 1974, restates a policy of FHWA that has remained consistent over the years. It essentially adopts language of uncodified policy directives dating back to 1964 which indicate that the policy on eligibility incorporated therein was one that has been followed, at least informally, prior to that time.

Although this policy has been in place for a long time, questions of interpretation have been prompted by the literal language of the regulation, particularly that of how "grounded in contract provisions and specifications" should be construed. In the "Louisiana Department of Highways" case, the Court of Claims described this key eligibility language as being "far from clear," 604 F.2d at 1340, and suggested that it be clarified. This thought was again echoed in the "Pennsylvania Department of Transportation" case, 643 F.2d at 765. In 1981, the American Road and Transportation Builders Association

argued that eligibility issues could best be resolved by making Federal-aid participation automatic in any case where a settlement is approved by the SHA's chief administrative officer and the State's Attorney General.

While the FHWA maintains its right to exercise separate and independent judgment on claim reimbursement eligibility questions, a clearer statement of criteria was sought through the rulemaking process. On March 27, 1984, the FHWA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**. Comments were to be received on or before May 29, 1984. A subsequent request for extension of the comment period from the American Association of State Highway and Transportation Officials (AASHTO) was granted and a revised ending date of July 30, 1984, was established (49 FR 23663).

Written comments were received from 34 agencies and private organizations. Of these, 28 were from SHA's or State Attorneys General, four were from highway organizations or trade agencies, and two were from private sources. A total of 31 different items concerning the proposed contract claim regulation were raised by the commenters.

The issue most frequently mentioned concerned the eligibility of interests costs as a participating item. The earlier position taken by the FHWA was that interest should be denied as this would reflect conformity with the general principle that interest is not recoverable against the United States unless specifically provided for by contract or statute. However, based upon the information received in this rulemaking process, the FHWA feels that interest costs should be included as a generally reimbursable item. In order for these costs to be eligible, they must not result from delays caused by dilatory action of the SHA or the contractor. For example, where State processing of claims is unjustifiably slow, the FHWA may decide not to participate in interest payments. Further the payments to the contractor for these interest charges must be allowable by State statute or specification. The applicable interest rates must not exceed the rates provided for by the State statute or specifications. Paragraph (f) of § 635.120 is being added to include interest as an eligible item.

Another subject frequently brought up concerned the feelings that the proposed rule would encourage adverse relationships among the parties to the issues by giving the FHWA the power to second-guess decisions made by those more intimately involved with the claim. Related comments pointed to the need for the FHWA to be objective and uniform in its decisions and for the FHWA to seek to prevent and avoid claim by getting involved earlier when the claims arises. The FHWA agrees that uniform and objective decisions should be made. The objective of this rulemaking is to clarify the existing policy so that those decisions can be more easily made. The agency believes that to foster a better Federal-State relationship, both parties (FHWA and SHA) should work to agree on resolution of contract claims at an early stage. In this way, the SHA may be apprised of an FHWA position before it continues with its course of action. In this regard, the FHWA should be made aware of claim issues as they arise so that they will be able to make informed decisions which will help the SHA determine the proper course of action to pursue. General statements requiring coordination of efforts are being included in the revised regulation. However, it is felt that more specific criteria concerning coordination activities should not be included in the regulation. It is preferred that more specific implementation procedures be jointly developed by each SHA and the FHWA that would respond to the circumstances in the particular State.

Some concern was raised regarding the use of terms which are incapable of accurate definition and application, such as "reasonable." The FHWA agrees that some of the terms being used could be replaced with more objective words. Most easily understood terms or phrases have been substituted in the final rule, where possible.

Several commenters suggested that the FHWA mandate the use of standardized construction contract language clauses for changes dealing with differing site conditions and suspension of work. This idea has been brought up several times over the last several years. It has been the FHWA's concern that mandating contract language, except where necessitated by statutory requirements, usurps responsibility that rightfully belongs to the SHA. It is felt that it would be more advantageous to cooperate with the SHA in revising the contract language in order to eliminate the ambiguities that cause contract claims. The FHWA does recognize and promote the use of the AASHTO *Guide Specifications for Highway Construction* [1] which currently contains language similar to what was suggested by the commenters.

Comments were received that suggested that Federal-aid participation should be automatic where the settlement is approved by the Chief Administrative Officer of the SHA, by the State's Attorney General, or by law boards, panels, or courts. The FHWA cannot concur in this approach. Just as the FWHA has discretion to review State court judgments or arbitration panel decision concerning contract claims, it follows that the FHWA has discretion to review negotiated settlements. The FHWA believes it to be in the best interest of the Federal-aid highway program to continue the case-by-case determination approach for participation eligibility.

Comments on payment of contractor's attorney fees awarded by the courts were also frequent. However, in the absence of any Federal statute that specifically requires payment, the FHWA has determined that contractor's attorney fees should be non-reimbursable. Accordingly, the final rule still contains an exclusion on the eligibility of such fees.

Five commenters suggested that the reference to Federal nonparticipation when SHA employees act unreasonably in project design and plan preparation be deleted because the FHWA approves plans prior to bid lettings. As an alternative, it was suggested that the FHWA should share the cost of claims related to design/plan errors if they approve the plans. The FHWA does not agree with these comments. While the FHWA review can detect improper conduct on some occasions, it does not relieve the State of responsibility. Therefore, the provisions of § 635.120(e) of the regulations would apply to those cases where the State has acted improperly, regardless of the FHWA's prior approval of the plans, specifications and estimates of the projects.

In a related issue, it was suggested that more descriptive terms of how SHA personnel must act in order to deny participation should be included. The FHWA feels that those acts related to gross negligence, intentional acts or omissions, fraud, or other acts not accepted within the standards of the profession should not be allowed and those claims arising from these acts should be considered ineligible. This may also include, in certain extreme cases, improper management relating to numbers of personnel assigned to design and construction work. The final rule contains language to clarify this issue.

[1] The *Guide Specifications for Highway Construction*, 1984, is published by an available for purchase from the American Association of State Highway Transportation Officials, Suite 225, 444 North Capitol Street, NW Washington, DC 20001.

Four commenters felt that the proposed rule did not contain definitive guidelines concerning what criteria will be used to determine eligibility for participation as a result of arbitration, administrative hearing, or civil court judgment. The proposed rule gave general criteria for participation eligibility; i.e., the claim has to be supportable, have a basis in terms of the contract and applicable State law, and be in accord with prevailing principles of public contract law. Providing more definitive specifics would tend to reduce any flexibility of the regulation. It would also be difficult to cover all aspects due to the variety of differing circumstances.

It was also brought up that many judgments are beyond the control of the SHA. It was felt that the proposed rule did not give fair weight in those circumstances, such as when an adverse decision is rendered by a court in an amount more than can be justified by the SHA. Other commenters suggested that State law should control, and the FHWA should accept court decisions providing that are not arbitrary, capricious, or not supported by evidence. The FHWA does not wish to "punish" the SHA in these instances. Although the FHWA will look at the merits of each case, participation in judgments by outside authorities will be eligible provided the FHWA was consulted and concurred in the proposed course of action and providing that all avenues of appeal have been considered. It is also assumed that the SHA attorneys will pursue the case diligently and in a professional manner. The final rule addresses this issue.

Still another related item concerns the necessity of putting the burden of proof on the SHA to support the claim. Several commenters felt that a properly documented contract adjustment should be assumed to be reasonable and acceptable without the need for further review by the FHWA. In responding to this, the FHWA feels that the SHA has prime responsibility in responding to contract claims, and is in the best position to provide information concerning the reasonableness of the claim. The FHWA concurs that a properly documented claim founded in the contract should be considered eligible for participation. The FHWA responsibility, as in any case, is to assure that the general criteria concerning participation have been followed. Participation will not be denied if that has been accomplished. The FHWA will provide explanations in those cases where claims or portions of claims have been rejected.

The confidentiality of legal opinions to be provided by the SHA to the FHWA was an issue brought up by three commenters. It is possible that an SHA case could be compromised if the FHWA was forced to release this information. It is understood that legal opinions of this nature that are furnished by the SHA to the FHWA for review are offered in confidence. The FHWA recognizes this confidentiality and will take all reasonable steps to prevent disclosure. However, it would be impracticable to guarantee confidentiality in the regulation.

Two commenters requested that the rule be modified to distinguish between negotiated settlements and judgments rendered by the court. The FHWA does not feel that detailed criteria should be included in the proposed rule. Each claim will be examined based upon its own merits and how it follows the general criteria. However, the FHWA feel that negotiated settlements, such as between a contractor and a resident engineer or a district construction engineer, or any other less formalized methods, that fall short of arbitration, court judgment, or administrative board review, should be handled under regular change order procedures for Federal-aid projects.

The clarification of when an audit is required, the circumstances under which it is feasible, and to what extent it should be conducted was also requested by commenters. A revision to this section has been made, but specific criteria have not been included. The FHWA feels that audit criteria could be developed based upon general accounting procedures and agreed to between the SHA and FHWA division office in the State. The FHWA Division Administrator would be in the best position to determine whether further information to support a claim is necessary. It is also felt that providing more specific audit criteria could have the effect of requiring more audits than needed.

An item mentioned by one commenter pertained to whether or not the FHWA Division Administrators are sufficiently trained to make legal judgments concerning claims. While Division Administrators are not specifically trained in legal matters, most have a great deal of experience dealing with claims. As is normally the case, matters outside their "expertise" are referred to legal counsel or to others in the FHWA regional offices or to the FHWA Washington Headquarters. At the State level, the Division Administrator is the most qualified person and is in the best position to review claim characteristics. No change is anticipated in this responsibility for review of contract claims.

Another item mentioned by one commenter, was the issue of payment for anticipated profits. As the term implies, anticipation profits are those which a contractor feels would have been made given normal operating practices. If the contractor feels that the SHA adversely affected work progress, profits that were anticipated may have been lessened. Because it is improbable, if not impossible, to verify whether or not these profits would occur, there is no acceptable way to document it as a project cost. This is considered to fall under the realm of contractor risk. Accordingly, participation in claims for anticipated profits will not be accepted.

A few commenters brought up the point that discretionary judgment by the FHWA in contract claims was in conflict with Title 23, U.S.C. They felt that there was no statutory provision to permit withholding of participation and, therefore, the participation in contract claims should be mandatory. In a related issue, there was a few commenters that felt that the funds apportioned to and obligated by the State became State funds and should no longer be under control by the Federal Government. Both of these points are based on erroneous assumptions. A recent court case concerning reimbursement to the Federal Government when SHA's recovered project related funds employed the theory of restitution, and held that it would be an unjust enrichment for the States to retain such funds, since they were plainly not "outright gifts" to the States, "Tennessee v. Dole." No. 83-5499 (6th Cir. 1984) [1984-2 CCH Trade Cas. (CCH) ¶ 66318). Also, as previously cited, it has been recognized that the FHWA has no inherent contractual obligation to participate in any and all contract claim settlements, "Louisiana Department of Highways vs. United States," 604 F.2d 1339 (Ct.Cl., 1979).

A request was made to define the difference between "informal resolution" and "claim settlement in lieu of formal proceedings." For purposes of this rule, the FHWA feels these terms are synonymous. All forms of informal resolution of claims between the SHA and the contractor would be included in this category.

A commenter also felt that the proposed regulations should make provisions for the FHWA to reimburse the SHA for its administrative, legal, or other costs required to recover funds. Although not included in this regulation.

recovery of SHA costs is provided for under 23 CFR Part 140, Subpart E.

Therefore, based on a further review and with consideration given to the comments submitted to the public docket, the revisions as proposed and further modified to the extent discussed above are adopted in this final rule.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. As the changes being proposed constitute only a clarification of existing guidance, the FHWA has determined that the change reflected in this action will have only minimal impact on the affected States and public. No new requirements are imposed. In fact, the changes being proposed may have some positive effect on the States. Accordingly, for the foregoing reasons and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant impact on a substantial number of small entities and that the preparation of a full regulatory evaluation is not required.

In consideration of the foregoing and under the authority of 23 U.S.C. 110, 120, 315, and 49 CFR 1.48(b), the FHWA hereby amends Part 635, Subpart A of Chapter I of Title 23, Code of Federal Regulations, by revising § 635.120 to read as set forth below.

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

List of Subjects in 23 CFR Part 635

Government contracts, Grant programs—Transportation, Highways and Roads, Claims and Claim Awards.

Issued on: October 9, 1985.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

PART 635—[AMENDED]

The FHWA hereby amends Part 635, Subpart A to Chapter 1 of Title 23, Code of Federal Regulations, as follows:

1. The authority citation for Part 635 continues to read as follows:

Authority: 23 U.S.C. 112, 113, 114, 117, 128 and 315; 42 U.S.C. 3334, 4231–4233, 4601 *et seq.*; 49 CFR 1.48(b).

2. Section 635.210 is revised to read as follows:

§ 635.210 Participation in contract claim awards and settlements.

(a) The eligibility for and extent of Federal-aid participation up to the Federal statutory share in a contract claim award made by a State to a Federal-aid contractor on the basis of an arbitration proceeding, administrative board determination, or court judgement, or a contract claim settlement entered into in lieu of such proceedings, shall be determined on a case-by-case basis. However, Federal funds will participate to the extent that any contract adjustments made are supported, and have a basis in terms of the contract and applicable State law, as fairly construed. Further, the basis for the adjustment and contractor compensation shall be in accord with prevailing principles of public contract law.

(b) The FHWA shall be made aware by the SHA of the details of the claim at an early stage so that coordination of efforts can be satisfactorily accomplished. Claims arising on projects handled under Certification Acceptance (C.A.) procedures should also be brought to the attention of the FHWA in those cases where the type of claim is unusual, controversial, or is not covered by C.A. procedures approved in the State.

(c) When requesting Federal participation, the SHA shall set forth in writing the legal and contractural basis for the claim, together with the cost data and other facts supporting the award or settlement. Federal-aid participation in such instances shall be supported by a SHA audit of the actual costs incurred by the contractor unless waived by the FHWA as unwarranted. Where difficult, complex, or novel legal issues appear in the claim, such that evaluation of legal controversies is critical to consideration of the award or settlement, the SHA shall include in its submissions a legal opinion from its counsel setting forth the basis for determining the extent of the liability under local law, with a level of detail commensurate with the magnitude and complexity of the issues involved.

(d) In those cases where the SHA receives an adverse decision in an amount more than can be justified by the SHA, the FHWA will participate up to the appropriate Federal matching share, to the extent that it involves a Federal-aid participating portion of the contract, provided that, (1) the FHWA was consulted and concurred in the proposed course of action, (2) all avenues of appeal have been considered, and (3) the SHA pursued the case diligently and in a professional manner.

(e) Federal funds will not participate, (1) if it has been determined that SHA employees, officers, or agents acted with gross negligence, or participated in intentional acts or omissions, fraud, or other acts not accepted within the standards of the profession in project design, plan prepation, contract administration or other activities which gave rise to the claim; (2) in such cost items as consequential or punitive damages, anticipated profit, or any award or payment of attorney's fees paid by a State to an opposing party in litigation; and (3) in tort, inverse condemnation, or other claims erroneously styled as claims "under a contract."

(f) Payment of interest associated with a claim will be eligible for participation provided that the payment to the contractor for interest is allowable by State statute or specification and the costs are not a result of delays caused by dilatory action of the State or the contractor. The interest rates must not exceed the rates provided for by the State statute or specification.

(g) In cases where SHAs affirmatively recover compensatory damages through contract claims, cross-claims, or counterclaims from contractors, subcontractors, or their agents on projects on which there was Federal-aid participation, the Federal share of such recovery shall be equivalent to the Federal share of the project or projects involved. Such recovery shall be credited to the project or projects from which the claim or claims arose.

[FR Doc. 85-24526 Filed 10-15-85; 8:45 am]

BILLING CODE 4910-22-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42031A; FRL-2871-5]

Toxic Substances; Biphenyl; Test Rule

Correction

In FR Doc. 85-21811 beginning on page 37182 in the issue of Thursday, September 12, 1985, make the following corrections:

1. On page 37183, in the first column, in the fourth line of the third paragraph from the bottom of the page, "(<1 to 15)" should read "(≤1 to 15)".

2. On the same page, in the third column, in the ninth line from the top of the page "(<1 to 5)" should read "(≤1 to 5)".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HSQ-108-CN]

42 CFR Parts 400, 405, 412, 420, 433, 462, 466, 473, 474 and 476

Medicare and Medicaid Programs; Utilization and Quality Control Peer Review Organization (PRO); Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rules.

SUMMARY: This document corrects technical errors that appeared in four final rules, published April 17, 1985, that implemented portions of the Peer Review Improvement Act of 1982.

FOR FURTHER INFORMATION CONTACT: Marc Thomas (301) 594-9778.

SUPPLEMENTARY INFORMATION:

I. In document 85-9000, beginning on 50 FR 15312, the following corrections are made.

§ 400.200 [Corrected]

A. Page 15326: (1) In § 400.200 in column one: line two of the definition of "Area" is corrected by inserting a comma after "State" to read "State,"; line three is corrected by inserting a comma after "jurisdiction" to read "jurisdiction,"; and line four is corrected by replacing "constitution" with "constituting".

§ 405.330 [Corrected]

(2) In column one, the section number "§ 405.300" is corrected to read "§ 405.330".

(3) In column one, § 405.330(b), third line, the comma in "post-hospital, SNF care" is deleted, so that the phrase is corrected to read "post-hospital SNF care".

(4) In column two, § 405.330(b)(2), the second line is corrected by deleting the comma after "services," to read "the services has been determined under".

§ 412.44 [Corrected]

(5) In column two, the authority citation for Part 412 is corrected by adding sections "1866(a)(1)(F)" and "1395cc(a)(1)(F)" to read as follows: "Secs. 1102, 1866(a)(1)(F), 1871 and 1886 of the Social Security Act (42 U.S.C. 1302, 1395cc(a)(1)(F), 1395hh, 1395ww)."

(6) In column three, the section number, "§ 142.44" is corrected to read "§ 412.44".

B. Page 15327: (1) In column one, the authority citation for Part 433 is corrected by deleting a parenthesis in the last line between the "6" and the "k" "1396(k)", to read "1396k)".

§ 462.12 [Corrected]

(2) In column three, the title of § 462.12 in the Table of Contents for Part 462 is corrected to read "Involuntary termination or nonrenewal of grants".

C. Page 15328, column one, the third line of the authority citation for Part 462 is corrected by insertng ", 42" before "U.S.C.". The last line of the authority citation for Part 462 is corrected by inserting "42" before "U.S.C.", by inserting a "-1" in "1320c" and inserting "c" in "1320-2" to read "42 U.S.C. 1320c-1 and 1320c-2.".

D. Page 15329, column two: (1) In lines three and four, 466.92 is removed from the Table of Contents for Subpart C of Part 466.

(2) In the fifth line of the authority citation for Part 466, "1868(a)" is corrected to read "1866(a)" and "c" is inserted in "1320c-1320-12" to read "1320c-1320c-12".

§ 466.3 [Corrected]

(3) In the amendatory language designated as "C", in the second line, "§ 466.3" is corrected to read "§ 466.2", correcting the amendatory language to read as follows: "C. Section 466.1 is redesignated as § 466.2 and § 466.2 is redesignated as § 466.1".

§ 466.1 [Corrected]

(4) In § 466.1, five stars are inserted in the line after the section heading, denoting that the existing introductory language remains unchanged.

§ 466.80 [Corrected]

E. Page 15332, column one: (1) In § 466.80(b)(1)(ii), line three is corrected by deleting the dash in the middle of the line, inserting a comma after the word "reconsideration", and deleting the word "and" and replacing it with the phrase "or reopening". Line five is corrected by inserting a comma after the word "review". As a result, lines three through five are corrected to read "result of reconsideration, or reopening all approvals and denials with respect to cases subject to preadmission review,".

(2) In the fourth line from the bottom, the word "and" is inserted between "intermediaries" and "carriers", and the phrase "and if an" is corrected to read "or if an".

§ 466.86 [Corrected]

(F) Page 15333, column one. In the second complete paragraph (§ 466.86(c)(1)), on the sixth line, the word "care." is added after "patient".

§ 466.102 [Corrected]

(G) Page 15335, column one. In the third line of § 466.102(a)(1), "under review of the PRO review care" is corrected to read "under review if the PRO reviews care".

II. In document 85-9001, beginning on 50 FR 15335, the following corrections are made.

PART 420—[CORRECTED]

(A) Page 15343, column three: The correct authority citation for Part 420, Subpart B is "Secs. 1102, 1128, 1862(d), 1862(e), 1866(b)(2) (D), (E), and (F), 1871, 1902(a)(39), and 1903(i)(2) of the Social Security Act (42 U.S.C. 1302, 1320a-7, 1395y(d), 1395y(e), 139i5cc(b)(2) (D), (E), and (F), 1395hh, 1396a(a)(39), and 1396a(i)(2))."

§ 474.0 [Corrected]

(B) Page 15344, column three, in § 474.0 delete the definitions "PRO area" and "PSRO area". Since "Area" is defined in 42 CFR 400.200, these definitions are not necessary and should not have been included in the Federal Register.

III. In document 85-9002, beginning on 50 FR 15347, the following corrections are made.

§ 476.101 [Corrected]

(A) Page 15359: (1) In column two, § 476.101(b), in the sixth line of the definition of "Patient representative", "or (2) and individual" is corrected to read "or (2) an individual".

(2) In column three, § 476.101(b), in the definition for "Sanction report", in line four, the word "PROs" is corrected to read "PRO's".

§ 476.103 [Corrected]

(B) Page 15360: (1) In column one, in § 476.103(b)(6), in the second to the last line, a comma is added after "geographical"; in the last line, the word "institution" is corrected to read "institutional".

§ 476.105 [Corrected]

(2) In column two, the title § 476.105 is corrected to read "§ 476.105 Notice of disclosures made by a PRO."

(3) In column two, in § 476.105(b), in the third line from the bottom, "requirements and expections" is corrected to read "requirements and exceptions".

§ 476.107 [Corrected]

(C) Page 15361: (1) In column one, § 476.107(k), in the second line, the word "out" is inserted between "carry" and "its", so that the line is corrected to read

"Inspector General to carry out its statutory".

§ 476.109 [Corrected]

(2) In column one, § 476.109, "21 U.S.S. 1175" is corrected to read "42 U.S.C. 290dd–3 and 290ee–3".

§ 476.111 [Corrected]

(3) In column two, the fifth line from the top of the page, in § 476.111(c), the phrase "who are not covered under a private review contract held by a PRO" is deleted to make this section consistent with § 466.88(b)(2). Disclosure for the purpose of conducting review under a private review contract is already addressed at §§ 466.88(b)(1) and 476.111(b).

§ 476.120 [Corrected]

(D) Page 15362.

(1) In column one, the second line from the top of the page, "—" is inserted after the word "disclose" and paragraph "a" begins on the next line.

§ 476.132 [Corrected]

(2) In column two, § 476.132(b)(1)(ii), in the last line of the paragraph, "§ 473.28" is corrected to "§ 473.24".

§ 476.134 [Corrected]

E. Page 15363: (1) In column one, § 476.134(c), line three, a comma is inserted after the first word, "request", so that the line is corrected to read "request, reasons for the request, and the".

§ 476.138 [Corrected]

(2) In column three, in § 476.138(a)(3), line three is corrected by deleting the comma after the word "PRO", so that the line is corrected to read "PRO are not subject to subpoena or".

IV. In document 85–9003, beginning on 50 FR 15364, the following corrections are made.

§ 473.10 [Corrected]

A. Page 15372: (1) In column one, § 473.10(a), in the fourth line, the word "denial" is inserted between "initial" and "determination" and the word "or" is changed to "of".

§ 473.14 [Corrected]

(2) In column two, § 473.14(a)(2) is corrected to read "Medical necessity of services".

(3) In column two, § 473.14(c)(2), the fifteenth line is corrected by inserting "should be read to" before the word "mean". The line is corrected to read "should be read to mean initial and reconsidered".

§ 473.15 [Corrected]

(4) In column two, § 473.15(b), the two lines at the bottom of the page are corrected to read "(b) *Procedures.* Procedures described in §§ 473.18 through 473.36,".

§ 473.38 [Corrected]

B. Page 15374, column one.

1. In § 473.38(a), the second and third lines are corrected to read "accordance with § 473.40 and a final decision rendered; or".

§ 473.40 [Corrected]

(2) In § 473.40(c), line eight is corrected by changing the comma after "subpart" to a period.

(Secs. 1102 of the Social Security Act; 42 U.S.C. 1302)

(Catalog of Federal Domestic Assistance Programs No. 13773, Medicare—Hospital Insurance Program, and No. 13774, Medicare—Supplementary Medical Insurance Program)

Dated: October 9, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85–24667 Filed 10–15–85; 8:45 am]

BILLING CODE 4120–01–M

Office of Child Support Enforcement

45 CFR Parts 302, 304, 305, and 306

Child Support Enforcement Program; Medical Support Enforcement

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rule.

SUMMARY: This regulation amends the Child Support Enforcement program regulations governing medical support enforcement activities and responds to comments made on the proposed regulations published in the Federal Register on August 4, 1983 (48 FR 35468). The regulation also implements section 16 of Pub. L. 98–378.

Under this regulation, the IV–D agency must obtain basic medical support information and provide this information to the State Medicaid agency. Also, if the custodial parent does not have satisfactory health insurance coverage, the IV–D agency must petition the court or administrative authority to include medical support in new or modified support orders and inform the State Medicaid agency of any new or modified support orders that include a medical support obligation. Finally, the IV–D agency must take steps to enforce medical support which has been ordered by a court or administrative process under State law by assuring that coverage is acquired as ordered. These activities increase the use of available third party resources in the form of private health insurance, thus increasing medical cost savings to State and Federal governments under the Medicaid program. Federal funding is available to IV–D agencies for required medical support activities. Prior to these regulations, medical support activities were pursued by IV–D agencies only under optional cooperative agreements with Medicaid agencies.

We also are amending Child Support Enforcement program final audit regulations (see 50 FR 40120, published October 1, 1985) to add State plan-related audit criteria for medical support enforcement. Sections 305.20(c) and 305.56 are being published as interim final regulations with a comment period.

DATES:

Comment period: Consideration will be given to comments received on the audit criteria in §§ 305.20(c) and 305.56 by December 16, 1985 and changes will be made to the regulations if necessary in response to these comments.

Effective: These regulations are effective December 2, 1985 except for §§ 305.20(c) and 305.56, which are effective October 16, 1985.

FOR FURTHER INFORMATION CONTACT: Carol Jordan, Policy Branch, OCSE, (301) 443–5350.

SUPPLEMENTARY INFORMATION:

Background

The Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977 (Pub. L. 95–142) added section 1912 to title XIX of the Social Security Act (the Act). This section of the Act permits the State Medicaid agency to establish a medical support enforcement program. The Conference Committee Report (H.Rep. 95–673, September 22, 1977) states that the Medicaid agency may use the IV–D agency to assist in the enforcement of medical support rights due from or through an absent parent, since it was not intended that the Medicaid agency establish a separate system for the enforcement of medical support obligations.

On February 11, 1980, OCSE and the Health Care Financing Administration (HCFA) published joint regulations to implement section 1912 of the Act through optional cooperative agreements between the State Medicaid agency and the State IV–D agency. (See 45 CFR 306.0 through 306.40 for OCSE regulations and 42 CFR 433.151 through 433.154 for HCFA regulations.) Under these agreements, the Medicaid agency reimburses the IV–D agency for medical support enforcement activities

conducted. However, most State have not entered into agreements because of child support enforcement program priorities and because Federal funding for Medicaid activities is at a lower rate than for child support activities under title IV–D of the Act.

Providing for health care of children is an integral part of the general obligation that parents have to support their children. Assuring that children have available medical care is essential to their general welfare. We believe many parents have private health insurance or other type of health coverage such as Health Maintenance Organizations (HMO's) or Preferred Provider Organizations (PPO's) available through employers, unions or other groups which could be used, at reasonable cost to the parent, to pay for their dependents' medical expenses. A National Health Care Expenditures survey, conducted by the National Center for Health Services Research of the Public Health Service, indicated that 73 percent of low-wage employees can obtain employer-provided insurance at reasonable or no cost.

When employment-related or other group health insurance coverage is available to the parent and allows the parent to include the child(ren) in question, the parent should obtain this coverage. This includes situations where that parent has employment-related or other group health insurance coverage for himself, or himself and dependents living with him, and the coverage is available for dependents who are not living with him.

Private insurance provided by parents to cover their children who are eligible for Medicaid assistance reduces the public costs of supporting a child and results in significant cost savings to State and Federal governments under the Medicaid program. While we recognize that aggressive prosecution of medical support for children may have the effect of reducing potential incentive payments to IV–D agencies, we note that it may result in greater overall savings to the taxpayer.

Statutory Authority

These regulations were proposed under the authority of sections 1102 and 454(13) of the Act. Section 1102 authorizes the Secretary of HHS to publish regulations (not inconsistent with the Act) necessary to efficiently administer her functions under the Act. Under the title IV–D State plan requirement contained in section 454(13), the Secretary may prescribe, and the State must comply with, requirements and standards necessary to establish an effective title IV–D program.

Since the proposed regulation was published, Congress enacted section 16 of Pub. L. 98–378, the Child Support Enforcement Amendments of 1984. Section 16 adds a new section 452(f) to the Act that requires the Secretary to issue regulations to require State IV–D agencies to petition the court or administrative authority to include medical support as part of any child support order whenever health care coverage for a child is available to the absent parent at a reasonable cost. In addition, section 16 requires States to provide for improved information exchange between State IV–D and State Medicaid agencies with respect to the availability of health insurance coverage.

Regulatory Provisions

These regulations require IV–D agencies to gather specified medical support information regarding IV–D cases; submit the information to the Medicaid agency for use in its third party liability activities; petition the court or administrative authority to include employment-related or other group health insurance in new or modified support orders, unless the custodial parent has satisfactory coverage other than Medicaid; petition the court or administrative authority to include medical support as described above, whether or not it is actually available to the absent parent at the time the order is entered or modification of current coverage to include the child(ren) is immediately possible; inform the Medicaid agency when new or modified support orders include a medical support obligation; take steps to enforce the health insurance coverage required by a court or administrative order; and provide the Medicaid agency with health insurance policy information either at the time the order is entered or when the absent parent secures health insurance coverage under the order. These regulations do not require the IV–D agency to perform the actual collection of payments for medical services from liable third parties or to monitor Medicaid claims and payments. These activities remain the responsibility of the Medicaid agency.

These IV–D activities are in keeping with the Department's initiative to reduce medical costs to State and Federal governments. The IV–D agency already performs the functions of locating absent parents and establishing and enforcing the support obligations of absent parents. Requiring the IV–D agency to perform these medical support activities eliminates the duplication of effort, the unnecessary expense, and the administrative complexity that would result if the Medicaid agency had to establish enforcement systems to perform these activities. The administrative cost of performing the required medical support activities should be more than offset by substantial State and Federal Medicaid savings.

These regulations amend 45 CFR 302.80 by redesignating the current contents of the section as paragraph (a) and adding a new paragraph (b). In paragraph (a), the cross-reference to 45 CFR Part 306 is changed to refer to Subpart A of Part 306 for reasons explained below. Paragraph (b) specifies that the IV–D activities contained in 45 CFR Part 306, Subpart B, are requirements under the title IV–D State plan.

These regulations amend 45 CFR 304.20, Availability and rate of Federal financial participation, by adding a new paragraph (b)(11). Paragraph (b)(11) makes Federal funding available under the IV–D program for IV–D medical support activities required in Part 306, Subpart B, of these regulations.

These regulations also amend 45 CFR 304.23, "Expenditures for which Federal financial participation is not available," by revising the cross-references in paragraph (g). This change is required because 45 CFR Part 306 is redesignated as Part 306, Subpart A.

Two sections of the audit regulations at 45 CFR Part 305 are also being revised in this document. Section 305.20(c) is amended to include medical support criteria in the list of audit criteria OCSE will use to determine whether a State has an effective IV–D program. Medical support criteria were not included in § 305.20(c) previously because final medical support regulations had not been issued until now.

Section 305.56 is revised to specify the audit criteria that OCSE will use to determine whether a State is meeting the State plan requirement for medical support enforcement. Previously, § 305.56 specified that audit criteria would be published at the time final medical support regulations were published. These audit criteria parallel audit criteria used to assess State performance with respect to other State plan requirements. They require a State to have and use written procedures to meet the State plan requirements and to have personnel performing the necessary functions.

These changes of Part 305 are effective upon publication and are subject to public comment as noted earlier. We will make changes if

appropriate and republish any changes in the **Federal Register.**

The newly designated 45 CFR Part 306, Subpart A, entitled "Optional Cooperative Agreements," does not change current regulations at 45 CFR Part 306. Part 306, Subpart B, entitled "Required IV–D Activities," contains new § § 306.50 and 306.51.

The new § 306.50 is entitled "Securing medical support information." Section 306.50(a) lists the information a IV–D agency must secure for the Medicaid agency to assist with medical support enforcement activities. Under this paragraph, the IV–D agency must collect information if it is available or can be obtained on IV–D cases for which an assignment is in effect under title IV–A of IV–E of the Act if the IV–A or IV–E agency does not provide the information to the Medicaid agency. The information includes the name, address and social security number of the absent parent; the name and address of the absent parent's place of employment; the children's names and social security numbers; the AFDC or IV–E foster care case number, the Medicaid number or custodial parent's social security number; and the policy name(s) and number(s) and names of persons covered if the absent parent has any health insurance policies.

Section 306.50(b) requires the IV–D agency to inform individuals who apply for IV–D services under 45 CFR 302.23 that medical support enforcement services are available and to secure the information specified in paragraph (a) for certain individuals if the information is available or can be obtained. Under paragraph (b)(1), the IV–D agency is required to secure this information if the individual requesting services is a Medicaid applicant or recipient. Under paragraph (b)(2), the IV–D agency is required to secure this information with the consent of the individual requesting services, if the individual is not a Medicaid applicant or recipient.

Section 306.50(c) of the regulations requires the IV–D agency to submit the medical support information obtained under § 306.50 (a) and (b)(1) to the Medicaid agency. The IV–D agency may transmit the information manually or by automated system, but must transmit the information as specified in the State plan in a timely manner by the most efficient and cost-effective means available. We believe that requiring IV–D agencies to supply Medicaid agencies with medical support information that can be obtained with respect to a IV–D case is that simplest, least expensive way of securing the information necessary for medical support enforcement activities.

The new § 306.51 is entitled "Securing and enforcing medical support obligations." Paragraph (a) defines health insurance to be reasonable in cost if it is employment-related or other group health insurance. Paragraph (b) sets forth requirements with respect to AFDC and title IV-E foster care cases. Under paragraph (b)(1) the IV–D agency must petition the court or administrative authority to include in new or modified court or administrative orders health insurance that is available to the absent parent at reasonable cost, unless the custodial parent and children have satisfactory medical insurance other than Medicaid. Paragraph (b)(2) requires the IV–D agency to seek medical support in the order whether or not health insurance at reasonable cost is actually available to the absent parent at the time the order is entered or modification of current coverage to include the child(ren) in question is immediately possible.

The IV–D agency is not required to attempt to modify an existing order for the sole purpose of including medical support. The State is not limited to petitioning the court or administrative authority for medical support as specified in these regulations, but may petition for other forms of medical support if it seems reasonable to do so in the judgment of the IV–D agency.

Section 306.51(b)(3) requires the IV–D agency to inform the Medicaid agency of any new or modified orders that include medical support and to provide the information referred to in § 306.50(a) when this information is available.

Section 306.51(b)(4) requires the IV–D agency to take steps to enforce the medical support order if health insurance is available to the absent parent at reasonable cost but has not been secured at the time the order is issued. The State IV–D agency must take steps to ensure that the absent parent obtains the required medical insurance. For example, the coverage provided must name the dependents as insured persons on the policy. The State has discretion in determining what steps must be taken. The State may contact the employer or ask the court to require the absent parent to notify the court or IV–D agency when the ordered coverage has been obtained. The State may initiate contempt of court proceedings or other action under State law if the absent parent does not comply with the order. When the absent parent obtains the required medical insurance, paragraph (b)(4) requires the State to provide the Medicaid agency with the information referred to in § 306.50(a).

Paragraph(b)(5) requires the IV–D agency to communicate as specified in the State plan with the Medicaid agency to determine if there have been lapses in health insurance coverage for Medicaid applicants and recipients. This will enable the IV–D agency to actively enforce the medical support order.

Paragraph (b)(6) requires the IV–D agency to request employers and other groups offering health insurance coverage that is being enforced by the IV–D agency to notify the IV–D agency when the absent parent's health insurance coverage lapses.

Section 306.51(c) requires the IV–D agency to inform an individual who applies for IV–D services under 45 CFR 302.33 that medical support enforcement services are available and to provide the medical support services under paragraph (b) if the individual is a Medicaid applicant or recipient. If the individual who applies for IV–D services is not a Medicaid applicant or recipient the services must be provided with the individual's consent. The IV–D agency must provide information on the insurance policy and absent parent to the Medicaid agency as required under paragraphs (b)(3) and (4) only if the individual is a Medicaid applicant or recipient.

These regulations do not alter current regulations at 45 CFR 306.0 through 306.40 governing optional cooperative agreements between IV–D and Medicaid agencies under which IV–D agencies may provide medical support enforcement services additional to those required by this document and obtain reimbursement for these services from the Medicaid agency. These regulations are one step toward improving medical support enforcement and we solicit other recommendations to strengthen medical support enforcement efforts by both IV–D and Medicaid agencies.

States have 45 days from the date of publication to implement these regulations, except for §§ 305.20(c) and 305.56, which are effective upon publication. We have provided this time for States to establish procedures, develop any necessary forms, and disseminate operational policy throughout the State.

Changes to Proposed Regulations

This document amends several provisions of the proposed regulations as well as §§ 305.20 and 305.56 of the final OCSE audit regulations recently published in the **Federal Register** (50 FR 40120, October 1, 1985).

Section 302.80(b) is revised to require the State plan to provide that the IV–D agency shall establish and enforce medical support obligations in accordance with the requirements

contained in 45 CFR Part 306, Subpart B. This clarifies that the IV–D agency is responsible for medical support enforcement.

Section 305.20(c) is revised to include reference to medical support enforcement audit criteria at § 305.56.

Section 305.56 is revised to specify audit criteria for medical support enforcement based on the State plan provisions at § 302.80.

Section 306.50(a) is revised to include foster care cases for which there is an assignment under section 471(a)(17) of the Act when establishing and enforcing medical support obligations under 45 CFR Part 306, Subpart B. This change was made as a result of section 11 of Pub. L. 98–378 which requires IV–D agencies to provide services in title IV–E foster care cases.

Section 306.50 (a) and (b) are revised by deleting the phrase "during the regular processing of" a IV–D case. This revision was made to clarify that medical support enforcement is an integral part of IV–D case processing, which makes this reference unnecessary. Section 306.50(b) is also revised to specify that the IV–D agency shall inform applicants that medical support enforcement services are available and, in the case of individuals who are not Medicaid applicants or recipients, provide medical support enforcement services with the consent of the individual, rather than upon request. This emphasizes the responsibility of the IV–D agency to provide the services at their initiative, not only when asked.

Section 306.50(c) is revised to require the transmittal of medical support information to the Medicaid agency in a timely manner and only if the individual is a Medicaid applicant or recipient.

The title of § 306.51 is changed to "Securing and enforcing medical support obligations" to clarify that some enforcement activities are required under this section.

In response to comments asking for clarification of "reasonable cost", § 306.51(a) is added to specify that health insurance is considered reasonable in cost if it is employment-related or other group health insurance. Although the proposed regulations referred only to employer-based coverage, we believe that employment-related or other group health insurance should be sought because more families will be helped and costs to the absent parent will be no greater. Employment-related or other group health insurance includes all types of health insurance coverage related to employment or membership in a group which offers group plan insurance. Such benefits include, in addition to health insurance coverage provided by a parent's current employer, coverage provided in connection with a retirement, disability, or unemployment plan, by a union plan, or by some other similar group plan which offers comprehensive benefits.

Section 306.51(a), redesignated as § 306.51(b), is revised as a result of section 11 of Pub. L. 98–378 to include foster care cases for which there is an assignment under section 471(a)(17) of the Act. This provision in the proposed regulation specified when the IV–D agency must petition to include medical support in new or modified court or administrative orders for child support and referred to "employer-based" health insurance coverage. The final regulation at paragraph (b)(1) substitutes health insurance that is available at reasonable cost for employer-based coverage in order to correspond to the definition noted above. This paragraph also has been qualified in this final regulation to indicate that a petition for medical support need not be filed if the custodial parent has satisfactory health insurance coverage.

Section 306.51(b)(2) is added to require the State IV–D agency to petition for medical support whether or not health insurance at reasonable cost is actually available to the absent parent at the time the order is entered or modification of current coverage to include the children in question is immediately possible. This will expedite the enforcement of medical support that becomes available at a later date.

Sections 306.51(a) (2) and (3) of the proposed regulation are revised to specify that the information referred to in § 306.50(a) must be sent to the Medicaid agency when health insurance is obtained as the result of a medical support order. These paragraphs are redesignated as § 306.51(b) (3) and (4) in the final regulation.

Section 306.51(a)(3) of the proposed regulation required the State IV–D agency to ensure that the health insurance coverage required by the support order is obtained by the absent parent. We have amended this paragraph (now paragraph (b)(4)) to clarify that, if health insurance at reasonable cost is available to the absent parent at the time the order is entered, the State IV–D agency must take steps to enforce the medical support required by the order. The State has discretion in determining what steps will be taken as discussed earlier in the preamble.

A new § 306.51(b)(5) is added requiring the IV–D agency to communicate periodically with the Medicaid agency to determine if there have been lapses in health insurance coverage for Medicaid applicants and recipients.

A new § 306.51(b)(6) requires the IV–D agency to request employers and other groups offering health insurance that is being enforced by the IV–D agency to notify the IV–D agency of lapses in coverage.

Section 306.51(b) of the proposed regulation required the IV–D agency to provide the service specified in § 306.51(a) to non-AFDC applicants upon request. Section 306.51(b) is redesignated as paragraph (c) and is amended to clarify that the State IV–D agency must inform an individual who applies for IV–D services under 45 CFR 302.33 that medical support enforcement services are available and must provide the service specified in § 306.51(b) if the individual is a Medicaid applicant or recipient.

The State IV–D agency must provide these services with the consent of an individual who applies for services and who is not a Medicaid applicant or recipient. The IV–D agency must transmit health insurance policy information to the State Medicaid agency on individuals who are Medicaid applicants or recipients.

In addition to these changes, technical amendments changing certain references from singular to plural are made to § 306.50(a)(7). Finally, we decided to retain the section title "Medical support enforcement" for § 302.80, rather than the proposed "Medical support," in order to be consistent with the title of Part 306.

Response to Comments

We received thirty-six comments in response to the Notice of Proposed Rulemaking published in the Federal Register on August 4, 1983 (48 FR 35468). Thirty-one State agencies, two attorneys, two legal advocacy groups, and one governor submitted comments. A discussion of these comments and our responses follows:

1. *Comment:* One individual, one advocacy group, and one State agency recommended we expand the regulations to operate a full medical support enforcement program through the IV–D agency. The commentors suggested that we require States to include medical support in court orders as a condition of their participation in the IV–D program; allow the IV–D agency to recover past Medicaid payments; and amend regulations to permit third party recovery activity by the IV–D agency.

Response: Regulations do not have to be amended to permit third party

recovery activity by the IV–D agency. The regulations in this document do not replace current regulations now at Part 306, Subpart A governing optional cooperative agreements between IV–D and Medicaid agencies under which IV–D agencies may provide a full range of medical support enforcement services for which they receive full reimbursement from the Medicaid agency.

It is beyond the scope of Federal regulations to specify what a support order must contain. The provisions of a support order are determined on a case-by-case basis in accordance with State law and judicial descretion. The regulations require the IV–D State plan to provide that the IV–D agency petition the court or administrative body which establishes support orders to include medical support in the support order in appropriate cases.

2. *Comment:* Four State agencies commented that, when medical support is included in a support order, the amount of child support is often reduced by the amount ordered for medical support. This results in a reduction in the child support collection.

Response: The cost of employment-related medical insurance is estimated to be minimal. A study done in 1983 by the National Center for Health Services Research of the Public Health Service indicated that 73 percent of low-wage employees can obtain employer-provided insurance at reasonable or no cost. Based on these findings, employment-related insurance costs are not excessive. We also believe that other group insurance coverage may be available at reasonable or no cost. If this fact is made known to the court when seeking or modifying an order, any reduction in financial support may be avoided or reduced. We believe the benefits of medical support for dependent children in the form of health insurance coverage and medical care cost-savings to State and Federal governments offset the potential small reduction in child support collections.

3. *Comment:* Nine State agencies asked for clarification of the term "reasonable cost."

Response: We consider any employment-related or other group coverage "reasonable" under the assumption that most employment-related or other group health insurance is inexpensive to the employee/absent parent, as indicated by the study mentioned in response to the previous comment. These regulations do not require that absent parents be asked to purchase more expensive individual health coverage for their children.

In response to comments, we are specifying at § 306.51(a) of these regulations that health insurance is considered reasonable in cost if it is employment-related or other group health insurance.

4. *Comment:* Two State agencies asked if the State is required to petition for medical support only if health insurance coverage is available at the absent parent's place of employment.

Response: In response to this comment, we have expanded the regulations to clarify that the State must petition for medical support whether or not employment-related or other group insurance is currently available to the absent parent. We believe that this will result in fewer delays in obtaining coverage for dependents because the State will not always have to go back to court or use administrative procedures to have medical support included in the existing order once insurance becomes available to the absent parent.

5. *Comment:* One State agency asked, if health insurance coverage is not available from the employer, may the State be exempted from the requirement proposed at § 306.51(a)(1) to petition for medical support?

Response: States may not be exempted from the requirement in the final regulations at § 306.51(b)(1). Under § 306.51(b)(2), the IV–D agency must petition for medical support in IV–D cases whether or not employment-related or other group health insurance coverage is currently available to the absent parent. Therefore, the State must petition for medical support even when health insurance coverage is not available from the employer.

6. *Comment:* One State requested clarification regarding situations where the absent parent refuses to obtain health insurance coverage or the State office of support enforcement is not a party to the action, for example, when the parents are involved in a martial dissolution action.

Response: Under § 306.51(b)(1) the IV–D agency is required to petition the court or administrative authority to include medical support only when establishing or modifying a support order. The IV–D agency is not required to bring a case to court solely to establish a medical support obligation. If the absent parent refuses to obtain health insurance when it is available at reasonable cost after he or she is ordered to do so, the State must take whatever action it deems necessary to enforce the obligation, which may include citing the person for contempt of court.

If the parents are involved in a martial dissolution action it may be appropriate for the IV–D agency to intervene and request medical support if that is permitted under State law. Section 306.51(b) generally applies to petitions to establish paternity, URESA actions, and other State initiated proceedings to establish a support obligation.

7. *Comment:* Fourteen State agencies and one attorney for a State IV–D agency oppose the requirement that the IV–D agency ensure that the health insurance coverage required by the support order is obtained by the absent parent. One State agency commented that this requirement contradicts the statement in the preamble to the proposed regulation that the IV–D agency will not be responsible for medical support enforcement.

Response: We agree that a IV–D agency cannot ensure that medical coverage is obtained any more than it can ensure that child support is paid. Thus, in response to comments received, § 306.51(b)(4) requires States to take steps to enforce medical support ordered by a court or administrative process under State law. This means that, at a minimum, States must take action to determine whether the ordered health insurance coverage has been obtained and to notify the appropriate parties, such as the Medicaid agency and the court, if the absent parent has neglected to comply with the order. If the absent parent does not comply with the order by obtaining insurance that is available, the State may initiate contempt of court proceedings or other action under State law. Once the absent parent has obtained the health insurance coverage and the IV–D agency has notified the Medicaid agency, other enforcement activity such as monitoring Medicaid claims and payments, and pursuing third party medical support are the responsibility of the State Medicaid agency.

8. *Comment:* Three State agencies have questioned the purpose of providing information on non-AFDC applicants to the Medicaid agency.

Response: The purpose of providing third party liability (TPL) information to the Medicaid agency is to identify TPL and reduce Medicaid expenditures. Therefore, the State is not required to provide information to the Medicaid agency unless the individual is a Medicaid applicant or recipient. All AFDC recipients and title IV–E foster care recipients are eligible for Medicaid. Other individuals who apply for IV–D services under § 302.33 of this chapter may be Medicaid applicants or recipients. Regulations at § 306.50(e) and § 306.51(c) require the IV–D agency to transmit medical support information to

the Medicaid agency only if the person applying for IV–D services is a Medicaid applicant or recipient.

9. *Comment:* Four State agencies asked why child support programs should be required to perform medical support activities for which they receive no credit. Two State agencies suggested that the regulation include a mechanism for identifying and measuring the Medicaid costs which will be avoided as a result of the implementation of the regulation. Three State agencies recommended that State IV–D agencies receive an incentive for medical support collections or savings which result from IV–D medical support activities.

Response: Because we believe that providing for the medical needs of a child is an integral part of child support, the State IV–D agency must establish and enforce medical support as well as financial support. From a broad State and Federal perspective, these efforts will be as advantageous in terms of State and Federal savings as pursuit of cash support, if not more advantageous. We will assess the feasibility of providing incentives to IV–D agencies based on avoided Medicaid costs.

10. *Comment:* One State agency and one advocacy group recommended that we require the IV–D agency to provide health insurance policy information to the custodial parent.

Response: Although the final regulation does not require that policy information must be provided to the custodial parent, we encourage the State IV–D agency to provide health insurance policy information to the custodial parent, if the State Medicaid agency does not provide this information. It is our understanding that certain State Medicaid agencies do provide absent parent health insurance policy information to the custodial parent.

11. *Comment:* One State agency recommended we require the absent parent to assign rights to third party payments to the Medicaid agency for any Medicaid eligible dependents.

Response: Under the current Federal statute, we do not have authority to require the absent parent to execute an assignment.

12. *Comment:* One advocacy group expressed concern that the exchange of information from the IV–D agency to the Medicaid agency violates the privacy rights of non-AFDC "medically needy" recipients and is not authorized by statute.

Response: The transmittal of an absent parent's health insurance policy information and whether the absent parent has been ordered to obtain medical support for certain dependents is not a violation of the privacy rights of the non-AFDC "medically needy" recipient. Section 1912 of the Act permits the State Medicaid agency to establish a medical support enforcement program and the Conference Committee Report (H. Rep. 95–673, September 22, 1977) states that the Medicaid agency may use the IV–D agency to assist in the enforcement of medical support rights due from or through an absent parent.

In addition, section 16 of Pub. L. 98–378 requires the Secretary of HHS to issue regulations which provide for improved information exchange between State IV–D and State Medicaid agencies with respect to the availability of health insurance coverage.

13. *Comment:* One State agency recommends that the IV–D agency be relieved of the requirements of § 306.50(a) when they have been fulfilled by the IV–A agency.

Response: Sections 306.50 (a) and (c) require the IV–D agency to provide medical support information to the Medicaid agency only if the IV–A or IV–E agency does not provide the information. We agree with the commenter that the IV–D agency should not duplicate information already provided by the IV–A or IV–E agency.

14. *Comment:* One State agency suggested that, in county-administered programs, activities which do not qualify for Federal incentives should be eligible for State-funded incentives to supplement the county's reimbursement.

Response: The State may supplement the county costs which are not Federally matched. This would be at the discretion of the State.

15. *Comment:* One State agency asked if the State must verify the information it provides to the State Medicaid agency.

Response: The same verification policies and procedures developed by the State for verifying IV–D information should be applied to information provided to the Medicaid agency. Federal regulations do not specify verification requirements or procedures for information obtained on behalf of IV–D cases.

16. *Comment:* One State agency asked if there is a difference between "medical support" and "medical insurance."

Response: Provision of "medical support" generally implies obtaining "medical insurance", but medical support may take other forms in specific situations. The regulations at 45 CFR 306.51(a) specify certain types of medical support, i.e., employment-related or group health insurance coverage. Other forms of medical support may be ordered at the discretion of the judge or presiding officer of the court or administrative process.

17. *Comment:* One State agency has asked how IV–D collections that include medical should be distributed.

Response: These regulations do not affect current distribution policies. If an absent parent has employment-related or group health insurance available and the absent parent is ordered to obtain health insurance coverage, the medical support will be in the form of premiums paid to the insurance company, not payments made to the IV–D agency.

18. *Comment:* One State agency recommended that the absent parent be required either to maintain health insurance for dependent children or be responsible for an assessed medical and dental obligation in connection with the support order.

Response: These regulations implement section 16 of Pub. L. 98–378 which requires State IV–D agencies to petition for medical support. The court or presiding officer may determine what support is appropriate under the circumstances of the individual case.

19. *Comment:* One State agency recommended that the proposed regulations be modified to refer to instances where there is more than one health insurance policy.

Response: We agree with the commenter's recommendation and have amended the regulations at § 306.50(a)(7) to indicate there may be more than one policy.

20. *Comment:* One State agency has pointed out that section 462(b) of the Social Security Act which defines child support to include payments to provide for health care is an inappropriate authority because it only pertains to garnishment.

Response: Section 462(b) was used to indicate that there was some precedent under the Social Security Act for including health care in the definition of child support. In addition, section 16 of Pub. L. 98–378 requires States to petition for medical support and provide for information exchange between the State IV–D agency and State Medicaid agency.

21. *Comment:* One advocacy group recommended that the IV–D agency consult the custodial parent on the question of whether to seek child support or health insurance coverage.

Response: Given the high cost of health care and the relatively nominal cost of health insurance, OCSE considers medical support to be generally advantageous to custodial parents. Section 16 of Pub. Law 98–378 requires IV–D agency to petition for medical support in new or modified support orders where such support can be obtained "at reasonable cost." If the

custodial parent is a Medicaid applicant or recipient, the IV–D agency must petition the court or administrative authority to include medical support in the order. The State IV–D agency will seek medical support for non-Mediciad IV–D cases if consented to by the applicant. However, we are amending the regulation at § 306.51(b)(1) to provide that medical support need not be sought in AFDC or title IV–E foster care cases if the custodial parent has satisfactory health insurance coverage other than Medicaid for the child(ren) in question.

22. *Comment:* One commenter asked that we specify more clearly the activities for which Federal funding is available under the regulation.

Response: Under § 304.20(b)(11), Federal funding is available for medical support activities specified in Part 306, Subpart B. Under this subpart, certain medical support activities are required to be performed by the IV–D agency. For example, when an absent parent is being interviewed, the interviewer will gather information on health insurance and the information listed under § 306.50(a). Also, if the IV–D agency is attempting to establish a support order, it will petition the court or administrative authority to include medical support in the order. Administrative costs associated with enforcement of the support order and preparation and transmittal of information to the Medicaid agency are also examples of costs for which Federal funding is available under the IV–D program. Activities which are performed under Part 306, Subpart A, are not eligible for Federal funding under the IV–D program, as specified in § 304.23(g). The latter costs are paid under the Medicaid program.

23. *Comment:* Three State agencies recommended that States be given the option to include medical debts owed to the State when requesting judgments in IV–D cases.

Response: If the debt represents medical support, the Medicaid program has responsibility for collecting third party payments, which are normally pursued in the form of insurance payments, not collections from the absent parent directly. The IV–D agency may attempt to recover medical debts owed to the Medicaid agency if such enforcement activity is conducted under a cooperative agreement with the Medicaid agency and the amount collected will not reduce the absent parent's ability to pay child support (see 45 CFR 306.10(h)). For example, the IV–D agency may request reimbursement of such expenses as pre-natal and delivery fees in a particular case if permitted under State law and if recovery is incidental to other required IV–D services.

24. *Comment:* One advocacy group recommended that the regulations require States to include the custodial parent in petitions for medical support.

Response: The current statute and regulations do not permit the petition to include support for the custodial parent. Title IV–D of the Act authorizes the State IV–D agency to enforce medical support for the custodial parent if it is included in the court order. It is not permitted to seek medical support for the custodial parent.

25. *Comment:* Two State agencies have asked about the treatment of interstate cases in regard to the transfer of information.

Response: Section 306.51(b)(1) requires that a State petition the court or administrative authority to include medical support in new or modified court or administrative orders. Under this regulation, the initiating State must include a request for medical support in the petition sent to the responding State and the responding State must attempt to obtain the order. If medical support is ordered, the responding State must provide the information to the initiating State IV–D agency. We do not require a State IV–D agency to transmit medical support information to out-of-State Medicaid agencies. The initiating State IV–D agency receives the medical support information from the responding State and transmits it to the Medicaid agency in its State.

Waiver of Proposed Rulemaking

Because the final audit regulation was published before these final medical support enforcement regulations, the audit regulation did not contain specific audit criteria for medical support enforcement. Therefore, this document contains the specific audit criteria at §§ 305.20(c) and 305.56 a State must meet to be found in compliance with the State plan requirement for medical support enforcement.

We believe that under 5 U.S.C. 553(b)(B) good cause exists for waiver of Notice of Proposed Rulemaking since issuance of proposed regulations would be unnecessary. The changes made are not substantive and parallel exactly the other audit criteria for State plan-related functions which were published as proposed audit regulations. Comments were received on these proposed audit regulations and were responded to in the final audit regulation. These medical support enforcement audit criteria are the same as the other audit criteria which were published in the proposed audit regulation and do not impose any new kind of requirement on the States. Moreover, the final audit regulation already informed the public that medical support audit criteria would be published in the final regulations on medical support enforcement.

States are merely required to have and use written procedures to secure medical support information and to secure and enforce medical support obligations, and are required to have personnel performing these functions. While Notice of Proposed Rulemaking is being waived, we are interested in receiving comments on the revisions to §§ 305.20(c) and 305.56. We will review any comments on §§ 305.20(c) and 305.56 which we receive within 60 days of the publication of this rule and publish in the **Federal Register** any necessary changes to §§ 305.20(c) and 305.56 as a result of comments received.

Paperwork Reduction Act

These regulations at 45 CFR 305.56 (a) and (b), 306.50(c) and 306.51(b) (3) and (4) contain information collection requirements which are subject to OMB review under the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The public is not required to comply with these information collection requirements until OMB approves them under section 3507 of the Paperwork Reduction Act. Comments regarding the information collection requirements should be directed to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, Attention: Desk Officer for HHS. A notice will be published in the **Federal Register** when OMB approval is obtained.

Regulatory Impact Analysis

Section 1(b) of Executive Order 12291 states that a major rule is one that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

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

The Executive Order requires that, for major rules, we prepare a regulatory impact analysis which describes the potential benefits and costs of the rule, together with the potential benefits and costs of alternative approaches.

The Department estimates Federal Medicaid savings of $15 million in FY 86,

$60 million in FY 87, and $120 million in FY 88. The State Medicaid savings would be approximately 45% of Federal savings. The phase-in is gradual since inclusion of medical support will primarily occur in new child support cases, with a much more gradual inclusion in existing support cases. We have determined this is a major rule. The discussion below, together with the preamble as a whole, constitute the regulatory impact analysis.

The rule will not substantially change the total amount that will be spent on medical care for dependent children of absent parents. However, the financing of medical coverage will shift from the Medicaid program and taxpayers to parents, third party payors, and employers and employees who pay premiums. Therefore, this regulation results in a redistribution of resources with little or no net economic impact.

Alternatives to this rule have been examined and rejected. This rule implements the medical support activities required by section 16 of Pub. L. 98-378. The State IV-D agency is required to petition for medical support and transfer certain information to the State Medicaid agency. Prior to enactment of Pub. L. 98-378, we considered continuing to rely on the current system, in which medical support enforcement activities are pursued only through optional cooperative agreements between the State IV-D agency and the State Medicaid agency. However, as stated earlier in the preamble, most States have not elected to enter into such agreements and medical support enforcement efforts have been minimal. Another rejected option was to have the Medicaid agencies establish their own systems for these medical support activities. However, this would result in unnecessary expense and duplication of effort, since the IV-D agencies are already locating absent parents and collecting information from them. The alternative required in Pub. L. 98-378 and this regulation will provide great benefits to Federal and State governments at minimal burden to State IV-D agencies.

Under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), we are required to prepare a regulatory flexibility analysis for those rules which will have a significant economic impact on a substantial number of small entities. This rule will not have a significant economic impact on a substantial number of small entities. Its principal impact is on State IV-D agencies and third party payors. Although this rule can be expected to result in additional third party payments, these payments will represent a small fraction of costs (and premiums) for health insurance and will not have a significant economic impact. Therefore, a regulatory flexibility analysis is not required.

List of Subjects

45 CFR Parts 302 and 304

Child welfare, Grant programs/social programs.

45 CFR Part 305

Child welfare, Grant programs/social programs, Accounting.

45 CFR Part 306

Child welfare, Grant programs/social programs, Medicaid.

For the reason set out in the preamble, Chapter III of Title 45 of the Code of Federal Regulations is amended as follows:

PART 302—[AMENDED]

1. The authority citation for Part 302 is revised to read as set forth below, and the authority citations following all the sections in Part 302 are removed:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

2. 45 CFR 302.80 is revised to read as follows:

§ 302.80 Medical support enforcement.

(a) The State plan may provide that the IV-D agency will secure and enforce medical support obligations under a cooperative agreement between the IV-D agency and the State Medicaid agency. Cooperative agreements must comply with the requirements contained in Subpart A of Part 306 of this chapter.

(b) The State plan must provide that the IV-D agency shall secure medical support information and establish and enforce medical support obligations in accordance with the requirements contained in Subpart B of Part 306 of this chapter.

PART 304—[AMENDED]

3. The authority citation for Part 304 is revised to read as set forth below, and the authority citations following all sections in Part 304 are removed:

Authority: 42 U.S.C. 651 through 654, 657, 660, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

4. Section 304.20 is amended by adding a new paragraph (b)(11) to read as follows:

§ 304.20 Availability and rate of Federal financial participation.

* * * * *

(b) * * *

(11) Required medical support activities as specified in Part 306, Subpart B, of this chapter.

5. Section 304.23 is amended by revising paragraph (g) to read as follows:

§ 304.23 Expenditures for which Federal financial participation is not available.

* * * * *

(g) Medical support enforcement activities performed under cooperative agreements in accordance with Part 306, Subpart A, of this chapter.

* * * * *

PART 305—[AMENDED]

6. The authority citation for Part 305 continues to read as follows, and the authority citation following all of the sections in Part 305 are removed:

Authority: Sec. 403(h), 404(d), 452(a)(1) and (4), and 1102 of the Social Security Act.; 42 U.S.C. 603(h), 604(d), 652(a)(1) and (4), and 1302.

7. Section 305.20(c)(1) is amended by replacing "Medical support. [To be determined]" with "Medical support. [45 CFR 305.56(a)]" and § 305.20(c)(2) is amended by replacing "Medical support. (To be determined)" with "Medical support. (45 CFR 305.56(b)".

8. 45 CFR 305.56 is revised to read as follows:

§ 305.56 Medical support enforcement.

For the purposes of this part, to be found in compliance with the State plan requirement for medical support enforcement (45 CFR 302.80), a State must:

(a) Have written procedures to secure medical support information and secure and enforce medical support obligations in accordance with 45 CFR Part 306, Subpart B of this chapter;

(b) Use of written procedures specified above; and

(c) Have personnel performing the functions specified above.

PART 306—[AMENDED]

9. The authority citation for Part 306 is revised to read as set forth below, and the authority citations following all sections in Part 306 are removed:

Authority: 42 U.S.C. 652, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

10. 45 CFR Part 306 is amended by revising § 306.0 to read as follows:

§ 306.0 Scope of this part.

Subpart A of this part defines the requirements for an optional cooperative agreement between the IV-

D agency and the Medicaid agency for the purpose of enforcing medical support obligations under section 1912 of the Act. Subpart B of this part prescribes the required medical support activities to be performed by the IV–D agency.

11. A new heading, Subpart A—Optional Cooperative Agreements, is added after § 306.1 to read as follows, and §§ 306.0 and 306.1 are designated as Subpart A.

12. Subpart B—Required IV–D Activities consisting of §§ 306.50 and 306.51 are added to read as follows:

Subpart B—Required IV–D Activities

Sec.
306.50 Securing medical support information.
306.51 Securing and enforcing medical support obligations.

Subpart B—Required IV–D Activities

§ 306.50 Securing medical support information.

(a) If the IV–A or IV–E agency does not provide the information specified in this paragraph to the Medicaid agency and if the information is available or can be obtained in a IV–D case for which an assignment is in effect under § 232.11 of this title or section 471(a)(17) of the Act, the IV–D agency shall obtain the following information on the case:

(1) AFDC case number, title IV–E foster care case number, Medicaid number or the individual's social security number;

(2) Name of absent parent;

(3) Social security number of absent parent;

(4) Name and social security number of child(ren);

(5) Home address of absent parent;

(6) Name and address of absent parent's place of employment;

(7) Whether the absent parent has a health insurance policy and, if so, the policy name(s) and number(s) and name(s) of person(s) covered.

(b) When an individual applies for services under § 302.33 of this chapter, the IV–D agency shall inform the individual that medical support enforcement services are available and shall secure the information specified in paragraph (a) of this section:

(1) If the individual is a Medicaid applicant or recipient; or

(2) With the consent of the individual, if the individual is not a Medicaid applicant or recipient.

(c) The IV–D agency shall provide the information obtained under paragraphs (a) and (b)(1) of this section to the Medicaid agency in a timely manner by the most efficient and cost-effective means available, using manual or automated systems.

§ 306.51 Securing and enforcing medical support obligations.

(a) For purposes of this section, health insurance is considered reasonable in cost if it is employment-related or other group health insurance.

(b) With respect to cases for which there is an assignment in effect under § 232.11 of this title or section 471(a)(17) of the Act, the IV–D agency shall:

(1) Unless the custodial parent and child(ren) have satisfactory health insurance other than Medicaid, petition the court or administrative authority to include health insurance that is available to the absent parent at reasonable cost in new or modified court or administrative orders for support.

(2) Petition the court or administrative authority to include medical support as required under paragraph (b)(1) of this section whether or not—

(i) Health insurance at reasonable cost is actually available to the absent parent at the time the order is entered; or

(ii) Modification of current coverage to include the child(ren) in question is immediately possible.

(3) Inform the Medicaid agency when a new or modified court or administrative order for child support includes medical support and provide the information referred to in § 306.50(a) of this part to the Medicaid agency when the information is available.

(4) If health insurance is available to the absent parent at reasonable cost and has not been obtained at the time the order is entered, take steps to enforce the health insurance coverage required by the support order and provide the Medicaid agency with the information referred to in § 306.50(a) of this part.

(5) Periodically communicate with the Medicaid agency to determine if there have been lapses in health insurance coverage for Medicaid applicants and recipients.

(6) Request employers and other groups offering health insurance coverage that is being enforced by the IV–D agency to notify the IV–D agency of lapses in coverage.

(c) The IV–D agency shall inform an individual who applies for services under § 302.33 of this chapter that medical support enforcement services are available and shall provide the services specified in paragraph (b) of this section if the individual is a Medicaid applicant or recipient. The IV–D agency shall provide the services specified in paragraph (b) of this section with the consent of the individual who applies for services and is not a Medicaid applicant or recipient, except that health insurance information shall not be transmitted to the Medicaid agency.

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

Dated: July 22, 1985.

Stephen Ritchie,

Director, Office of Child Support Enforcement.

Approved: August 6, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85–24638 Filed 10–15–85; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[BC Docket No. 79–47; RM–2830; FCC 85–302]

Rebroadcasts of Transmissions of Nonbroadcast Radio Stations

Correction

In FR Doc. 85–14584 beginning on page 25241 in the issue of Tuesday, June 18, 1985, on page 25247, first column, in § 97.113, the paragraph designated as "(B)" should be designated as "(d)".

BILLING CODE 1505–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. HM–166P; Amdt. No. 173–193]

Hazardous Materials; Radiation Level Limits for Exclusive Use Shipments of Radioactive Materials

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the Hazardous Materials Regulations (HMR) to more clearly and completely specify external radiation level limitations for exclusive use shipments of radioactive materials and to specify the necessary capabilities for personnel who load and unload exclusive use shipments of radioactive materials. The changes are necessary to reduce misunderstandings of regulatory requirements and are intended to foster

compliance with these requirements and to help ensure adequate radiation protection for personnel who load and unload shipments.

EFFECTIVE DATE: December 1, 1985.

FOR FURTHER INFORMATION CONTACT: R.R. Rawl, Office of Hazardous Materials Regulation Materials Transportation Bureau, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 426-2313.

SUPPLEMENTARY INFORMATION:

I. Background

On October 7, 1982, the MTB published a notice (Docket HM-166P, Notice No. 82-8) in the **Federal Register** (47 FR 44356) proposing certain amendments to the HMR, specifically, to 49 CFR 173.389(o) and 173.393(j). The proposed amendments were designed to:

(A) Clarify the qualifications required of a "designated agent" when used for exclusive use shipments of radioactive material, as required by § 173.389(o)(2).

(B) Require reasonable efforts by shippers toward bringing each package into conformance with the lower radiation level limits specified in § 173.393(i).

(C) Reduce the maximum permitted radiation level for packages from 1,000 millirem per hour (mrem/h) or 10 millisieverts per hour (mSv/h) at 3 feet from the package surface to 1,000 mrem/h) (10 mSv/h at the package surface.

(D) Clarify that the 200 mrem/h [2 mSv/h) limit of § 173.393(j)(2) applies to readily accessible surfaces of the vehicle or load.

(E) Clarify that the 10 mrem/h (0.1 mSv/h) at 2 meters limit of § 173.393(j)(3) applies from readily accessible surfaces (except top and bottom).

(F) Specify that private carriers excepted from the 2 mrem/h (0.02 mSv/h) limit in occupied areas (§ 173.393(j)(2)(iii)) must have their personnel under a State or Federally regulated radiation protection program.

(G) Specify that the exclusive use instructions required by § 173.393(j) must be sufficient to assure that the carrier avoids unnecessary delay and any actions that would increase radiation levels or exposures.

Discussion of the reasoning for each proposed change was given in the proposal.

The final rules contained in Docket HM-169 were published (48 FR 10218, March 10, 1983; 48 FR 13431, March 1983; and 48 FR 31214, July 7, 1983) subsequent to the proposals of this docket. Some of the rule changes made by HM-169 have direct bearing on this docket. It was foreseen in HM-169 that this would occur and those overlapping requirements have been meshed as best possible. HM-169 did, however, finalize some of the proposals contained in the notice of proposed rulemaking for this docket. For example, the reduction of the maximum radiation level allowed for a package (item C above) was finalized by HM-169 in § 173.441(b)(1).

HM-169 restructured and renumbered all of the radioactive materials transport requirements. In order to assist the reader in reviewing these changes, the following cross references are provided:

49 CFR prior to July 1, 1983	Proposed in HM-166P	New section notation as of July 1, 1983 (per HM-169)
173.389(o)(2)	173.389(o)(2)	173.403(i).
173.393(i)	No change	173.441(a).
173.393(j)	173.393(j) and 173.393(j)(3).	173.441(b), (c), and (e).
173.393(j)(1)	173.393(j)(1)	173.441(b)(1).
173.393(j)(2)	173.393(j)(2)(i)	173.441(b)(2).
173.393(j)(3)	173.393(j)(2)(ii)	173.441(b)(3).
173.393(j)(4)	173.393(j)(2)(iii)	173.441(b)(4)

In the regulations established by HM-169, there are three additional requirements placed on the shipment of a package with radiation levels exceeding 200 mrem/h(2 mSv/h) at the surface or 10 mrem/h(0.1 mSv/h) at one meter. They are found in § 173.441(b)(1) and specify that the package must be shipped in a closed transport vehicle as defined in § 173.403(c), the package must remain in a fixed location within the vehicle, and there must be no loading or unloading operations during the transport.

In this final rule, changes are made to the requirements as they now appear in § 173.441 and not § 173.393 as proposed. Interested readers are referred to the final rules published in Docket HM-169 for additional background information.

II. Comments and Changes to the Proposal

Comments were received from 12 commenters and all favored adoption of the overall proposal while making recommendations about specific provisions within the proposal. The comments have been grouped according to the proposed changes as listed above.

A. Designated Agent [Proposed § 173.389(o)(2): Now Germane to § 173.403(i))

One commenter fully supported the proposed requirement. Another commenter agreed with the need for proper training and resources for a designated agent but questioned if this is necessary for a carrier who does not handle, load or unload the cargo. It is MTB's intent to require such training and resources *only* when in-transit loading and unloading takes place. Exclusive use shipments which do not involve in-transit loading or unloading do not require the use of a carrier with personnel having such training. Any in-transit handling or shifting of the cargo, however, including actions such as adjusting a load for with purposes *will* require proper training and resources on the part of the personnel doing such work.

The term "designated agent" has apparently created some confusion with the common usage of the term in the transportation industry. HM-169 eliminated the provision for loading and unloading operations under the direction of a designated agent. The consignor and consignee have direct knowledge of the nature of the cargo and are in the best position to direct any loading or unloading operations of an exclusive use shipment. Since the term "designated agent" is not necessary to implement the intent of the proposed requirement, it remains deleted per HM-169. A combination of the definition of exclusive use adopted under HM-169 and that proposed in Notice 82-8 is adopted. Initial, intermediate and final loading and unloading must be performed under the direction of the consignor or consignee by persons having appropriate radiological training and resources for safe handling of the consignment. An exclusive use shipment which does not involve carrier personnel in loading or unloading operations does not require that carrier personnel be specifically trained in procedures for handling the consignment. The responsibility for ensuring that appropriately trained personnel are used rests wih the consignor or consignee, depending on whose directions are being followed. Appropriate training could either be supplied by the consignor or consignee or could be provided by the employer providing the services of the personnel performing the loading or unloading.

B. Require Reasonable Efforts To Conform With the Lower Radiation Level Limitations of § 173.393(i) Before the Higher Limits of § 173.393(j) Are Utilized (Now Germane to §§ 173.441 (a) and (b))

Three comments were received concerning this point. Each questioned the extent of efforts which a package designer must expend to comply with the lower radiation level limits (§ 173.441(a)) before the higher limits (§ 173.441(b)) may be utilized. It is

basically a question of what constitutes "reasonable" and the concern of the commenters was that many different levels of "reasonable" effort can be imagined. In actual application, this requirement could be quite onerous.

The primary purpose for the proposed requirement was to avoid any unnecessary radiation exposure to personnel handling packages. The new definition of exclusive use, § 173.403(i), now requires all loading and unloading of exclusive use shipments to be performed by trained personnel. Since a package with radiation levels exceeding the limits of § 173.44(a) must conform with § 173.441(b), it must be shipped as exclusive use. Consequently, packages with radiation levels exceeding 200 mrem/h (2 mSv/h) at the surface or 10 mrem/h (0.1 mSv/h) at one meter may be loaded and unloaded only by trained personnel. Additionally, § 173.441(b)(1)(iii) prohibits in-transit handling of high surface radiation level packages. Therefore, MTB believes that the primary intent of the proposed requirement will be met without incorporatiing a reference to "reasonable efforts and accepted radiation protection practices" and that proposal is withdrawn.

C. Reduce the Maximum Allowable Radiation Level of a Package From 1000 mrem/ (10 mSv/h) at 3 feet to 1000 mrem/h(10 mSv/h) at the Package Surface (Now Germane to § 173.441(b)(1))

This requirement was originally proposed, addressed, and incorporated under HM-169.

D. Specify That the 200 mrem/h (2 mSv/h) Vehicle Radiation Level Limit Applies To All Readily Accessible External Surfaces (Now Germane to § 173.441(b)(2))

Five commenters addressed this proposed requirement.

Two commenters requested assurance that the 200 mrem/h (2 mSv/) limit still applies to the top and underside of the vehicle. It is MTB's intent to continue the application of this limit to the top and underside of vehicles and in order to clarify this the term "including the top and underside of the vehicle or load" is used. Application of this limit to the top of the load is limited to open transport vehicles, whereas closed vehicles have the limit applied at the vehicle enclosure.

Two commenters addressed the proposed requirement which specifies the 200 mrem/h (2 mSv/h) at "accessible surfaces" when it is applied to flat-bed style vehicles. This issue arises from the International Atomic Energy Agency (IAEA) approach (adopted in HM-169) of specifying the 200 mrem/h (2 mSv/h) limit at the outer surface of the vehicle or in the case of an "open" vehicle at the vertical planes projected by the outer edges of the vehicle. Under the IAEA and HM-169 approach, a flat-bed trailer in exclusive use can be used to transport a package with a surface dose rate over 200 mrem/h (2 mSv/h) but not exceeding 1000 mrem/h (2 mSv/h) provided that the vehicle is equipped with an enclosure which limits access to the cargo area, the cargo is secured so that its location remains fixed, and there is no in-transit loading and unloading.

The main difference between the IAEA approach and the "accessible surfaces" approach is that, for the former, no radiation level limit is specified at the enclosure. When the enclosure covers only part of the vehicle bed (the cargo space) the radiation levels at the enclosure could exceed 200 mrem/h (2 mSv/h) but will still be constrained to this value at the edges of the vehicle.

One commenter objected to MTB's proposed deviation from the IAEA approach and one commenter supported MTB's proposal. The differences of opinion arise from the philosophies underlying the two approaches. In the instance of specifying limits at the enclosure, it is assured that there will be a limit at any surface which may be contacted even under unusual circumstances (such as someone climbing onto the vehicle). In the case of specifying the limit at the edges of the vehicle, (per IAEA and HM-169), the vehicle itself has the limits applied to it. The vehicle basically represents a "package" and the 200 mrem/h (2 mSv/h) limits apply to its perimeter. Under all normal situations the approaches are basically equal, such as when evaluating exposures to surrounding populations, passengers in other vehicles and people present at rest and refueling stops. Only in the extreme situation of someone remaining on the vehicle for a significant period of time would the "accessible surfaces" approach provide appreciable dose reduction over the "outer edges" approach. The commenter opposing MTB's proposal believed that the additional protection afforded to persons who are not authorized to be on the vehicle was insufficient to justify deviating from the present U.S. and international requirements.

MTB has also taken into consideration the potential doses to inspection personnel who may be checking the vehicle for compliance with radiation level limits. If the limits are specified at the enclosure, inspectors must either climb onto the vehicle or use extendable radiation detection probes. It is desirable for inspectors to minimize their exposures by using extendable probes but some instruments currently in use cannot be modified to accomplish this. Additionally, inspectors are often required to perform in less than ideal situations such as poor weather or darkness where the physical act of climbing on a trailer entails some element of risk. From these standpoints, it is better to prescribe the radiation limits at the edges of the vehicle.

The MTB believes that the small hypothetical dose reduction which might result from using the proposed "accessible surfaces" limits are outweighted by the small but real increase in risk to inspection personnel. Additionally, by keeping the existing "outer edges" limits, MTB will avoid imposing additional costs on the shipping industry and will maintain the closest practical alignment with the IAEA regulations. Therefore, § 173.441(b) (2) and (3) are not amended as originally proposed. Instead, they are amended to clarify that the radiation limits applicable to flat-bed style vehicles apply at the outer edges of the vehicle. Such vehicles must have suitable enclosures when used in accordance with § 173.441(b)(1) which allows for the transportation of packages with surface radiation levels exceeding 200 mrem/h (2 mSv/h). Even when enclosures are required, however, the vehicle radiation level limit of 200 mrem/h (2 mSv/h) is applied at the outer edges of a flat-bed vehicle.

E. Specify That the 10 mrem/h (0.1 mSv/h) at 2 Meters Vehicle Radiation Level Limit Applies From Readily Accessible Surfaces, Except Top and Bottom (Now Germane to § 173.441(b)(3))

The proposal was to specify the 10 mrem/h (0.1 mSv/h) limit at 2 meters from the external surfaces as opposed to specifying it from the walls of a closed vehicle and from the vertical planes projected from the outer edges of a flat-bed style vehicle.

The comments received on this point were very similar to those discussed above under item D. MTB's line of reasoning is similar also. Therefore, § 173.441(b)(3) is amended only to clarify its application, particularly with regard to flat-bed style vehicles.

F. Clarify That Private Carriers Excepted From the 2 mrem/h (0.02 mSv/h) Limit in Occupied Areas Must Have Their Personnel Under a State or Federally Regulated Radiation Protection Program (Now Germane to § 173.41a(b)(4))

One commenter addressed this proposal and suggested that MTB reconsider the exception for private carriers. The commenter cited examples of poor radiation protection practices which some private carriers have indulged.

MTB believes that by requiring private carrier personnel to operate under a regulated radiation protection program such poor practices can be discovered and corrected. Of course, private carriers may still choose to operate in compliance with the 2 mrem/h (0.02 mSv/h) limit in occupied areas and thus avoid the requirement for a State or Federally regulated radiation safety program. Therefore, instead of completely eliminating the exception for private carriers, (which was not originally proposed) MTB believes that adoption of the requirement, as proposed, will improve the situation.

The commenter also requested that MTB clarify the definition of a private carrier. The term is defined in 49 CFR 390.33(b) and its usage in § 173.441(b)(4) is consistent with this definition.

Clarification was also sought as to whether or not the 2 mrem/h (0.02 mSv/h) limit (for carrier operations not excepted) applies in the sleeper compartments of tractor/trailer combinations. MTB's interpretation of this requirement is that the limit does apply to all spaces which can be regularly occupied. This includes sleeper compartments unless specific actions are taken to prevent the occupation of these areas.

G. Specify That the Exclusive Use Instructions Issued by the Shipper Must be Sufficient to Assure That the Carrier Avoids Unnecessary Delay and Any Action That Would Increase Radiation Levels or Exposures (Now Germane to § 173.441(e))

Two commenters addressed this proposal and both were concerned with the requirement that the shipper *assure* that the carrier not take any adverse action. MTB realizes that the actual actions of the carrier are beyond the absolute control of the shipper. However, the specific instructions provided by the shipper need to be complete enough so that when the carrier follows them, there will be no unnecessary delay or increase in radiation levels or exposures.

There have been instances where carrier personnel have taken actions such as load shifting or power unit substitution which have resulted in unnecessary radiation exposure. In other cases, the delivery of the consignment has been delayed for the carrier's convenience and this may lead to unnecessary exposures as well. MTB believes that it is necessary for the shipper to be specific in the instructions to preclude, as far as possible, these occurrences. If the shipper issues specific instructions and the carrier fails to follow them, it is clearly not a situation the shipper could control. On the other hand, if the instructions are not clear or complete, the carrier's actions may be in conformance with them and yet result in unnecessary delay or increased radiation levels or exposure. This would be an example of the shipper failing to fulfill the requirement. MTB believes the existing § 173.441(e), as promulgated under Docket HM-169, adequately states this requirement and no changes are made to it in this final rule.

III. Administrative Notices

A. Executive Order 11129

The MTB has determined that the effect of this final rule will not meet the criteria specified in section 1(b) of Executive Order 12291 and the final rule is, therefore, not a major rule. This is not a significant rule under DOT regulatory procedures (44 FR 11034) and requires neither a Regulatory Impact Analysis, nor an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.) A regulatory evaluation is available for review in the Docket.

B. Impact on Small Entities

Based on limited information concerning size and nature of entities likely affected, I certify this final rule will not, as promulgated, have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation.

In consideration of the foregoing, Part 173 of Title 49, Code of Federal Regulations is amended as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, unless otherwise noted.

2. In § 173.403, paragraph (i) is amended by adding a new sentence at the end of the first sentence and preceding the last sentence of the paragraph, to read as follows:

§ 173.403 Definitions.

* * * * *

(i) * * * Any loading or unloading must be performed by personnel having radiological training and resources appropriate for safe handling of the consignment. * * *

* * * * *

3. In § 173.441, paragraph (b) is revised to read as follows:

§ 173.441 Radiation level limitations.

* * * * *

(b) A package which exceeds the radiation level limits specified in paragraph (a) of this section shall be transported by exclusive use shipment only and the radiation levels for such shipment must not exceed the following during transportation:

(1) 200 millirem per hour (2 millisievert per hour) on the external surface of the package unless the following conditions are met, in which case the limit is 1000 millirem per hour (10 millisievert per hour).

(i) The shipment is made in a closed transport vehicle;

(ii) The package is secured within the vehicle so that its position remains fixed during transportation; and

(iii) There are no loading or unloading operations between the beginning and end of the transportation;

(2) 200 millirem per hour (2 millisievert per hour) at any point on the outer surfaces of the vehicle, including the top and underside of the vehicle; or in the case of a flat-bed style vehicle, at any point on the vertical planes projected from the outer edges of the vehicle, on the upper surface of the load (or enclosure is used), and on the lower external surface of the vehicle;

(3) 10 millirem per hour (0.1 millisievert per hour) at any point 2 meters (6.6 feet) from the outer lateral surfaces of the vehicle (excluding the top and underside of the vehicle); or in the case of a flat-bed style vehicle, at any point 2 meters (6.6 feet) from the vertical planes projected by the outer edges of the vehicle (excluding the top and underside of the vehicle); and

(4) 2 millirem per hour (0.02 millisievert per hour) in any normally occupied space, except that this provision does not apply to private carriers if exposed personnel under their control wear radiation dosimetry

devices and operate under provisions of a State or Federally regulated radiation protection program.

* * * * *

Issued in Washington, D.C. on Oct. 9, 1985 under the authority delegated in 49 CFR Part 1, Appendix A.

M. Cynthia Douglass,

Acting Director, Materials Transportation Bureau.

[FR Doc. 85-24628 Filed 10-15-85; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 246 (Sub-No. 3)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Service—1985 Update

AGENCY: Interstate Commerce Commission.

ACTION: Final rules: Correction.

SUMMARY: On October 1, 1985 at 50 FR 40024, the Interstate Commerce Commission published final rules which updated the Commission's user fee schedule to reflect the Commission's current cost of providing services and benefits. A correction to those rules was published on October 9, 1985 at 50 FR 41158. The purpose of this document is to correct one additional error that appears in the decision.

EFFECTIVE DATE: October 16, 1985.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King (202) 275-7428

or

Paul Meder (202) 275-5360

SUPPLEMENTARY INFORMATION: In this notice we are correcting an error that involves fee item (62), relating to petition to declaratory orders. Inadvertently the description of that item was changed. There should have been no change in that item. The correct description is set forth in the appendix to this decision.

Decided: October 10, 1985.

By the Commission.

James H. Bayne,

Secretary.

Appendix

PART 1002—FEES

The following corrections are made in the document that was published at 50 FR 40024, October 1, 1985:

§ 1002.2 [Corrected]

In § 1002.2, paragraph (f)(62) at 50 FR 41159 is corrected to read as follows:

(62) A petition for declaratory order

(i) Petition for declaratory order involving dispute over an existing rate or practice which is comparable to a complaint proceeding	$500
(ii) All other petitions for declaratory order	$800

[FR Doc. 85-24680 Filed 10-15-85; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1241

[Ex Parte No. 460]

Certification of Railroad Annual Report R-1 By Independent Accountant

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a reporting revision that will require Class I railroads to submit a report from an independent public accountant stating that specified data in the R-1 annual report have been examined, using agreed-upon procedures, and found in compliance with the Uniform System of Accounts for Railroad Companies. The report would also present any material exceptions which came to the attention of the accountant during the examination. This revision will provide an alternative to the audits currently being perfomed by the Commission Staff.

DATE: Effective for the R-1 annual reports filed for the year 1986 which are to be filed by March 31, 1987.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr., (202) 275-7510.

SUPPLEMENTARY INFORMATION: In this proceeding, the Commission has proposed to have the railroads' independent public accountants certify certain schedules in annual report Form R-1 which is filed with the Commission. 50 FR 18539 (May 1, 1985). At the request of the American Association of Railroads, two requests for extension of time to file comments were granted. Also, at the request of the AAR, the Commission clarified the extent of the independent accountant's attestation. 50 FR 25282 (June 18, 1985).

Comments were filed by the Association of American Railroads (AAR), Norfolk Southern Corporation (NS), Elgin, Joliet and Eastern Railway Company (EJE), American Institute of Certified Public Accountants (AICPA), Deloitte Haskins & Sells (DHS), Ernst & Whinney (EW), Peat, Marwick, Mitchell & Company (PM), John A. Murray (Murray), Margaret L. Carey (Carey) and Patrick W. Simmons (Simmons).

The AAR, NS and EJE stated that the certification proposed in the NPR would be expensive and a heavy burden on the railroad industry. The AICPA, EW and PM concurred, adding that the proposed certification would substantially increase the scope of audits performed by independent public accountants and substantially increase their audit fees.

The AAR and EW also argued that the proposal is inappropriate at this time, and that the Commission should delay any change in its audit program until the Railroad Accounting Principles Board (RAPB) has considered the issues of data integrity and audit standards.

The EJE stated that the current centralization of the R-1 audit function within the Commission is a contributing factor to uniform interpretation of Commission rules and transferring the audit responsibility to independent accountants could result in differing interpretations and increase the likelihood of inconsistency in reporting.

Simmons and Carey questioned the credibility of annual report form R-1 data if it is not audited by the Commission's audit staff.

The EJE and Murray are of the opinion that the review of the independent public accountant's workpapers by the Commission audit staff would result in work duplication. However, the AAR stated that this review procedure should be required to assure that the current reliability of R-1 data continues.

The AICPA, EW, and PM stated that the proposed auditors' report does not conform with professional reporting standards in AICPA Statement on Auditing Standards No. 35. Under these professional reporting standards, auditors cannot issue a report that provides positive assurance on operating statistics (Schedule 755).

The AAR, AICPA, and DHS stated that the ICC audit staff which currently audits the Form R-1 data, does not provide any positive assurance reports as proposed in the NPR.[1]

[1] The term "positive assurance," as used in this proceeding, means an auditor's report developed in accordance with the reporting standards mandated by generally accepted auditing standards. Such a report would state the scope of the auditing procedures performed and contain an unqualified, qualified or disclaimer of opinion that the financial statements are in accordance with generally accepted accounting principles (GAAP) and applied on a consistent basis. (Statement on Auditing Standards No. 1)

The AAR urges the Commission to retain the audit function for Schedules 410 and 755, and believes the independent public accountants' present audit reports to stockholders should provide the Commission with adequate audit coverage on the basic financial statements. However, if the Commission is unable to do so, the AICPA and the AAR offer a constructive alternative.

Alternative Proposals

The AICPA and the AAR propose that:

(1) The independent public accountant issue a negative assurance report based on agreed-upon procedures for critical regulatory data contained in the selected R–1 schedules.[2]

(2) the agreed-upon procedures should be developed by a joint task force composed of representatives of the AICPA, the Commission, and the AAR.

(3) The independent public accountant would issue a report as provided for in the AICPA Statement on Auditing Standards No. 35.

(4) The Commission staff would review the independent public accountant's workpapers to ensure that the tests performed to verify the compilation of the data are in accord with the agreed-upon procedures. Any deficiencies or errors set out in the independent public accountant's report would be resolved as considered necessary by the Commission audit staff.

In a supplemental response, the NS endorsed this alternative and stated that the proposal would enable the Commission to discontinue its present continuous audits, maintain or even enhance the integrity of reported data critical to the regulatory process, and minimize burden and cost to the railroad industry.

The EW, DHS, and PM responses include suggestions similar to the alternative proposal. They emphasize the limiting of the data elements to those which are critical and significant to the regulatory process. The AICPA stated that the alternative proposal would result in no major increase in the scope of testing or reporting relative to the scope of work currently performed by the Commission's staff auditors. The AICPA also suggests that the Commission define insignificant exceptions that do not have to be reported.

PM requested that the Commission clarify the "cyclical" audit referred to in the NPR.[3]

Discussion

As we stated in the Notice of Extension of Time to File Comments, published in the **Federal Register** on June 18, 1985 (50 FR 25282), the finalization of the standards to be developed by the RAPB and their subsequent implementation would extend further the amount of time the instant proceeding and its implementation would be delayed. Therefore, the Commission will consider any necessary changes at such time as those standards are issued by the RAPB.

Our proposal was a starting point, and the intent was to attain the same reliance in the data reported by the railroads as we currently attain with the audits performed by Commission audit staff.

In the NPR, we recognized that an expanded audit scope by the independent public accountants would undoubtedly result in incremental audit fees. The extent of the increase in audit fees would be greatly alleviated under the alternative proposals.

We do not believe that transferring the audit responsibility will result in any significant difference in interpretations of the Commission's accounting rules. The Section of Accounting and Reporting in the Bureau of Accounts prepares interpretations in the form of Accounting Series Circulars for the industry and letters to individual carriers. This will not change under the instant proceeding. In addition, the Commission's auditors will review the independent public accountants' workpapers for inconsistencies within the industry. As noted earlier, the AAR agrees that our review of the workpapers is required to assure the continued reliability of the data.

The credibility of the railroad reported data should remain unchanged under the alternative proposals submitted by the AAR and the AICPA. The independent public accountants will be performing the same type of procedures and tests on the data to be reported upon as currently being performed by Commission auditors. Again, the review of the independent public accountants' workpapers by the Commission's auditors will assure that the proper procedures and tests are being followed.

We also note that many government agencies, including the Federal Energy Regulatory Commission which was referred to in the NPR, rely on the reports of independent public accountants for verification of data.[4]

Alternative Proposal

We have studied the AICPA and AAR's alternative proposal and the similar suggestions by EW, PM and DHS. We believe they have merit and can be adopted to meet the Commission's objective.

Our objective is that the data filed by the railroads with the Commission conform in all material respects with the accounting requirements of the Commission, as set forth in its Uniform System of Accounts for Railroad Companies, and orders issued by the Commission.

At the present time, our auditors examine the railroad's records for inaccuracies and improper accounting or reporting. When errors are found, a report is issued to the railroad requesting correction. If no material errors are found, a report is issued stating that fact. In essence, our auditors issue a negative assurance report as proposed by the AAR and AICPA. Since the Commission will be receiving the same level of assurance under the alternative proposals as it receives from our current audit program, we believe this alternative is acceptable.

The AAR states that, in recent years, the differences between generally accepted accounting principles and the Uniform System of Accounts have been substantially reduced with a corresponding reduction in the differences between the resulting statements. Since the regulatory need of the basic financial statements (Schedules 200, 210, 240 and 245) is limited, the AAR proposes that the Commission accept the independent public accountant's present audit reports and not require a separate audit of these schedules.

We agree with the AAR that the independent public accountants' present report on the basic financial statements as a whole, are acceptable for our regulatory needs. However, specific data elements within the basic financial statements are used in our ratemaking

[2] The term "negative assurance," as used in this proceeding, means a specialized auditor's report developed in accordance with the reporting requirements described in Statement on Auditing Standards (SAS) Nos. 14 and 35. Negative assurance implies that the financial information may be in accordance with GAAP, since nothing of a material nature to the contrary was discovered during the performance of the auditing procedures. SAS No. 14 specifies that a negative assurance report can only be expressed when an auditor is engaged to report on compliance with aspects of contractual agreements or regulatory requirements related to audited financial statements.

[3] Rather than delay further this proceeding, we will consider any necessary changes at such times as new standards are issued by the RAPB.

[4] Securities and Exchange Commission, Department of Housing and Urban Development, Department of Health and Human Services, Environmental Protection Agency, and Department of Education.

process, and we do need assurance of their credibility. Those data elements would have to be included in the agreed-upon audit procedures.

We have again reviewed the data elements needed to fulfill our regulatory responsibilities under the Interstate Commerce Act, the 4–R Act of 1976, and the Staggers Rail Act of 1980.[5] As stated in our Notice published July 22, 1985, the data in the listed schedules is generally used as a whole and cannot be separated into audited and non-audited segments. However, some data elements are more critical to our regulatory functions. Accordingly, we have limited the data elements to those which we consider essential to meet our responsibility. Using this criteria, Schedules 200, 210, 240, 310, 310A, 450, and 512 will be eliminated in their entirety. Non-critical elements in the remaining schedules will also be eliminated. Several data elements in Schedule 415, Supporting Schedule—Equipment and Schedule 700, Mileage Operated at Close of Year, have been added due to elimination of data elements in other schedules.

The alternative proposal to have the independent public accountants' report based on procedures developed by a joint task force composed of representatives of the AICPA, AAR and Commission is endorsed by DHS, EW, and PM.

We agree that specific procedures would have to be developed so that our auditors can review the work performed by the independent public accountants to verify the compilation of the data reported in the R–1.

However, we believe that participation by the AAR in developing the audit procedures to audit its member railroads would present a conflict of interest. Generally Accepted Auditing Standard No. 2 states that an auditor must be independent. We interpret this to include the development of audit procedures to be used in auditing a client's records. Consequently, representatives of the AICPA and the Commission will develop the audit procedures. This will preclude any implication of conflict or self interest on part of the railroads.

The proposal that the independent public accountant issue a report as provided for in the AICPA Statement on Auditing Standards (SAS) No. 35 is also endorsed by DHS, EW, and PM.

Since the independent public accountants will be performing specific procedures on specific data elements, rather than the financial statements as a whole, a report issued in accordance with SAS No. 35 would be appropriate. As noted earlier, this report would substantially be the same as currently issued by Commission auditors. We will not specify the report language, but the independent accountant will be required to report, in accordance with SAS No. 35, any adjustments which come to their attention as a result of applying agreed-upon procedures to the specified data elements.

The Commission has been using a general materiality factor of 10% in taking exceptions to accounting and reporting errors. The 10% materiality factor would be continued and would apply to the specific data element or group of data elements being audited.

The cyclical audit referred to in the NPR is a current practice of our auditors in which a major segment of accounting and reporting, such as revenue accounting, expense accounting, property accounting, or statistics is audited each year. Over a three-year cycle, all major segments are audited. This practice spreads the cost of an audit over three periods, and was suggested in the NPR to alleviate the cost of the Commission's proposal. We do not believe this practice would be appropriate under the alternative proposal because of its reduced audit scope.

Since new audit procedures have to be developed for several hundred items, we do not believe that the new audit program can be completed in time for the 1985 annual reports. Accordingly, we will implement the new program for the 1986 annual reports due March 31, 1987.

Conclusions

We believe the AICPA and AAR alternative proposal will meet our objective to sustain our current level of confidence in data reported by the railroads.

The Bureau of Accounts is directed to meet with representatives of the AICPA to develop audit procedures necessary to assure the continued reliability of reported data.

The audit procedures developed will be used in auditing the data filed in the R–1 report for 1986.

The auditors' report will be prepared in compliance with SAS No. 35 and the railroads will file the report as an integral part of the annual report R–1.

The auditors' report will cover the data elements listed in the Appendix.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities. This decision directly affects only Class I railroads which have annual revenues of $50 million or more.

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

List of Subjects in 49 CFR Part 1241

Railroads; Reporting and recordkeeping requirements.

These rules are promulgated under the authority of 11145 and 5 U.S.C. 553.

This revision has been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). Respondents may direct comments to OMB by addressing them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for Interstate Commerce Commission, Washington, DC 20503.

Decided: September 26, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Lamboley commented with a separate expression. Commissioner Simmons dissented with a separate expression.

James H. Bayne,

Secretary.

Appendix—Data Elements in Annual Report Form R–1 Which Are To Be Examined by an Independent Public Accountant and Reported Upon in Accordance With the Provisions of Ex Parte No. 460

The references for the data elements listed below are to Form R–1 for 1985. From time to time, the R–1 is revised with resulting changes in the line and column identifications. The railroads will be advised of all such changes.

Schedule

200 *Comparative Statement of Financial Position*
- Line 30, column (b)
- Line 39, column (b)
- Line 41, column (b)
- Line 42, column (b)
- Line 43, column (b)
- Line 44, column (b)
- Line 45, column (b)
- Line 46, column (b)

210 *Results of Operations*
- Line 7, column (b)
- Line 17, column (b)
- Line 22, column (b)
- Line 38, column (b)
- Line 39, column (b)
- Line 40, column (b)
- Line 41, column (b)
- Line 44, column (b)
- Line 67, column (b)

[5] The Interstate Commerce Act and related laws enacted as subtitle IV of Title 49, United States Code, "Transportation," by Pub. L. 95–473.

245 *Working Capital Information*
Line 28, column (b)
330 *Road and Equipment Property*
Lines 1 through 44, column (h)
330A *Improvements on Leased Property*
Lines 1 through 44, column (h)
335 *Accumulated Depreciation—Road and Equipment Owned and Used*
Lines 1 through 41, column (g)
342 *Accumulated Depreciation—Improvements to Road and Equipment Leased From Others*
Lines 1 through 39, column (g)
352A *Investment in Railway Property Used in Transportation Service (By Company)*
Line 31, columns (d) & (e)
352B *Investment in Railway Property Used in Transportation Service (By Property Accounts)*
Line 44, columns (b), (c), (d), (e)
410 *Railway Operating Expenses*
Lines 1 through 620, column (h)
Crosschecks to Schedules 412, 414 & 417
415 *Supporting Schedule—Equipment*
Line 43, columns (b) & (f)
510 *Debtholdings*
Summary included in Instruction 8
700 *Mileage Operated at Close of Year*
Line 57, columns (d) through (j)
755 *Railroad Operating Statistics*
Line 1 through 89, column (b)
Line 98 through 129, column (b)

[FR Doc. 85-24633 Filed 10-15-85; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 41154-4154]

Tanner Crab Off Alaska

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

ACTION: Notice of reopening of fishing season.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that in the Bering Sea District in Registration Area J the desired harvest level of *Chionoecetes opilio* Tanner crab has not been achieved in the Northern Subdistrict, the Pribilof Subdistrict, and the portion of the Southeastern Subdistrict west of 164° W. longitude. The Regional Director believes that additional fishing time is necessary to fully utilize *C. opilio* stocks. The Secretary of Commerce therefore issues this notice opening the fishing season for *C. opilio* in these areas for vessels of the United States until midnight December 31, 1985. The intended effect is to achieve the optimum yield of the fishery.

DATE: This notice is effective 12:00 noon, Alaska Daylight Time (ADT) October 9, 1985. Public comments on this notice of season opening are invited until October 28, 1985.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. weekdays) at NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (NMFS Fishery Management Biologist), 907-586-7229.

SUPPLEMENTARY INFORMATION:

Background

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

Section 671.26(f)(1) establishes six districts within Registration Area J. One of these is the Bering Sea District, which is further divided into three subdistricts for the purposes of managing smaller units of crab stocks.

While the minimum size for male *C. opilio* crab is 3.1 inches carapace width, the industry has been taking crabs mostly 4 inches and larger in size. At this harvest size, an exploitation rate of 0.58 is used to determine the guideline harvest level available. The NMFS trawl survey is designated to estimate populations in the Bering Sea north and south of 58° N. latitude. However, the dividing line for the Bering Sea Subdistricts is at 58°39' N. latitude. The result is survey areas and subdistricts that are not exactly comparable.

The 1984 NMFS Bering Sea trawl abundance survey indicated that in the Pribilof area, in the area north of 58° N. latitude, and in the Southeastern Bering Sea, 25, 30, and 43 million pounds respectively of *C. opilio* would be available for harvest. Preliminary data from the 1985 NMFS survey are now available. This survey indicates that approximately 28 million pounds of *C. opilio* are available for harvest from the Pribilof area. This is a slight increase from the amount predicted from the 1984 survey. The 1985 survey also indicates that there are about 10 million pounds less available for harvest from the area of the Bering Sea north of 58° N. latitude than was predicted by the 1984 survey.

There were substantial differences between the 1984 and 1985 survey data for the Southeastern Bering Sea. The abundance survey of available *C. opilio* dropped from an estimated 43 million to 9 million pounds. Some of this apparent decline may be attributed to crab moving over the 168° W. longitude dividing line separating the Pribilof and Southeastern Subdistricts. During the 1985 fishing season in the Southeastern Subdistrict, most of the catch was taken near the border of the Pribilof Subdistrict. There is some question as to how well the 1985 survey in the Southeastern Subdistrict actually reflects the true abundance of crab. The fishery will be closely monitored and catch statistics will be used to assess the condition of the stock and to verify the trawl survey results.

Section 671.26(f)(2)(vi) specifies that the fishing season for *C. opilio* in the Bering Sea district ends August 1 at noon. The 1985 season in the Northern Subdistrict was extended by notice, however, until August 22, 1985 (50 FR 31604, August 5, 1985), in response to requests from the North Pacific Fishing Vessels Owners' Association and the fishing industry for more fishing time in which to harvest the resource. The fishery was closed on that date to promote coordination and enforcement of the State of Alaska's blue king crab fishery, which was opened as scheduled on September 1, 1985.

The Regional Director has received additional requests from the industry to reopen the Northern Subdistrict, the Pribilof Subdistrict, and a portion of the Southeastern Subdistrict in order to allow additional opportunity to harvest the available resource.

The total harvest of *C. opilio* in the Northern Subdistrict through August 25, 1985, was about 8 million pounds. Given a preharvest abundance estimate of 30 million pounds, there is a surplus of crabs available. The Regional Director plans to reopen this entire subdistrict. The total harvest of *C. opilio* in the Southeastern Subdistrict through August 25, 1985, was about 26.7 million pounds. There also remains a surplus of crabs to be harvested in this Subdistrict, as the survey showed concentrations of *C. opilio* mostly west of 164° W. longitude and concentrations of *C. bairdi* east of

164° W. longitude. To avoid possible excessive handling mortality on *C. bairdi*, the Regional Director plans to reopen only the portion of the Southeastern Subdistrict west of 164° W. longitude to vessels of the United States. The total Pribilof Subdistrict harvest of *C. opilio* was approximately 25.4 million pounds. The portion of this subdistrict south of 58° N. latitude was closed to fishing on May 8, 1985 (50 FR 19948, May 13, 1985), based on 1984 survey results and inseason fishery performance. The portion of the Pribilof Subdistrict north of 58° N. latitude remained open until the ending date of August 1. The Regional Director plans to reopen the entire Pribilof Subdistrict.

Because substantial amounts of *C. opilio* are unharvested, the current condition of *C. opilio* stocks remains good, a situation that was not anticipated at the beginning of the fishing year. The Secretary, therefore, extends the season for *C. opilio* in the Northern Subdistrict north of 58°39' N. latitude, in the Pribilof Subdistrict west of 168° W. longitude and south of Cape Newenham (58°39' N. latitude), and only in that portion of the Southeastern Subdistrict west of 164° W. longitude, until midnight December 31, 1985, a date when inclement weather and ice conditions will normally force this fishery to close.

The opening will become effective after this notice is filed for public inspection with the Office of the Federal Register and it is publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of opening may be submitted to the Regional Director at the address stated above. If comments are received, the necessity of this opening will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this opening's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the Northern and Pribilof Subdistricts and a portion of the Southeastern Subdistrict will be subject to underharvest unless this order takes effect promptly. This could have a severe adverse economic impact on Tanner crab fishermen and processors, many of whom have already been affected by declines in king crab stocks. The Agency, therefore, finds for good cause that advance opportunity for public comment on this notice is contrary to the public interest and that no delay should occur in its effective date.

This action is taken under the authority of § 671.27 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 671

Fisheries.

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

Dated: October 10, 1985.

Carmen J. Blondin,

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

[FR Doc. 85-24682 Filed 10-11-85; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 50713-5113]

Groundfish of the Gulf of Alaska

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

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: The Secretary of Commerce extends an emergency rule in the groundfish fishery in the Gulf of Alaska. This extension authorizes continuation of a closure of fishing for a single species of groundfish in an area or district when the optimum yield for that species in that area or district has been harvested. The intent of this action is to allow continued fishing for species of groundfish that are not stressed.

EFFECTIVE DATES: October 8, 1985, until December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, NMFS) 907-586-7229.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce has determined that the conditions discussed in the original emergency interim rule (50 CFR 28580, July 15, 1985) still exist. Information leading to the situation requiring emergency action is discussed in the preamble to the emergency interim rule and is not repeated here.

Classification

The Assistant Administrator has determined this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable laws. He has also determined that it is impractical to provide prior opportunity for public comment or to delay the effective date of this rule of 30 days.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 672

Fisheries.

Dated: October 8, 1985.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85-24624 Filed 10-10-85; 12:10 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 200
Wednesday, October 16, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 61, 70, and 72

Financial Responsibility Requirements Applicable to NRC Licensees for Cleanup of Accidental and Unexpected Releases of Radioactive Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Advanced Notice of proposed rulemaking; extension of comment period.

SUMMARY: On June 7, 1985 (50 FR 23960), the NRC published for public comment an Advanced Notice of Proposed Rulemaking (ANPRM) indicating that the Commission is considering whether to amend its regulations to require certain persons licensed to possess nuclear materials to demonstrate that they possess adequate financial means to pay for cleanup of accidental releases of radioactive materials.

The comment period expired October 7, 1985. A number of commenters have requested an extension of the comment period. In view of the importance of the ANPRM, and the desire of the Commission to allow all parties to fully express their views, the NRC has decided to extend the comment period. The comment period now expires on November 7, 1985.

DATES: The comment period has been extended and now expires November 7, 1985. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received before this date.

ADDRESSES: Send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Jo Seeman, Office of Nuclear Materials Safety and Safeguards, on (301) 427–4647, U.S. Nuclear Regulatory Commission, Washington, DC. 20555.

Dated at Washington, DC, this 9th day of October, 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85–24888 Filed 10–15–85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 73

[Airspace Docket No. 85–AWA–40]

Proposed Alteration of Restricted Areas R–4005 and R–4006, Patuxent River, MD, and Establishment of R–4008 Patuxent River, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the eastern boundary of R–4006 by eliminating the dogleg near Crisfield, MD, and limiting the altitudes of R–4005 and R–4006. A new Restricted Area would be established over R–4005 and R–4006 providing more efficient use of the airspace. This action is also designed to reduce delays in the New York area caused by traffic congestion along the New York and Florida corridor. Due to the fact that this action is critical to the efficient management of air traffic in the east coast corridor and is proposed to be implemented in January 1986, to coincide with other interrelated action, the public comment period is limited to 30 days.

DATE: Comments must be received on or before November 14, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 85–AWA–40, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Ronald C. Montague, Airspace and Aeronautical Information Requirements Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–3128.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Also, since this action is critical to the efficient management of air traffic in the east coast corridor and is proposed to be implemented in January 1986, to coincide with other interrelated actions, the comment period is limited to 30 days. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AWA–40." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA

personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by sumbitting 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) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering amendments to Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to restructure the Patuxent River Restricted Area complex. The restructuring/realignment of these areas would provide for better management, more realistic utilization of the airspace and would coincide with and accommodate newly proposed and realigned high altitude routes. These combined actions will help alleviate congestion and compression of air traffic along the heavily traveled coastal corridor between New York and Florida.

The maximum altitude for R-4005 and R-4006 would be limited to, but would not include, FL 250. This action would more accurately reflect the airspace utilized by NAS Patuxent for mission accomplishment.

Additionally, the eastern boundary of R-4006 would be altered so as to eliminate the dogleg near Crisfield, MD. The straightening of this boundary line would enhance flight safety, increase test efficiency (increase the extended straight line test tracks), and decrease radar advisory communications (by decreasing the number of spill outs into surrounding airspace).

The establishment of the new R-4008 would provide NAS Patuxent with the necessary airspace when mission requirements call for altitudes of FL 250 and above. The proposed action would facilitate the efficient use of restricted airspace and the return of that airspace to public use without requiring increased air traffic control communications with NAS Patuxent River. Sections 71.151 and 73.40 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory eveluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental Control area and restricted areas.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69

2. Section 71.151 is amended as follows:

R-4008 Patuxent River, MD [New]

PART 73—[AMENDED]

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69

4. Section 73.40 is amended as follows:

R-4005 Patuxent River, MD [Amended]

Remove "Surface to FL 850." and substitute "Surface to but not including FL 250."

R-4006 Patuxent River, MD [Amended]

Remove "along Pennsylvania Railroad to lat. 38°12'30" N.; long. 75°41'30" W.; to lat. 38°02'30" N., long. 75°52'30" W.;" and also remove "3,500 feet MSL to FL 850," and substitute "3,500 feet MSL to but not including FL 250."

R-4008 Patuxent River, MD [New]

Boundaries. Beginning at lat. 38°42'00" N., long. 75°52'00" W.; to lat. 38°40'00" N., long. 75°35'00" W.; to lat. 38°20'00" N.; long. 75°39'00" W.; to lat. 37°45'00" N., long. 76°11'00" W.; to lat. 37°45'00" N., long. 76°24'00" W.; to lat. 37°51'00" N., long. 76°32'00" W.; to lat. 37°55'00" N., long. 76°33'00" W.; to lat. 38°17'00" N., long. 76°19'00" W.; thence to the point of beginning.

Designated altitudes. FL 250 to FL 850.

Time of designation. Continuous.

Controlling agency. FAA Washington ARTCC.

Using agency. U.S. Navy, Commanding Officer, NAS Patuxent River, MD.

Issued in Washington, D.C., on October 10, 1985.

James Burns, Jr.,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-24720 Filed 10-15-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 85-AWA-41]

Proposed Alteration and Establishment of Jet Routes, Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter three Jet Routes and establish two new Jet Routes located in the vicinity of Richmond, VA. The realignment would alleviate congestion and compression of traffic in the airspace between New England and Florida. This proposal is part of the Expanded East Coast Plan (EECP) that is designed to make optimum use of limited airspace along the east coast corridor. This action would reduce en route and terminal delays in the Boston, New York, Miami, Chicago and Atlanta areas; and eliminate delays, save fuel and reduce controller workload. The EECP proposal will be implemented in several segments until completed. Due to the fact that this action, if adopted, would be implemented on January 16, 1986, to coincide with other related actions, the public comment period is limited to 30 days to permit implementation by that date.

DATE: Comments must be received on or before November 14, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Eastern Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-41, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief

Counsel, Room 916, 800 Independence Avenue, S.W., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis, W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Also, since this action, if adopted, would be implemented on January 16, 1986, to coincide with other related actions, the comment period is limited to 30 days. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-41." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of J-79, J-174 and J-40, and establish Jet Routes J-191 and J-193 located in the vicinity of Richmond, VA. Currently, east coast traffic flows are so saturated and compressed in the New York, NY, metropolitan area that substantial delays are experienced daily. To alleviate this congestion, the EECP we are proposing would provide optimum use of airspace along the heavily traveled coastal corridors between New York and Florida and reduce departure/arrival delays in the Boston, MA, Chicago, IL, Atlanta, GA, and New York areas. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—[AMENDED]

1. The authority citation for Part 75 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69

2. Section 75.100 is amended as follows:

J-79 [Amended]

By removing the words "Charleston; Wilmington, NC; Norfolk, VA; INT of Norfolk 023° and Coyle, NJ, 208° radials; Coyle; Kennedy, NY;" and substituting the words "Charleston; Tar River, NC; Franklin, VA; Salisbury, MD; Sea Isle, NJ; Kennedy, NY;"

J-174 [Amended]

By removing the words "From Snow Hill, MD, via" and substituting the words "From Jacksonville, FL; via INT Jacksonville 020°T(023°M) and Charleston, SC, 214°T(216°M) radials; Charleston; Wilmington, NC; Norfolk, VA; INT Norfolk 023°T(026°T) and Snow Hill, MD, 211°T(216°M) radials; Snow Hill;"

J-40 [Amended]

By removing the words "Wilmington, NC; Richmond, VA;" and substituting the words "Wilmington, NC; Tar River, NC; Richmond, VA;"

J-191 [New]

From Coyle, NJ, via Kenton, DE; Patuxent, MD; Hopewell, VA; Tar River, NC; to Wilmington, NC.

J-193 [New]

From Wilmington, NC, via INT of Wilmington 058°T(062°M) and Franklin, VA, 190°T(199°M) radials; to Franklin.

Issued in Washington, D.C., on October 10, 1985.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-24721 Filed 10-15-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 93

[Docket No. 24600; Notice No. 85-18]

Abbotsford, British Columbia (BC), Canada, Special Airport Traffic Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to lower the ceiling of the Abbotsford, BC, Special Airport Traffic Area (SATA) from 4,000 feet mean sea level (MSL) to 3,000 feet MSL. This SATA is located in the State of Washington and is associated with the Abbotsford, BC, Airport in Canada. This action is being proposed to complement the recent Canadian controlled airspace reclassification which resulted in the establishment of a general ceiling for

Canadian control zones of 3,000 feet above the elevation of the airport:

DATE: Comments must be received on or before December 16, 1985.

ADDRESSES: Comments on the proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24600, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Davis, Airspace-Rules and Aeronautical Information Division, ATO-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24600." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

Need for Amendment

By letter dated March 27, 1985, Mr. K. S. Gray, Transport Canada, petitioned the FAA to lower the ceiling of the Abbotsford SATA. As part of the reorganization of controlled airspace in Canada, most Canadian control zones are established at 3,000 feet above the airport elevation and expressed as cardinal altitudes above MSL. The current Abbotsford SATA lateral boundary is geographically described identically to the Abbotsford Control Zone in the U.S. However the ceiling of the SATA is established as 4,000 feet MSL so that it would have the same ceiling as the Abbotsford Control Zone in Canada. The effect of the existing rule is that it establishes a U.S. airport traffic area, in U.S. airspace, for an airport located in Canada. However, the recent Canadian controlled airspace reorganization lowered the ceiling of the Canadian Abbotsford Control Zone to 3,000 feet MSL leaving a disparity in the applicability between the U.S. and Canadian flight rules. Because this proposed amendment would simplify the flight rules for operations conducted to and from a Canadian airport, and its effect on the users of U.S. airspace would be minimal, this document involves a rulemaking action which is not a major rule under Executive Order 12291 and is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Further, for these reasons, I certify that, under the criteria of the Regulatory Flexibility Act, a resulting amendment will not have a significant economic impact on a substantial number of small entities. In addition, the FAA has determined that the expected economic impact of this section is so minimal that it does not require an evaluation.

The Proposal

Accordingly, the FAA is proposing to lower the ceiling of the Abbotsford SATA from 4,000 feet MSL to 3,000 feet MSL so that it would coincide with the established ceiling of the Canadian Abbotsford Control Zone.

List of Subjects in Part 93

Special airport traffic areas, Traffic patterns, Safety, Aircraft, Aircraft pilots, Air traffic control.

The Proposal

Accordingly, the Federal Aviation Administration proposes to amend Part 93 of the Federal Aviation Regulations (14 CFR Part 93) as follows:

PART 93—[AMENDED]

1. The authority citation for Part 93 continues to read as follows:

Authority: 49 U.S.C. 1303, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 93.197 [Amended]

2. In § 93.197(a) by removing the words "4,000 feet MSL" and substituting the words "3,000 feet MSL."

Issued in Washington, DC, on September 11, 1985.

John R. Ryan,

Director, Air Traffic Operations Service.

[FR Doc. 85-24589 Filed 10-15-85; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-22507; File No. S7-737]

National Market System Securities

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period for concept release.

SUMMARY: The Commission has extended from September 30, 1985 to December 30, 1985 the deadline for submitting comments on the National Market System Securities concept release which the Commission published on June 27, 1985.

DATE: Comments to be received by December 30, 1985.

ADDRESS: Persons wishing to submit comments should file six copies with John Wheeler, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. All comments should refer to File No. S7-737 and will be available for inspection at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Andrew E. Feldman, Esq., (202) 272-2414, Room 5205, Division of Market Regulation, Securities and Exchange

Commission, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission has extended from September 30, 1985 to December 30, 1985 the deadline for submitting comment in response to the Commission's June 21, 1985 request for comment on the direction which the designation process for National Market System ("NMS") Securities should take and how these securities should participate in the NMS.[1] The Commission has extended the deadline in order to afford an additional opportunity for public comment.

By the Commission.

Dated: October 4, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-24492 Filed 10-15-85; 8:45 am]

BILLING CODE 8010-01-M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Proposed Amendment to Comprehensive Plan and Water Code of the Delaware River Basin

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rule and public hearing.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold a public hearing to receive comments on a proposed amendment to the Commission's Comprehensive Plan and *Water Code of the Delaware River Basin* in relation to metering of large ground water withdrawals. The hearing will be part of the Commission's regular business meeting which is open to the public.

DATE: The public hearing is scheduled for Tuesday, November 26, 1985, beginning at 1:30 p.m. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing. The comment closing date will be announced at the hearing.

ADDRESSES: Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628. The public hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

[1] *See* Securities Exchange Act Release No. 22127 (June 21, 1985), 50 FR 26584, June 27, 1985.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, telephone (609) 883-9500.

SUPPLEMENTARY INFORMATION:

Background and Rationale

The lack of accurate, quantitative information regarding ground water withdrawals has been a long-standing problem, as evidenced by the great discrepancies which often exist between estimated and actual withdrawals in various parts of the Basin. Improved information on ground water withdrawals and use is critical for resolving water management problems.

Current Commission policy regarding metering (section 2.50.1 of the Water Code) applies only to service metering (metering of individual dwelling units), and only to *new* water supply systems and *extensions* of existing water supply systems designed to serve more than 250 connections or distribute water supplies in excess of 100,000 gallons per day (gpd). The policy does not require source metering (metering of individual ground water withdrawals). This has been a problem from a water conservation perspective, since source metering, as well as service metering, are both needed to administer an effective leak detection and repair program.

The *Special Ground Water Study, Basinwide Report and Executive Summary* outlined a program for integrated management of ground water quanity and quality in the Basin. The study, accepted by the Commission on December 15, 1982, concluded that data regarding ground water withdrawals and use in the Basin is often inaccurate or incomplete and that this information is critical for effective management of the Basin's water resources. On July 19, 1984 the Commission's Ground Water Advisory Committee unanimously approved a proposal to require metering of large ground water withdrawals in order to obtain an improved water use data base for the Basin.

The proposed amendment calls for source metering and recording of both new and existing ground water withdrawals that exceed 100,000 gpd during any 30-day period.

The subject of the hearing will be as follows:

Amendment to the Comprehensive Plan Relating to Ground Water Withdrawal Metering, Recording and Reporting

List of Subjects in 18 CFR Part 410

Water pollution control.

PART 410—[AMENDED]

Article 2 of the *Water Code of the Delaware River Basin* includes Commission policy relating to conservation, development and utilization of Basin water resources. It is proposed to:

Amend the Comprehensive Plan and Article 2 of the *Water Code of the Delaware River Basin* which are referenced in 18 CFR Part 410 by the addition of a new subsection 2.50.2, to read as follows:

2.50.2 Ground-water withdrawal metering, recording and reporting.

(1) Except as provided in subsection (2), each person, firm, corporation, or other entity whose cumulative daily average withdrawal(s) from the underground waters of the Basin from a well or group of wells operated as a system, or a spring, exceeds 100,000 gallons per day during any 30-day period shall meter and record their withdrawals and report such withdrawals to the designated agency of the state where the withdrawals are located. Withdrawals shall be metered by means of an automatic continuous recording device, flow meter, or other method capable of measuring accurately the quantity of water withdrawn. Meters or other methods of measurement shall be subject to approval and inspection by the designated state agency as to installation, maintenance, and reading. Withdrawals shall at a minimum be recorded on a daily basis and reported as monthly totals annually.

(2) The following water uses and operations are exempt from the requirement of metering ground water withdrawals: farm irrigation; dewatering incidential to mining and quarrying; and dewatering incidental to construction. Persons engaged in such withdrawals in excess of 100,000 gallons per day during any 30-day period shall, in lieu of metering, record the pumping rates and the dates and elapsed hours of operation of any well or pump used to withdraw ground water, and report such information as monthly totals annually to the designated state agency.

(3) The following are the designated state agencies for the purposes of this regulation: Delaware Department of Natural Resources and Environmental Control; New Jersey Department of Environmental Protection; New York State Department of Environmental Conservation; and Pennsylvania Department of Environmental Resources.

(4) Pursuant to section 11.5 of the Compact, the designated state agencies shall administer and enforce programs for metering, recording, and reporting of ground water withdrawals, in accordance with this regulation and any applicable state regulations.

(5) This regulation shall be effective January 1, 1987.

[Delaware River Basin Compact (75 Stat. 688)]

Susan M. Weisman,

Secretary.

October 8, 1985.

[FR Doc. 85-24603 Filed 10-15-85; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

Abandoned Mine Reclamation Fund; Fee Collection and Coal Production Reporting

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Extension of comment period.

SUMMARY: This notice extends the period for public comment on a petition for rulemaking an additional seven days. OSM published a petition for rulemaking in the Federal Register on September 9, 1985 (50 FR 36858), to seek comments and recommendations regarding the granting or denying of a petition, submitted pursuant to section 210(g) of the Surface Mining Control and Reclamation Act, 30 U.S.C. 1211(g), requesting further interpretation of OSM's definition of "reclaimed coal" contained in 30 CFR 870.5. The comment period is being extended due to a request by the office of Planning and Budget of the state of Utah.

DATE: Comments must be received no later than 5:00 p.m. October 23, 1985.

ADDRESS: Written comments: Hand deliver to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (AML-R), Room 5315, 1100 L Street NW., Washington, DC 20240, or mail to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (AML-R), Room 5315-L, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jane Robinson, Division of Reclamation Fee Management, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240, telephone (202) 343-7591.

Robert J. Ewing,

Assistant Director, Finance and Accounting.

October 10, 1985.

[FR Doc. 85-24630 Filed 10-15-85; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2911-8]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to disapprove a revision to the Porter County, Indiana State Implementation Plan (SIP) for total suspended particulates (TSP). The revised strategy for this County was submitted as a revision to the SIP by Indiana on October 15, 1984, and is contained in new Indiana regulation, 325 IAC 6-6—Source Specific and Facility Emission Limitations for TSP in Porter County. USEPA has reviewed the regulation and the supporting documentation and has found that the proposed regulation is not approvable under the Clean Air Act (CAA) due to deficiencies in the regulations itself, in the modeling analysis, and in the emission inventory submitted to support the regulation.

DATE: Comments on this revision and on the proposed USEPA action must be received by December 16, 1985.

ADDRESSES: Copies of the SIP revision, the support material submitted and USEPA's technical support document concerning this revision are available at the following addresses for review: (It is recommended that you telephone Robert B. Miller, at (312) 886-6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Robert B. Miller, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: Under section 107 of the CAA, USEPA has designated certain areas in each State as not attaining the NAAQS for particulate matter.[1] A small portion of northern Porter County is presently designated unclassifiable with respect to attainment of the particulate matter NAAQS and the remainder of the County is designated attainment.[2]

Bethlehem Steel Corporation (BSC), with technical advice from the Indiana Air Pollution Control Division (IAPCD), recently developed a revised TSP control strategy for Porter County, Indiana. The strategy used a computer dispersion modeling analysis to determine emission limits (industrial and non-industrial).[3] The purpose of the

[1] The primary particulate matter NAAQS are violated when, in a year, either: (1) The geometric mean value of TSP concentrations exceeds 75 micrograms per cubic meter of air (75 $\mu g/m^3$) (the annual primary standard), or (2) the maximum 24-hour concentration of TSP exceeds 260 $\mu g/m^3$ more than once (the 24-hour standard). The secondary particulate matter NAAQS is violated when, in a year, the maximum 24-hour concentration exceeds 150 $\mu g/m^3$ more than once.

[2] On March 3, 1978, USEPA initially designated all of Porter County as unclassifiable for particulate matter (43 FR 8962). On October 5, 1978, USEPA mistakenly designated Porter County as primary nonattainment (43 FR 45993).

In 1979, USEPA established three TSP monitors near Bethlehem Steel Corporation (BSC). These monitors recorded clear violations of the particulate matter NAAQS. On August 18, 1982, USEPA corrected its mistake by designating the entire county nonattainment by officially redesignating most of Porter County as unclassifiable and, based on the monitored violations near BSC, designated a portion of northern Porter County as primary nonattainment for particulate matter (47 FR 35966).

BSC petitioned the Seventh Circuit Court of Appeals to review this nonattainment designation. On December 13, 1983, the Court held that USEPA does not now have the authority to unilaterally redesignate an area nonattainment and vacated the designation. See *Bethlehem Steel Corporation* v. *USEPA*, 726 F.2d 1303. In response to the Court decision, USEPA reinstituted its initial unclassifiable designation for the entire County on June 6, 1984 (49 FR 23343).

On March 14, 1984, Indiana requested that all of Porter County be redesignated attainment, except for an area in the northern portion of Porter County which contains BSC and other major sources. USEPA approved this redesignation on April 22, 1985 (50 FR 15748). The current designation is that an area bounded on the north by the Lake Michigan shoreline, on the east by Mineral Springs Road, on the south by I-94, and on the west by Indiana 249 from I-94 to Burns Ditch and then following Burns Ditch to Lake Michigan is designated unclassifiable. The remainder of the County is designated attainment.

[3] This type of SIP is referred to as an "attainment demonstration SIP". In order to be approvable, an attainment demonstration SIP requires that all applicable emission limitations and requirements within it must individually be approvable, because the demonstration assumes that all of the limits are in place and are approved as a part of the SIP. Additionally, it requires all other applicable section 110 requirements to be met, e.g., explicit and approvable test methods, inspection procedures, and compliance schedules.

revised Porter County strategy appears to be to attain and maintain the primary particulate matter standards in the most cost effective manner by emphasizing nonprocess fugitive dust control, rather than increased process controls. The modeling submitted in support of the strategy does predict violations of the 24-hour secondary standard.

BSC submitted this strategy to the Indiana Air Pollution Control Board (IAPCB) for its consideration. On May 21, 1984, the IAPCB sent USEPA for comment a copy of a draft Porter County TSP regulation, 325 IAC 6-6, and a December 1983 Technical Support Document, consisting of (1) particulate matter emissions inventories, and (2) an air quality modeling report ("Northwestern Porter County Air Quality Modeling Study", December 21, 1983). USEPA submitted comments on the proposed rule and the technical support document on July 6, 1984, with revisions on July 18, 1984.

On October 3, 1984, the IAPCB adopted this Porter County strategy as new regulation 325 IAC 6-6. Indiana submitted this rule on October 15, 1984, as a proposed revision to the SIP. Previously, on September 26, 1984, Indiana had sent to USEPA, BSC's August 27, 1984, response to USEPA's, July 6, 1984, comments, additional support documentation for the fugitive dust control program, and a revised air quality modeling report ("Northwestern Porter County Air Quality Modeling Study", August 13, 1984). However, Indiana did not submit a revised emission inventory for this area. On November 7, 1984 Indiana promulgated 325 IAC 6-6 as a State regulation.

USEPA has reviewed the documents which have been submitted. The proposed revision is not approvable due to deficiencies in the regulation itself and the underlying modeling analysis and emission inventory. The following comments discuss the major deficiencies. Other deficiencies and more detail on the deficiencies discussed below can be found in USEPA's technical support document which is available for review at the addresses listed in the front of this notice.

Deficiencies in the Emission Limits in 325 IAC 6-6

In 325 IAC 6-6-4, Emission Limitations, the heading above the emission limits column identifies these as "annual" limits. USEPA cannot approve any strategy which does not ensure attainment and maintenance of the short-term, as well as the annual, particulate matter NAAQS. Because 325 IAC 6-6 does not include short-term limits to protect the 24-hour NAAQS [4] and the State has not demonstrated that the annual limits protect the 24-hour NAAQS, USEPA cannot approve the regulation.

Certain of the emission limits in 325 IAC 6-6 are expressed in term of pounds per hour. To be approvable, any "mass per unit time" emission limit, such as pounds per hour, must either be supported by a thorough reduced load modeling analysis or evidence must be submitted that the facility cannot operate at less than full load.[5] No such analysis or evidence was provided for the Porter County pounds per hour limits. Therefore, because such limits are an intrinsic part of the Porter County strategy, the strategy cannot be approved.

Deficiencies in 325 IAC 6-6—Compliance Determinations

Rule 325 IAC 6-6-2(d)(6) lists certain sources for which fuel usage data are used to determine compliance, and 325 IAC 6-6-2(e)(1) lists certain sources for which stack tests determine compliance. These two rules, however, do not list all sources limited by 325 IAC 6-6, i.e., they are not all inclusive. Rule 325 IAC 6-6-2(j) states that for *all* stack sources where compliance is not based on fuel monitoring analysis, compliance shall be based on opacity observations. Subsection 2(j) is not approvable because, although stack tests can be required [325 IAC 6-6-2(j)(4)], the results of these stack tests are not usable to determine compliance for those sources which are neither listed in 325 IAC 6-6-2(e)(1) not in 325 IAC 6-6-2(d)(6), and it is not clear which is controlling for sources that are listed in 325 IAC 6-6-2(e)(1).

Stack tests must be the primary test to determine compliance with particulate limitations for all stack sources for which compliance is not based on fuel monitoring data. Opacity limitations should apply in addition to the stack test particulate limitations.

The Porter County strategy claims 30% control for BSC's basic oxygen furnace (BOF) vessels Nos. 1 and 2 and 90% control for BOF vessel No. 3. Emission limits for these sources are included in 325 IAC 6-6. However, the State did not provide a compliance method for roof monitor emissions from these sources. Typically, appropriate opacity limits are provided to determine compliance for process fugitive emissions. Indiana did not include any source-specific opacity limits for the BOF shop. Therefore, the opacity limits for these sources are contained in Indiana's general opacity rule, 325 IAC 5-1, and the limits in this rule have not been demonstrated to be reflective of 30% or 90% control. Without a compliance method, the emission limits on the BOF emissions vented through the roof monitor are not approvable.

The submitted modeling analysis claims a 75% emission reduction in emissions from reentrained road dust from U.S. 12. However, neither 325 IAC 6-6 nor any other rule requires cleaning of this road and no one has committed to clean it. Therefore, the emission credit from this cleaning is not approvable.

The submitted modeling analysis is based on emissions being limited both at BSC and other facilities in the area. However, 325 IAC 6-6 only includes emission limitations and control measures for BSC. The State did not docment that the emissions from these other sources used in the modeling represent the maximum allowable under current SIP regulations. Without such documentation, USEPA cannot confirm that this portion of the Porter County strategy is enforceable and, therefore, the strategy as a whole must be disapproved.

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[4] USEPA recognizes that 325 IAC 6-6-2(f) allows compliance with the annual limits to be determined using stack test data, which are collected over a period of less than 24 hours. However, it is not clear from the regulation if the stack test data is then extrapulated to annual emissions (to reflect downtime, etc.) before compliance is determined. If so, then USEPA's concern about the inability of annual mass limits to protect the 24-hour particulate matter standard remains valid. If stack test data is not extrapulated, then emission limits for which compliance is determined by stack tests are not actually annual limits and are mislabled.

Emission levels determined from fuel monitoring are calculated monthly and are monthly averages [325 IAC 6-6-2(d)]. It is not clear from 325 IAC 6-6 how this monthly data is used to determine compliance with the annual emission limitation, e.g., a running annual average of the monthly calculations, a running annual average of the quarterly calculations, etc. In any case, the State has not demonstrated that either monthly or annual emission limits protect the 24-hour NAAQS, and the strategy must therefore be disapproved.

[5] Under a "mass per unit time" emission limit, total allowable particulate loading for sources remains constant whether the source is operating at full load or a reduced load. At reduced loads, however, effective stack heights (plume rises) decrease, and, thus, ground-level pollutant concentrations increase at the same mass per unit time emission level. An adequate reduced load analysis is necessary to ensure that this expected increase in ambient TSP concentrations at reduced loads will not jeopardize attainment. Therefore, one reason why USEPA is proposing to disapprove the Porter County TSP plan is that it contains many mass per unit time limits, which Indiana did not support with adequate analyses showing that the TSP NAAQS are protected under all operating loads.

Deficiencies With the Air Quality Modeling

Indiana did not submit a complete copy of the modeling analysis, but did submit a report on the analysis from the contractor who developed the Porter County strategy. This report contained a summary of the modeling analysis techniques, a summary of the modeling input data, and a summary table of the results of the modeling. Without seeing a complete copy of the modeling analysis, USEPA cannot fully comment upon it. However, USEPA's review of the report has revealed several deficiencies.

The most obvious deficiency with the completed modeling analysis is the lack of a reference short-term attainment demonstration. Instead, the demonstration used statistical transform equations to approximate 24-hour TSP concentrations. This technique is contrary to current EPA modeling guidelines, and current demonstrations based on this technique cannot be approved. (See the "Regional Workshops on Air Quality Modeling: A Summary Report" (April 1981), and a memo dated June 20, 1984 from G. T. Helms entitled "Modeling Demonstration for Niagara Frontier.")

Additionally, the contractor's August 13, 1984 report states that Porter Country sources were modeled at 1979 stack and process fugitive source emission parameters adjusted to reflect projected operating rates. USEPA's modeling policy requires that short-term attainment demonstrations must use maximum allowable operating levels and maximum allowable emission limitations. For this reason also, the short-term modeling is deficient.

Another modeling deficiency concerns the issue of "ambient air." USEPA's ambient air policy is found at 40 CFR 50.1(e) and in a January 19, 1980, letter from Douglas Costle, then Administrator, to Senator Jennings Randolph. This policy only exempts from consideration land owned or controlled by the source to which public access is precluded by a fence or other physical barriers. No documentation was provided to justify the exclusion of modeled receptors from a large portion of the Burns Harbor area. For example, the neighboring Port of Indiana property does not fit the ambient air exemption, and the lack of receptors in this area is an obvious deficiency. This specific situation was addressed in the August 18, 1982, notice on the redesignation of Porter County. Thus, the submitted modeling analysis is further deficient because it fails to provide a complete assessment of the pollutant concentrations in all the "ambient air" areas of Porter County.

Consequently, USEPA is proposing to disapprove the Porter County strategy because the State did not adequately demonstrate that it will protect the 24-hour primary TSP NAAQS nor did it demonstrate that the primary NAAQS will be protected in all the applicable areas of the County. Other modeling deficiencies are discussed in the technical support document. These include application of the model, area source inventory, miscellaneous inventory problems, calibration data base, and meteorological data.

Deficiencies in the Emission Inventory

There are discrepancies between the inventories Indiana has submitted in support of its Porter County sulfur dioxide strategy and that it submitted in support of its TSP strategy. Further, there are inconsistencies between the emission rates in the modeled emission inventory, the proposed emission limits portion of the technical support document, and the emission limits in 325 IAC 6-6. For instance, several of the proposed emission limits in the technical support document for baghouses are expressed in grains per dry standard cubic foot, whereas the 325 IAC 6-6 limits are in pounds per hour. Using appropriate conversion factors, these emission limits can be expressed in the same units and compared with each other. When this is done, many of the baghouse emission limits in the strategy's emission inventory are much lower than that which 325 IAC 6-6 allows. Obviously, this indicates that 325 IAC 6-6 allows more emissions than the modeled strategy assumes will be emitted. This difference brings into question the magnitude of the modeled concentrations. Similar problems exist for other sources at BSC. BSC has indicated to USEPA that these discrepancies have been corrected, but they still exist in the documents officially submitted to USEPA. USEPA must base its rulemaking on the documents officially submitted. Therefore, until the State submits these corrections, USEPA must propose to disapprove the Porter County plan based on these discrepancies.

Regulation 325 IAC 6-6 contains a method for determining compliance with the quench water quality limit (a 5-consecutive day composite sample once per quarter), but there is no enforceable quench water quality limit in the regulation. In a separate regulation, 325 IAC 11-3-2(h), there is a quench water quality limit of 1500 milligrams per liter (mg/l) that would apply in Porter County. (This portion of 325 IAC 11-3-2(h) was disapproved on December 6, 1983 (47 FR 44261) because of an inadequate compliance methodology.) However, a 1500 mg/l water quality limit (with an adequate testing method) gives a quenching emission rate of 0.6 lb per ton of coal. The strategy assumes an emission rate of 0.27 lb per ton of coal. Because the quenching emission rate does not correspond to the quench water quality limit, this portion of the Porter County plan must be proposed for disapproval. Also a once per quarter sampling frequency is inadequate, and for this reason also the plan must be proposed for disapproval.

Similarly, 325 IAC 6-6 refers to 325 IAC 11-3 to provide emission limits for coke pushing. 325 IAC 11-3-2(g) requires 90% capture of emissions by a device which emits no more than 0.04 lb/ton of coke pushed. This leads to an emission factor for pushing of 0.05 lb/ton of coal for uncollected emissions and 0.03 lb/ton for emissions collected, or total emissions of 0.08 lb/ton of coal. However, the emission inventory in the strategy appears to assume emissions of 0.047 lb/ton of coal for No. 2 battery and 0.043 lb/ton of coal for No. 1 battery. Therefore, even if 325 IAC 11-3-2(g) were enforceable, it allows more emissions than are assumed in the Porter County strategy, and, therefore, this part of the strategy is not approvable. Additionally, USEPA determined on December 6, 1983, that 325 IAC 11-3-2(g) is not enforceable, and this continues as a reason for disapproval.

Similarly, compliance with 325 IAC 11-3-2(b) results in a charging emission rate of about 0.043 lb/ton of coal. The Porter County strategy emission inventory assumes a charging emission rate of 0.016 lb/ton of coal. For this reason, also, the Porter County strategy is not approvable.

Violations of the Secondary Particulate Matter Standard

The modeling submitted with the Porter County strategy predicted violations of the 24-hour secondary particulate matter standard. These 24-hour violations were predicted using the CDM annual model with the statistical transform equations (Larsen's Transforms) referred to previously. These statistical techniques are not acceptable for demonstrating attainment; mostly because they underpredict 24-hour concentrations. For the same reason, the converse is true; that these same techniques can be used to demonstrate nonattainment. This is because the hourly sequential short-term modeling concentrations given by

reference modeling will generally be greater, not less, than the transform derived short-term concentrations. USEPA is proposing to disapprove Indiana's Porter County plan also because the modeling predicts that the plan will not protect the secondary TSP standard in an area currently designated better than secondary nonattainment, unclassifiable.

In conclusion, the Porter County TSP strategy is not approvable because of deficiencies in the regulation itself, such as enforceability; deficiencies in the modeling procedures used in development of the strategy; deficiencies in the emission inventory used in the strategy; and predicted violations of the secondary TSP standard. The above notice references some of the major deficiencies with the plan. Other deficiencies are noted in USEPA's technical support document which is available for review at the locations listed in the addresses section of this notice. USEPA is soliciting comments on the analysis in this technical support document, on today's notice, and on the proposed Porter County strategy.

Under 5 U.S.C. 605(b), I certify that this proposed SIP revision, if ultimately disapproved, will not have a significant economic impact on a substantial number of small entities. The State's regulation, which USEPA is proposing, applies to only one large company, Bethlehem Steel Company. Additionally, if USEPA utlimately disapproves this proposed revision, no new requirements will apply to any firm. The notice of SIP deficiency may require Indiana to develop a plan covering more sources than Bethlehem, but the other sources in this geographical area are generally also large.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Authority: 42 U.S.C. 7401–7442.

Dated: June 24, 1985.

Alan Levin,

Acting Regional Administrator

[FR Doc. 85–24645 Filed 10–15–85; 8:45 am]

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40 CFR Part 52

[KY 015; A–4–FRL–2911–9]

Approval and Promulgation of Implementation Plans; Kentucky; Removal of Conditions and Approval of Part D TSP Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On December 24, 1980, (45 FR 84999) EPA conditionally approved the State Implementation Plan (SIP) revisions which Kentucky developed for total suspended particulate (TSP) nonattainment areas pursuant to Part D of Title I of the Clean Air Act. EPA today proposes to remove seven of the nine conditions attached to its approval of these revisions. EPA is deferring action with regard to the other two conditions.

DATE: To be considered, comments must be rceived on or before November 15, 1985.

ADDRESSES: Written comments should be addressed to Melvin Russell of EPA Region IV's Air Management Branch (see EPA Region IV address below). Copies of the materials submitted by Kentucky and the technical support document referenced in this notice may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Kentucky Department for Environmental Protection, Division of Air Pollution Control, 18 Reilly Road, Bldg. 2, Fort Boone Plaza, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: Melvin Russell, EPA Region IV, Air Management Branch, at the above listed address, phone 404/881–2864 (FTS 257–2864).

SUPPLEMENTAL INFORMATION:

Background

On March 3, 1978 (FR 8962 at 8996), and September 11, 1978 (43 FR 40412 at 40425), EPA designated a number of areas in the Commonwealth of Kentucky as not attaining certain national ambient air quality standards (NAAQS). The areas listed below were considered nonattainment for TSP:

A. Bell County
B. Boyd County
C. That portion of Bullitt County in Shepherdsville
D. That portion of Campbell County in Newport
E. That portion of Daviess County in Owensboro
F. That portion of Henderson County in Henderson
G. Jefferson County
H. That portion of Lawrence County in Louisa
I. McCracken County
J. Marshall County
K. That portion of Madison County in Richmond
L. Muhlenberg County
M. That portion of Perry County in Hazard
N. That portion of Pike County in Pikeville
O. That portion of Whitley County in Corbin

In response to the nonattainment designations, the Kentucky Department for Natural Resources and Environmental Protection on June 15, 1979, adopted SIP revisions designed to comply with the Clean Air Act (CAA) amendments of 1977 and submitted them to EPA.

EPA proposed conditional approval of the TSP portion of Kentucky's Part D (nonattainment) SIP revisions in the November 15, 1979, **Federal Register** (44 FR 65781). Extensive comments were received in response to that notice. After reviewing the comments along with the material submitted by Kentucky, EPA presented its position in a notice published on September 18, 1980 (45 FR 62163), "Reproposal and Reopening of Commment Period for Kentucky's Particulate Part D Plan Revisions." In the second notice EPA (1) responded to comments which were received in response to the original proposal and which related directly to deficiences found in Kentucky's TSP plan and (2) described deficiences discovered in the plan after publication of the original proposal.

On December 24, 1980 (45 FR 84999), EPA conditionally approved the plan, addressing all comments received in response to the second proposal notice.

Discussion

In the conditional approval, EPA required Kentucky to submit corrections for all identified TSP SIP deficiencies by October 15, 1981. On August 17, 1981, Kentucky requested an extension. EPA determined that such an extension was in order due to the complexity of the regulatory corrections required. The Agency granted the extension on October 2, 1981, requesting that the State make the corrections at the earliest practicable date.

Today's notice proposes to approve Kentucky revisions which require reasonably available control technology (RACT) regulatios as mandated by the Clean Air Act.

Sections 172(b)(2) and (3) of the Clean Air Act require the imposition of RACT as follows:

(b) The plan provisions required by subsection (a) shall . . .

(2) Provide for the implementation of reasonably available control measures as expeditiously as practicable;

(3) Require, in the interim, reasonable further progress (as defined in section 171(1)) including such reduction in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology.

EPA explained at length in the reproposal notice why some of the State's regulations did not require RACT. That notice also expressed EPA's position regarding levels of control that represent RACT.

In the notice of conditional approval, at 45 FR 85003, EPA defined nine specific conditions of approval (listed below). Kentucky submitted corrective information on December 9, 1982, and May 1, 1984. The conditions of EPA's approval and the corrections submitted by Kentucky are as follows:

I. *Condition (i)*—A revision to Regulation 401 KAR 50:055, section 2(3), specifying a method other than Method 9 of Appendix A, 40 CFR Part 60, for determining opacity for sources with intermittent emissions.

A. *Kentucky Correction:* Kentucky did not revise section 2(3) of Regulation 401 KAR 50:055, General Compliance Requirements. The State attempted to meet this condition by revising or developing regulations as follows:

1. 401 KAR 61:075, Steel Plants Using Existing Electric Arc Furnaces (See condition (vi) below) [Revised].

2. 401 KAR 61:080, Steel Plants Using Existing Basic Oxygen Process Furnaces (See condition (vii) below) [Revised].

3. 401 KAR 61:140, Existing By-Product Coke Manufacturing Plants (See condition (viii) below) [Revised].

4. 401 KAR 61:170, Existing Blast Furnace Casthouses (See condition (ix) below) [Developed].

5. 401 KAR 61:020, Existing Process Operations [Revised].

B. *EPA Rationale for Proposal:* The intent of this condition was to require Kentucky to adopt appropriate procedures for all intermittent source types for which Method 9 was inappropriate. Kentucky has corrected this deficiency for the iron/steel industry, and EPA is today proposing to approve the applicable regulations.

Kentucky attempted to correct this deficiency for other source types by revising Regulation 401 KAR 61:020 at section 4(6) as follows: "(6) For intermittent emissions, the method to determine opacity shall be a method promulgated by U.S. EPA and subsequently adopted by the department pursuant to the requirements of KRS Chapter 13." EPA understands the State's position on this issue, but cannot accept their commitment for future adoption as satisfying the present requirement for RACT in nonattainment areas.

EPA is proposing to defer action on section 4(6) of 61:020. A February 19, 1985, letter from the State requested that EPA defer action on this portion of their submittal rather than propose to disapprove it. The State is preparing corrections and will submit them during the third quarter of FY 85. We believe it is appropriate to defer action in view of the State's request; moreover, disapproval would produce no environmental benefit between now and when the State corrects the SIP.

EPA's deferral of action on section 4(6) will not affect or alter the intent of the remaining parts of Regulation 401 KAR 61:020 or any other part of Kentucky's SIP.

II. *Condition (ii)*—A revision to Regulation 401 KAR 50:055, section 2(6), which specifies that adjustment of opacity standards be restricted to stack or control device discharges.

A. *Kentucky Correction:* The necessary revision to this regulation was adopted by Kentucky on March 15, 1982, with an effective date of September 22, 1982. The title of the affected subsection has been revised to read: "Adjustments of opacity standards for emissions from a stack or a control devise." Subpart (a) of the subsection states that "Fugitive emissions are not subject to the provisions of this subsection."

B. *EPA Rationale for Proposal:* In the September 18, 1980, notice at page 62168, item B.2, EPA stated that "Adjustment of opacity standards should be restricted to stack or control devices. It would be inappropriate for uncaptured process fugitive emissions to have opacity adjustments." EPA has determined that the State's revision is satisfactory and therefore proposes to remove this condition and approve the State's revision.

III. *Condition (iii)*—Revisions to Regulation 401 KAR 50:055, section 6, Alternative Emission Reduction Options, to correct deficiencies outlined in the notice of September 18, 1980 (45 FR 62163 at page 62168, deficiency number 3).

A. *Kentucky Correction:* Kentucky has corrected this deficiency by deleting the ET regulation and adopting a revised ET regulation which EPA has proposed action on in another notice (47 FR 27871, June 28, 1982). The effective date of the State regulation was September 22, 1982. The State developed the ET regulation pursuant to EPA's ET policy statement of April 7, 1982.

B. *EPA Rationale for Proposal:* The State's new emissions trading regulation (401 KAR 51:055) has not been approved by EPA; however, this does not affect the approvability of Kentucky's Part D TSP SIP revisions. This notice proposes no action on 51:055, as it is not part of the State's Part D SIP. EPA stated on September 18, 1980 (45 FR 62163 at 62168), "Kentucky may correct this portion of the SIP, or delete it, since attainment is not jeopardized by its absence." Kentucky chose to adopt appropriate regulations and delete the ET procedures from 50:055; EPA proposes only to approve the deletion.

IV. *Condition (iv)*—Revisions to Regulation 401 KAR 61:005 General Provisions, section 2(1) and 2(2), such that the regulation clearly requires a performance test as the means for demonstrating compliance.

A. *Kentucky Correction:* The necessary revisions to this regulation were adopted by Kentucky on May 13, 1982, effective December 1, 1982. The revised regulation clearly defines the circumstances under which performance tests are required.

B. *EPA Rationale for Proposal:* The State's submittal corrected this deficiency by clarifying the applicability of Section 2, Performance Test. Section 2(2) of the previous regulation implied that the State could exempt affected sources other than those in section 2(1). Section 2(1) was not revised because section 2(2) was revised to remove the implication regarding affected sources other than those identified in section 2(1). Section 2(2) clarifies that a performance test is *mandatory* for affected facilities except for the exempt ones listed in 2(1), and that the State *may* require a performance test for the exempt ones. EPA finds this revision satisfactory and proposes to remove this condition and approve the revision in section 2(2) of Regulation 401 KAR 61:005.

V. *Condition (v)*—A revision to Regulation 401 KAR 61:020, Existing Process Operations, section 3, Standard for Particulate Matter, such that the regulation has a specific requirement of reasonably available control technology (RACT) applicable to sources of process fugitive emissions.

A. *Kentucky Correction:* To satisfy this condition, Kentucky revised regulation 61:020; the revisions were adopted on September 29, 1982, with an effective date of December 1, 1982. The revised regulation, at section 3(2)(c) is as follows: "(c) Fugitive emissions of particulate matter from any affected facility located in any area designated nonattainment for particulate matter under 401 KAR 51:010 shall be subject to reasonably available control technology

requirements as set forth in conditions appearing on the operating permit."

B. *EPA Rationale for Proposal:* EPA has determined that the State's revision to Regulation 61:020, does not satisfy the condition. EPA is deferring action on section 3(2)(c) of 61:020. A February 19, 1985, letter from the State requested that EPA defer action on this portion of their submittal. The State is preparing corrections and will submit them during the third quarter of FY 85. We believe that the deferral is appropriate in view of the State's request; moreover, disapproval would produce no environmental benefit between now and when the State corrects the SIP. In order for this part of the regulation to be approved, the State would have to submit approvable (enforceable) permits to EPA for all sources that have a significant impact on the nonattainment areas.

The State could, alternatively, satisfy this condition by revising 61:020 or adopting new regulations to provide enforceable RACT procedures in regulatory form. EPA is available to assist the State as necessary.

VI. *Condition (vi)*—Revisions to Regulation 401 KAR 61:075, Steel Plants and Foundries Using Existing Electric Arc Furnaces, which specify a method other than Method 9 of Appendix A, 40 CFR Part 60, for determining opacity for sources of intermittent emissions, and an opacity limitation which represents a level of control equivalent to RACT.

A. *Kentucky Correction:* The necessary revisions to this regulation were adopted on May 13, 1982, with an effective date of December 1, 1982. The regulation was revised according to EPA guidance. It now identifies as a violation of RACT an opacity greater than twenty percent for more than eleven times as observed at fifteen second intervals over a period of any sixty consecutive minutes.

B. *EPA Rationale for Proposal:* On September 18, 1980 [45 FR 62169], EPA stated that the Agency believed that the rulemaking docket for the reproposal notice would support a standard for electric arc furnace (EAF) shops which would restrict the opacity of emissions discharged from EAF shops, excluding discharges from control devices, to less than 20 percent opacity except for three minutes in any consecutive 60-minute time period.

The Kentucky provisions limit the opacity to 20 percent or less, and EPA believes, based on the rulemaking docket relied on in EPA's December 24, 1980 conditional approval, that this is equivalent to RACT. The State's provisions for aggregating observations is an acceptable procedure for intermittent emissions from EAF shops where use of Method 9 is inappropriate. Therefore, EPA proposes to remove condition (vi) and approve the State's revision of 401 KAR 61:075.

VII. *Condition (vii)*—A revision to Regulation 401 KAR 61:080, Steel Plants Using Existing Basic Oxygen Process Furnaces (BOPF), specifying a method other than Method 9 of Appendix A, 40 CFR Part 60, for determining opacity for sources of intermittent emissions, and specifying an opacity or mass limitation which represents a level of control equivalent to RACT.

A. *Kentucky Correction:* The State revised regulation 401 KAR 61:080 to comply with EPA's requirements. The regulation was adopted on September 15, 1983, with an effective date of April 1, 1984. Regarding opacity or mass limitations, section 3, Standard for Particulate Matter: (1) Limits the concentration of gases discharged to the atmosphere from the control device, to 0.030 grains per dry standard cubic foot (gr/dscf), as measured only during the main oxygen blowing period; (2) limits the concentration of gases discharged to the atmosphere from a control device associated with any other BOPF associated metallurgical equipment to 0.010 gr/dscf, as measured only during operation of such equipment; (3) requires that gases that exit a control device shall not exhibit an opacity of 20 percent or more; and (4) stipulates that no owner or operator shall cause to be discharged into the atmosphere any gases which exit from a shop, due to operations of BOPF and/or associated metallurgical equipment, and exhibit opacity of twenty (20) percent or more for more than eleven (11) times as observed at fifteen (15) second intervals over a period of any sixty (60) consecutive minutes. (See technical support document for additional information regarding procedures for determining opacity.)

B. *EPA Rationale for Approval:* On September 18, 1980 (45 FR 62169, item 7) EPA stated:

> EPA believes the data available as part of the rulemaking docket on this notice would support a standard for basic oxygen furnace (BOF) shops which would restrict the opacity of emissions discharged from BOF shops, excluding discharges from control devices, to less than 20 percent opacity except for either three minutes in any consecutive 60 minute period of time or on a 3 minute moving average. Further, the opacity from any control devices employed must be restricted to 20 percent unless an equivalent opacity could be established per 401 KAR 50:055 for any control device(s) meeting either of the following mass standards.
>
> EPA believes the data available as part of the rulemaking docket on this notice would support a standard which would restrict emissions from the primary BOF control device to 0.030 gr/dscf as tested only during the main oxygen blow and emissions from any secondary emissions control devices to 0.010 gr/dscf as tested only during the duration of the secondary operation. An alternative would be 0.10 pounds of emissions (aggregation of all BOF gas cleaner stacks)/ton of steel produced.

As seen in VII.A above, Kentucky's revised regulation meets the criteria described in the reproposal notice. Regulation 61:080 is included as part of the technical support document for this notice. Based on the foregoing and the record relied on in EPA's December 24, 1980 conditional approval, EPA proposes to remove condition (vii) and approve the State's revision to 401 KAR 61:080.

VIII. *Condition (viii)*—Revisions to Regulation 401 KAR 61:140, Existing By-Product Coke Manufacturing Plants, which specify standards and emission limitations which represent a level of control equivalent to RACT for battery topside leaks, charging, pushing and quenching operations, as well as appropriate test methods.

A. *Kentucky Correction:* The revisions to this regulation were adopted by the State on September 29, 1982, with an effective date of December 1, 1982.

1. Section 3 (Standards for Particulate Matter) of the regulation specifies emission limits as follows:

> Section 3. Standards for Particulate Matter. No person subject to the provisions of this regulation shall cause, suffer or allow particulate matter to be discharged to the atmosphere from each affected facility or operation of a by-product coke oven battery except as follows:
>
> 1. Coke oven charging: No visible emissions during the charging cycle from the control equipment, the charging ports, the larry cars or the open chuck door, except for an average of twenty-five (25) seconds of any visible emissions (excluding water vapor) per charge, averaged over five (5) consecutive charges.
>
> 2. Battery topside leaks: No more than five (5) percent of the charging ports and ten (10) percent of the standpipes on operating ovens shall be leaking (exhibiting visible emissions except for steam or nonsmoking flame) at any time.
>
> 3. Doors: No visible emission, except nonsmoking flame, from more than ten (10) percent of the total coke oven doors on a battery.
>
> 4. Combustion stack: No visible emission (other than water mist or vapor) shall exceed twenty (20) percent opacity from any coke oven combustion stack.
>
> 5. Pushing: Emissions shall be controlled such that: (a) No visible emissions, as observed at fifteen (15) second intervals, shall exceed twenty (20) percent opacity from the time the oven door removal has been

completed until the hot car is inside the quench tower except for ten (10) percent of the total number of observations recorded.

(b) The emission rate from the control device shall not exceed 0.030 pounds of filterable particulate per ton of coke pushed, averaged over a number of pushes.

6. Quenching:

(a) No visible emissions, except water vapor or mist, shall exceed an opacity of twenty (20) percent during the quenching operations.

(b) No process water shall be used for quenching and the make-up water shall not contain total dissolved solids concentration in excess of 750 mg/liter.

(c) The quench tower draft shall be adequate to ensure that all visible quenching gases exit through the quench tower baffles.

2. Section 5 (Tests Methods and Procedures) of regulation 61:140 specifies test methods and procedures to satisfy the EPA requirements as follows:

a. Subsections (3) (a) and (b) provide appropriate test methods and procedures for determination of visible emissions during the oven charging period.

b. Subsection (4) provides appropriate test methods and procedures for determination of visible emissions from coke oven top side leaks.

c. Subsection (5) provides appropriate door inspection procedures.

d. Subsection (6) provides appropriate procedures for determination of quenching visible emissions.

e. Subsection (7) provides appropriate procedures for determination of pushing visible emissions.

The test methods and procedures in Section 5 of Regulation 61:140 are too lengthy to be expressed in detail here. The regulation is included in the technical support document for this notice.

B. *EPA Rationale for Proposal:* EPA has reviewed the State's submittal in light of condition (viii) above, EPA requirements outlined in the reproposed notice (45 FR 62169, item 8), and the data that was made available as part of the rulemaking docket for the 1980 conditional approval. Item 8 at 45 FR 62169 outlined the RACT criteria as follows:

8. 401 KAR 61:140. Existing by-product coke manufacturing plants. EPA believes that the data available as part of the rulemaking docket on this notice would support the following changes to the proposed standards.

a. Charging emissions should be restricted to no visible emissions except for an average (averaged over 4 to 7 charges) of 25 seconds of any visible emissions (excluding water vapor) per charge with an exemption for a discarded charge reading (e.g., the highest charge in every 20 observed).

b. Battery topside leaks should be broken down into two separate standards. In its present format good control of charging ports would allow less than a RACT level of control for standpipes. The recommended standards are no more than 5 percent of the charging ports or 10 percent of the standpipes on operating ovens should be leaking at any time.

c. The proposed regulation requires 85 percent capture of total particulate matter generated during pushing. If an enforceable test procedure were included with the standard so that compliance could be documented, EPA would have no objections to the proposed regulation. However, in the absence of such a test procedure, EPA would recommend an opacity standard such as no visible emissions during pushing should equal or exceed 20 percent opacity except for 6 seconds per push (averaged over a number of pushes) as read over the collector main or 90 percent of Method 9, 15 second readings shall not equal or exceed 20 percent opacity during the pushing operation and the subsequent travel of the hot car to the quench tower.

d. Make up water used in the quenching operation should not contain TDS in excess of 750 mg/l. An acceptable alternative would be to restrict stack emissions to 0.60 pounds of emissions/ton of coke produced.

Other needed changes in 401 KAR 61:140 include an opacity reading procedure for combustion stacks. Method 9 would be an inappropriate procedure for determining compliance as the standard is presently proposed. Also, a specific visible emission test procedure will be needed for pushing. Finally, a number of the test methods and procedures proposed will need to be modified in light of the suggested changes in a number of the proposed emission limitations.

EPA has determined that the Kentucky revisions satisfy the EPA RACT requirements as outlined in the 1980 conditional approval. Therefore, EPA is proposing to remove condition (viii) and approve the State's revision of 401 KAR 61:140.[1]

IX. *Condition (ix)*—Establishment of a regulation which will represent a level of control equivalent to RACT for blast furnace casthouses.

A. *Kentucky Correction:* The State developed a new regulation to satisfy this condition; Regulation 401 KAR 61:170 Existing Blast Furnace Casthouses. The regulation establishes appropriate emission limits for particulate matter, including test methods and procedures and a compliance timetable which requires compliance by December 31, 1982. The regulation was adopted on September 15, 1983, with an effective date of April 1, 1984.

Section 3 (Standard for Particulate Matter) of the regulation is as follows:

Section 3. Standard for Particulate Matter. No owner or operator of a blast furnace casthouse subject to the provisions of this regulation shall cause to be discharged into the atmosphere from the blast furnace casthouse any gases which:

(1) Exhibit an average opacity in excess of twenty (20) percent.

(2) If such gases exit from a gas cleaner, no owner or operator subject to the provisions of this regulation shall cause to be discharged into the atmosphere any gases which:

(a) Contain particulate matter in excess of 0.010 gr/dscf as tested during the casting of hot metal and slag; or

(b) Exhibit an average opacity in excess of twenty (20) percent.

Section 4(6), Test Methods and Procedures, includes the required test procedures to supplement Method 9, when Method 9 is inappropriate. The procedures in Section 4(6) are as follows:

(6) For the purpose of determining compliance with Section 3(1), the following procedures shall be used to supplement Method 9:

(a) A series of consecutive observations taken at fifteen (15) second intervals shall be made during the entire period of time that hot metal and slag are being cast. Compliance shall be based on a comparison of the standard in section 3(1) with the highest average opacity occurring over any six (6) consecutive minutes during the period of observation. If emissions are emitted from the roof monitor and other discharge points from the building, the reader shall read and record whichever plume is most opaque at the time of each reading.

(b) 1. In making observations of roof monitor emissions, the reader shall be positioned within a sector seventy (70) degrees either side of a line perpendicular to the long axis of the roof monitor. Within this sector the reader shall be positioned with the sun behind him and generally perpendicular to the axis of the plume that is being observed. On overcast days or if the plume is in a shadow, the reader need not follow the requirement about positioning his back to the sun.

2. In making observations of emissions from other openings in the building, the reader shall be positioned within a sector seventy (70) degrees either side of a line perpendicular to the side of the building nearest which the emissions occur and with a clear view of the emissions. Within the sector the reader shall be positioned with the sun behind him and generally perpendicular to the axis of the plume that is being observed. On overcast days, the reader need not follow the requirement about positioning his back to the sun.

B. *EPA Rationale for Proposal:* In EPA's September 18, 1980, notice (see item 9 at 45 FR 62169), EPA stated the following:

9. It will be necessary for the State to adopt specific regulations which will require the installation of RACT on blast furnace

[1] Although EPA stated in the 1980 notice that the State needed to add a test procedure beyond EPA Method 9 for reading opacity from combustion stacks, EPA recognizes now that no such additional procedure is necessary. Method 9 is an adequate procedure for reading combustion stack opacity since combustion stacks are continuous emission sources.

casthouse. Once again, EPA believes the data available as part of the rulemaking docket on this notice would support a visible emission standard which would restrict the opacity of emissions from blast furnace casthouses to less than *20* percent as read on a moving 6 minutes average or restrict any emissions to below 20 percent opacity except for 6 percent of the individual 15 second readings per cast. In addition, emissions from the discharge of any air pollution control devices installed would need to be restricted to 0.01 gr/dscf as tested during casting.

EPA has reviewed the state's submittal in light of condition (ix) above, the EPA requirements given in the September 18, 1980, notice, and the data that was made available as part of the rulemaking docket for the reproposal notice. EPA has determined that the Kentucky revisions satisfy the EPA RACT requirements.

Based on this review and the data made available as part of the rulemaking docket for the 1980 conditional approval, EPA is proposing to remove condition (ix) and approve the State's revision of Regulation 401 KAR 61:170.

Proposed Action On Conditions

EPA is proposing to approve Kentucky's SIP revisions relating to conditions (ii), (iii), (iv), (vi), (vii), (viii) and (ix), and remove those conditions. Note, however, that this notice defers action on Kentucky Regulations 401 KAR 51:055, Emissions Trading, because it is not related to Part D requirements. EPA is deferring action on the State's corrections for conditions (i) and (v), for the reasons given in I.B. and V.B. above.

Other Proposals

In addition to the regulations discussed above, Kentucky revised other regulations relevant to their Part D TSP SIP. The additional regulations and EPA's response are as follows.

I. Regulation 401 KAR 50:010 Definitions and Abbreviations

This regulation was revised to include definitions of "fugitive emissions," "intermittent visible emissions," and "volatile organic compounds," and a revised definition of "secondary emissions." These definitions in the regulation read as follows:

(21) 'Fugitive emission,' except where 401 KAR 51:017 and 401 KAR 51:052 are applicable, means the emissions of any air contaminant into the open air other than from a stack or air pollution control equipment exhaust.

(24) 'Intermittent emissions' means emissions of particulate matter into the open air from a process which operates for less than any six (6) consecutive minutes.

(39) 'Secondary emissions' means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined, qauntifiable, and impact the same general area as does the stationary source modification which causes the secondary emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emission which come directly from a mobile source, such as the emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(4) 'Volatile organic compounds (VOC)' means chemical compounds of carbon (excluding methane, ethane, carbon monoxide, carbon dioxide, carbonic acid, metallic cabides, and aumonium carbonate) which have a vapor pressure greater than one-tenth (0.1) mm Hg at conditions of twenty (20) degrees Celsius and 760 mm Hg.

The above definitions were effective December 1, 1982. EPA has reviewed these definitions and found them approvable. EPA proposes to approve Kentucky Regulation 50:010 as amended.

II. Regulation 401 KAR 61:015—Existing Indirect Heat Exchangers

Kentucky has deleted paragraph (2)(d) of section 8 of 61:015, so that sources which were not made subject to more stringent standards could not have additional time to comply with the 1979 SIP revisions. Appendix B to 61:015, with regard to Class V–A counties, was amended to correct an error in the applicable equations, and to indicate that the allowable rates are three-hour averages except where the provision for using fuel analysis applies, in which case the standard is a 24-hour average. The revision was effective December 1, 1982. In the reproposal notice of September 18, 1980, EPA proposed to disapprove the portion of 61:015, section 8(2)(d), which allowed sources which were not subject to more stringent emission standards additional time to comply with existing emission standards. In the final rule of December 24, 1980, EPA disapproved section 8(2)(d) of 61:015. At that time, section 8(2)(d) was part of Kentucky's deletion of section 8(2)(d) from Regulation 401 KAR 61:0.15.

EPA also proposes to approve the State's correction of the equation in Appendix B to 61:015. EPA did not identify this is a deficiency; however, the State's correction is in order.

Summary of Proposed Actions.

EPA is today proposing to approve the SIP revisions discussed above. They involve the following Kentucky regulations:

(1) 401 KAR 61:140 Existing By-Product Coke Manufacturing Plants,

(2) 401 KAR 61:075, Steel Plants and Foundries Using Existing Electric Arc Furnaces,

(3) 401 KAR 61:020, Existing Process Operations,

(4) 401 KAR 61:015, Existing Indirect Heat Exchangers,

(5) 401 KAR 61:080, Steel Plants Using Existing Basic Oxygen Process Furnaces,

(6) 401 KAR 61:170, Existing Blast Furnace Casthouses,

(7) 401 KAR 50:010, Definitions, and Abbreviations,

(8) 401 KAR 50:055, General Compliance Requirements,

(9) 401 KAR 61:005, General Provisions.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter, Incorporation by reference.

Authority: 42 U.S.C. 7401–7642.

Dated: June 27, 1985.

Sanford W. Harvey, Jr.,

Acting Regional Administrator.

[FR Doc. 85–24644 Filed 10–15–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 65

[Docket No. 9–85–49; A–9–FRL–2910–2]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Proposed Delayed Compliance Order for Douglas Furniture, Redondo Beach, CA

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue an administrative order to Douglas Furniture. The Order requires the company to bring volatile organic compounds emissions from its metal parts coating lines in Redondo Beach, California into compliance with the

South Coast Air Quality Management District's Rule 1107(6)(B), part of the Federally approved California State Implementation Plan (SIP). Because the company is unable to comply with these regulations at this time, the proposed order would establish an expeditious schedule requiring final compliance by December 31, 1986. Source compliance with the Order would preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation of the SIP regulations covered by the Order. The purpose of this notice is to invite public comments and to offer an opportunity to request a public hearing on EPA's proposed issuance of the Order.

DATES: Written comments and requests for a public hearing must be received on or before November 15, 1985. If there is a significant public interest in a hearing, it will be held twenty-one days after prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESS: Comments and requests for a public hearing should be submitted to Chief of the Compliance Section, Air Management Division, U.S. EPA, 215 Fremont Street, San Francisco, California 94105. Material supporting the Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing.

FOR FURTHER INFORMATION CONTACT: Abra Bennett, Compliance Section, Air Management Division, U.S. EPA, 215 Fremont Street, San Francisco, California 94105 at (415) 974-8057.

SUPPLEMENTARY INFORMATION: Douglas Furniture operates two metal parts coating lines in Redondo Beach, California. The proposed Order addresses volatile organic compounds (VOC) emissions from the coating lines at this facility, which are subject to the South Coast Air Quality Management District's (SCAQMD) Rule 1107, which is part of the Federally approved California SIP. Rule 1107 limits the VOC emissions from manufactured metal parts and products coatings. Rule 1107(6) specifies the date by which Douglas Furniture must be in compliance with the Rule. The Order requires final compliance with Rule 1107 by August 1, 1986 by conversion to the use of complying coatings, or by December 31, 1986 by means of the installation of an add-on control device. Douglas Furniture is to undertake an incremental replacement of non-complying coatings with reformulated complying coatings during the period of September 15, 1985 to July 15, 1986. If Douglas Furniture believes that sufficient progress is not being made with respect to reformulation of coatings, it shall undertake the purchase and installation of add-on control equipment consisting of an incinerator or carbon adsorption system during the period of April 1, 1986 to December 31, 1986, reaching final compliance by December 31, 1986. The source has consented to the terms of this Order. The source has agreed to meet the Order's increments during the period of this informal rulemaking.

The proposed Order satisfies the applicable requirements of section 113(d) of the Clean Air Act (the Act). If the Order is issued, source compliance with its terms would preclude further EPA enforcement action under section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect.

Enforcement against the source under the citizen suit provisions of the Act (section 304) would be similarly precluded. However, Douglas Furniture has been notified that its failure to achieve final compliance by the dates specified in the Order may result in a requirement to pay a noncompliance penalty under section 120 of the Act.

Comments received by the date specified above will be considered in determining whether EPA should issue the Order. Testimony given at any public hearing concerning the Order will also be considered. After the public comment period and any public hearing, the Administrator of EPA will publish in the Federal Register the Agency's final action on the Order in 40 CFR Part 65.

List of Subjects in 40 CFR Part 65

Air pollution control.

Dated: August 12, 1985.

Judith E. Ayres,

Regional Administrator, Region IX.

PART 65—[AMENDED]

§ 65.400 [Amended]

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter I, by adding an entry to the table in § 65.400, Federal Delayed Compliance Orders issued under section 113(d)(d) (1), (3), and (4) of the Act, to reflect approval of the following order.

U.S. Environmental Protection Agency

Region IX

In the matter of: Douglas Furniture, Redondo Beach, California; Proceeding Pursuant to section 113(d) of the Clean Air Act, as Amended (42 U.S.C. 7413(d)).

This Order is issued this date pursuant to section 113(d) of the Clean Air Act, as Amended, 42 U.S.C. 7401 et seq. (hereinafter the "Act"), and contains a schedule for compliance, interim control requirements, and reporting requirements. Public notice, opportunity for public comment, and thirty days, notice to the South Coast Air Quality Management District have been provided in accordance with section 113(d)(1) of the Act, 42 U.S.C. 7413(d)(1).

Findings

1. On April 3, 1985, the United States Environmental Protection Agency ("U.S. EPA", or "Agency") issued a Notice of Violation pursuant to section 113(a)(1) of the Act, 42 U.S.C. 7413(a)(1l) to Douglas Furniture for violation of the California State Implementation Plan (SIP), SCAQMD Rule 1107, at its coating lines at its Redondo Beach, California facility. Rule 1107(6)(B) prohibits any person from applying any coating to manufactured metal parts and products which contains volative organic compounds (VOCs) in excess of 275 grams per liter of coating, as applied, excluding water, when the coated products are dried at a temperature at or above 90 °C. (194 °F). Rule 110.7(6) requires that compliance with Rule 1107(6)(B) be achieved by January 1, 1985.

2. Douglas Furniture owns and operates two coating lines which are subject to Rule 1107.

3. Pursuant to section 113(a)(4) of the Act, opportunity to confer with U.S. EPA representatives was extended to Douglas Furniture, and a conference was held on June 7, 1985. At the conference the company described the progress it was making toward reducing VOC emissions from its coating lines by attemping to develop a complying formulation for the brass-finish coating it applies to chrome parts.

4. The violation of SCAQMD Rule 1107 has continued beyond the 30th day after the date the Notice of Violation was received by the company.

5. It has been determined that although Douglas Furniture has made significant efforts to achieve compliance with SCAQMD Rule 1107, it was not able to do so by the January 1, 1985 deadline in Rule 1107(6), and will be

unable to achieve compliance prior to the dates set forth herein.

6. After a thorough investigation of all relevant facts, including the seriousness of the violations and the company's good faith efforts to comply, and after opportunity for public comment, it has been determined that the schedule for compliance set forth in this Order is as expeditious as practicable, and that the terms of the Order comply with section 113(d) of the Act. Therefore, it is ordered and agreed that:

Compliance Program

A. Douglas Furniture shall achieve and demonstrate compliance with Rule 1107 at the coating lines at its Redondo Beach, California facility. Douglas Furniture shall comply by means of conversion to complying coatings, installation of an add-on control device, or by means of the equivalency provision of Rule 1107(c) which provides for compliance by demonstrating that emission reductions obtained are at least equal to those which would be obtained by the use of coatings and operational techniques specified in Rule 1107.

B. Douglas Furniture shall achieve and demonstrate compliance at its coating lines in accordance with the following schedule:

(1) Achieve Compliance By Reformulation

(a) Replace 5% of non-complying coatings with reformulated complying coatings—September 15, 1985

(b) Replace 10% of non-complying coatings with reformulated complying coatings—October 15, 1985

(c) Replace 15% of non-complying coatings with reformulated complying coatings—November 15, 1985

(d) Replace 20% of non-complying coatings with reformulated complying coatings—December 15, 1985

(e) Replace 25% of non-complying coatings with reformulated complying coatings—January 15, 1986

(f) Replace 30% of non-complying coatings with reformulated complying coatings—February 15, 1986

(g) Replace 35% of non-complying coatings with reformulated complying coatings—March 15, 1986

(h) Replace 40% of non-complying coatings with reformulated complying coatings—April 15, 1986

(i) Replace 50% of non-complying coatings with reformulated complying coatings or have a sufficient amount of coatings below the compliance level so as to achieve by equivalency the same emission level as would be achieved by 50% complying coatings—May 15, 1986

(j) Replace 75% of non-complying coatings with reformulated complying coatings or have a sufficient amount of coatings below the compliance level so as to achieve by equivalency the same emission level as would be achieved by 75% complying coatings—June 15, 1986

(k) Replace 100% of non-complying coatings with reformulated coatings or replace a sufficient percentage of non-complying coatings with reformulated complying coatings so that compliance with Rule 1107 is achieved by equivalency—July 15, 1986

(l) Achieve and demonstrate compliance with Rule 1107—August 1, 1986

(2) Achieve Compliance With Add-On Controls

(a) Commence preliminary engineering—April 1, 1986

(b) Issue purchase orders and submit engineering plans to the U.S. EPA—May 1, 1986

(c) Complete installation—December 1, 1986

(d) Achieve and demonstrate compliance with Rule 1107—December 31, 1986

(3) Achieve Compliance by Curtailing Emissions

(a) If Douglas Furniture is unable to achieve full compliance with Rule 1107 by July 15, 1986 and has not commenced installation of add-on pollution control equipment subject to the schedule in paragraph 2 above, Douglas Furniture shall curtail or discontinue emissions of non-complying coatings to the extent necessary to achieve full compliance with Rule 1107 by equivalency by August 1, 1986.

C. No later than 14 days after the scheduled completion date of any interim or final compliance schedule increment, Douglas Furniture shall submit to the U.S. EPA a status report stating whether or not such compliance schedule increment was achieved.

D. If final compliance is achieved by means of conversion to the use of complying coatings, Douglas Furniture shall submit the following information to U.S. EPA: Identification of each coating material used, including the suppliers' name; coating identification code; coating density in pounds per gallon; solids content expressed as percent by weight; chemical composition of the volatile portion expressed as percent by weight of all solvents, both exempt and non-exempt; water content expressed as percent by weight of all solvents, both exempt and nonexempt; water content expressed as percent by weight; and total batch weight of as-received coating prior to solvent and/or solids addition as the coating line.

E. If Douglas Furniture successfully achieves and demonstrates compliance as required in paragraph (1) above, commencing on August 1, 1986, it shall maintain, on a daily basis, the following records:

(1) Number of gallons of each coating used in spray booths subject to Rule 1107 on an as-received basis.

(2) Number of gallons of each non-exempt solvent added to each coating prior to use in spray booths subject to Rule 1107.

Douglas Furniture shall maintain such records for a period of six months and shall report such data to the U.S. EPA on a monthly basis. The first report shall be submitted to the U.S. EPA on September 1, 1986. All data required for such records shall be retained for one year and shall be available for inspection by the U.S. EPA or its agents upon request. Douglas Furniture shall permit the U.S. EPA to inspect its facility and to take samples to assure compliance.

I. Nothing contained in these Findings or Order shall affect the responsibility of Douglas Furniture to comply with all other State or Local laws or regulations or other Federal laws or regulations.

J. Douglas Furniture is hereby notified that its failure to achieve Final compliance by the dates specified in this Order may result in a requirement to pay a noncompliance penalty in accordance with section 120 of the Act, 42 U.S.C. 7420.

K. This Order shall be terminated in accordance with section 113(d)(8) of the Act if the Administrator or his delegate determines on the record, after notice and hearing, that an inability to comply with the applicable California SIP no longer exists.

L. Douglas Furniture is protected by section 113(d)(10) of the Act against Federal enforcement action and citizen suits under section 304 of the Act for noncompliance with the California SIP until the date for final compliance in the Order is past, where Douglas Furniture is in compliance with the terms of this Order.

M. Nothing herein shall be construed to be a waiver by the Administrator of any rights or remedies under The Clean Air Act, including, but not limited to, section 303 of the Act 42 U.S.C. 7503.

N. This Order is effective upon promulgation in the **Federal Register.**

Dated October 3, 1985.

Lee M. Thomas,
Administrator, United States Environment Protection Agency.

Douglas Furniture, by the duly authorized undersigned, hereby consents to the provisions of this Order and believes it to be a reasonable means by which its Redondo Beach, California facility can achieve compliance with the

South Coast Air Quality Management District's Rule 1107, which is part of the California State Implementation Plan.

Dated: September 6, 1985.

Harold Applebaum,

Douglas Furniture.

[FR Doc. 85-24679 Filed 10-15-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 155

[OPP-250068; FRL-2909-9]

Notification to the Secretary of Agriculture of a Final Regulation on Pesticide Registration Standards Docketing and Public Participation Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture a final regulation that establishes procedures to provide specific opportunities for public participation in the development of Registration Standards. The procedures include setting up and maintaining indexed dockets for the Registration Standards and announcing in the **Federal Register** an annual schedule of Registration Standards under development and the availability of dockets and Registration Standards. This action is required by section 25(a)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

By mail: Jean M. Frane, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington DC 20460.

Office location and telephone number: Room 1114, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-0592).

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(B) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any final regulation at least 30 days prior to signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the final regulation within 15 days after receiving it, the Administrator shall issue for publication in the **Federal Register**, with the final regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 15 days after receiving the final regulation, the Administrator may sign the regulation for publication in the **Federal Register** anytime after the 15-day period.

As required by FIFRA section 25(a)(3), a copy of this final regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

Authority: 7 U.S.C. 136 et seq.

Dated: September 26, 1985.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 85-24273 Filed 10-15-85; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 50, No. 200
Wednesday, October 16, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Rulemaking of the Administrative Conference of the United States. The committee will meet on October 25, 1985, at 10:00 a.m. in the offices of Hughes, Hubbard & Reed, 1201 Pennsylvania Avenue NW., Suite 300, Washington, DC.

The committee will consider the status of pending projects, including (1) a draft report by Mr. Arnold Liebowitz describing sanctions on employers of illegal aliens and legalization of aliens in several foreign countries, and (2) a preliminary study of the U.S. visa process by Professor Robert Cane.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the committee before, during or after the meeting.

Contact Person: Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037 (Telephone: (202) 254–7065). Minutes of the meeting will be available on request.

Richard K. Berg,

General Counsel.

October 10, 1985.

[FR Doc. 85–24599 Filed 10–15–85; 8:45 am]

BILLING CODE 6110–01–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: National Technical Information Service (NTIS)

Title: Assessment of the Foreign Technical Information Market in the United States

Form Number: NA

Burden: 8,900 respondents; 4,450 reporting hours

Needs and Uses: NTIS intends to use the collected information to establish a profile of individual users of foreign technical information to assist in the design of a program to effectively disseminate foreign technical information to U.S. industry. Focuses on general technical information resources used, interest in foreign technical information, and current use of NTIS services

Affected Public: State or local governments, businesses or other for-profit institutions, Federal agencies or employees, non-profit institutions, and small businesses or organizations

Frequency: One time

Respondent's Obligation: Voluntary

OMB Desk Officer: Timothy 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, DC 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, DC 20503.

Dated: October 9, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–24668 Filed 10–15–85; 8:45 am]

BILLING CODE 3510–CW–M

Bureau of the Census

Members of the Bureau of the Census Performance Review Board

The following individuals will serve as members of the Bureau of the Census Performance Review Board:

(1) Barbara A. Bailar
(2) Bryant Benton
(3) William P. Butz
(4) C.L. Kincannon
(5) Jerome A. Mark
(6) Roland H. Moore
(7) Charles A. Waite
(8) Katherine K. Wallman

Dated: October 8, 1985.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 85–24666 Filed 10–15–85; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

Exporters' Textile Advisory Committee; Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on December 12, 1985 at 2:30 p.m. until 4:30 p.m., in Herbert Hoover Dining Room, 4th Floor, Waldorf-Astoria Hotel, 301 Park Avenue, New York, New York 10022. The Committee provides advice about ways to promote increased exports in U.S. textiles and apparel.

Agenda: Review of export data; report on conditions in the export market; recent foreign restrictions affecting textiles; export expansion activities; and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact Helen LaGrande (202) 377–3737.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 85–24678 Filed 10–15–85; 8:45 am]

BILLING CODE 3510–DR–M

[A–412–501]

Anhydrous Sodium Metasilicate From the United Kingdom; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether anhydrous sodium metasilicate from the United Kingdom is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are materially injuring, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 21, 1985, and we will make ours on or before February 24, 1986.

EFFECTIVE DATE: October 16, 1985.

FOR FURTHER INFORMATION CONTACT: Steve Lim; Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–1776.

SUPPLEMENTARY INFORMATION:

The Petition

On September 16, 1985, we received a petition in proper form filed by P.Q. Corporation. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

Petitioner bases home market price on a market research study which analyzes pricing information obtained from interviews with end users, manufacturers, and distributors. U.S. price is based on pricing information obtained by petitioner's sales representatives in the U.S. Using these comparisons, petitioner alleges a weighted-average dumping margin of 39.9 percent. Critical circumstances are also alleged.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on anhydrous sodium metasilicate from the United Kingdom and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether anhydrous sodium metasilicate from the United Kingdom is being, or is likely to be, sold in the United States at less than fair value.

Scope of Investigation

The product covered by this investigation is anhydrous sodium metasilicate, currently classified under item number 421.34 of the *Tariff Schedules of the United States*. Anhydrous sodium metasilicate is a definite crystalline chemical compound having the chemical formula Na_2SiO_3.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 21, 1985, whether there is a reasonable indication that imports of anhydrous sodium metasilicate from the United Kingdom are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

October 7, 1985.

[FR Doc. 85–24672 Filed 10–15–85; 8:45 am]

BILLING CODE 3510–DS–M

[C–122–507]

Postponement of Preliminary Countervailing Duty Determination; Certain Fresh Atlantic Groundfish from Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioner, the North Atlantic Fisheries Task Force, the Department of Commerce is postponing its preliminary determination in the countervailing duty investigation of certain fresh Atlantic groundfish from Canada. The preliminary determination will be made on or before January 2, 1986.

EFFECTIVE DATE: October 16, 1985.

FOR FURTHER INFORMATION CONTACT: Gary Taverman or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–0161 or 377–3464.

SUPPLEMENTARY INFORMATION: On August 26, 1985, the Department initiated a countervailing duty investigation on certain fresh Atlantic groundfish from Canada. In our notice of initiation, we stated that we would issue our preliminary determination on or before October 29, 1985 (50 FR 35281, August 30, 1985).

On September 30, 1985, the petitioner filed a request that the preliminary determination in this investigation be postponed for up to 65 days, or no later than 150 days after the date on which the petition was filed.

Section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), provides that the preliminary determination in a countervailing duty investigation may be postponed where the petitioner has made a timely request for such a postponement. Pursuant to this provision and the request by petitioner in this investigation, the Department is postponing its preliminary determination to no later than January 2, 1986.

This notice is published pursuant to section 703(c)(2) of the Act.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

October 7, 1985.

[FR Doc. 85–24674 Filed 10–15–85; 8:45 am]

BILLING CODE 3510–DS–M

[C–479–503]

Preliminary Affirmative Countervailing Duty Determinations; Certain Welded Carbon Steel Pipe and Tube Products From Yugoslavia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to producers, manufacturers or exporters in Yugoslavia of certain welded carbon steel pipe and tube products. The estimated net bounty or grant is 74.50 percent *ad valorem*.

We are directing the U.S. Customs Service to suspend liquidation of all entries of certain welded carbon steel pipe and tube products from Yugoslavia that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net bounty or grant.

If these investigations proceed normally, we will make our final determinations on or before December 23, 1985.

EFFECTIVE DATE: October 16, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles 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) 377–3174 or (202) 377–2438.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

Based upon our investigations, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to producers, manufacturers or exporters in Yugoslavia of certain welded carbon steel pipe and tube products. For purposes of these investigations, the following programs are found to confer bounties or grants:

- Export Bonuses
- Preferential Export Credit
- Foreign Exchange Retention Scheme.

We preliminarily determine the estimated net bounty or grant for certain welded carbon steel pipe and tube products to be 74.50 percent *ad valorem*.

Case History

On July 16, 1985, we received a petition in proper form from the standard pipe and tube subcommittee and the line pipe subcommittee of the Committee on Pipe and Tube Imports (CPTI) and by each of their member companies which produce standard pipe and tube and line pipe. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers or exporters in Yugoslavia of certain welded carbon steel pipe and tube products receive benefits which constitute bounties or grants within the meaning of section 303 of the Act.

Yugoslavia is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, sections 303 (a)(1) and (b) of the Act apply to these investigations. Accordingly, petitioners were not required to allege that, and the U.S. International Trade Commission (ITC) was not required to determine whether, imports of these products materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations, and on August 5, 1985, we initiated such investigations (50 FR 32247). We stated that we expected to issue our preliminary determinations on or before October 9, 1985.

We presented detailed government and company questionnaires concerning the allegations to the government of Yugoslavia in Washington, DC on August 15, 1985, and we requested a response by September 16, 1985. We have not received a response, either from the government or from any manufacturers, producers or exporters of the subject merchandise in Yugoslavia.

In our "Notice of Initiation" of these cases, we stated that we considered Yugoslavia to be a market-economy for the purpose of initiation. We based our decision on information provided in the petition, as well as material gathered by us independent of the petition. Because the government of Yugoslavia has not submitted a response, or made any arguments in other submissions that Yugoslavia is not a market economy, we preliminarily determine that Yugoslavia is a market economy.

We initiated an investigation on line pipe, a defined in the "Scope of Investigations" section, based on information supplied by the petitioners that an importer has made an irrevocable offer of sale of line pipe for delivery in the United States in the second half of 1985 or the first quarter of 1986. There is information in the preliminary injury determination by the ITC in the companion antidumping investigations that casts some doubt on petitioners' allegation (50 FR 37068). However, this information is ambiguous and so is not better evidence than petitioner's allegation. Because respondents have not responded to our questionnaires, we have drawn an adverse inference from the information in the record, and hence we preliminarily determine that there is a "likelihood" of sale within the meaning of section 701(a) of the Act.

Scope of Investigations

The products covered by these investigations are:

(1) Welded carbon steel pipe and tube with an outside diameter of .375 inch or more but not over 16 inches, of any wall thickness, currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A–120, A–53 or A–135; and

(2) Welded carbon steel line pipe with an outside diameter of .375 inch or more but not over 16 inches, and with a wall thickness of not less than .065 inch, currently classifiable in the TSUSA under items 610.3208 and 610.3209. These products are produced to various API specifications for line pipe, most notably API–5L or API–5LX.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigations. 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, 1984, issue of the **Federal Register** (49 FR 18006).

Because we did not receive a response to our questionnaires, we are using the best information available as required under § 355.39 of our regulations (19 CFR 355.39), adversely inferring countervailability and receipt of benefits based on the absence of responses. The Department has no record of past countervailing duty investigations or administrative reviews involving Yugoslavia and therefore, we are unable to include our own information in estimating the benefit from programs alleged to be bounties or grants in the petition. If we do not receive a complete response in time to verify the information submitted, we will continue to seek information from

our own sources to determine the countervailability and level of benefits of the programs under investigation. As best information available, we are using the estimates of benefits included in the petition and a subsequent submission by petitioners. For those programs on which the petitioners provided no estimates of benefits, we are requesting additional information to determine whether a bounty or grant is being conferred.

I. Programs Preliminarily Determined to Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers or exporters in Yugoslavia of certain welded carbon steel pipe and tube products under the following programs.

A. Export Bonuses

Petitioners allege that export bonuses are paid to designated priority industries in Yugoslavia. These payments, which can be as high as 25 percent of the value of export sales, are bestowed on a company within a priority industry by Regional Committees for Foreign Economic Relations (CIFERs). According to information submitted by the petitioner, iron and steel was designated as a priority industry in the 1981–1985 national development plan. As best information available, we preliminarily determine that the companies under investigation received bonuses on exports from the CIFERs in their regions. To determine the amount of the benefit conferred by this program, we assume that the highest rate of bonus quoted in the petition was given to respondents. On this basis, we preliminarily determine an estimated net bounty or grant of 25.00 percent *ad valorem*.

B. Preferential Export Credit

Petitioners allege that exporters in Yugoslavia have access to short-term credit from the National Bank of Yugoslavia and long-term credit from the Yugoslav Bank for International Economic Cooperation at interest rates inconsistent with commercial considerations.

According to information supplied in the petition, the short- and long-term commercial lending rates in July 1984 were 48 percent *per annum*, while the interest rate for export loans was between 27 and 42 percent *per annum*. As best information available, we preliminarily determine that the companies under investigation financed 100 percent of their exports at the lowest rate possible, 27 percent. To calculate the benefit from this program, we took the difference between the commercial lending rate supplied in the petition, 48 percent per year, and the 27 percent annual rate. We thus preliminarily determine an estimated net bounty or grant of 21.00 percent *ad valorem*.

C. Foreign Exchange Retention Scheme

Petitioners allege that exporters of standard pipe and tube and line pipe in Yugoslavia benefit from a foreign exchange retention scheme which permits exporting companies to retain their foreign exchange earnings. According to information submitted in the petition, exporters that earn foreign exchange in excess of the amount they need to pay for imports are allowed to retain a certain amount for their own purposes and not turn it into the government at the official exchange rate. Petitioners state that exporters may sell foreign exchange at a premium over the official exchange rate, thus receiving a benefit from the right to retain foreign exchange earned from export sales.

Petitioners further argue that this benefit confers an export bounty or grant because foreign exchange sold by exporters at a premium yields more dinars than importers pay to purchase the equivalent amount of foreign exchange for imports. Because we have not received a response to our questionnaire in this case, we have no information beyond that supplied in the petition to use in analyzing this program. We have no way of knowing whether exporters in Yugoslavia do in fact have the ability to sell foreign exchange at a premium over the official exchange rate and whether this right would confer a bounty or grant. Therefore, as best information available, we preliminarily determine that this program constitutes a bounty or grant to exporters of standard pipe and tube and line pipe in Yugoslavia. To calculate the benefit, we assume that the companies under investigation received a bounty or grant equal to the highest amount of benefit calculated by the World Bank in an analysis of the foreign exchange retention scheme provided by the petitioners. On this basis, we preliminary determine an estimated net bounty or grant of 28.50 percent *ad valorem*. If we receive a response in this investigation, we will verify any information relating to currency retention prior to our final determinations.

II. Programs for Which We Need Additional Information

Information regarding the level of benefits received under the following programs was not supplied by petitioners. We have also been unable to discover any information on the level of benefits or potential countervailability of these programs from any sources other than the petition. Therefore, we preliminary determine that we need additional information on the following programs:

A. Export Credit Insurance

Petitioners allege that the Yugoslav Bank of International Economic Cooperation (YBIEC) provides export credit insurance to exporters at rates and on terms inadequate to cover its long-term operating costs. Since the respondents did not provide a response in this investigation, and neither the petitioners nor the Department were able to find information upon which to estimate a benefit from this program, we cannot quantify the amount of any bounty or grant that may be received.

B. Income Tax Exemptions on Export Earnings

Petitioners allege that exporters of standard pipe and tube and line pipe may receive income tax exemptions on export earnings. We did not receive a response to our questionnaire in this case, and neither petitioners nor the Department were able to develop information on which to estimate a net bounty or grant.

C. Import Duty Refunds and Duty Exemptions on Non-Physically Incorporated Imported Inputs

Petitioners allege that the government of Yugoslavia refunds import duties or permits duty-free importation of goods and services on inputs other than those physically incorporated in the final exported product. Because the respondents did not provide a response in this case and the petitioners were unable to provide information as to whether or to what degree the pipe and tube industry receives countervailable benefits under this program, we cannot determine whether this program provides a bounty or grant or quantify any estimated bounty or grant.

D. Preferential Credit for Priority Sector Development

Petitioners allege that ferrous metallurgy in the 1981–1985 national development plan is designated as a priority sector and therefore receives preferential access to investment funds. Petitioners further allege that other benefits may be available on preferential terms to encourage development. The respondents have not provided information about any benefits available to industries located in designated priority sectors. Neither the petitioners nor the Department were

able to find any information regarding the level of benefits or potential countervailability of this program.

E. Loans to Firms in Less Developed Regions

Under the Yugoslav Law on Permanent Funds to Finance Underdeveloped Regions, federal funds are channeled to enterprises through regional governments. Petitioners allege that, given the priority attached to the steel industry, it is likely that the regional governments have provided low-interest loans to the steel industry to promote development in the less developed regions of the country. Because we have not received a response in this case we do not have any information on which to base an estimated bounty or grant from loans to firms in less-developed regions. Petitioners did not provide any information on the amount of benefit conferred by this program; therefore, we are unable to quantify an estimated bounty or grant.

Verification

In accordance with section 776(a) of the Act, if we receive responses in a timely manner, we will verify the data used in making our final determinations. We will not accept any statement in a response that cannot be verified for our final determinations.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain welded carbon steel pipe and tube products from Yugoslavia which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each entry in the amount of 74.50 percent *ad valorem*. This suspension will remain in effect until further notice.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary determinations at 2:00 p.m. on November 18, 1985, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, room B-099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of pre-hearing briefs must be submitted to the Deputy Assistant Secretary by November 18, 1985. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determinations or, if a hearing is held, within 10 days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

Dated: October 9, 1985.

[FR Doc. 85-24677 Field 10-15-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-583-503]

Preliminary Affirmative Countervailing Duty Determination; Welded Carbon Steel Line Pipe From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers or exporters of welded carbon steel line pipe (line pipe) in Taiwan. The estimated net subsidy is 1.15 percent *ad valorem*.

We have notified the United States International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of line pipe from Taiwan that are entered or withdrawn from warehouse for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond on entries of this product in an amount equal to the bonding rate.

If this investigation proceeds normally, we will make our final determination by December 23, 1985.

EFFECTIVE DATE: October 16, 1985.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3003 (LaCivita) or 377-3464 (Martin).

SUPPLEMENTARY INFORMATION:

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect 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 of line pipe in Taiwan. For purposes of this investigation, the following programs are found to confer subsidies:

- Export Loss Reserves.
- Tax Exemptions for Export Sales.

We preliminarily determine the estimated net subsidy to be 1.15 percent *ad valorem* for all manufacturers, producers or exporters of line pipe in Taiwan.

Case History

On July 16, 1985, we received a petition in proper form filed by the Line Pipe Subcommittee of the Committee of Pipe and Tube Imports (CPTI) and by each of its member companies who produce line pipe. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers or exporters of line pipe in Taiwan directly or indirectly receive 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 August 5, 1985, we initiated such an investigation (50 FR 32751). We stated that we expected to issue a preliminary determination by October 9, 1985.

Since Taiwan is entitled to an injury determination under section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Taiwan materially injure, or threaten material injury to, a U.S. industry. Therefore, we notified the ITC of our initiation. On August 30, 1985, the ITC determined that there is a reasonable indication that these imports materially injure a U.S. industry (50 FR 36159).

On August 15, 1985, we presented a questionnaire concerning the petitioners' allegations to the American Institute in Taiwan in Washington, D.C. Responses to the questionnaire were received on September 20, 1985 and September 23, 1985.

There are two known producers of welded carbon steel line pipe in Taiwan.

the Far East Machinery Company, Ltd. (FEMCO) and Kao Using Chang Iron and Steel Corporation (KHC). China Steel Corporation (CSC) responded to the Department's questionnaire concerning preferentially-priced inputs.

Scope of the Investigation

The product covered by this investigation is welded carbon steel line pipe, with an outside diameter of .375 inch or more but not over 16 inches, and with a wall thickness of not less than .065 inch, currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA) under items 610.3208 and 610.3209. This product is produced to various American Petroleum Institute (API) specifications for line pipe, most notably API-5L or API-5X.

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, 1984, issue of the **Federal Register** (49 FR 18006).

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

For purposes of this preliminary determination, the period for which we are measuring subsidies, "the review period", is calendar year 1984, which corresponds to the respondents' fiscal and financial year.

Based upon our analysis of the petition and the responses to our questionnaire submitted by the Taiwan authorities, FEMCO, KHC, CSC, we preliminarily determine the following:

I. Programs Preliminary Determined To Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers or exporters of line pipe in Taiwan under the following programs:

A. Export Loss Reserves

Under Article 31 of the Statute for Encouragement of Investment (SEI), exporters are able to set aside an export loss reserve of up to one percent of export sales from the previous year. The reserve is treated as a deduction from taxable income and is identified as a liability on company accounts. Should a company's export loss reserve exceed one percent during the tax year, excess funds are carried forward as taxable income in the subsequent year.

Because this program is contingent upon export sales, we preliminarily determine that it confers a benefit which constitutes an export subsidy. To calculate the benefit, we multiplied the corporate tax rate by the amount of tax deductions claimed by the respondent companies, then divided the tax savings by the value of the respondent companies' total 1984 exports. The estimated net subsidy is 0.03 percent *ad valorem*.

B. Tax Exemption for Export Sales

Articles 29 and 30 of the SEI and Articles 41 through 45 of the Enforcement Rules of the SEI, provide exporters with an exemption from the gross business receipts tax and a reduction of the invoice stamp tax. To apply for export sales tax relief, exporters submit export shipping documents, letters of credit and other documents to the local tax authorities who verify the export-sales transactions and exempt them from the 0.75 percent gross business receipts tax and reduce the invoice stamp tax rate from 0.4 percent to 0.1 percent. These programs may be used simultaneously.

The gross business receipt tax exemption and the invoice stamp tax reduction provide relief from two types of taxes that arguably are indirect taxes.

Under U.S. countervailing duty law, the non-excessive rebate of indirect taxes levied at the final stage, and of prior-stage cumulative indirect taxes borne by inputs that are physically incorporated into the final product, is not considered a subsidy. However, because the response does not indicate that bases for the gross business receipts tax and invoice stamp tax calculations, we believe that this program should be countervailed for the purpose of the preliminarily determination.

To calculate the benefit, we added the amount of the tax savings from each program and allocated the resulting sum over the value of the respondent companies' total 1984 exports. The estimated net subsidy is 1.12 percent *ad valorem*.

II. Program Preliminarily Determined Not To Confer a Subsidy

We preliminarily determine that subsidies are not provided to the manufacturers, producers or exporters of line pipe in Taiwan under the following program:

A. Preferential Prices for Raw Materials

Petitioners allege that the Taiwan authorities are directing China Steel Corporation (CSC), a state-owned corporation and a supplier of pipe and tube inputs, to provide coil at preferential prices to exporters in order to make it easier for them to export. However, in their questionnaire response, CSC submitted information which indicates that although they do have a two-tiered pricing policy, all coil prices are set at or above world-market prices. Under item (d) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, a price preference for inputs used in the production of export goods constitutes a subsidy only if the preference lowers the price below world-market levels (*See*, Final Negative Countervailing Duty Determination: Certain Steel Wire Nails from the Republic of Korea, 47 FR 39549). Therefore, we preliminarily determine that this program does not confer a benefit which constitutes a subsidy on exports of the subject merchandise.

III. Program Preliminarily Determined Not To Be Used

We preliminarily determine that the following program is not used by the manufacturers, producers or exporters of line pipe in Taiwan:

A. Preferential Export Financing

The Export Financing Program was established by the Export Loan Discount Regulations of the Central Bank of China. All registered exporters who have received a letter of credit are eligible for low-cost financing which covers up to 85 percent of the export transaction. Export financing loans are arranged through authorized foreign currency banks, which apply for an interest-rate accommodation from the Central Bank. Exporters have 180 days to settle the loan with foreign exchange or pay an interest-rate penalty on the full amount of the loan.

The response indicates that neither respondent company received export financing under the Export Loan

Discount Regulations of the Central Bank of China for exports of the products under investigation to the United States. Therefore, we preliminarily determine this program not to be used.

Verification

In accordance with 776(a) of the Act, we will verify all data used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of welded carbon steel line pipe from Taiwan which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond equal to 1.15 percent *ad valorem* for each entry of this merchandise from Taiwan. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 120 days after the Department makes its preliminary affirmative determination or 45 days after its final affirmative determination, whichever is latest.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on November 19, 1985, at the U.S. Department of Commerce, Room 1413, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by November 12, 1985. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 7 days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

October 9, 1985.

[FR Doc. 85-24676 Filed 10-15-85; 8:45 am]

BILLING CODE 3510-05-M

[C-533-503]

Preliminary Affirmative Countervailing Duty Determination; Welded Carbon Steel Standard Pipe and Tube from India

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of welded carbon steel standard pipe and tube in India. The estimated net subsidy is 5.00 percent *ad valorem*. In addition, we have determined that "critical circumstances" exist in this case.

We have notified the United States International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of welded carbon steel standard pipe and tube from India that are entered or withdrawn from warehouse for consumption, on or after the date which is 90 days before publication of this notice, and to require a cash deposit or bond on entries of these products in an amount equal to the estimated net subsidy.

If this investigation proceeds normally, we will make our final determination by December 23, 1985.

EFFECTIVE DATE: October 16, 1985.

FOR FURTHER INFORMATION CONTACT: Loc Nguyen or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0167 (Nguyen) or 377-3464 (Martin).

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect 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 of welded carbon steel standard pipe and tube in India. For purposes of this investigation, the following programs are found to confer subsidies:

- Cash Compensatory Support (CCS) Program.
- Packing Credit Program.

We preliminarily determine the estimated net subsidy to be 5.00 percent *ad valorem* for all manufacturers, producers or exporters of welded carbon steel standard pipe and tube in India.

Case History

On July 16, 1985, we received a petition in proper form from the standard pipe and tube subcommittee of the Committee of Pipe and Tube Imports (CPTI) and by each of its member companies which produce standard pipe and tube. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters of welded carbon steel standard pipe and tube in India directly or indirectly receive 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 August 5, 1985, we initiated such an investigation (50 FR 32249). We stated that we expected to issue a preliminary determination by October 9, 1985. On September 24, 1985, the petitioners alleged critical circumstances with respect to welded carbon steel standard pipe and tube from India.

Since India 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 August 30, 1985, the ITC determined that an industry in the United States is materially injured or threatened with material injury by

reason of imports of welded carbon steel standard pipe and tube from India (50 FR 37068).

On August 14, 1985, we presented a questionnaire concerning the petitioners' allegations to the government of India in Washington, DC. Responses to the questionnaire were received on September 26 and 27, 1985. There are three known producers/exporters of welded carbon steel standard pipe and tube in India: Zenith Steel Pipes and Industries Ltd., Tata Iron and Steel Co. Ltd, and Gujarat Steel Tubes Ltd.

Scope of Investigation

The products covered by this investigation are welded carbon steel pipe and tube, with an outside diameter of .375 inch or more, but not over 16 inches, of any wall thickness, currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925. These products, commonly referred to in the industry as standard pipe or tube, are produced to various ASTM specifications, most notably A–120, A–53 or A–135.

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 Falt-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

For purposes of this preliminary determination, the period for which we are measuring subsidization ("the review period") is calendar year 1984.

Based upon our analysis of the petition and the response to our questionnaire, we preliminarily determine the following:

I. Programs Preliminarily Determined To Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters of welded carbon steel standard pipe and tube in India under the following programs:

A. The Cash Compensatory Support Program (CCS)

The Cash Compensatory Support Program is designed to rebate indirect taxes upon exported merchandise. The rebates are paid as a percentage of the f.o.b. invoice price.

Under the Act, the non-excessive rebate of indirect taxes levied at the final stage, and of prior stage cumulated indirect taxes borne by inputs that are physically incorporated into the final product, is not considered a subsidy. In order to determine whether a cash payment upon export is a *bona fide* rebate of indirect taxes, we examine whether: (1) The program operates for the purpose of rebating indirect taxes; (2) there is a clear link between eligibility for payments on exports and indirect taxes paid; and (3) the government has reasonably calculated and documented the actual indirect tax incidence borne by the product concerned and has demonstrated a clear link between such tax incidence and the rebate amount paid on export.

In its most recent administrative review of "Certain Iron Metal Castings from India" (48 FR 56092, December 19, 1983), the Department determined that the CCS program satisfies the linkage test. In verifying the requisite linkage, we examined evidence showing that the CCS program operates primarily to rebate indirect taxes, that those eligible for the CCS rebate also are subject to such indirect taxes, and that the Indian government reasonably calculated and documented the actual indirect tax incidence borne by the merchandise.

In order to determine whether the CCS program provides an overrebate of indirect taxes on exports of welded carbon steel standard pipe and tube, we must compare the amount of the CCS payment with the amount of allowable indirect tax incidence on exports of this merchandise. The government of India did not provide us with adequate information concerning the cost structure of the exported merchandise or the applicable indirect taxes in time for our preliminary determination. Therefore, we are unable to determine what, if any, portion of the CCS rebate is a proper export rebate of indirect taxes allowable under the Act and our regulations. Accordingly, for purposes of this preliminary determination, we find the entire amount of the CCS payment applicable to welded carbon steel standard pipe and tube during the review period, 5.00 percent *ad valorem*, to confer an export subsidy.

B. The Packing Credit Program

Under this program, the Reserve Bank of India, through commercial banks, provides pre-shipment credit to exporters for financing the purchase, processing or packing of goods. These credits may be received upon presentation of: (1) Letters of credit opened by an importer of goods outside India; (2) a confirmed and irrevocable order for export of goods from India; or (3) any other evidence of an order for an export from India having been placed with the exporter. In general, the loans are granted for a period of 90 to 290 days. The interest rates applicable to steel pipes and tubes during the review period were 12 percent for loans of up to 180 days and 14.5 percent for loans of 180 days to 290 days. For purposes of this preliminary determination, we have used 18 percent as the national average interest rate for short-term loans in India in 1984. This benchmark rate was published in the Reserve Bank of India Bulletin and was used as the benchmark for both types of short-term "packing credit" loans.

Since the packing credit financing is only available for use by exporters and the rates of interest charged are less than our benchmark, we preliminarily determine that the provision of such financing provides a countervailable benefit.

The benefit provided under this program was determined by multiplying the interest rate differential between our benchmark and the interest rates paid by the respondent companies by the principal amount of all packing credit loans received by the companies for the subject merchandise exported to the United States. We then allocated the aggregate benefit over the value of exports of the subject merchandise to the United States. On this basis, we calculated an estimated net subsidy of less than 0.001 percent *ad valorem*.

II. Programs Determined Not To Be Used

We preliminarily determine that manufacturers, producers or exporters in India of welded carbon steel standard pipe and tube did not use the following programs:

A. Import Replenishment Licenses (REPs)

Petitioners alleged that REPs are given to exporters in India both as an incentive and as a necessary condition for increased export activity. They also alleged that, although in theory, the REPs were supposed to supply only necessary inputs for the exporter himself, the import permits are actually negotiable and therefore can have a market value. Because these licenses have a market value, petitioners alleged, they confer a countervailable benefit to the exporter.

The government of India responded that the companies under investigation did not receive or utilize REPs with respect to exports of the subject merchandise during the review period. Therefore, we preliminarily determine that this program was not used.

B. Regional Benefits to New Facilities in Madhya Pradesh

Petitioners alleges that producers of the subject merchandise may be benefitting from certain regional development incentives in the state of Madhya Pradesh including: (1) Preferential power rates; (2) investment grants; (3) sales tax exemptions or deferments; (4) feasibility study cost reimbursements; and (5) preferential water rates.

The government of India stated that no company located in Madhya Pradesh exported or is exporting the subject merchandise to the United States. Therefore, we preliminary determine that this program was not used.

Preliminary Affirmative Determination of Critical Circumstances

By amendment to their petition on September 24, 1985, petitioners alleged that critical circumstances exist within the meaning of section 703(e)(1) of the Act, with respect to imports of welded carbon steel standard pipe and tube from India.

In determining whether critical circumstances exist, we must examine whether there is a reasonable basis to believe or suspect that:

(a) The alleged subsidy is inconsistent with the Agreement; and

(b) There have been massive imports of the subject merchandise over a relatively short period.

In this case, we find that the government of India confers export subsidies on welded carbon steel standard pipe and tube. Article 9 of the Subsidies Code provides a general prohibition on the use of export subsidies on non-primary products. Article 14 provides an exception under which export subsidies maintained by a developing country are not automatically considered to be a violation of Article 9. Article 14 is applicable to India as a developing country.

However, Article 14 also sets limits on the exception otherwise provided in that article. The paragraph that sets out these limitations reads as follows:

> Developing country signatories agree that export subsidies on their industrial products shall not be used in a manner which causes *serious prejudice to the trade or production of another signatory.*

The Department must determine whether there is sufficient positive evidence on the record that provides a reasonable basis to believe or suspect that, in this case, export subsidies maintained by the government of India cause serious prejudice to the trade or production in the United States within the meaning of Article 14, Section 3 and, hence, are inconsistent with the Agreement. Evidence on the record in this case includes import volume, information on material injury included in the petition, and more importantly, the preliminary determination by the ITC (50 FR 37068) that there is a reasonable indication that the U.S. domestic industry is materially injured by reason of subsidized imports. However, the ITC made its preliminary affirmative injury determination based on the cumulation of imports of welded carbon steel standard pipe and tube, and not solely on imports of this product from India.

Having stated the above and based on the information currently available to us, we preliminarily determine that there is a reasonable basis to believe or suspect that there is a reasonable basis to believe or suspect that these subsidized imports have caused serious prejudice to the production of welded carbon steel standard pipe and tube in the United States. We would welcome any comments on relevant factors in determining the standard for "serious prejudice" particulary in instances where the ITC's injury determination is made on a cumulative basis.

In making this preliminary determination, we considered the following factors, which led us to suspect that there have been massive imports of the product under investigation over a relatively short period of time: (1) Whether imports have surged recently; (2) whether recent import penetration ratios have increased significantly; and (3) whether recent imports are significantly above the average calculated over the last three years. Based upon our analysis of the information, we preliminarily determine that imports of the products covered by this investigation appear massive over a relatively short period.

Finally, since massive imports of the product under investigation exist over a relatively short period of time, we preliminarily determine that critical circumstances exist with respect to welded carbon steel standard pipe and tube from India.

Suspension of Liquidation

In accordance with section 703(f) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all unliquidated entries of welded carbon steel standard pipe and tube from India which are entered, or withdrawn from warehouse, for consumption, on or after the date which is 90 days before the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each such entry of this merchandise at 5.00 percent *ad valorem*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 120 days after the Department makes its preliminary affirmative determination or 45 days after its final affirmative determination, whichever is latest.

Verification

In accordance with section 776(a) of the Act, we will verify the data used in making our final determination. As previously stated, we will not accept any statement in the response for our final determination that cannot be verified.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 2:00

p.m. on November 19, 1985, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B–099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of pre-hearing briefs must be submitted to the Deputy Assistant Secretary by November 12, 1985. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

October 9, 1985.

[FR Doc. 85–24675 Filed 10–15–85; 8:45 am]

BILLING CODE 3510–DS–M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Colorado, Boulder

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 State. 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, DC.

Docket No.: 85–132. Applicant: University of Colorado, Boulder, Boulder, CO 80309. Instrument: High Pressure Freezing Apparatus (Prototype). Manufacturer: Balzers AG, Switzerland. Intended use: See notice at 50 FR 15596.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument can rapidly freeze tissue specimens to 0.6 millimeters thickness by applying pressures up to approximately 2.13×10^8 pascals (30 870 pounds per square inch). The National Institutes of Health advises in its memorandum dated July 3, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(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. 85–24607 Filed 10–15–85; 8:45 am]

BILLING CODE 3510–DS–M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Illinois at Chicago

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, DC.

Docket No. 85–170. Applicant: University of Illinois at Chicago, Chicago, IL 60612. Instrument: Besancon Anomalometer and Accessories. Manufacturer: Statice Etudes et Development, France. Intended use: See notice at 50 FR 23753.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides a wide range of color mixtures, a high-intensity light source, and directly-viewed optics. The National Institutes of Health advises in its memorandum dated August 13, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(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. 85–24608 Filed 10–15–85; 8:45 am]

BILLING CODE 3510–DS–M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of Michigan

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, DC.

Docket No. 85–155. Applicant: University of Michigan, Ann Arbor, MI 48109–0010. Instrument: Microwave Instrument, Model NJE 2603–10 KW with Accessories. Manuacturer: New Japan Radio Company, Limited, Japan. Intended use: See notice at 50 FR 21481.

Comments: None received. Decison: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument can reach peak power in 0.01 second and uses an unique animal holding mechanism which permits precise beam tuning and focusing. The National Institutes of Health advises in its memorandum dated August 13, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(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. 85–24609 Filed 10–15–85; 8:45 am]

BILLING CODE 3510–DS–M

Decision on Application for Duty-Free Entry of Scientific Instrument; Yale University

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, DC.

Docket No. 85–162. Applicant: Yale University, New Haven, CT 06520. Instrument: UHR Mass Spectrometer, Model MM ZAB–SE. Manufacturer: VG Analytical Ltd., United Kingdom. Intended use: See notice at 50 FR 23171.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides a resolution up to 100,000 (10 percent valley) and a mass range from 1 to 12,000 atomic mass units at an accelerating potential of 10,000 volts. The National Institutes of Health advises in its memorandum dated August 13, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(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. 85–24610 Filed 10–15–85; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review; Application

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certification should be issued.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than November 5, 1985, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 85–00013."

Applicant: Basler Electric Company, Box 269, Route 143, Highland, Illinois 62249.

Application #: 85–00013

Date Deemed Submitted: October 1, 1985

Members (in addition to applicant): William L. Basler, Floyd J. Basler, Carly Ann Maurer, Basler Electric Aviation, Inc., Basler Electric Circuits, Inc., and Summit Electronics, Inc.

Summary of the Application

A. Export Trade and Export Trade Services

The Applicant and its members intend to export from the United States the following products: static exciter-regulators (and accessories), solid state protective relays, automatic synchronizers, power system control devices, transformers, reactors, chokes, industrial controls, power supplies (linear), field repair services, printed circuit boards and power supplies (switching). The applicant and its members will also provide export trade services related to the sales and maintenance of these products, including leasing, advertising and marketing, and technical application and assistance to end-users or representatives.

B. Export Markets

The applicant and its members intend to export worldwide.

C. Export Trade Activities and Methods of Operation

Basler Electric Company and its members seek certification:

(i) To enter into exclusive and non-exclusive agreements with suppliers, including suppliers within the same industry, to act as an export intermediary.

(ii) To enter into, refuse to enter into, and terminate exclusive and non-exclusive agreements with distributors, sales representatives and customers located in foreign countries and in the United States for goods and services being exported or in the course of being exported.

(iii) To enter into and terminate license agreements for patents, trademarks, trade names, know-how, or technical assistance.

(iv) To sell, furnish, or offer for sale goods or services (exported or in the course of being exported) of like grade or quality at discriminatory prices or on unequal terms or to induce or to receive such goods or services or to pay, grant or receive commission, brokerage or compensation to an intermediary or to pay value on unequal terms with regard thereto.

(v) To sell or lease goods or services (exported or in the course of being exported) on the condition that the purchaser or lessee does not use or deal in goods or services of a competitor.

(vi) To act as a purchasing agent, for other companies, for goods and services exported or in the course of being exported.

The foregoing agreements may contain territorial, customer, price and/or quantity restrictions.

(vii) To "package" quotations responsive to invitations to bid, including the supply of products or services in the same industry and the designation and coordination of the sharing of business among its suppliers. The applicant and its members may consult and exchange information with competitors to ascertain the existence of, prepare bids for and share business from foreign customers or relating to good or services in the course of being exported.

Dated: October 10, 1985.

James V. Lacy,

Director, Office of Export Trading Company Affairs.

[FR Doc. 85-24662 Filed 10-15-85; 8:45 am]

BILLING CODE 3510-DR-M

National Bureau of Standards

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Publication of NVLAP Directory Supplement.

SUMMARY: The National Bureau of Standards (NBS) announces laboratory accreditation actions taken during the third quarter of 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Stanley I. Warshaw, Manager, Laboratory Accreditation, ADMIN A603, National Bureau of Standards, Gaithersburg, MD 20899 (301) 921-3751.

SUPPLEMENTARY INFORMATION: This supplement to the 1984 NVLAP Directory of Accredited Laboratories (NBS Special Publication 687 issued February 1985) is published pursuant to § 7.6(b) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (15 CFR 7.6(b)).

The following table summarizes NVLAP accreditation actions for the period July 1, 1985, through September 30, 1985.

	TIM	CON	CAR	STO	ACO	CPL	DOS	Totals
Initial accreditations	1						6	7
Terminations		1			1			-2
Balance	39	30	24	10	8	2	31	144

TIM—Insulation LAP.
CON—Concrete LAP.
CAR—Carpet LAP.
ACO—Acoustical Testing Services LAP.
STO—Stove LAP.
CPL—Commercial Products LAP (Paint, Paper, Mattresses).
DOS—Dosimetry LAP.

The laboratories awarded initial accreditations are:

Insulation LAP
- BASF Styropor Technical Center, Jamesburg, NJ

Dosimetry LAP
- Detroit Edison, Newport, MI
- Rochester Gas & Electric, Ontario, NY
- Arizona Nuclear, Phoenix, AZ
- Pacific Gas & Electric, Avila Beach, CA
- Teledyne Isotopes, Westwood, NJ
- Public Service Electric & Gas, Hancocks Bridge, NJ

The laboratories whose accreditation have been terminated are:

Concrete LAP
- Central Ready Mixed Concrete, Milwaukee, WI

Acoustics LAP
- Intest Laboratories, Minneapolis, MN

Date: October 10, 1985.

Raymond G. Kammer,

Acting Director, National Bureau of Standards.

[FR Doc. 85-24641 Filed 10-15-85; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Domestic Observer Committee will convene its first public meeting on October 15, 1985, at 9:30 a.m., in the Conference Room, Building C-3, Fishermen's Terminal, Seattle, WA, to organize the Committee and to decide on a course of action to address the problem of assigning observers to U.S. vessels fishing in the Alaskan fishery conservation zone and.

On October 29-30, the Council's workgroup on goals and objectives for the management of groundfish in the Gulf of Alaska will convene a public meeting with the Council's Plan Team, at 9:30 a.m. on October 29 in Conference Room C-114, Federal Building, 701 C Street, Anchorage, AK, to continue work on the revision of the Gulf of Alaska Groundfish Fishery Management Plan and to develop long range goals for the fisheries managed under that plan. For further information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274-4536.

Dated: October 9, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-24625 Filed 10-15-85; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Sulcon Systems

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant Sulcon Systems, having a place of business in Champaign, Illinois, an exclusive right in the United States and certain foreign countries to manufacture, use, and sell modified sulfur cement and concrete products embodied in Patents 4,311,926, 4,348,313, and 4,391,969. The patent rights to these inventions have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.9. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85-24604 Filed 10-15-85; 8:45 am]

BILLING CODE 3510-04-M

Government-Owned Inventions; Notice of Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-419,637 (4,530,834)
Preparation of an Entomopathogenic Fungal Insect Control Agent
SN 6-500,049 (4,522,838)
2-Acetyl-1-Pyrroline and its Use for Flavoring Foods
SN 6-694,554
Aliquot Part Locator
SN 6-734,527
Counter Rotating Double Disc Chunker
SN 6-759,385
Punch Planter for Variable Seed Spacing

Department of Commerce

SN 6-762,740
Humidity Sensing and Measurement Employing Halogenated Organic Polymer Membranes
SN 6-762,740
Humidity Sensing and Measurement Employing Halogenated Organic Polymer Membranes
SN 6-773,285
Method and Apparatus for Suppression of Well Blowout Fires

Department of Health & Human Services

SN 6-396,057 (4,522,494)
Non-Invasive Optical Assessment of Platelet Viability
SN 6-530,067 (4,530,698)
Method and Apparatus for Traversing Blood Vessels
SN 6-758,899
An Improved Detector for the Measurement of Gamma Radiation Field of Invention
SN 6-763,218
A Method of Producing Improved Immune Response
SN 6-763,657
Adoptive Immunotherapy as a Treatment Modality in Humans
SN 6-769,684
A Kit and Quantitative Assay for Human Terminal Complement Cascade Activation
SN 6-771,409
Reconstituted Basement Membrane Complex With Biological Activity

Department of the Air Force

SN 6-442,212 (4,528,641)
Variable Radix Processor
SN 6-455,677 (4,531,055)
Self-Guarding Schottky Barrier Infrared Detector Array
SN 6-461,426 (4,528,549)
Bipolar Digitizer Having Compression Capability
SN 6-480,156 (4,530,602)
Interface Alignment System
SN 6-520,356 (4,523,809)
Method and Apparatus for Generating a Structured Light Beam Array
SN 6-545,307
Wavelength Selective Demultiplexer Tuner
SN 6-559,169 (4,528,978)
Solar Rocket Absorber
SN 6-559,611 (4,528,660)
Multiplexed Data Stream Monitor
SN 6-667,306
Selective Anodic Oxidation of Semiconductors for Pattern Generation
SN 6-680,611
Adapter Pallet System
SN 6-740,107
Electostatic Filtration of N_2O_4 For Removal of Solid and Vapor Contaminants
SN 6-757,994
Resonant Cavities for Stall Revovery in Gas Turbine Engines
SN 6-758,928
A Buffer Diverter System

Department of the Army

SN 6-250,991 (4,532,122)
Anti-Trypanosomal Activity of Platinum Co-ordination Compounds
SN 6-550,435 (4,513,513)
Microwave Drying of Ammonium Perchlorate Grinding Spheres
SN 6-747,741
Metallographic Preparation of Particulate Filled Aluminum Metal Matrix Composite Metarial
SN 6-750,611
Large Memory Acousto-Optically Addressed Pattern Recognition
SN 6-761,256
Multiple Parallel RF Excited CO_2 Lasers
SN 6-761,257
Optical Radar Transceiver Control Apparatus
SN 6-763,160
Chemical Sensor Matrix
SN 6-763,161
Slot Line Tunable Bandpass Filter
SN 6-763,164
Surface Acoustic Wave device for Sensing the Presence of Chemical Agents
SN 6-763,362
Automated Calibration Technique for Non-Field Perturbing (Electrically Small) Electromagnetic Field Sensors
SN 6-763,860
Cable Stripping Apparatus
SN 6-766,271
Analog-To-Digital Converter
SN 6-768,271
Cathode for Use in High

Department of the Interior

SN 6-480,793 (4,537,133)
Non-Incendive Rock-Breaking Explosive Charge
SN 6-488,480 (4,530,112)
Self-Adjusting Cap Lamp Bracket

Tennessee Valley Authority

SN 6-603,045 (4,531,571)
Condenser Targeted Chlorination Injection System
SN 6-616,879
Production of Acid-Type Fertilizer Solutions

[FR Doc. 85-24661 Filed 10-15-85; 8:45 am]
BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Charges to the Group Limit for Certain Cotton, Wool and Man-Made Fiber Apparel Products Produced or Manufactured in Thailand

October 9, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 9, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On September 25, 1985 a notice was published in the **Federal Register** (50 FR 38875) which announced that the United States Government had decided to control imports of apparel products in Categories 330-359, 431-459, and 630-659, as a group, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985, at a level of 83,132,782 square yards equivalent. It was further announced that charges amounting to 64,337,169 square yards equivalent were being made to the new limit, and further charges would be made as the data became available. The purpose of this notice is to advise the public that additional imports amounting to 12,008,894 square yards equivalent are being charged to the group limit. In the letter to the Commissioner of Customs which follows this notice, the CITA Chairman directs that this amount be charged.

A description of the textile categories in terms of T.S.U.S.A. number was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 50607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

October 9, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, as amended, between the Governments of the United States and Thailand, I request that, effective on October 9, 1985, you charge 12,008,894 square yards equivalent to the restraint limit established in the directive of September 20, 1985 for Categories 330–359, 431–459 and 630–659, as a group, produced or manufactured in Thailand and exported during the the twelve-month period which began on January 1, 1985 and extends through December 31, 1985. This amount includes charges for August 1985 for those categories in the group which were not previously controlled by Customs. For those categories in the group previously under Customs' control, the charges included are for the period September 7 through 27, 1985.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-24616 Filed 10-15-85; 8:45 am]

BILLING CODE 3510-DR-M

New Import Control Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand; Correction

October 9, 1985.

On September 25, 1985 a notice was published in the **Federal Register** (50 FR 38875) which announced that, effective on September 26, 1985, the United States Government would control imports of cotton, wool and man-made fiber apparel products in Categories 330–359, 431–459 and 630–659, as a group, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1985, at a level of 83,132,782 square yards equivalent.

In line two of paragraph two the date of the U.S.-Thailand agreement should read "July 27 and August 8, 1983, as amended."

The penultimate sentence of paragraph two of that notice should be deleted and the following language substituted:

An amount of 64,337,169 square yards equivalent will be charged to the group limit. For categories in the group not previously controlled by the U.S. Customs Service the charges included in that amount are based on the most current Census import data for goods exported on and after January 1, 1985 and imported during the January–July period of 1985. For categories in the group previously under Customs' control the charges are based on exports on and after January 1, 1985 which have been imported through September 6, 1985.

The following language should also have been included as paragraph 3 of the notice document:

Subsequent to negotiations with the Government of Thailand, and pursuant to the terms of the bilateral textile agreement, the 1984 overshipment of the limit established for cotton, wool and man-made fiber apparel products in Categories 330–359, 431–459 and 630–659, as a group, may be charged to the limit established for this group in a subsequent agreement period or periods.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-24617 Filed 10-15-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Advisory Committee on the Air Force Historical Program; Open Meeting

October 8, 1985.

The Advisory Committee on the Air Force Historical Program will hold a meeting on December 10, 1985 from 8:30 a.m. to 4:00 p.m. and December 11, 1985 from 8:30 a.m. to 12:00 noon at Bolling Air Force Base (AFB), D.C., Building 5681, Office of Air Force History's 4th Floor Conference Room. The purpose of the meeting is to examine the mission, scope, progress, and productivity of the Air Force Historical Program and make recommendations thereon for the consideration of the Secretary of the Air Force. The meeting will be open to the public. Topics to be discussed include: organization and personnel, current status of historical projects, and status of the field history program.

For further information, contact Lt. Col. John E. Norvell, Executive Officer, Office of Air Force History, Bolling AFB, D.C., telephone (202) 767–5764.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-24656 Filed 10-15-85; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

List of Nationally Recognized Accrediting Agencies and Associations

Correction

In FR Doc. 85–23537, beginning on page 40213 in the issue of Wednesday, October 2, 1985, make the following corrections:

1. On page 40215, first column, under "Medical Technology," the first entry should read "American Medical Association."

2. On page 40216, in the second column, under **Accrediting Agencies and Associations Recognized for Their Preaccreditation Categories,** the listing under *Regional Institutional Accrediting Associations* is incorrect. After that heading, the following association was omitted and should have been listed:

New England Association of Schools and Colleges (Candidate for Accreditation)

The listing that begins with the Accrediting Commission for Community and Junior Colleges should have been preceded by the following heading:

Regional Institutional Accrediting Commissions

BILLING CODE 1505-01-M

Office of Elementary and Secondary Education

Indian Education Act—Part A—Formula Grants; Local Educational Agencies and Tribal Schools

AGENCY: Department of Education.

ACTION: Application Notice for New Awards under the Indian Education Act—Part A—Formula Grants—Local Educational Agencies and Tribal Schools for Fiscal Year 1986.

SUMMARY: Applications are invited for new projects under the Indian Education Act Formula Grant Program.

Authority for this program is contained in section 303 of Part A of the Indian Education Act, as amended.

(20 U.S.C. 241bb)

This program authorizes grants to local educational agencies, and to

certain Indian tribes and Indian organizations described in section 1146 of Pub. L. 95–561.

The program provides financial assistance to develop and carry out elementary and secondary school projects that meet the special educational and culturally related academic needs of Indian children.

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand delivered on or before February 13, 1986.

Applications Delivered by Mail

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.060A, Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building No. 3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Program Information

In Fiscal Year 1985, $45,903,023 supported 1131 projects in schools with a total eligible Indian student enrollment of 330,508. The average grant amount was $40,586. The amount of each grant is based on a formula that takes into account the Indian student enrollment in the applicant's school and the average per pupil expenditure for public elementary and secondary education in the applicant's State.

Intergovernmental Review

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review of and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A–95.

Transactions with non-governmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and selected this program for review:

State	
Alabama	Montana
Arizona	Nebraska
Arkansas	Nevada
California	New Jersey
Connecticut	New Mexico
Delaware	New York
District of Columbia	North Dakota
Florida	Northern Mariana Islands
Guam	Ohio
Hawaii	Oklahoma
Indiana	Oregon
Kansas	Pennsylvania
Louisiana	South Carolina
Maine	South Dakota
Massachusetts	Texas
Michigan	Utah
Missouri	Vermont
Virgin Islands	Washington
Virginia	Wisconsin
	Wyoming

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, area wide, regional, and local entities must be mailed or hand delivered by April 14, 1986, to the following address:

The Secretary, U.S. Department of Education, Room 4181, (CFDA No. 84.060A), 400 Maryland Avenue, SW., Washington, DC 20202. (Proof of mailing will be determined on the same basis as applications.)

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT MUST SUBMIT ITS COMPLETED APPLICATION. DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.

Available Funds

The President's budget request for Fiscal Year (FY) 1986 was for $45,913,000 for this program. The Congress has not passed the FY 1986 appropriation act covering this program. The FY 1986 budget request estimated that approximately 1,117 projects would be supported and the average grant would be $41,104.

These estimates, however, do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Projects supported under this program will be for a period of one year.

Application Forms

Application forms and program information packages are expected to be ready for mailing on December 13, 1985. These may be obtained by writing to Indian Education Programs, U.S.

Department of Education (Room 2177, FOB 6), 400 Maryland Avenue, SW., Washington, DC 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 3 pages in length.

The Secretary further urges that applicants not submit information that is not requested.

(The application form is approved by the Office of Management and Budget under control number 1810-0021.)

Applicable Regulations

The following regulations apply to this program:

(a) The regulations governing Indian Education Programs in 34 CFR Parts 250 and 251.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

Further Information

For further information contact Adrion Baird, Indian Education Programs, U.S. Department of Education, Office of Elementary and Secondary Education (Room 2177, FOB-6), 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 732-1890.

(20 U.S.C. 241aa-241ff)

(Catalog of Federal Domestic Assistance No. 84.060A; Formula Grants to Local Educational Agencies and Tribal Schools)

Dated: October 9, 1985.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 85-24611 Filed 10-15-85; 8:45 am]

BILLING CODE 4000-01-M

Office of Vocational and Adult Education

Application Notice for New Awards Under the Vocational Education Hawaiian Natives Program for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Application Notice for New Awards under the Vocational Education Hawaiian Natives Program for Fiscal Year 1986.

SUMMARY:

Applications are invited for new projects under the Vocational Education Hawaiian Natives Program.

Authority for this program is contained in section 103 of Title I, Part A of the Carl D. Perkins Vocational Education Act (Perkins Act), Pub. L. 98-524 (20 U.S.C. 2313).

Under this program, the Secretary awards grants to organizations primarily serving and representing Hawaiian natives which are recognized by the Governor of the State of Hawaii (20 U.S.C. 2313 (c)).

The purpose of an award is to provide opportunities to plan, conduct, and administer vocational education projects or portions of projects for the benefit of Hawaiian natives which are authorized by and consistent with the Perkins Act (20 U.S.C. 2313(c)).

Closing Date for Transmittal of Applications

An application for an award must be mailed or hand delivered by November 15, 1985.

Applications Delivered by Mail

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.101) 400 Maryland Avenue, SW., Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:00 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

Applications that are hand delivered will not be accepted by the Application Control Center after 4:00 p.m. on the closing date.

Selection Criteria

Applications for awards will be evaluated in accordance with the selection criteria contained in 34 CFR 410.31 of the regulations governing this program. As stated in section 410.30(d) of the regulations, the Secretary may distribute a reserved 15 points among the criteria for each competition. Applicants should note that the Secretary is adding the entire 15 points to the criterion, *Plan of Operation.*

In addition, the Secretary may consider the factors set forth in 34 CFR 410.32 of the program regulations in making a decision whether to award a grant to a particular applicant.

Intergovernmental Review

On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158-29168), implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthening federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring

Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and

• Revokes OMB Circular A-95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The Vocational Education Hawaiian Natives Program is a new program, and States have not made a determination as to whether it will be included or excluded from review under the State review process. Therefore, immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about and to comply with the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program. All comments for State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by January 14, 1986 to the following address:

The Secretary, U.S. Department of Education, Room 4161 (84.101), 400 Maryland Avenue, SW., Washington, DC 20202. Proof of mailing will be determined on the same basis as applications.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.

Available Funds

A total of $1,729,128 will be available for projects supported under this competition. The Department has no prior experience on which to base an estimate of the number or size of grants.

Application Forms

Application forms and program information packages will be available by October 16, 1985. These packages may be obtained by writing to the Office of Vocational and Adult Education, U.S. Department of Education (Room 519 Reporters Building), 400 Maryland Avenue, SW., Washington, DC 20202.

An application must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The program information package, however, is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary is soliciting applications for awards of up to eighteen months duration. An application for a eighteen-month award must have the information required by 34 CFR 75.117, including a budget for the full period.

(The application form is approved by the Office of Management and Budget under control number 1830-0013)

Applicable Regulations

The following regulations apply to this program:

(a) The regulations governing the Vocational Education Indian and Hawaiian Natives Program, codified in 34 CFR Part 410. The regulations were published in final form in the **Federal Register** on August 16, 1985 (50 FR 33256). Applications should be prepared based on these regulations.

(b) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

For Further Information

For further information contact Ron Castaldi, Office of Vocational and Adult Education, U.S. Department of Education, (Room 519, Reporters Building), 400 Maryland Avenue, SW., Washington, DC 20202. Telephone (202) 732-2369.

(20 U.S.C. 2313)

(Catalog of Federal Domestic Assistance No. 84.101, Vocational Education Programs for Indian Tribes, Indian Organizations, and Hawaiian Natives)

Dated: October 8, 1985.

John K. Wu,

Acting Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 85-24551 Filed 10-15-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER85-807-000]

Green Mountain Power Corp.; Filing

October 8, 1985.

Take notice that on September 30, 1985, Green Mountain Power Corporation (GMP) submitted for filing one original and five copies of an update of its rate schedule ER84-451-000. That rate schedule provides for the sale of non-firm power by GMP to Central Maine Power Company. That schedule was orginally filed with the Commission on May 14, 1984. The material tendered for filing here should replace Attachment No. 3 of the original filing.

GMP requests that this revised rate schedule become effective immediately. GMP states that the proposed rate schedule is based on more recent filings by GMP with the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 24650 Filed 10-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-3-000]

The Montana Power Co.; Filing

October 8, 1985.

Take notice that on October 2, 1985, The Montana Power Company ("Montana"), tendered for filing a revised Appendix I as required by Exhibit C for retail sales in accordance with the provisions of the Residential Purchase and Sale Agreement ("Agreement") between Montana and the Bonneville Power Administration ("BPA").

The Agreement was entered into pursuant to the Pacific Northwest

Electric Power Planning and Conservation Act, Public Law 96-501. The Agreement provides for the exchange of electric power between Montana and BPA for the benefit of Montana's residential and farm customers.

Montana requests an effective date of October 1, 1984 and, therefore, requests waiver of the Commission's notice requirements.

A copy of the filing was served upon BPA.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (19 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 18, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24651 Filed 10-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-4-000]

Puget Sound Power & Light Co.; Tariff Change

October 8, 1985

The filing Company submits the following:

Take notice that Puget Sound Power & Light Company of Bellevue, Washington (Puget Power), on October 3, 1985, tendered for filing a change in rates applicable to electric service rendered to a wholesale customer under its existing Wholesale for Resale Power Contract. Puget Power's filing would change its wholesale rate schedule for large customers. Puget Power states that the proposed change would increase revenues from the wholesale customer by $199,548 based on the twelve-month period ending December 31, 1984.

Puget Power states that proposed rate increase is necessary in order to recover a portion of the $301,929 overall revenue deficiency which exists at the present revenue level authorized in ER-84-681-000.

Copies of the filing were served upon Puget's wholesale customer.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C., 20426, in accordance with § 385.211 and § 385.214 of this chapter. All such petitions or protests should be filed on or before October 21, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24652 Filed 10-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EF86-4011-000]

Southwestern Power Administration; Filing

October 8, 1985.

The filing Company submits the following: Take notice that the Deputy Secretary, U.S. Department of Energy, on October 2, 1985, submitted the following Southwestern Power Administration System rates to the Commission for confirmation and approval on a final basis, pursuant to the authority vested in the Commission by Delegation Order No. 0204-108:

Rate Schedule P-84A, Peaking Power
Rate Schedule P-84B, Peaking Power through Oklahoma Utility Companies and/or Oklahoma Municipal Power Authority
Rate Schedule F-84A, Firm Power
Rate Schedule F-84B, Firm Power through Oklahoma Utility Companies
Rate Schedule TDC-82 (Revised), Transmission Service
Rate Schedule EE-82, Excess Energy
Rate Schedule IC-82, Interruptible Capacity

The System rates were confirmed, approved and placed in effect on an interim basis by the Deputy Secretary of Energy in Rate Order No. SWPA-18 for the period October 1, 1985, through September 30, 1989.

The Deputy Secretary of Energy has submitted the rates to the Commission for confirmation, approval and implementation on a final basis for the same period.

The System rate schedules would increase annual revenue by $756,600 from $105,355,300 to $106,111,900 to recover projected increases in operating expenses. This would be accomplished by an approximate one percent increase in the monthly demand charge. Also, a reduction is proposed in the purchased power adders for the next rate period to compensate for good water conditions that have occurred since implementation of the adders in August 1983 under the so-called purchased power accounting mechanism. The effect of this reduction, when combined with the increased demand charge, will be an overall rate decrease of one to three percent for customers affected by the purchased power adders and an increase of approximately one percent for others. Other proposed rate schedule revisions include limiting the effective period of penalties applied for capacity overruns, clarifying billing adjustments for conditions of service and reductions in service, implementing power factor penalties in peaking rate schedules and adding a reference year to rate schedule designations.

The reference year included in the designations of the proposed rate schedules represents the last year of historical data used in developing the Power Repayment Studies that are the basis of the annual revenue requirement. This facilitates chronological identification of the rate schedules and saves confusion when rate schedules are revised. This procedure has previously been adopted for existing Rate Schedule TDC-82. SWPA indicates the penalties applied to capacity overruns in Rate Schedules P-4 and F-4A have been very successful as a deterrent. However, SWPA further indicates the use of such a penalty during the nighttime hours is unnecessary and serves no practical purpose, since SWPA intends the penalty to protect its limited peak capacity resource. Therefore, SWPA plans to eliminate the penalties during the period 10:00 p.m. to 6:00 a.m.

SWPA has also experienced some confusion in applying charges for conditions of service in Rate Schedules P-4 and F-4A when deliveries are made at two or more voltages. The wording in these sections has been changed for clarification. SWPA has also changed the formula determining adjustments for reductions in service in Rate Schedules P-4 (P-84A) and P-4B (P-84B). The present formulas are based on the assumption that the customer will schedule 100 hours per month of the annual 1200 hours of energy per kW of capacity. However, since the amount scheduled varies from 60 to 200 hours per month, SWPA has revised the formula to recognize the number of hours that peaking energy is scheduled during the month, but not less than 60. In an effort to encourage more efficient operations, SWPA has implemented

adjustments for power factor in proposed Rate Schedules P-84A and P-84B. The adjustments for power factor presently contained in Rate Schedules F-4A (F-84A), F-4B (F-84B), and TDC-82 (TDC-82 (Revised)) have been revised for consistency with the power factor adjustments added to proposed Rate Schedules P-84A and P-84B.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 21, 1985.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24653 Filed 10-15-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/48; PH-FRL 2911-5]

Carbofuran; Special Review of Certain Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces that EPA is initiating a Special Review of all granular formations of pesticide products containing the active ingredient carbofuran. EPA has determined that carbofuran is highly, acutely toxic to birds when used on field corn, sorghum, rice fields, and all other agricultural and nonagricultural sites, and meets or exceeds the risk criteria described in 40 CFR 162.11 and the proposed risk criteria published in the Federal Register of March 27, 1985 (50 FR 12183). Therefore, a Special Review of all granular formulations of products containing carbofuran registered for use on all sites is appropriate to determine whether additional regulatory actions, if any, are required. During the Special Review process, EPA will carefully examine the risks and benefits of using carbofuran products which are registered for these sites.

DATE: Comments, evidence to rebut the presumptions in this Notice, and other relevant information must be received no later than 45 days from the date this Notice is received or until December 2, 1985.

ADDRESS: Written comments identified as "OPP-30000/48" should be sent by mail to.

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted, or any comment concerning this Notice may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. An edited copy of the comment containing material claimed to be CBI must be submitted (with the CBI portions deleted) for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All non-CBI written comments will be available for public inspection in Rm. 236 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Linda E. Zarow, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm 711, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7453).

SUPPLEMENTARY INFORMATION: The term "Special Review" is the name now being used by EPA for the process previously called the Rebuttable Presumption Against Registration (RPAR) process. Modifications to the process are proposed in the new Special Review regulations (50 FR 12183). These modifications include new risk criteria. Until other applicable final regulations are adopted, the present Special Review will adhere to RPAR procedures now in effect and set forth in 40 CFR 162.11.

EPA has determined that a Special Review will be conducted for all granular formulations of pesticide products which contain carbofuran as an active ingredient. EPA has also determined that data necessary to refine the Agency's risk analysis must be developed. These data include: an extensive, multi-year assessment of bird mortality in the Corn Belt regions of the U.S. and in areas of early planting (e.g., Georgia, Texas), and an assessment of the extent and significance of secondary poisoning of raptors. The Agency announced these data requirements in the carbofuran registration standard issued in 1984.

EPA restricted the use of carbofuran after a registration standard was issued in 1984 because of acute toxicity and occurrence in ground water.

This Notice identifies potential hazards associated with the use of carbofuran on all sites. These hazards will be examined further to determine the nature and extent of the risk, and considering the benefits of carbofuran, whether such risks cause unreasonable adverse effects on the environment.

I. Initiation of a Special Review

A. General

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*). Before, a product can be registered, it must be shown that it can be used without "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)), that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" (FIFRA section 2(bb)). The burden of proving that a pesticide meets this standard for registration is on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard for registration, the Administrator may cancel the registration under section 6 of FIFRA.

The Agency has created an administrative process for fully evaluating whether a pesticide satisfies or continues to satisfy the statutory standard for registration. This Special Review process provides a formal procedure through which EPA may gather and evaluate information about the risks and benefits of a pesticide's use. It also provides a means by which interested members of the public may comment on and participate in EPA's decision making process. The regulations governing this process are set forth at 40 CFR 162.11.

A Special Review is begun when EPA determines that a pesticide meets or exceeds one or more of the risk criteria

set out in the regulations (40 CFR 162.11(a)(3)). The Agency generally announces the beginning of the Special Review by issuing a Position Document (PD) 1, which is published in the **Federal Register**. In addition, registrants of affected products will receive the PD 1 by certified mail. Registrants and other interested persons are invited to scrutinize the basis for the Agency's decision to initiate the Special Review and to submit data and information which rebut or support the Agency's determination of risk. Commenters may also suggest methods to reduce risks of use of the pesticide. In addition to addressing risk issues, commenters are encouraged to submit evidence and discussions of the biological, economic, social, and environmental costs and benefits of use of the pesticide. The public participation stage is described in more detail in Unit IV. This Notice constitutes the PD 1 for granular formulations of pesticide products which are registered for use on all sites and contain carbofuran.

If risk issues are not satisfactorily resolved, EPA will proceed to evaluate the risks and benefits of granular formulations of carbofuran, in order to determine whether to propose regulatory actions to reduce the risks. After providing an opportunity for comment by the Scientific Advisory Panel, the Secretary of Agriculture, registrants, and the public on those actions and the reasons for them, EPA will issue an appropriate final notice. If EPA determines that the risks of use exceed the benefits, EPA will issue a Notice of Intent to Cancel the registration of products intended for such use. The Notice may state the intention to cancel registrations outright or may require certain changes in the composition, packaging, application methods and/or labeling of the product. These changes would be intended to reduce the risks to levels that, when considered against the benefits, will not pose unreasonable adverse effects to man or the environment.

A notice initiating a Special Review is not a Notice of Intent to Cancel the registration of a pesticide, and a Special Review may or may not lead to cancellation. This Notice initiating the Special Review for granular carbofuran products registered for all sites is an announcement of EPA's concern about the safety of the pesticide's use, and only after carefully considering the risks and benefits of carbofuran and determining that the pesticide appears to cause unreasonable adverse effects on the environment, would EPA issue a Notice of Intent to Cancel.

B. Presumption of Avian Hazard

EPA has determined that the use of granular carbofuran products registered for use on all agricultural and non-agricultural sites meets or exceeds existing and proposed risk criteria for hazard to birds. The chemical name for this insecticide is 2,3-dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate. The trade name for carbofuran is Furadan®. In the following sections of this document the Agency's concerns regarding carbofuran's effects on birds are discussed.

1. Acute Toxicity to Birds

EPA has determined that granular carbofuran products registered as insecticides and nematicides used primarily to control insect populations in corn, sorghum, and other agricultural and nonagricultural sites meets or exceeds the existing risk criterion for acute avian toxicity described in 40 CFR 162.11(a)(3)(i)(B)(*2*). This criterion provides that a Special Review shall be conducted if a pesticide "occurs as a residue immediately following application in or on the feed of an avian species, representative of the species likely to be exposed to such feed in amounts equivalent to the average daily intake of such representative species, at levels equal to or greater than the subacute dietary LC_{50} measured in avian test animals as specified in the Registration Guidelines." The regulatory intent of this criterion is to identify pesticide uses that cause significant acute mortality of birds. This regulation can be literally applied only to foliar application that leave a predictable toxic residue in or on avian foods. Use of granular carbofuran does not result in appreciable, general contamination of bird foods. The Agency has ample evidence, however, that lethal quantities of granular forms of carbofuran are ingested by birds. Birds may consume carbofuran granules by mistaking them for seeds or perhaps inadvertently when feeding on soil invertebrates such as earthworms (Ref. 1). Because such ingestion of granules has been shown to cause widespread avian mortality in treated fields, the Agency believes the regulatory intent of the dietary residue trigger [§ 162.11(a)(3)(i)(B)(*2*)] is exceeded for the major agricultural uses of granular carbofuran (e.g. corn, sorghum).

The Agency has proposed new criteria for initiating a Special Review on a specific pesticide. If the criteria are finalized in their current form, a pesticide would be considered for Special Review when its use results in "residues of the pesticide product or its ingredients, impurities, metabolites, or other degradation products in the environment of nontarget organisms at levels which equal or exceed concentrations acutely or chronically toxic to such organisms. . . ." Available laboratory and field data indicate that granular formulations of carbofuran meet or exceed this proposed criterion.

On the basis of scientific studies reviewed by the Agency, EPA concluded that carbofuran in its granular formulation is highly toxic to birds and its use results in significant fatalities of many small species of birds and also secondary poisoning of birds of prey.

Carbofuran is known to be an acutely toxic pesticide to birds, (fulvous whistling ducks $LD_{50} = 0.2$ mg/kg, mallard $LD_{50} = 0.48$ mg/kg), (Ref. 2), and it is widely used in granular formulations. Consumption of single granules of carbofuran may be fatal to many small birds as demonstrated by the following data (Ref. 3):

PERCENT FATALITY AMONG TWO AVIAN SPECIES ADMINISTERED FURADAN® 10G

Species	Dosage (number of granules)	
	1	5
	Percent	
House Sparrow:		
Trial 1	100	
Trial 2	80	
Red-winged Blackbird	20	80

Label directions for major uses of carbofuran require soil-incorporation or subsurface application. Application with currently available farm equipment, however, will leave exposed granules available to feeding birds, (Ref. 4). Moreover, soil-incorporation of granules will not prevent hazards to birds such as robins that probe in the soil for invertebrates.

Two field studies have demonstrated that the use of granular carbofuran on corn fields, the major use of carbofuran, will result in substantial avian fatalities. The major study on the effect of granular carbofuran on avian populations associated with corn fields, was conducted in Utah for FMC Corporation (Ref. 4). Furadan® 10G (10 percent active ingredient (a.i.) granules) and 15G (15 percent a.i.) were applied as a narrow band (seven-inches wide), incorporated into the soil over the seed furrows in randomly selected fields at a rate of 40.0 lb (10G) and 26.7 lb (15G) formulation/acre (4 lb A.I.). Even though the pesticide is soil incorporated, there is evidence that avian fatalities will still occur. Fatalities were observed

throughout a 60-day monitoring period. A total of 911 dead birds were found on the corn plots (254 acres) during organized carcass searches. About 91 percent of these birds were horned larks. A total of 504 birds were killed on 15G plots as compared to 373 birds killed on 10G plots, but the difference was not statistically significant (the remaining 34 birds were found on control plots that were adjacent to the treated plots). Other bird species that were found dead included: 21 yellow-headed blackbirds, 19 brown-headed cowbirds, and 19 mourning doves. Four predators were found dead (two ravens, one marsh hawk, and one short-eared owl) and analysis of stomach contents indicated these fatalities resulted from secondary exposure, (i.e. consumption of smaller birds that had been poisoned with carbofuran granules).

Birds observed in the post-treatment plots also showed atypical behavior such as inability to fly, or uncoordinated motion while sitting, standing, or walking. These signs are typical of symptoms associated with acetylcholinesterase (AChE) depression.

A second study, conducted by EPA in Frederick County, Maryland, demonstrated mortality to birds and other non-target animals (some small mammals), from at-plant treatment of corn fields with 10G carbofuran (Ref. 1). Six song birds (Order Passeriformes) were found in the 486 treated acres. All but a blue jay contained carbofuran at lethal levels. Additionally, the fresh partial remains of four American robins and a common grackle were found in newly treated fields, an indication of predators feeding on other birds killed by carbofuran. Two birds were found exhibiting irregular behavior consistent with symptoms of carbofuran poisoning.

The observed fatalities represent only a portion of those occurring at the site. Fifteen corn fields were studied but each field was searched only twice (<24 and 96 hours post-application). Moreover, the search corridors established in fields covered only about 20 percent of field surface. Factors which may account for some of the difference in fatalities observed between this study and the previously described study in Utah include: a more extensive carcass-search was done in the Utah study; and, geographical and ecological differences between the two study sites.

A third study, conducted by the U.S. Fish and Wildlife Service and the U.S. Forest Service (Ref. 6), demonstrated that soil-incorporated use of Furadan® 10G in pine seed orchards resulted in extensive bird fatalities in four locations in the southern United States (Mississippi, South Carolina, Louisiana, and Florida). The research was undertaken to determine whether improved application equipment would enhance soil-incorporation and reduce avian fatality. The application rate (25 lbs. a.i./acre) was much higher than in corn, but soil-incorporation of granules was considered high (> 99 percent). Searches were conducted only during the first four to five days after application, nonetheless, 96 dead birds were found at the four sites (totalling 117 acres). Possible secondary poisoning of two loggerhead shrikes (one dead, one sick) was also noted.

A fourth study, (Ref. 7) on the effect of granular carbofuran applied to rice fields, was conducted in Texas by the U.S. Fish and Wildlife Service. This study monitored aerial broadcast application of 3 percent a.i. granular formulation to rice fields. The granules were not soil-incorporated, and were available for consumption by birds feeding in the fields. Bird, fish, frogs, crayfish, earthworms, and nontarget insects fatalities occurred in rice fields after treatment with carbofuran (Ref. 7). Specifically, four sandpipers wre found dead following the Furadan® 3G treatment; and, a red-winged blackbird was also found dead and one was seen showing signs of poisoning.

These four field monitoring studies discussed above are the only known studies on the effects of carbofuran on wild birds under typical use conditions. All of these studies demonstrate acute toxicity to birds. Three of the studies, monitoring higher concentration granules (10 to 15 percent a.i.) demonstrated secondary poisoning of birds of prey. From these data, and because granular carbofuran is extensively used (>10 million acres annually), the Agency concludes that acute poisoning of birds probably occurs at most application sites, is not adequately controlled by soil-incorporation of granules, and potentially affects an extensive number of birds.

2. Effects on Bird Populations

EPA has determined that carbofuran may meet or exceed the existing risk criterion in 40 CFR 162.11(a)(3)(ii)(C), which provides that a Special Review shall be conducted if the use of a pesticide "can reasonably be anticipated to result in significant local, regional, or national population reductions in nontarget organisms, or fatality to members of endangered species."

The following is a brief summary of available data:

Overall Fatalities. A study conducted for FMC (Ref. 5) is the most extensive evaluation of carbofuran related fatalities available. Six treated corn fields in Utah, totalling 254 acres, were studied. Fields were systematically searched up to 60 days post-treatment, revealing 911 bird casualties. The following table indicates the number of casualties by bird type.

Bird Fatality Occurring in Carbofuran-Treated Corn Fields

Songbirds	884
Doves	19
Ducks	3
Pheasants	2
Hawks	1
Owls	1
Shorebirds	1
Total	911

(found in overall study sites)

A crude mortality rate (number dead/area treated) calculated from these data is 3.6 birds/acre treated.

EPA conducted monitoring of a more limited scope in Maryland in 1980 (Ref. 1). Fifteen fields (486 acres) were searched twice within four days of application; actual area searched in fields was estimated at 62–94 acres. Five confirmed bird deaths occurred in the search area. Two birds also exhibited symtoms of poisoning, and five sites with suggesting evidence of predators feeding on other birds were located in the fields. These data indicated a crude mortality rate of approximately 0.13 to 0.19 birds/acre.

Much more extensive monitoring of carbofuran use on corn would have to be conducted to accurately forecast the extent of bird losses. Moreover, specific studies addressing the effects of carbofuran of bird population dynamics are not available. In lieu of such information, the Agency concludes that it is prudent to presume that avian fatalities this extensive may be of ecological significiance to rare or declining populations, particularly in high use areas.

Of special concern to the Agency is the evidence that secondary poisoning of birds of prey may be an unavoidable and regular consequence of use of granular carbofuran. Available information is not definitive and does not allow accurate prediction of the number of raptors that might be killed or temporarily paralyzed (and exposed to injury).

Incidence of Secondary Poisoning by Bird Type

Marsh hawk	2 (1 dead, 1 sick)
Short-eared owl	1

Raven	3 (1 dead, 2 sick)
Total	6

Rate of secondary poisoning = 6/250 acres = 0.024/ acre. The Utah study (Ref. 5) is the only long-term monitoring study on the effects on birds as a result of the corn application of carbofuran. This study is therefore considered to present the most accurate depiction of bird fatality available. However, since monitoring is not available for major corn producing areas, uncertainty is acknowledged concerning the general extent of avian fatality, both primary and secondary, that may occur. Nonetheless, the available data indicate a potentially high rate of fatality to exposed avian species.

The actual ecological significance of secondary poisonings is unknown. Exposed populations of several species of raptors are considered weak or declining, and warrant special consideration (i.e., red-shouldered hawks, marsh hawks, and loggerhead shrikes). While carbofuran is not presently considered the causative factor in population declines, carbofuran-related losses may be a significant additive factor. Red-shouldered hawks, for example, which are considered declining, are listed as rare or endangered by several major corn-producing States (Iowa, Illinois, Michigan, Missouri, and Wisconsin) (Ref. 8). The red-shouldered hawk population of Iowa has been estimated at 19 pairs (Ref. 8) and EPA monitoring showed secondary poisoning of this species by Furadan 10G (Ref. 9). The Agency considers carbofuran a potential hazard to the remaining red-shouldered hawk population in Iowa, since carbofuran is used extensively throughout the State.

Although the only studies that we have are in corn, rice, and pine seed, these data are representative of avian exposure and potential adverse effects that could occur on other sites where carbofuran is used.

C. Comments on the Initiation of the Special Review

Prior to the initiation of a Special Review, technical registrants receive private notification of the Agency's determination that the criteria to initiate a Special Review may have been met. This notification includes information on the findings and related general information. Registrants then have 30 days following receipt of the notification to rebut the Agency's conclusions.

D. Rebuttal Criteria

All registrants, applicants for registration, and other interested members of the public are invited to submit evidence either to support or to rebut the presumption that carbofuran poses a risk of toxicity to nontarget birds on agricultural crops. Under 40 CFR 162.11(a)(4)(iii) the presumption initiating a Special Review must be rebutted by proving, "that the determination by the Agency that the pesticide meets or exceeds any of the criteria for risk was in error."

Under 40 CFR 162.11(a)(4)(i) the presumption initiating a Special Review for acute effects to nontarget birds may be rebutted by proving that "the formulation, packaging, method of use, and proposed restrictions on and directions for use, the anticipated exposure to an applicator or user and to local, regional or national populations of nontarget organisms is not likely to result in any significant acute adverse effects."

E. Carbofuran Use and Alternative Use Information

Carbofuran is a broad spectrum carbamate insecticide/nematicide produced in the United States. FMC Corporation is the major producer of the technical product. End-use products registered include granular formulations containing 2, 3, 5, 10, and 15 percent active ingredient (a.i.); a flowable formulation containing 4 lb a.i./gal; and a 75 percent wettable powder. Granular formulations may be used as an insecticide on sites such as corn, peanuts, and tobacco. Granular formulations may also be used on nonagricultural sites such as nursery plantings, and commercial plantation of cottonwoods, siberian elms, pine seedlings and southern pine seed orchards. The 4 lb/gal flowable formulation may be used on alfalfa, corn, soybeans, and tobacco. The 75 percent wettable powder formulation may be used on alfalfa. Different formulations and products may be registered for use on the same agricultural crops, but the pests controlled may be different.

Annual domestic usage of all formulations of carbofuran is estimated to be 10 to 11 million pounds active ingredient. Approximately 60 percent of the total usage is on corn and 20 percent on sorghum. Each of the remaining registered sites such as alfalfa, tobacco, peanuts, soybeans, and rice accounts for less than 5 percent of the total carbofuran market.

1. *Field corn.* Since the early 1980's carbofuran usage on corn declined from approximately 30 percent to just under 20 percent of the total insecticide market on corn. Carbofuran usage as an insecticide is predominately concentrated in the central United States (Nebraska, Minnesota, Illinois, Indiana, Iowa, Missouri, Ohio and Wisconsin).

The use of carbofuran as a corn nematicide comprises less than 5 percent of annual usage on corn. Usage as a nematicide is concentrated in the Southeastern region of the United States.

Most of the carbofuran used on field corn is for the control of the northern and western corn rootworms (Corn Belt and Northern Plain States), European corn borer (Northern Plain States and Great Lake States), wireworms and nematodes (Southeastern States and southwestern corn borer (Texas).

In addition to the corn pests already mentioned, granular carbofuran may also be used to control: flea beetles, armyworm, the suppression of cutworms, early season suppression of common stalk borer, seedcorn maggot, southern corn billbug, and aid in the control of leafhoppers and white grubs.

Granular carbofuran may be applied at planting to field corn grown under conventional, minimum or no tillage systems. For most pests the granules are applied as a 7-inch band ahead of the planter press wheel and incorporated into the top 1 inch of soil by using an incorporating device or by dragging a short-length chain, or directing the granules into the planter shoe with the seed, or placing the applicator tube directly behind the planter shoe so that the granules drop into the furrow and are mixed with the covering soil. In areas where sting, stunt, stubby root, root-knot, dagger, lesion, lance and spiral nematodes are the pests of concern, a broader band (7" to 15") is made, and the granules are incorporated into the top 3 inches of soil. Also, where seedcorn maggots or second to third generation southwestern corn borers are of major concern, the granules should be applied only into the seed furrow. The rates of application vary with the target pest and range from 1.2 to 3.6 oz. a.i. per 1,000 linear feet of row.

Post-emergent soil applications may be made for the control of northern and western corn rootworms. Granules are applied at the rate of 1.2 oz. a.i. per 1,000 ft. of row by banding over the row or applying on both sides of the row, just ahead of the cultivator shovels so that the granules will be covered by soil.

Foliar applications may also be made for control of southwestern corn borer (second to third generation) and

European corn borers if no more than 1.2 oz. a.i. per 1,000 ft. of row were made at planting. The application of 1.0 lb a.i./acre is made by aerially broadcasting the granules over the plants, or by directing the granules into the whorls with ground equipment. The label directions state that no more than two foliar applications can be made per season.

The granules spilled during loading or turning at the end of rows are covered or incorporated into the soil by disking.

2. *Sorghum.* In recent years, usage of carbofuran on sorghum has decreased in a manner similar to the trend observed in the corn market. The amount of carbofuran used on sorghum has declined since the early 1980's from over 30 percent to less than 20 percent of the total sorghum insecticide market. Carbofuran is used typically to control greenbugs and chinch bugs in most sorghum-producing regions. However, usage is concentrated in the central U.S. (South Dakota, Nebraska, Kansas, Oklahoma and Texas).

Granular carbofuran is applied at planting time to control greenbug and chinch bug infestations on sorghum grown for grain or forage. The 10 or 15 percent a.i. granulars may be applied directly to the seed furrow or as a 7-inch band over the row. The granules must be incorporated into the top 1 inch of soil using a planter fitted with a press wheel, dragging a short length chain or other suitable incorporating device. The rate of application is 0.9 to 1.2 oz. a.i. per 1,000 linear ft. of row for greenbug control and 1.2 oz. a.i. per 1,000 linear ft. of row for chinch bug control. In addition to these two pests, a Special Local Needs (under section 24(c) of FIFRA) registration permits the use of a 15G formulation for the control of the sugarcane aphid, southern corn rootworm, and corn leaf aphid on sorghum in Texas. The granulars are to be applied as a 7-inch band at planting at a rate of 1.35 oz. a.i. per 1,000 linear ft. of row.

The granules spilled during loading or turning at the end of rows are covered or incorporated into the soil by disking.

3. *Alternative chemicals.* The likely alternatives to carbofuran for the control of corn rootworms in field corn at the time of planting are: terbufos (Counter®); fonofos (Dyfonate®); chlorpyrifos (Lorsban®); fensulfothion (Dasanit®); phorate (Thimet®); trimethacarb (Broot®); isofesfos (Amaze®); ethoprop (Mocap®); and carbofuran flowable (Furadan® 4F).

F. Other Information Requested

In addition to submitting evidence to rebut the presumption of risk in the Special Review, 40 CFR 162.11(a)(5)(iii) provides that a registrant or applicant "may submit evidence as to whether the economic, social and environmental benefits of the use of the pesticide subject to the presumption outweigh the risk of use." If the presumption of risk is not rebutted, the benefits evidence submitted by registrants, applicants, and other interested persons will be considered by the Agency when determining the appropriate regulatory action.

Registrants, applicants or other interested persons who desire to submit benefits information should consider submitting information on the following subjects along with any other relevant information.

1. Identification of the biological and economic importance of granular carbofuran formulations.

2. Identification of alternative pesticides and non-chemical methods of control, and information concerning the wildlife effects, potential for wildlife exposure, and/or any human effects and potential for human exposure associated with alternatives.

3. Comparative performance studies which compare the granular and flowable formulation of carbofuran.

4. Comparative performance studies comparing granular carbofuran formulations and likely alternative pesticides.

5. Identification of cultural or integrated pest management practices which are enhanced or limited by the use of granular carbofuran.

G. Additional Concerns

The Agency is concerned about potential ground water contamination for all registered uses of carbofuran. Carbofuran has the potential to move (leach) through the soil and contaminate ground water which may be used as drinking water. Carbofuran has been found in ground water as a result of agricultural use. The Agency does not have the data necessary to fully assess the extent of ground water contamination associated with the registered uses of carbofuran. The Agency has required the registrant submit monitoring studies pertaining to ground water contamination from use of carbofuran in the registration standard. Ground water in certain parts of California, Iowa, Maryland, New York, and Wisconsin has been monitored for carbofuran. There are confirmed findings of carbofuran in ground water in Maryland, New York and Wisconsin, which in all likelihood, stemmed from normal agricultural use. (It should be noted that the toxic, potentially leachable metabolite 3-hydroxycarbofuran was not analyzed for most of these studies.) The Agency will continue to monitor carbufuran contamination in ground water through the National Drinking Water Survey.

If the Agency determines that use of carbofuran may result in significant contamination of ground water, the Agency will consider regulatory actions necessary to reduce exposure to carbofuran through this source.

II. Rebuttal Submission Procedures

All registrants and applicants for registration are being notified by certified mail of the Special Review being initiated on their granular carbofuran products registered for all use sites. The registrants and applicants for registration will have 45 days from the date this Notice is received or until December 2, 1985 (whichever is later) to submit evidence in rebuttal to the Agency's presumption. Other interested parties may submit comments during the same period.

III. Duty to Submit Information on Adverse Effects

Registrants are required by section 6(a)(2) of FIFRA to submit any additional information regarding unreasonable adverse effects to man or the environment which comes to their attention at any time. Registrants of carbofuran products registered for use on agricultural crops must immediately submit any published or unpublished information, studies, reports, analyses, or reanalyses regarding any carbofuran effects in animal species or humans, and claimed or verified exposure incidents involving humans, domestic animals, fish and aquatic life or wildlife which have not been previously submitted to EPA. These data should be submitted with a cover letter specifically identifying the information as being submitted under section 6(a)(2) of FIFRA. Registrants should notify EPA of any studies on carbofuran currently in progress, their purpose, the protocol, and approximate completion date, a summary of all results observed to date, the name and address of the laboratory performing the studies, and a statement as to whether these studies are being conducted in accordance with the Good Laboratory Practices specified in 40 CFR Part 160.

IV. Public Comment Opportunity

During the time allowed for submission of rebuttal evidence, specific comments are solicited on the presumptions set forth in this Notice. In particular, any documented episodes of adverse effects on humans, domestic,

animals, or wildlife should be submitted to the Agency as soon as possible. Any information as to any laboratory studies in progress or completed should be submitted to the Agency as soon as possible with a statement as to whether those studies are in compliance with the Good Laboratory Practices specified in 40 CFR Part 160. Specifically, the Agency requests information on any adverse wildlife effects associated with carbofuran, its impurities, metabolities and degradation products on all sites where the use of granular formulation of carbofuran is registered. Similarly, the Agency requests submission of any studies or comments on the benefits from the use of carbofuran on all sites registered for granular formulations. All comments, information, and analyses which are submitted or otherwise come to the attention of EPA, may serve as a basis for final determination of regulatory action following the Special Review.

All comments and information should be sent to the address given above, preferably in triplicate, to facilitate the work of EPA and others interested in inspecting them. The comments and information should bear the identifying notation [OPP-30000/48].

During the comment period, interested members of the public or registrants may request a meeting to discuss the risk issues and methods of reducing risks. Written memoranda describing and materials exchanged at such meetings may also be filed under docket number OPP-30000-48.

V. References

(1) Balcomb, R., Bowen CA II, Wright D., Law M. 1984a. Effects on wildlife of at-planting corn application of granular Carbofuran. J. Wildl. Manage. 48(4): 1353-1359.

(2) Hudson, R.H., Richard, K.T., Haegele, M.A. 1984. Handbook of Toxicity of Pesticides to wildlife.

(3) Balcomb, R., Steven R., and Bowen CA II. 1984b. Toxicity of 16 granular insecticides to wildcaught Songbirds. Bull. Environ. Contam. Toxicol. 33: 302-307.

(4) Erback, D.C., and Tollefson, J.J. 1983. Granular insecticide application for corn rootworm control. Trans. Am. Soc. Agri. Eng. 26: 696-699.

(5) FMC. 1983. Effects of Furadan® formulations 10G and 15G on avian populations associated with corn fields.

(6) Overgaard, N.A., Walsh, D.F., Hertel, G.D., Barber, L.R., Major, R.E., Gates, J.E. 1983 Evaluation on modified POWR-TILL seeder for soil incorporation to provide insect control and minimize bird mortality. U.S. Dept. of Agric. For. Serv. Tech. Publ. R8-TP3. 35 pp.

(7) Flickinger, E.L., King, K.A., Stout, W.F., Mohn, M.M. 1980. Wildlife hazards from Furadan® 3G applications to rice in Texas. J. Wildl. Manage. 44: 190-197.

(8) Bednarz, J.C., and Dinsmore, J.J. 1981. Status, habitat use, and management of red-shouldered hawks in Iowa. J. Wildl. Manag. 45(1).

(9) Balcomb, R. 1983. Secondary poisoning or red-shouldered hawks with carbofuran. J. Wildl. Manage. 47: 1129-1132.

All reference material is available for review in Room 236 at the Virginia address given above.

Dated: September 30, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-24646 Filed 10-15-85; 8:45 am]

BILLING CODE 2560-50-M

[OPP-30000/28J; PH-FRL 2912-1]

Pesticide Programs; Intent To Cancel Registrations of Pesticide Products Containing Creosote and Coal Tar for Nonwood Preservative Uses

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Cancel.

SUMMARY: On October 18, 1978, EPA initiated an administrative review process to consider whether the pesticide registrations for all registered uses of creosote, coal tar, and coal tar neutral oil (CTNO) should be cancelled or modified. EPA issued a Special Review Position Document 2/3 setting forth the Agency's preliminary determination regarding the risks and benefits associated with nonwood preservative uses of these pesticides for all registered uses which was published in the **Federal Register** of August 22, 1984 (49 FR 33328). This Notice announces the Agency's final decision to cancel registrations of all nonwood preservative uses of creosote and coal tar except for the use to control gypsy moth egg masses, and to defer the regulatory decision on the nonwood preservative uses of coal tar neutral oil (CTNO) until more data are obtained.

DATE: Requests for a hearing by a registrant, applicant, or other adversely affected person must be received by November 15, 1985 or, for a registrant or applicant, within 30 days from receipt by mail of this Notice, whichever date is later.

ADDRESS: Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Paul Parsons, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office Location and telephone number: Rm. 711 Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (702-557-1632)

SUPPLEMENTARY INFORMATION:

I. Introduction

The Environmental Protection Agency issued a notice of rebuttable presumption against registration (hereafter referred to as Special Review) for the uses of pesticide products containing creosote, coal tar, and coal tar neutral oil (CTNO), which was published in the **Federal Register** of October 18, 1978 (43 FR 48154).

Issuance of the Notice initiated the Agency's Special Review of the risks and benefits of these products. The Special Review was issued on the basis of oncogenicity and mutagenicity. The Special Review Position Document 1 (PD 1) issued with the notice of rebuttable presumption describes in detail the studies that formed the basis for the presumption. In January 1981 a Position Document 2/3 (PD 2/3) addressed the risks and benefits of the wood preservative uses of creosote, coal tar, and CTNO, the inorganic arsenicals, and pentachlorophenol.

A Position Document 4 (PD 4) was published in the **Federal Register** of July 13, 1984 (49 FR 28666) on the wood preservative uses of creosote, coal tar and CTNO, the inorganic arsenical compounds and pentachlorophenol. It set forth the Agency's final position on the regulation and use of these chemicals as wood preservatives. EPA announced in the **Federal Register** of August 22, 1984 (49 FR 33328) the availability of Position Document 2/3 (PD-2/3-nonwood) and the Agency's proposed decision to cancel registrations of all nonwood preservative uses of creosote, coal tar, and CTNO.

This Notice concludes the Special Review process and announces the Agency's final decision to cancel registrations of all nonwood preservative uses of creosote and coal tar, except for use to control gypsy moth egg masses, and to defer the regulatory decision on the nonwood preservative uses of CTNO until more data are obtained.

In summary, the Agency has determined that all the nonwood preservative uses of creosote and coal tar meet or exceed the risk criteria outlined in 40 CFR 162.11. The Agency has also analyzed the economic, social, and environmental benefits of these uses. In balancing risks and benefits, the Agency considered whether the risks of each use are outweighed by the benefits

of the use, what risk reductions could be achieved, and how risk reduction measures would affect the benefits of the use. The Agency has determined that the risks of all but one of the nonwood preservative uses are greater than the social, economic, and environmental benefits of these uses. Accordingly, the Agency is denying applications and cancelling the registration of creosote and coal tar products for the following uses:

Herbicidal Use: Nutgrass control in ornamental flowering plants and lawns, Product storage yards, Agricultural premises and highway rights-of-way.

Fungicidal Use: Rope and canvas.

Disinfectant Uses: Livestock premises, Poultry premises, Home and institutional uses, Transportation vehicles, Tree wound dressing.

Insecticidal and Miticidal Uses: Insect repellent, Animal repellent, Screwworm control, Bird repellent, Animal dip.

The Agency is returning the registrations of creosote and coal tar products for control of gypsy moth egg masses to the normal registration process because: Usage and exposure are low, there are no alternative control measures at this time, and there are potentially high benefits from this use. The Agency is requiring changes to the terms and conditions of registration of this use to further reduce applicator exposure and risk.

The Agency has also determined that a thorough review of available toxicological and chemistry data on CTNO shows that there is insufficient evidence at this time to conclude the Special Review on CTNO. The Agency is therefore deferring this decision until data are submitted to resolve the toxicological issues concerning CTNO. The Agency will require registrants of CTNO products to submit toxicology and other data on these products pursuant to FIFRA section 3(c)(2)(B). When the data are received and reviewed, the Agency will determine regulatory action.

This Notice is organized into six units. Unit I is this introduction. Unit II, entitled "Legal Background," provides a general discussion of the regulatory framework within which this action is taken. Unit III summarizes the risk and benefit determinations concerning the nonwood preservative uses of creosote, coal tar, and CTNO. Unit IV contains the comments of the Scientific Advisory Panel (SAP), the U.S. Department of Agriculture (USDA), registrants, and interested parties received in response to the Position Document 2/3 on the nonwood uses of creosote, coal tar, and CTNO, and the Agency's responses to these comments. Unit V sets forth the regulatory actions required by this Notice. Unit VI, entitled "Procedural Matters," provides a brief discussion of the procedures which will be followed in implementing the regulatory actions which the Agency is announcing in this Notice.

II. Legal Background

To obtain a registration for a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended ("FIFRA"), an applicant for registration must show that the pesticide satisfies the statutory standard for registration. That standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)).

The term "unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide" (FIFRA section 2(bb)). This standard requires a finding that the benefits of each use of the pesticide exceed the risks of use, when the pesticide is used in accordance with commonly recognized practice and in compliance with the terms and conditions of registration.

The burden of proving that a pesticide satisfies the registration standard is on the proponents of registration and continues as long as the registration remains in effect. Under section 6 of FIFRA, the Administrator may cancel the registration whenever it is determined that the pesticide causes unreasonable adverse effects on the environment. The Agency created the RPAR process, now known as the Special Review process, to facilitate the identification of pesticide uses which may not satisfy the statutory requirements for registration and to provide an informal procedure to gather and evaluate information about the risks and benefits of these uses.

A Special Review is commenced if a pesticide meets or exceeds risk criteria set out in the regulations at 40 CFR 162.11. The Agency announces that a Special Review is initiated by issuing a notice for publication in the **Federal Register**. Registrants and other interested persons are invited to review the data upon which the review is based and to submit data and information to rebut the presumption by showing that the Agency's initial determination of risk was in error, or by showing that use of the pesticide is not likely to result in any significant risk to humans or the environment. In addition to submitting evidence to rebut the risk presumption, commenters may submit evidence as to whether the economic, social and environmental benefits of the use of the pesticide outweigh the risks of use. Unless all presumptions of risk are rebutted, the Special Review is concluded by issuance of a Notice of Intent to Cancel.

In determining whether the use of a pesticide poses risks which are greater than the benefits, the Agency considers possible changes to the terms and conditions of registration which can reduce risks, and the impacts of such modifications on the benefits of use. If the Agency determines that such changes reduce risks to the level where the benefits outweigh the risks, it may require that such changes be made in the terms and conditions of the registrations. Alternatively, the Agency may determine that no change in the terms and conditions of a registration will adequately assure that use of the pesticide will not pose any unreasonable adverse effects. If the Agency makes such a determination, it may seek cancellation, and, if necessary, suspension. In either case, the Agency may issue a Notice of Intent to Cancel the registrations. If the Notice requires changes in the terms and conditions of registration, cancellation may be avoided by making the specified corrections set forth in the Notice, if possible. Adversely affected persons may also request a hearing on the cancellation of a specified registration and use, and if they do so in a legally effective manner, that registration and use will be maintained pending a decision at the close of an administrative hearing.

III. Summary of Risk and Benefit Determinations

A. Introduction

The Agency has carefully considered the information and evaluated the data submitted regarding the risks and benefits of continued nonwood use of creosote and coal tar. Detailed discussions of these risks and benefits are presented in the PD 2/3 nonwood uses of creosote and coal tar and the PD-4 for the wood preservative uses. This unit sets forth the Agency's summary of the risk determinations for the nonwood preservative uses of creosote and coal tar.

B. Risk Determinations

Creosote and coal tar and many of their component chemicals have been well characterized as carcinogens in laboratory animals (PD-1, Coal tar,

Creosote, and Coal Tar Neutral Oils; PD–2/3 Wood Preservatives). These studies, along with the several reports in the literature of skin cancer in people exposed to creosote and coal tars, suggest that these chemicals are human carcinogens.

Data on the mutagenic activity of creosote and coal tar and the data regarding the mutagenic activity of the individual compounds identified in creosote and coal tar suggest that creosote and coal tar are potentially mutagenic in intact mammals including humans. Although creosote and coal tar are judged as potential mammalian mutagens which may cause somatic mutations (somatic mutations may be involved in the etiology of cancer), the data concerning genetic risk with respect to germ cells are too limited for any conclusions at present.

No data have been provided during this Special Review that rebuts these conclusions concerning the oncogenicity and mutagenicity of creosote or coal tar. Applicators of products containing creosote and coal tar used for nonwood purposes are subject to both dermal and inhalation exposure during the application process. The Agency has therefore determined that the use of products containing creosote and coal tar for all nonwood purposes poses a risk of oncogenic and mutagenic effects to the applicators.

CTNO has not been specifically tested for oncogenicity or mutagenicity. The Agency concludes that it is inappropriate to extrapolate the risks of CTNO from data on creosote or coal tar. Nevertheless, the Agency remains concerned about the potential carcinogenicity and mutagenicity of CTNO, considering its derivation from or similarity to materials known to be carcinogenic and mutagenic, (i.e. coal tar and creosote). This issue is discussed further in Unit IV.A.2.

C. Benefit Determinations

The risks of all nonwood preservative uses of creosote and coal tar are of sufficient magnitude to require the Agency to determine whether these uses offer offsetting social, economic, or environmental benefits.

The nonwood uses of creosote and coal tar fall into four categories: Herbicidal uses, fungicidal use, insecticidal uses, and disinfectant uses. Creosote and coal tar are ingredients in products registered as a foliar spray to control weeds and grass. As a fungicide, creosote and coal tar are registered for use on rope and canvas products. As a disinfectant, creosote and coal tar are used to control fungi and bacteria in poultry and livestock areas, and on tree wound dressings. Their insecticidal uses include the treatment of gypsy moth egg larvae, and use as a repellent. These nonwood preservatives uses of creosote and coal tar represent approximately two percent of the total amount of creosote and coal tar produced. Except for the gypsy moth egg mass use, there are efficacious, economically competitive alternative products for all uses. Moreover, as discussed below, the Agency believes that there are few or no products actually being sold for the non-wood registered uses. Thus, cancellation of these registrations would have no adverse economic or social impact.

The projected impacts of the cancellation of these registrations are discussed at length on pp. III–1–13 of the PD 2/3 (nonwood).

A brief summary of the projected economic impact for each use is provided below.

1. *Herbicidal uses*—a. *Ornamental plants and lawns.* Creosote is currently registered as a herbicide for use on ornamental flowering plants and lawns to control nutgrass. However, the Agency is unaware of any current use of creosote for this purpose. Because there are registered, efficacious, and economically competitive alternative products, cancellation of this use is expected to have no economic impact.

b. *Product storage yards.* Cresote and coal tar have limited use to control weeds and grass on product storage yards. There are efficacious and economically competitive alternative products available and cancellation of this use is expected to have no economic impact.

c. *Agricultural premises and highway rights-of-way.* Cresote is registered for use on agricultural premises and along highway rights-of-way for general weed control. The Agency has no information on the extent of current use. Because of the number of efficacious, economically competitive alternative products available, the Agency concludes that there will be no economic impact from cancellation of this use.

2. *Fungicidal (rope and canvas).* Creosote is registered for use as fungicide on rope and canvas. However, the Agency believes that cancellation of this use would have no economic impact because there are efficacious, economically competitive alternatives available.

3. *Disinfectant uses*—a. *Livestock premises.* Creosote and coal tar are used as livestock disinfectants. However, since efficacious, economically competitive alternatives are available, cancellation of this use would not have a significant economic impact.

b. *Home and institutional use.* Although several products are registered for home and institutional uses, actual use for these purposes is unlikely because the products have a strong unpleasant odor. Since efficacious, economically competitive alternatives are available, cancellation of this use would not have a significant economic impact.

c. *Transportation vehicles.* Although products are registered for use as disinfectants in transportation vehicles, the Agency knows of no actual use for these purposes.

d. *Tree wound dressings.* Although creosote is registered for use as a tree wound dressing, the Agency has no evidence of current use. Cancellation of this use would therefore not be expected to have a significant economic impact.

4. *Use as larvicide, insecticide, and repellent*—a. *Insect repellent.* Coal tar is currently registered for use as an insect repellent. However, there is no evidence that such products are currently being marketed and so cancellation would not have a significant economic impact. There are efficacious, economically competitive, alternative products registered for this use.

b. *Animal repellent.* Creosote products are registered as animal repellents but the Agency has not been able to obtain information on the extent of use. The Agency believes that creosote products are in current use to prevent cribbing by horses on wooden structures. There are efficacious, economically competitive alternative control measures for this use and cancellation would not have a significant economic impact.

c. *Screwworm control.* One product is registered for screwworm control, but actual use of the product cannot be confirmed. Cancellation of this use is therefore not expected to have a significant economic impact.

d. *Insect control.* Coal tar products are registered to control maggots and flies. However, efficacious and economically competitive alternatives are available. Therefore, the cancellation of this use would not have a significant impact.

e. *Animal dip.* Coal tar distillates have been used for more than a century to control parasites on animals. However, there are numerous registered alternative products. Therefore, the cancellation of this use would not have a significant impact.

f. *Bird repellent.* Coal tar products are used to treat seed to prevent birds from eating it. Efficacious, economically competitive chemical and non-chemical alternatives are available, and therefore,

the cancellation of this use would not have a significant impact.

g. *Gypsy moth control.* Creosote products are used by the USDA Plant Protection and Quarantine Program to destroy the egg masses of the gypsy moth. Gypsy moth larvae have damaged extensive acreages of forest in the northeastern United States. This pest has been expanding its range along a wide front to the south and west. One method of reducing its spread is to inspect outdoor products in transit for the presence of gypsy moth egg masses, and to destroy any egg masses that are found. This practice reduces the accidental introduction of this pest into non-infested areas. There are no currently registered alternative products with ovicidal activity for this use and cancellation could result in a significant economic impact.

IV. Comments of Registrants and Other Interested Parties, the U.S. Department of Agriculture and the Science Advisory Panel; Agency Responses to Comments

A. Comments of Registrants and Other Interested Parties

1. *General.* The Agency received comments on the Position Document ⅔ from several registrants and users and from the Creosote Council of the American Wood Preservers Institute. All comments were considered in the preparation of this document. These comments fall into six general categories: The chemical identity of coal tar neutral oil; the adequacy of the Agency's toxicology assessment; the adequacy of the Agency's exposure assessment; the Agency's consideration of measures to reduce exposure to creosote, coal tar, and CTNO; the adequacy of the Agency's oncogenic and mutagenic risk assessments; and, the adequacy of the Agency's benefit assessment. The following unit will discuss the comments in each of these categories, and present the Agency's responses to the comments.

2. *The chemical identity of coal tar neutral oil (CTNO)*—a. *Comment.* In brief, the Creosote Council commented (pp. 2–15) that the CTNO tested in the toxicology studies the Agency used as the basis of the rebuttable presumption against CTNO is not the same substance used in currently registered pesticides. In addition, the Creosote Council stated that CTNO is not chemically similar to creosote or coal tar, and therefore, toxicological data concerning creosote or coal tar do not apply to CTNO. The Creosote Council provided some simplified information on the derivation of CTNO from coal tar, and on the chemical composition of CTNO. The information provided by the Creosote Council accounts for only 60 percent to 65 percent of the constituents of CTNO.

b. *Agency response.* Based on the information provided by the Creosote Council, the Agency now believes that the CTNO used in these early studies does not have the same composition as the CTNO used in currently registered products.

In the PD ⅔ (nonwood), the Agency summarized the evidence for the oncogenicity of CTNO:

> As with creosote and coal tar, dermal application of coal tar neutral oil has been shown to produce skin tumors in mice (Horton, 1961). Berenblum and Schoenthal (1947) found that several chromatographic fractions of coal tar neutral oil produced skin tumors when dermally applied to mice. Cabot et al. (1940) found that mixtures of coal tar neutral oil with benzo(a)pyrene produced fewer tumors than benzo(a)pyrene alone, but suggested that this inhibiting effect was due to skin damage. (p. II–13)

The early, poorly characterized material was apparently coal tar with the acids and bases removed. The CTNO currently marketed is a fraction or mixture of fractions of coal tar with a specific boiling range or ranges, from which the tar acids are removed and from which the tar bases may or may not be removed. This CTNO has not been tested for oncogenic or mutagenic potential. Furthermore, the Agency agrees that CTNO has not been chemically characterized sufficiently to make toxicological comparisons between CTNO and creosote or coal tar.

However, the Agency remains concerned about the possible oncogenicity and mutagenicity of CTNO, particularly in light of the unknown composition of 35 percent to 40 percent of CTNO and its derivation from or similarity to materials known to be carcinogenic and mutagenic, i.e., coal tar and creosote. Therefore, the Agency is deferring a regulatory decision on CTNO at this time. Additionally, toxicological and other data will be required under FIFRA section 3(c)(2)(B). The Agency has issued a Data Call-In Notice (May, 1985) requiring registrants to submit product chemistry data on creosote, coal tar, and CTNO.

Because the regulatory decision on CTNO products is being deferred, rebuttal comments received pertaining to CTNO will not be addressed in this document. The Agency will consider these comments in the review of CTNO.

3. *The adequacy of the Agency's toxicology assessment*—a. *Comment.* The Creosote Council commented (p. 17) that the toxicology assessment for the nonwood preservative uses of creosote and coal tar is similar to the toxicology assessment for the wood uses of creosote and coal tar. The Council stated that, therefore, since the toxicology assessment for the wood uses of creosote and coal tar has been rebutted, then the toxicology assessment for the nonwood preservative uses of creosote and coal tar is also rebutted.

b. *Agency response.* The Agency agrees that the toxicology assessment of the wood and the nonwood use of creosote are similar. These assessments are presented in the PD ⅔ (wood preservative) and PD ⅔ (nonwood). The Agency used the same data base for wood and nonwood uses of creosote and coal tar for hazard assessment because the creosote and coal tar used for both categories of use are virtually identical. However, the Agency does not agree that the toxicology assessment for the wood preservative uses of creosote and coal tar has been rebutted. As noted in the PD–4 for the wood preservative uses of creosote and coal tar:

> No new information was received by the Agency which changed the Agency's position regarding the rebuttable presumptions for creosote. As summarized in the PD ⅔ (pp. 36–46 and p. 85), creosote and many of its component chemicals have been shown to cause cancer in laboratory animals; there have also been many case reports linking human cancer to exposure to creosote.

The Agency has received no new information since the issuance of the wood preservative PD–4 or the issuance of the nonwood preservative PD ⅔ which alters the Agency's position on the oncogenic or mutagenic potential of creosote and coal tar. Therefore, the toxicology assessment of the nonwood preservative uses of creosote and coal tar has not been rebutted.

4. *The adequacy of the Agency's exposure assessment—a. Comment.* The Creosote Council commented (pp. 20–21) that the Agency's exposure assessment is qualitative, not quantitative. The Creosote Council also commented (pp. 20–21) that the Agency's exposure assessment omitted estimates of the amount of creosote exposure from various pathways.

b. *Agency response.* The Agency agrees that its exposure assessment was qualitative and not quantitative. Because of the unique nature of creosote and coal tar, it was not possible to provide a quantitative exposure assessment nor to estimate creosote exposure by different pathways. Creosote and coal tar are heterogeneous mixtures of a multitude of organic components, which vary not only when the creosote and coal tar are prepared from different sources, but also within batches from the same source. This

heterogeneity poses extremely difficult problems in chemical and risk analysis and exposure sampling; these problems preclude a quantitative exposure assessment at this time. No information was provided which would make possible a qualitative exposure assessment, taking into account different exposure pathways.

c. *Comment.* The Creosote Council commented (p. 22) that the Agency's qualitative exposure assessment assumes complete human uptake of creosote.

d. *Agency response.* The Agency disagrees with this interpretation of its exposure assessment. At no point in the exposure assessment is complete human uptake of creosote or coal tar stated as an assumption. The Agency assumed that there is some uptake, since as discussed in the PD ⅔ (non-wood) (pp. II–18–19), human and animal exposure studies clearly show exposure to creosote and coal tar leads to adverse effects.

e. *Comment.* The Creosote Council commented (pp. 20; 22–23) that the Agency has not justified its exposure assumptions, basing them instead on product labeling.

f. *Agency response.* The Agency has stated that the exposure assumptions are based on label directions of creosote and coal tar products because this was the only available information. It is reasonable to use this information because labeling directions indicate application rates and methods, concentrations of pesticide, and other information used in preparing exposure assessments. No further information has been provided to refine or change these assumptions.

g. *Comment.* The Creosote Council commented (pp. 22–23) that the Agency has not defined the qualitative terms used in the exposure assessment to classify exposure.

h. *Agency response.* The Agency used the words high, medium, and low to classify exposure potential in the PD 2/3 (nonwood). These words represented the Agency's best description for estimating exposure at that time. As explained in Agency response 4.b. above, the heterogeneity of creosote and coal tar precludes a quantitative description at this time. These terms are based on the Agency's consideration of exposure factors are based on the Agency's consideration of exposure factors that include: frequency of use by the applicator, protective clothing likely to be used or required by label directions, concentration of the product used, and application method. While these words do not convey a quantitative estimate, they do attempt to indicate the Agency's estimate of exposure levels. No information has been provided to allow more precise classification.

i. *Comment.* The Creosote Council commented (pp. 18–20) that the Agency's exposure assessment does not follow the proposed guidelines for exposure assessment (49 FR 46304).

j. *Agency response.* The Agency believes the Creosote Council has misinterpreted the proposed exposure guidelines. The proposed guidelines are a suggested format for assessing exposure. They are not specific nor do they represent specific methodologies. Quantitative exposure estimates are not required in the guidelines. Absence of quantitative data does not preclude a qualitative assessment based on the available information.

5. *The Agency's consideration of measures to reduce exposure to creosote and coal tar*—a. *Comment.* the Creosote Council commented (pp. 25–27) that the Agency did not adequately consider regulatory measures to reduce exposure to creosote and coal tar.

b. *Agency response.* The Agency considered regulatory measures to reduce exposure to creosote and coal tar, as discussed on pp. IV–2–9 in the PD 2/3 (nonwood). These measures included use of impermeable gloves, use of respirators and coverall, disposal of protective gloves, use of respirators and coveralls disposal of protective clothing, and other measures. The Agency believes that the risks of the nonwood preservative uses of creosote and coal tar could be reduced by use of protective clothing and other measures. however, the benefits of these uses are very small; for some uses it cannot be determined if there is any usage. In light of the small benefits and the availability of adequate alternative pesticides, the Agency has determined that even if measures were taken to reduce exposure to creosote and coal tar, the remaining risks of these uses outweigh the benefits.

6. *The adequacy of the Agency's oncogenic and mutagenic risk assessment*—a. *Comment.* The Creosote Council commented (p. 28) that the Agency did not present quantitative data on dose response for the oncogenic risks of creosote and coal tar.

b. *Agency response.* As stated in PD 2/3 (nonwood), creosote and coal tar and many of their component chemicals are well characterized as carcinogens (p., II–54). Also, there is strong evidence from individual case studies that creosote and coal tar are potential human carcinogens. However, because of the variable composition of creosote and coal tar, the data are not appropriate quantitative risk estimates.

As set forth in PD 2/3 (nonwood), creosote and coal tar are complex blends of hundreds of constituents, including carcinogens, promoters, initiators and inhibitors. Because of the complexity of creosote and coal tar and the variable nature of the commerical materials, the quantitative estimation of risk will require special inhalation and dermal studies in laboratory animals. These studies will need to employ special sampling techniques to assure that test materials are truly represenative of the chemicals to which people are actually exposed from the use of creosote and coal tar. However, it is clear from the large number of laboratory studies on creosote and coal tar and their individual components that these materials are carcinogenic. In addition, exposure to applicators, based on consideration of use patterns is sufficient to cause the Agency to have significant concern about the continued nonwood preservative use of creosote and coal tar.

c. *Comment.* The Creosote Council commented (pp. 28–29) that the Agency did not present quantitative date on the mutagenic risk of creosote and coal tar. The Creosote Council further commented that the mutagenic risk assessment therefore does not meet the minimum standards of the proposed mutagenicity guidelines.

d. *Agency response.* The Agency agrees that it did not present quantitative data on the mutagenic risk of creosote and coal tar. However, it should be stressed that the available data on the mutagenicity of creosote and coal tar were appropriate only for hazard identification, not for a quantitative assessment, as stated on pp. II–53 of PD 2/3 (nonwood). The Agency views mutagenicity assessment as a multi-step process of which the first step is a hazard identification or a qualitative evaluation of data to determine the likely potential of an agent or a chemical to be mutagenic to humans. Available data indicate that creosote and coal tar are mutagenic insome microbial tests.

Furthermore, the Creosote Council has possibly misinterpreted the Agency's propsed guidelines, which state that ". . . often, no further data will be available [other than that for hazard identification] and judgments will need to be based on mainly qualitative criteria."

e. *Comment.* The Creosote Council commented (p. 29) that the proposed mutagenicity risk guidelines (49 FR 46315) emphasize that experimental

animal data are not directly relevant to human experience because ". . . the experimental data on induced mutation frequency are usually obtained at exposure levels much higher than those that will be experienced by human beings." Accordingly, they state that the risk guidelines specify that it is necessary to extrapolate the induced mutation or carcinogenic frequency downward to approximate human dose-response. Thus, the Creosote Council believes the Agency has exaggerated the human dose-responses by not performing such a downward extrapolation.

f. *Agency response.* The mutagenicity guidelines do not state that "experimental animal data are not directly relevant to human experience. . . ." The Creosote Council has possibly misinterpreted the guidelines. The guidelines state that, in extrapolating from animal data to human exposure situations, high-dose to low-dose extrapolation may be required. The Agency agrees that the downward extrapolation may well be required in quantitative assessments. However, this rebuttal comment does not apply to the mutagenicity assessment on creosote and coal tar, since only a qualitative assessment was conducted.

g. *Comment.* The Creosote Council commented (p. 30) that in evaluating mutagenic activity, the proposed mutagenicity risk guidelines state that ". . . greater weight will be attributed to tests conducted in germ cells than in somatic cells." They further claimed that in PD 2/3 (nonwood) the Agency acknowledged that its information regarding germ cells is so limited that it cannot make any conclusions regarding mutagenicity and that its somatic mutation information is equivocal.

h. *Agency response.* The Agency agrees that greater weight will be attributed to tests conducted in germ cells and also to studies conducted in mammalian cells. However, this statement should not be misinterpreted to mean that studies in somatic cells should be disregarded. Creosote was tested in mammalian cells in culture and showed positive results. The gene mutation data on mammalian cells *in vitro* and in bacteria are not equivocal but strongly suggest that creosote and coal tar are mutagenic in mammalian cells.

7. *The adequacy of the Agency's benefits assessment*— a. *General.* Since the regulatory decision on CTNO is being deferred, several of the nonwood preservatives uses for which only CTNO is used are not under consideration in this document. These uses are:

Disinfectant uses: Seed potato storage premises and equipment

Use as larvicide, insecticide, repellent: Mosquito larvicide

Comments concerning these uses will not be addressed in this document. Uses for which creosote, coal tar, and CTNO are all registered will be discussed but these discussions apply only to the use of creosote and coal tar, not CTNO.

The Creosote Council commented on four issues concerning the Agency's benefit assessment of the nonwood uses of creosote and coal tar. These issues will be discussed and responded to individually. No comments supporting cancellation of the nonwood preservative uses of creosote and coal tar were received.

b. *Comment.* The Creosote Council commented (p. 32) that the Agency has not weighed the loss of the benefits resulting from the cancellation of the nonwood uses of creosote and coal tar against the risks of these uses.

c. *Agency response.* The Agency disagrees with this comment. The Agency has weighed the risks and benefits of the nonwood preservative uses of creosote and coal tar and has determined that the risks outweigh the benefits of these uses. These determinations are discussed on pp. V–1 through V–12 of the PD 2/3 (nonwood). No new information has been submitted, neither concerning risks nor benefits, that would cause the Agency to change these determinations.

d. *Comment.* The Creosote Council commented (p. 32) that the Agency has not considered the small producers who would be put out of business if the nonwood uses of creosote and coal tar were cancelled.

e. *Agency response.* The Agency assumes that the Creosote Council is referring to small pesticide producers, since no evidence has been submitted to show that small agricultural producers would be significantly affected by these cancellations. As stated in the Health Risk and Economic Impact Assessment of Suspected Carcinogens: interim Procedures and Guidelines published in the **Federal Register** of May 25, 1978 (41 FR 21402).

> The principal concern in the economic analysis will be the assessment of economic impacts on pesticide users and on the consumers of the products of the users. The impacts on pesticide manufacturers are not germane to this type of regulatory decision, in which the risk of the use of a pesticide is compared to the benefit of those uses.

Therefore, in accordance with the Agency's interim guidelines, the Agency did not consider the economic impact of the proposed cancellation on small pesticide producers.

f. *Comment.* The Creosote Council commented (pp. 32–33) that the Agency ignored the benefits information contained in joint USDA/EPA/State Biologic and Economic Assessment. The Creosote Council further commented that, according to the Assessment report, ". . . for at least five uses (disinfectant in animal quarters; control of drain flies; control of equine cribbing; bird repellent; and control of gypsy moth egg masses), there are no pesticidal alternatives, or only alternatives that are less effective or pose greater environmental risks."

g. *Agency response.* The Agency based much of its benefits analysis for the nonwood preservative uses of creosote and coal tar on the USDA/EPA/State Assessment; the Agency's conclusions in the PD 2/3 (nonwood) were largely in agreement with the Joint Assessment. Regarding the uses the Creosote Council believes that the Joint Assessment identifies as having no alternatives, or less efficacious or riskier alternatives, the Joint Assessment states:

> The uses described above are minor compared with the major uses as a wood preservative. Among these minor uses, however, there are only five that are significant. They are as follows: Control of drain flies; and gypsy moth control; (these two have no registered alternatives), horse cribbing; disinfectant in animal quarter; and as a bird repellent. (These latter three have strong user support, although there are effective registered alternative pesticides for control).

Of these five uses, horse cribbing (i.e. animal repellent), animal quarter disinfectant, and bird repellent, are clearly identified in the Joint Assessment as having effective registered alternatives. One product is currently registered for drain fly control. The active ingredient in this product that actually controls against drain flies has been determined to be orthodichlorobenzene, and not creosote or coal tar. Furthermore, the registrants of this product have amended this registration such that it no longer contains creosote or coal tar. The gypsy moth egg mass use is discussed in the following Unit IV.A.7.h.

h. *Comment.* Concerning the use of creosote and CTNO to control gypsy moth egg masses, the Creosote Council commented (p. 36) that the Agency, citing USDA use of these products, . . . states that the use of these products is environmentally sound because these two products prevent the future use of

large amounts of pesticide to control the problem."

i. *Agency response.* The Agency believes that the Creosote Council has misunderstood the Agency's position. The PD 2/3 (nonwood) does not state that the use of creosote or CTNO to control gypsy moth egg masses is environmentally sound. Rather, the PD 2/3 (nonwood) states (p. II–13) that the USDA believes that this use is essential. The Agency did not agree, and noted that the USDA was researching alternative control methods. The Agency has received further information from USDA (see Section C, Comment 1 below) on this use since the issuance of the PD 2/3 (nonwood) and has reconsidered its position as discussed in Unit IV.B.

B. Comments of the U.S. Department of Agriculture

The United States Department of Agriculture also responded to the PD 2/3 on the nonwood uses of creosote. The Agency carefully considered the USDA comments in the development of the final regulatory position. Specific issues that the USDA raises are numbered in brackets (e.g. [1]) and answered in the following section. The USDA's comments in their entirety were:

Mr. Steven Schatzow,
Director, Office of Pesticide Programs, U.S. Environmental Protection Agency, Washington, D.C. 20460.

Dear Mr. Schatzow: This is in response to your letter of August 17 forwarding Position Document 2/3 on the non-wood preservative uses of coal tar, creosote and coal tar neutral oils.

[1.] As discussed verbally with Registration Division personnel the Department does not have any serious objection to the cancellation of most uses of these chemicals with one notable exception. The use of creosote is necessary for control of gypsy moth egg masses. Creosote is the only acceptable pesticide presently registered for this use. We have been actively involved in evaluating alternatives for this use and have been unable to find any material which provides sufficient efficacy for regulatory use and, until such time as acceptable alternative registered materials become available, the use of creosote should be maintained.

[2.] It is our opinion that the economic analysis contained in the PD 2/3 is inadequate. It consists either of conclusory statements, with no supporting references, or of statements that no data are available. The benefits analysis does say that it is based on the assessment team report, but there is no indication in the text to support this claim. The economic analysis contains no numbers—it does however acknowledge that a complete cost benefit analysis based on current usage date must be done before a final regulatory decision can be issued.

[3.] Similarly, while the agency does a credible job summarizing mutagenic and carcinogenic potential of the subject chemicals, without some type of quantitative evaluation of exposure and the resultant risk, the decisionmaker does not know if the risks of using creosote or coal tar for the proposed cancelled uses are any more or less than the risk to homeowners who clean their own chimneys or eat charcoal-broiled steaks. Many of the mutagenic or carcinogenic chemicals in creosote and coal tar are ubiquitous in our environment. Consequently, some measure of incremental risk is necessary, even if crude because of uncertainties in cancer potency of creosote or coal tar mixtures.

We have a number of other minor comments on the document. At page III–13, for example, it states that "USDA recommends . . . Normally the USDA does not make "recommendations" therefore we would appreciate receiving a citation for this statement. We feel that the remainder of our comments would not be particularly useful until the agency corrects the major deficiencies.

Sincerely,

Charles L. Smith,
Coordinator, Pesticides and Pesticide Assessment.

C. Agency Response to Comments of the U.S. Department of Agriculture

Comment [1]—*Proposed cancellation.* The Department of Agriculture does not object to proposed cancellation of most uses of creosote, coal tar, and CTNO with the exception of the use to control gypsy moth egg masses. USDA notes that creosote and CTNO are the only acceptable registered pesticides for this use. In a later communication from Mr. Smith dated March 11, 1985, USDA informed the Agency that:

The USDA's Animal and Plant Health Inspection Service requires treatment of certain household articles found infested with gypsy moth eggs pursuant to 7 CFR 301.45. These regulations were published in the **Federal Register**, on April 11, 1984 (40 FR 19951). Paragraph 301.45–12(a)(1)(2) of 7 CFR provides that outdoor articles may move in interstate commerce following certification by a qualified inspector. The inspector must certify that the outdoor household articles have been inspected and are free of any life stage of gypsy moth; or that the household article has been treated to destroy any life stages of gypsy moth in accordance with procedures prescribed in Section III.C.5 of the Appendix to the above regulation. The Appendix permits treatments with creosote, Spray-N-Kill, and Ficam A, as ovicides. All three of these were placed in our regulations because they were registered by EPA for that use. Spray-N-Kill contains acephate and Ficam A contains bendiocarb, neither of which provides ovocidal control.

Experience indicates, and it is the opinion of our experts that only the creosote is effective for this use. Applications of creosote used under this regulation have been limited. Less than 2 gallons of material have been used each year. . . .

The Agency has reconsidered its proposed cancellation of this use, and will not cancel this use at this time, because: usage and exposure are low, there are no alternative control measures providing the needed ovicidal control at this time, there are potentially high benefits from this use.

Comment [2]——*Inadequacy of economic analysis.* The Department of Agriculture stated that the economic analysis in PD–2/3 (nonwood) was inadequate and had no supporting references.

The economic analysis in the PD–2/3 was based on the USDA Assessment Team Report as well as reports prepared by the Mitre Corporation (EPA 1981) creosote, coal tar, and CTNO. There is a brief discussion in the text of the PD 2/3 (nonwood) (p. III–1) indicating that the benefit analysis was taken from these reports.

Also, USDA comments that a statement in the PD 2/3 (nonwood) ". . . acknowledges that a complete cost benefit analysis based on current usage data must be done before a final regulatory decision can be issued." This statement was made only with respect to the use of CTNO as a disinfectant in seed potato storage premises and equipment (p. III–4) and was put into the PD 2/3 (non-wood) document because available efficacy and benefits data did not indicate conclusively if this use is critical.

Comment [3]—*Inadequacy of risk analysis.* USDA also commented that the risk analysis did not contain quantified risk estimates and, therefore, an incremental risk assessment was not done. As noted in the response to similar registrant comments, a quantitative risk assessment has not been done for any of the regulatory decisions on creosote, coal tar, and CTNO because of the chemical heterogeneity of these chemicals and because of the paucity of exposure data. No data were provided to refine these estimates.

D. Comments of the Scientific Advisory Panel

The Scientific Advisory Panel held an open meeting on July 9, 1985, to review the Preliminary Notice of Determination concluding the Special Review for the nonwood use of creosote, coal tar, and coal tar neutral oil. At this meeting, the SAP heard a presentation by the Agency, the registrants, and other interested members of the public. The comments of the SAP are published in full below:

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel

Review of the Proposed Decision Options Being Considered To Conclude the Special Review of the Non-Wood Uses of Creosote, Coal Tar, and Coal Tar Neutral Oil

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) has completed review of the proposed decision oiptions being considered by the Agency to conclude the Special Review of the Non-wood Uses of Creosote, Coal Tar, and Coal Tar Neutral Oil. The review was conducted in an open meeting held in Alexandria, Virginia, on July 9, 1985. All Panel members were present for the review.

Public notice of the meeting was published in the **Federal Register** on Friday, June 21, 1985.

Oral and written statements were received from Koppers and from the Creosote Council of the American Wood Preservers Institute (AWPI).

In consideration of all matters brought out during the meeting and careful review of the materials presented by the Agency, by the AWPI, and by Koppers, the Panel unanimously submits the following report:

Report of SAP Recommendation

The Scientific Advisory Panel (SAP) has reviewed the creosote, coal tar and coal tar neutral oil Position Document 2/3 prepared by EPA, as well as other materials, and responds as follows to the issue on coal tar neutral oil (CTNO).

Issue:

Although Coal Tar Neutral Oil (CTNO) is not well characterized, EPA believes the risks posed by CTNO are similar to those posed by coal tar and creosote. Do the members of the SAP agree and do they have any information that the risks posed by CTNO would differ from those posed by coal tar and creosote?

Response:

The Panel does not believe that the risks posed by CTNO are necessarily similar to those posed by coal tar and creosote. There are simply no data available on which the Panel can base an informed judgment.

The Panel believes that EPA should set forth clearly to the industry the toxicology and other data requirements which must be met for CTNO.

For the Chairman.

Certified as an accurate report of Findings:

Philip H. Gray, Jr.,

Executive Secretary, FIFRA Scientific Advisory Panel.

Dated: July 29, 1985.

E. Agency Response to Comments of the Science Advisory Panel

The Agency agrees with the Science Advisory Panel, and will require registrants to submit toxicology and other data on CTNO.

V. Initiation of Regulatory Actions

1. *Registered pesticide products.* Based upon the assessment summarized in Unit IV. and discussed in detail in Position Documents 1 and ⅔, the Agency determines that all of the present nonwood preservative uses of creosote and coal tar (except the use to control gypsy moth egg masses) pose risks greater than the social, economic and environmental benefits of those uses. The Agency has determined that no modifications to the terms and conditions of registration for the nonwood preservative products will bring these products into compliance with the statutory standard for registration.

Therefore, the Agency is cancelling the registration of each of the following federally registered pesticide products for nonwood preservative uses containing the active ingredient creosote and coal tar whether registered under FIFRA sec. 3 or sec. 24(c):

Herbicidal Uses: Nutgrass control in ornamental flowering plants and lawns.
Product storage yards and lawns.
Agricultural premises and highway rigth-of-way.
Fungicidal Uses: Rope and canvas.
Disinfectant Uses: Livestock premises.
Poultry premises.
Home and institutional uses.
Transportation vehicles.
Tree wound dressings.
Insecticidal Uses:
Animal repellent.
Screworm control.
Animal dip.
Bird repellent.
Insect repellent.

The Agency has decided to continue the registrations of creosote and coal tar products registered to control gypsy moth egg masses since the benefits outweigh the risks of this use. The Agency has determined that changes to the terms and conditions of registration of these products will further reduce the risks of this use.

In order to avoid cancellation, registrants of creosote or coal tar products for the gypsy moth egg mass use must file an amended application to modify the terms and conditions of registration to include certain information on their product labels.

The amended application must be filed within 30 days after publication of this Notice or within 30 days of receipt of this Notice, whichever occurs later.

The labels must be amended for the gypsy moth egg mass use of creosote and coal tar to include the following information:

Applicators must wear gloves impervious to the creosote or coal tar formulations (e.g., polyvinyl acetate (PVA), polyvinyl chloride (PVC), or neoprene) in all situations where dermal contact is expected.

Work clothing must be changed when it shows signs of contamination. Launder work clothing separately from other household laundry. Dispose of worn-out work clothing and or boots in any general landfill, in the trash, or in any other manner approved for pesticide disposal.

Avoid inhaling vapors.

Applicators must not eat, drink, or use tobacco products during those parts of the application process that may expose them to the creosote or coal tar treatment formulation. Wash thoroughly after skin contact, and before eating, drinking, use of tobacco products, or using restrooms.

Pesticide wastes are toxic. Improper disposal of excess pesticide, spray mixture, or rinsate is a violation of Federal law. If these wastes cannot be disposed of by use according to label instructions, contact your State Pesticide or Environmental Control Agency, or the Hazardous Waste representative at the nearest EPA Regional Office for guidance.

In addition, the Agency has determined that the product chemistry and toxicological data on coal tar neutral oil are insufficient at this time to allow a credible weighing of the risks and benefits of the uses of coal tar neutral oil. Nevertheless, the Agency remains concerned about the potential carcinogenic and mutagenic risks of CTNO. Therefore, the Agency has decided to defer the regulatory decision on CTNO. In the near future the Agency will issue a Data Call-In-Notice under section 3(c)(2)(B) of FIFRA requiring registrants to submit data to resolve the toxicological and other concerns about CTNO.

The Data-In Notice will require submission of the following studies to resolve the concerns of this Special Review regarding CTNO:

Mutagenicity: Salmonella microsome plate incorporation test. Mammalian gene mutation test in vitro. Sister chromatid exchange in mammalian cells in vitro.

Carcinogenicity: Six-month Senkar mouse skin painting study (in lieu of a dermal subchronic study).

The Data Call-In (DCI) Notice will contain necessary information on experimental protocols to be used. Other studies may also be required by the DCI Notice.

Upon receipt and review of the above studies, additional studies, including exposure studies, may be required.

2. *Existing stocks.* Under the authority of FIFRA section 6 (a)(1) and (b), EPA is establishing certain limitations on the sale, distribution and use of existing stocks of creosote and coal tar products subject to this cancellation Notice. EPA defines the term "existing stocks" to mean any quantity of creosote and coal tar nonwood preservative product in the

United States on the date of EPA's Notice of Intent of Cancel that has been formulated, packaged and labeled for any nonwood preservative use and is being held for shipment or release or has been shipped or released into commerce.

EPA will allow the sale and distribution of existing stocks of creosote and coal tar nonwood preservative products for up to one year after publication of this Notice of Intent to Cancel in the **Federal Register.** EPA also will allow use of those existing stocks for up to one year after publication of this Notice. EPA is requiring registrants to contact commercial distributors of creosote and coal tar products to inform them of the time limitations on distribution, sale, and use, and to provide supplemental labeling reflecting the time limitations for existing stocks in the possession of the commercial distributors.

Following expiration of the time limitations on distribution or sale of existing stocks, revised labeling will be required on the products for use to control gypsy moth egg masses. Upon expiration of the time limitation use of existing stocks, disposal would be in accordance with the requirements of the Resource Conservation and Recovery Act.

The Agency believes that only very small (if any) quantities of creosote and coal tar products for any nonwood perservative use are currently distributed into commerce. Therefore, these quantities are likely to be used up within one year and are unlikely to pose any unreasonable risk to humans or the environment in that year.

VI. Procedural Matters

This Notice announces the Agency's final decision to cancel all Federal registrations except those for control of gypsy moth egg masses and to deny all applications for nonwood preservative uses of products containing creosote and coal tar. Under sections 6(b)(1) and 3(c)(6) of FIFRA, applicants, registrants, and certain other adversely affected parties may request a hearing on the cancellation and denial actions that this Notice initiates. Unless the registrant or applicant makes the required corrections stated in this Notice or a hearing is properly requested with regard to a particular registration or application, the registration will be cancelled or the application denied. This unit of the Notice explains how such persons may request a hearing and the consequences of requesting or failing to request a hearing in accordance with the procedures specified in this Notice.

A. Procedure for Requesting a Hearing

To contest the regulatory actions set forth by this Notice, registrants, and any applicant whose applications for registration has been denied, may request a hearing within 30 days of receipt of this Notice, or within 30 days from the publication of this Notice in the **Federal Register,** whichever occurs later. Any other persons adversely affected by the cancellation action described in this Notice, or any interested person with the concurrence of an applicant whose application for registration has been denied, may request a hearing within 30 days of publication of this Notice in **Federal Register.**

All registrants, applicants, and other adversely affected persons who request a hearing must file the request in accordance with the procedures established by FIFRA and the Agency's Rules of Practice Governing Hearings (40 CFR Part 164). These procedures require that all requests must identify the specific registration(s) by registration number(s) and the specific use(s) for which a hearing is requested, and must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requirements will result in denial of the request for a hearing. Requests for a hearing should also be accompanied by objections that are specific for each use of the pesticide product for which a hearing is requested.

Requests for a hearing must be submitted to: Hearing Clerk (A–100), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

B. Consequences of Filing or Failing to File a Hearing Request

1. *Consequences of filing a timely and effective hearing request.* If a hearing on any action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by the Agency's Rules of Practice for Hearings under FIFRA section 6 (40 CFR Part 164). In the event of a hearing, each cancellation action concerning the specific use or uses of the specific registered product which is the subject of the hearing will not become effective except pursuant to an order of the Administrator at the conclusion of the hearing. Similarly, in the event of a hearing, each denial of registration which is a subject of the hearing will not become effective prior to the final order of the Administrator at the conclusion of the hearing.

The hearing will be limited to the specific registrations or applications for which the hearing is requested.

2. *Consequences of failure to file in a timely and effective manner.* If a hearing concerning the cancellation or denial of registration of a specific nonwood preservative pesticide product subject to this Notice is not requested by the end of the applicable 30-day period, registration of that product will be cancelled, or the denial will be effective, unless the registrant or applicant files a request for an amended label within the statutory period provided herein. If a registrant wishes to contest the cancellation or required conditions for particular identified uses, but desires to modify the terms and conditions of registration to secure continued registration of one of more of those uses permitted by this Notice, the registrant must file a request to amend his label in accordance with the terms and conditions of registration set forth herein as well as submit the hearing request.

C. Procedures Required for Products Registered Pursuant to 40 CFR 162.17

EPA is aware of a number of pesticide products containing creosote or coal tar for nonwood preservative uses which are not federally registered and which are being marketed under the authority of 40 CFR 162.17. The Agency hereby notifies all persons producing or distributing such products that they must submit a full application for Federal registration including all required supporting data as prescribed by the provisions of section 3 of FIFRA of 40 CFR Part 162 and of PR Notice 83–4 and 83–4a within 30 days of receipt of this Notice or publication in the **Federal Register,** whichever is later. The Agency further notifies all such applicants that only products which conform with the requirements of this Notice will be registered. Any person who wishes to register a product which would not conform with the requirements of this Notice is informed that this Notice is a denial of his application, and that if he wishes to contest the denial, he must request a hearing within the applicable 30-day period provided by this Notice.

D. Separation of functions

The Agency's rules of practice forbid anyone who may take part in deciding this case, at any stage of the proceeding from discussing the merits of the proceeding ex parte with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives (40 CFR 164.7).

Accordingly, the following Agency offices, and the staffs thereof, are designated as the judicial function of the Agency in any administrative hearing on this Notice of Intent to Cancel: the Deputy Administrator, and the members of the staff in the immediate office of the Administrator. None of the persons designated as the judicial staff may have any ex parte communication with the trial staff or any other interested person not employed by EPA, on the merits of any of the issues involved in these proceedings, without fully complying with the applicable regulations.

Dated: October 2, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-24639 Filed 10-15-85; 8:45 am]

BILLING CODE 6560-50-M

[SW-FRL-2911-7]

Solid Waste Disposal; Inventory of Open Dumps

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of the Inventory of Open Dumps.

SUMMARY: The Resource Conservation and Recovery Act (RCRA or the Act) provides for publication of an inventory of open dumps. The Act defines "open dumps" as facilities which do not comply with EPA's "Criteria for Classification of Solid Waste Disposal Facilities and Practices" (40 CFR Part 257).

State solid waste management agencies have been evaluating disposal facilities in an attempt to identify facilities which do not comply with the criteria and are, therefore, "open dumps." The facility evaluations leading to publication of the inventory were conducted by State agencies as part of their effort to develop and implement State solid waste management plans in accordance with the Act.

This notice indicates that the fifth installment of the inventory of open dumps is now available.

ADDRESSES: Copies of the inventory of open dumps are available from the EPA Regional Offices listed in Appendix I or from EPA Headquarters, State Programs Branch (WH-563-B), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Martha A. Madison, Inventory of Open Dumps, Office of Solid Waste (WH-563-B), U.S. EPA, Washington, DC 20460; (202) 382-2210.

SUPPLEMENTARY INFORMATION:

Structure of Subtitle D Planning Program

Subtitle D of the Resource Conservation and Recovery Act (RCRA or the Act) established a voluntary program through which participating States develop and implement solid waste management plans. EPA's role in the program has included publishing guidelines for States to follow in developing their plans, providing funds for the States, and approving those adopted State plans which meet the requirements of the Act.

On July 31, 1979, EPA published "Guidelines for Development and Implementation of State Solid Waste Management Plans" (40 CFR Part 256, 44 FR 45066-45086). The Guidelines are based on Section 4003 of the Act, which lists the minimum requirements with which State plans must comply. Section 4007 of the Act provides for EPA approval of State plans meeting the requirements.

Role of the Inventory

One requirement listed in the Act and addressed in the Guidelines is that ". . . the plan shall provide for the closing or upgrading of all existing open dumps within the State . . . ." In furtherance of this planning effort, the Act requires that EPA publish an inventory of open dumps. Publication of the inventory will serve to inform the Congress and the public of those facilities which the States have found to be open dumps.

Classification Criteria

For purposes of State planning and the inventory, the Act defines the term "open dump" to mean ". . . any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 4004 and which is not a facility for the disposal of hazardous waste." Thus, any facility which fails to comply with any one element of the "Criteria for Classification of Solid Waste Disposal Facilities and Practices" (40 CFR Part 257) is an open dump.

Open Dumping

In addition to establishing a mechanism where States, with EPA assistance, provide control over *facilities* which are found to be open dumps, RCRA prohibits the *practice* of open dumping of solid waste as a matter of Federal law. In EPA's view, the Federal prohibition presently may be enforced only in Federal District Court through the citizen suit provisions in section 7002 of RCRA.

The 1984 Hazardous Waste Amendments do provide EPA with limited authority to enforce the Federal prohibition. However, under the provisions of RCRA section 4005(c), it may only be exercised where a State fails to adopt and implement an adequate small quantity generator and household hazardous waste disposal program within 18 months after EPA promulgates revised open dumping criteria pursuant to section 4010. As the revised criteria are not required under section 4010 until March 31, 1988, EPA presently lacks authority to take enforcement action against parties that may violate the Federal open dumping prohibition.

Whether specific acts of specific individuals constitute the prohibited practice is a matter for the Federal courts to determine in the context of particular cases after *de novo* review of the facts in each case. In reviewing a case *de novo*, the court is not bound by the State's determination that a facility is an open dump. Rather, the court will make its own finding of fact and rule accordingly.

The open dumping prohibition is a provision of Federal law which stands on its own, separate from the State planning program. The inventory of open dumps is a publication of State findings from State planning efforts to satisfy the requirement of section 4003 of the Act. The inclusion of a facility on the list of open dumps is not an administrative determination by EPA that any particular parties are engaging in the prohibited act of open dumping.

A determination for purposes of the open dump inventory need not precede an open dumping suit. However, before the results of the inventory may be used to support a legal determination that open dumping has occurred, the court would have to determine that the classification was a correct application of the criteria and that the defendant was responsible for actions violating the criteria. The court would be obliged to review the sufficiency of the State's classification of a facility and not simply defer to the State's decision.

Description of the Inventory

The first installment of the inventory was published on May 29, 1981 (46 FR 29064-29149). It reflected the initial efforts of the States in evaluating a portion of the total universe of facilities and represented a fraction of the total number of open dumps likely to exist. The second publication of the inventory, published on April 29, 1982, by EPA, reflected subsequent efforts of the States in evaluating facilities during FY 1981. Those facilities found by the States to be open dumps were added to the initial list, and facilities found by the States no longer to be open dumps were

deleted. Notices of the availability of the third and fourth installments were published in the **Federal Register** on June 21, 1983 and June 29, 1984.

This fifth installment of the inventory reflects additions and deletions to the list which were provided by the States during FY 1984. Federal Subtitle D funds to support, this effort have not been available since FY 1981. However, a number of States have used their own resources to continue evaluating facilities and to close or upgrade those already listed. In total, 18 States submitted additions or deletions for this edition of the inventory.

Actions on Facilities

Because the inventory lists facilities which the States have found to pose a reasonable probability of adverse effects on health or the environment, participating States will be planning for the closure or upgrading of these facilities pursuant to State authority. Specific actions may vary, including issuance of a State administrative order or the gathering of additional data. In some cases, States already have placed listed open dumps on compliance schedules for closure or upgrading prior to publication of this list.

All such actions are to be taken under State law and through State regulatory and administrative procedures. Interested parties may wish to contact the State solid waste management agencies (Appendix II) concerning the current status of any of these open dumps and the responsibilities the agencies have under State law.

State Approaches

EPA's Planning Guidelines require the plans of participating States to provide for an orderly time-phasing of the evaluation of disposal facilities to determine which facilities are open dumps. Thus, there is a considerable flexibility for the State to set priorities for evaluating facilities. The establishment of these priorities is part of the State plans subject to the public participation provisions of 40 CFR 256.60.

The States have taken differing approaches in ranking facilities for evaluation and in conducting evaluations. For example, where States already had extensive data on hand, they could more easily rank their facilities for evaluation or make noncompliance determinations. Otherwise, resources had to be expended in locating facilities and gathering information, and fewer determinations would be likely to be made over the year.

For this fifth installment of the inventory, three of the 18 participating States provided the Agency with brief descriptions of actions and approaches they have taken in evaluating facilities. These descriptions are included in the report. Further information may be obtained from the State agency personnel listed in Appendix II.

Authority: RCRA 4004.

Dated: September 17, 1985.

Jack W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

APPENDIX I—EPA REGIONAL OFFICE CONTACTS FOR OPEN DUMP INVENTORY

Region I

Paul Bedrosion, Waste Management Branch, USEPA, Region I, John F. Kennedy Building, Boston, MA 02203, (617) 223–5630

Region II

Garrett Smith, Hazardous Waste Program Support Section, USEPA, Region II, 26 Federal Plaza, New York, NY 10278, (212) 264–3407

Region III

John Armstead (3HW30), Waste Management Branch, USEPA, Region III, 841 Chestnut Street, Philadelphia, PA 19107, (215) 597–8116

Region IV

Otis Johnson, Chief, Waste Planning Section, USEPA, Region IV, 345 Courtland Street, N.E., Atlanta, GA 30365, (404) 881–3016

Region V

Dave Stringham, Solid Waste Branch, USEPA, Region V, 230 South Dearborn Street, 13th Floor, Chicago, IL 60604, (312) 886–7435

Region VI

Pat Hull, Chief, State Programs Section (6AW–HP), USEPA, Region VI, 1201 Elm Street, InterFirst Two Building, Dallas, TX 75270, (214) 767–2645

Region VII

Chet McLaughlin, Hazardous Materials Branch, USEPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (816) 374–6534

Region VIII

Charles Brinkman, Solid Waste Section, USEPA, Region VIII, 1860 Lincoln Street, Denver, CO 80295, (303) 293–1794

Region IX

Charles Flippo, State Programs Section (T–2–1), USEPA, Region IX, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8245

Region X

Betty Wiese, Solid Waste Program, USEPA, Region X, 1200 6th Avenue, Seattle, WA 98101, (206) 442–2808

APPENDIX II—STATE CONTACTS FOR OPEN DUMP INVENTORY

Alabama

Daniel E. Cooperr, Chief, Land Disposal Program, Alabama Department of Environmental Management, State Capitol, Montgomery, Alabama 36130, (205) 832–6728

Alaska

Dick Williams, Alaska Department of Environmental Conservation, Pouch O, Juneau, Alaska 99811, (907) 465–2672

Arizona

Barry Abbott, Arizona Department of Health Services, 2005 N. Central Street, Phoenix, Arizona 85004, (602) 257–0022

Arkansas

Vince Blubaugh, Chief, Solid and Hazardous Waste Division, Arkansas Department of Pollution Control & Ecology, P.O. Box 9583, Little Rock, Arkansas 72209, (501) 562–7444

California

John Bell, Manager, Monitoring Section, Solid Waste Management Board, 1020 Ninth Street, Suite 300, Sacramento, California 95814, (916) 322–1769

Colorado

Barbara Bogema, Radiation & Hazardous Waste Control Division, Colorado Department of Health, 4210 East 11th Avenue, Denver, Colorado 80220, (303) 320–8333

Connecticut

Thomas Pregman, Principal Environmental Analyst, Solid Waste Management, Connecticut Department of Environmental Protection, 165 Capitol Avenue, Hartford, Connecticut 06106, (203) 566–3672

Delaware

Kenneth Weiss, Supervisor, Solid Waste Management Branch, Department of Natural Resources and Environmental Control, P.O. Box 1401, Dover, Delaware 19901, (302) 736–4781

Florida

John Reese, Florida Department of Environmental Regulations, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301, (904) 438–0300

Georgia

John Taylor, Chief, Land Protection Branch, Environmental Protection Division, 270 Washington Street, S.W., Room 822, Atlanta, Georgia 30334, (404) 656–2833

Hawaii

Melvin K. Koizumi, Deputy Director for Environmental Health, Hawaii State Department of Health, P.O. Box 3378, Honolulu, Hawaii 96801, (808) 548–4139

Idaho

Jerome Jankowski, Idaho Department of Health and Welfare, Division of Environment, Statehouse, Boise, Idaho 83720, (208) 384–4108

Illinois

Bill Child, Division of Land Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706, (217) 782-6760

Indiana

Steven Poe, Solid Waste Management Section, Division of Land Pollution Control, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206, (317) 243-5004

Iowa

Darrell McAllister, Acting Director, Air and Land Quality Division, Dept. of Environmental Quality, Henry A. Wallace Building, 900 East Grand Street, Des Moines, Iowa 50319, (515) 281-8692

Kansas

Howard Duncan, Director, Bureau of Environmental Sanitation, Dept. of Health and Environment, Forbes Field, Building 321, Topeka, Kansas 66620, (913) 862-9360, Ext. 290

Kentucky

Carolyn Patrick Haight, Division of Waste Management, Department of Natural Resource and Protection, 18 Reilly Road, Frankfort, Kentucky 40601, (502) 564-6716

Louisiana

Gerald J. Healy, Administrator, Solid Waste Management Division, Department of Environmental Quality, P.O. Box 94307, Baton Rouge, Louisiana 70804, (504) 342-1216

Maine

Paula Clark, Division of Solid Waste Management Control, Bureau of Land Quality, Dept. of Environmental Protection, State House-Station 17, Augusta, Maine 04333, (207) 289-2111

Maryland

James Pittman, Chief, Municipal Waste Division, Waste Management Administration, Office of Environmental Programs, Department of Health and Mental Hygiene, 201 Preston Street, Baltimore, Maryland 21201, (301) 383-2770

Massachusetts

Fifi Nesson, Division of Solid and Hazardous Waste, Dept. of Environment Quality Engineering, 1 Winter Street, Fifth Floor, Boston, Massachusetts 02108, (617) 292-5590

Michigan

Tim Wright, Hazardous Waste Division, Dept. of Natural Resources, P.O. Box 30038, Lansing, Michigan 48909, (517) 373-0540

Minnesota

Lisa Thorvig, Div. of Solid and Hazardous Waste, Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota 55113, (612) 297-1781

Mississippi

Johnny Biggert, Division of Solid and Hazardous Waste Management, Bureau of Pollution Control, Department of Natural Resources, P.O. Box 10385, Jackson, Mississippi 39209, (601) 961-5171

Missouri

Dave Bedan, Ph.D., Director, Solid Waste Management Program, Department of Natural Resources, State Office Building, P.O. Box 1368, 117 East Dunklin, Jefferson City, Missouri 65102, (314) 751-3241

Montana

John Geach, Solid Waste Management Bureau, Cogswell Building, Room A201, Helena, Montana 59620, (406) 449-2821

Nebraska

Jay Ringenberg, Chief, Permit and Enforcement Div., Dept. of Environmental Control, P.O. Box 94887, Lincoln, Nebraska 68509, (402) 471-2186

Nevada

H. LaVerne Rosse, P.E., Program Director, Waste Management, Div. of Environmental Protection, 201 S. Fall Street, Capitol Complex, Room 120, Carson City, Nevada 89710, (702) 885-4670

New Hampshire

Tom Sweeny, Bureau of Solid Waste, Department of Health and Welfare, State Laboratory Building, Hazen Drive, Concord, New Hampshire 03301, (603) 271-4611

New Jersey

Lino F. Pereira, Director, Solid Waste Administration, New Jersey Dept. of Environmental Protection, P.O. Box 1390, Trenton, New Jersey 08625, (609) 229-9120

New York

Norman H. Nosenchuck, P.E., Director, Division of Solid Waste Management, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233, (518) 457-6603

North Carolina

Gordon Layton, Solid and Hazardous Waste Management Branch, Department of Human Resources, Division of Health Services, P.O. Box 2091, Raleigh, North Carolina 27602, (919) 733-2178

North Dakota

Jay Crawford, Director, Div. of Environmental Waste Management and Research, North Dakota State Dept. of Health, 1200 Missouri Avenue, Bismarck, North Dakota 58505, (701) 224-2366

Ohio

Tim Krichbaum, Ohio EPA, Office of Land Pollution Control, P.O. Box 1049, Columbus, Ohio 43216, (614) 466-8934

Oklahoma

R. Fentoon Rood, Director, Solid Waste Division, Waste Management Service, Oklahoma State Dept. of Health, P.O. Box 53551, 1000 Northeast 10th Street, Oklahoma City, Oklahoma 73152, (405) 271-7159

Oregon

Bill Dana, Oregon Department of Environmental Quality, Solid Waste Division, P.O. Box 1760, Portland, Oregon 97207, (503) 299-6266

Pennsylvania

William F. Pounds, Acting Chief, Division of Facilities Management, Bureau of Solid Waste Management, P.O. Box 2063, Harrisburg, Pennsylvania 17120, (717) 787-7381

Rhode Island

Frank Stevenson, Solid Waste Management Program, Dept. of Environmental Management, 204 Cannon Building, 75 Davis Street, Providence, Rhode Island 02908, (401) 277-2797

South Carolina

Hartsell Trusdale, Director, Facility Engineering, Bureau of Solid and Hazardous Waste Management, Dept. of Health Environmental Control, J. Marion Sims Building, 2600 Bull Street, Columbia, SC 29201, (803) 758-5681

South Dakota

Joel Smith, Director, Air Quality and Solid Waste Program, 217 Joe Foss Building, Pierre, South Dakota 57501, (605) 773-3329

Tennessee

J. Mike Apple, Deputy Director, Division of Solid Waste Management, Bureau of Environmental Services, Tennessee Dept. of Public Health, 150 9th Avenue North, Nashville, Tennessee 37203, (615) 741-3424

Texas

Wiley Osbourne, Chief, Program Management Division, Texas Department of Health, 1100 West 49th Street, T-602, Austin, Texas 78756, (512) 458-7271

Jay Snow, Chief, Solid Waste Section, Texas Dept. of Water Resources, 1700 North Congress, Room 237-1, P.O. Box 13087, Capitol Station, Austin, Texas 78711, (512) 475-2041

Utah

Dr. Dale Parker, Director, Bureau of Solid Waste Management, P.O. Box 2500, Salt Lake City, Utah 84110, (801) 533-4145

Vermont

Richard Valentinetti, Air and Solid Waste Programs, Agency of Environmental Conservation, State Office Building, Montpelier, Vermont 05600, (802) 828-3395

Virginia

Robert Wickline, Div. of Solid Waste and Hazardous Waste Management, Virginia Department of Health, Monroe Building, 11th Floor, 101 North 14th Street, Richmond, Virginia 23219, (804) 267-2067

Washington

Jon Pace, Washington State Dept. of Ecology, Solid Waste Division, PY-11, Olympia, Washington 98504, (206) 459-6295

West Virginia

Timothy T. Laraway, Chief, Division of Water Resources, West Virginia Dept. of Natural Resources, 1201 Greenbrier Street, Charleston, West Virginia 25311, (304) 348-5935

Wisconsin

Mark Giesfeldt, Bureau of Waste Management, Wisconsin Department of Natural Resources, Box 7921, Madison, Wisconsin 53707, (608) 267-7562

Wyoming

Charles A. Porter, Supervisor, Solid Waste Management Program, Equality State Bank Building, 401 West 19th Street, Cheyenne, Wyoming 82002, (307) 777-7752

American Samoa

Pati Faiai, Executive Secretary, Enviornmental Quality Commission, Office of the Governor, Pago Pago, American Samoa 96799, Overseas Operator: 633-4116

Commonwealth of the Northern Mariana Islands

Carl Goldstein, Environmental Engineer Division of Environmental Quality, Commonwealth of the Northern Mariana Islands, P.O. Box 1115, Overseas Operator: 6984

District of Columbia

Angelo Tompros, Chief, Dept. of Consumer and Regulator Affairs, Pesticides and Hazardous Waste Management, Room 112, 5010 Overlook Ave., SW., Washington, D.C. 20032, (202) 767-8422

Guam

James Branch, Deputy Administrator, Environmental Protection Agency, P.O. Box 2999, Agana, Guam 96910, Overseas Operator: 646-8863

Puerto Rico

Santose Rohenna, Director, Solid, Toxic and Hazardous Waste Program, Environmental Quality Board, Box 11785, Santurce, Puerto Rico 00910, (809) 725-8992

Virgin Islands

Bob Mathes, Solid Waste Planner, Solid Waste Planning Office, Department of Public Works, Government of the Virgin Islands, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774-7880.

[FR Doc. 85-24647 Filed 10-15-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-745-DR]

Pennsylvania; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidental declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA-745-DR), dated October 8, 1985, and related determinations.

DATE: October 8, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 646-3616.

Notice is hereby given that, in a letter of October 8, 1985, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the Commonwealth of Pennsylvania resulting from severe storms and flooding, beginning on September 27, 1985, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the Commonwealth of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Robert J. Adamcik of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Pennsylvania to have been affected adversely by this declared major disaster:

Lackawanna, Luzerne, and Wayne Counties for Public Assistance and Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 85-24612 Filed 10-15-85; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-745-DR]

Pennsylvania; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania (FEMA-745-DR), dated October 8, 1985, and related determinations.

DATED: October 9, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646-3616.

The notice of a major disaster for the Commonwealth of Pennsylvania, dated October 8, 1985, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 8, 1985:

Susquehanna County as an adjacent county for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85-24613 Filed 10-15-85; 8:45 am]

BILLING CODE 6718-02-M

[Docket No.: FEMA-REP-4-SC-4, FEMA-REP-4-NC-3]

The South Carolina and North Carolina Radiological Emergency Response Plans Site-Specific to the Catawba Nuclear Station; Certification of FEMA and Determination

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR 350, the State of South Carolina submitted its State and local plans for radiological emergencies related to the Catawba Nuclear Station to the Regional Director of FEMA Region IV for FEMA's review and approval on September 5, 1984; and the State of North Carolina submitted its State and local plans for radiological emergencies related to the Catawba Nuclear Station to the Regional Director of FEMA Region IV for FEMA's review and approval on August 31, 1984. On November 20, 1984, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans around the Catawba Nuclear Station; an evaluation of the joint exercise conducted on February 15-16, 1984, in accordance

with § 350.9 of the FEMA rule; and a public meeting held on February 17, 1984, to discuss the site-specific aspects of the State and local plans around the Catawba Nuclear Station in accordance with § 350.10 of the FEMA rule.

The alert and notification system for the Catawba Nuclear Station is under review. An engineering design review has been completed and the telephone survey of the public was conducted immediately following the alert and notification system demonstration on May 7, 1985. The results of the demonstration and the siren system operability results are currently being evaluated.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that, subject to the condition stated below, the State and local plans and preparedness for the Catawba Nuclear Station are adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. The condition for the above approval is that the adequacy of the alert and notification system already installed and operational must be verified as meeting the standards set forth in the Nuclear Regulatory Commission/FEMA criteria in NUREG–0654/FEMA REP–1, Rev. 1, Appendix 3 and in FEMA–43, "Standard Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants".

FEMA will continue to review the status of offsite plans and preparedness associated with the Catawba Nuclear Station in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File No. FEMA–REP–4–SC–4 and FEMA–REP–4–NC–3 maintained by the FEMA Regional Director, FEMA Region IV, 1371 Peachtree Street NE., Atlanta, Georgia 30309.

Dated: October 8, 1985.

For the Federal Emergency Management Agency.

Samuel W. Speck,

Associate Director State and Local Programs and Support.

[FR Doc. 85-24614 Filed 10-15-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 221–003921–001.

Title: Ponce, Puerto Rico Terminal Agreement.

Parties:

Administrative Board of the Municipal Piers at Ponce (Administrative Board)

Seahorse Marine Supplies, Inc. (Seahorse).

Synopsis: The agreement provides for the leasing by the Administrative Board to Seashorse of 2720.0420 square meters of waterfront and adjacent land located at Ponce Playa near the port zone. The lease shall have a term of five years. The premises shall be used for the maintenance or repair of ships, machinery or parts belonging thereto, for a gas station, and for the exhibition and sale of goods and merchandise which are usually sold in a gas service station. The premises leased under this agreement shall not be used in connection with common carriers by water.

Agreement No. 202–006200–025.

Title: U.S. Atlantic & Gulf/Australia-New Zealand Conference.

Parties:

Atlanttrafik Express Service Ltd.

Columbus Line

Pacific America Container Express

Synopsis: The proposed amendment would restate the agreement to conform to the Commission's regulations concerning form and format. Additionally, it would expand the authority of the agreement and make various administrative changes.

Agreement No. 202–010485–013.

Title: U.S. Atlantic and Gulf Ports/Italy, France and Spain Freight Conference.

Parties:

Compania Trasatlantica Espanola, S.A.

Costa Line

Farrell Lines, Inc.

Sea-Land Service, Inc.

Lykes Bros. Steamship Corp.

Zim Israel Navigation Co., Ltd.

Med-America Express Service

Synopsis: The proposed amendment would change a voting requirement applicable to the Special Northern Spain Section of the Conference.

Agreement No. 224–010606–001.

Title: Portland Terminal Agreement

Parties:

Port of Portland (Port)

Hong Kong Islands Lines, America, S.A. (HKILA)

Synopsis: This agreement amends the basic agreement which provides that HKILA will be granted use by the Port of four acres at the Port's Terminal No. 6. The amendment changes the premises from Terminal No. 6 to Terminal No. 2. The Port will no longer provide the stevedoring services for HKILA at the premises. The Stevedoring Services of America will provide such services. In addition, Article VI of the agreement is changed to reflect the new arrangement whereby Stevedoring Services of America will invoice and collect all stevedoring and terminal charges from HKILA and remit same to the Port. The Port will refund that portion of HKILA as provided for in the agreement.

Agreement No. 202–010676–009.

Title: Mediterranean/U.S.A. Freight Conference

Parties:

Atlanttrafik Express Services, Ltd.

Achille Lauro

C.I.A. Venezolana de Navegacion

Compania Trasatlantica Espanola, S.A.

Costa Line

d'Amico Societa di Navigazione per Azioni

Farrell Lines, Inc.

Flota Mercante Grancolombiana S.A.

"Italia" di Navigazione, S.P.A.

Jugolinija

Jugooceanija

Lykes Bros. Steamship Co., Ltd.

Med-America Express Service

Nedlloyd Lines

Nordana Line/Dannebrog Lines AS

Sea-Land Service, Inc.

Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would revise procedures concerning independent action.

Agreement No. 217–010784–001.

Title: Transamerican Steamship Corporation/The National Shipping Company of Saudi Arabia Space Charter Agreement.

Parties:

Transamerican Steamship Corporation

The National Shipping Company of Saudi Arabia

Synopsis: The proposed amendment would modify the scope of the

agreement to include ports and inland and coastal points in the Arabian Gulf. The parties have requested a shortened review period.

Agreement No. 224–010839.
Title: Seattle Terminal Agreement.
Parties:
Port of Seattle (Port)
American President Lines, Ltd. (APL)

Synopsis: The agreement provides for a phased relocation of APL from Terminals 25 and 46 to Terminal 5 in Seattle, for APL's operations at Terminal 46 and Terminal 5 during the Port's renovation of the terminal and for APL's long term use and occupany of Terminal 5, and to further provide for construction required by APL for the use of Terminal 5 within certain costs paid by the Port to be amortized by APL's payment to the Port over the term of the new lease covered by Agreement No. 224–010839. The term of the lease shall extend to January 1, 1986, with option to extend the lease for two additional terms of five years each. The Port will grant APL preferential use of Port owned container cranes. The premises shall be used for the loading and discharging of APL's vessels. Agreement Nos. T–3968–1 and T–3968–A will be terminated and superceded by Agreement No. 224–010839.

Agreement No. 221–010840.
Title: San Diego Terminal Agreement.
Parties:
San Diego Unified Port District (SDUPD)
Holt Cargo Systems, Inc. of California (HOLT)

Synopsis: The SDUPD will lease to Holt 1,606 sq. ft. of tideland area in the City of San Diego at the 10th Avenue Marine Terminal to Holt. The term of the lease shall be for a period of five years with an option to extend the term for an additional five year period. The premises shall be used for the purpose of maintaining general offices in connection with stevedoring and terminal operations at the 10th Avenue Terminal.

Agreement No. 221–010841.
Title: San Diego Terminal Agreement.
Parties:
San Diego Unified Port District (SDUPD)
Holt Cargo Systems, Inc. of California (HOLT)

Synopsis: The SDUPD will lease to HOLT 193,764 sq. ft. of tideland area in the City of San Diego, designated as Transit Shed No. 1, at the 10th Avenue Terminal. The term of the lease is for five years with an option to extend the term for an additional five years. The premises shall be used for the receiving, handling and storage of general merchandise and cargo.

Agreement No. 224–010842.
Title: San Diego Terminal Agreement.
Parties:
Sn Diego Unified Port District (SDUPD)
Holt Cargo System, Inc. of California (HOLT)

Synopsis: Agreement No. 224–010842 provides that HOLT will perform terminal services at SDUPD's 10th Avenue Marine Terminal utilizing Berths Nos. 3 and 4. The services will be performed with common carriers by water in interstate or foreign commerce. The term of the agreement is for five years with the option to extend the term for one additional five year period. HOLT shall pay to SDUPD all dockage and wharfage charges in accordance with the appropriate Port of San Diego tariff. In cosideration for the terminal services performed by HOLT they will be allowed to retain fifty percent of all wharfage due SDUPD.

By Order of the Federal Maritime Commission.

Dated: October 10, 1985.

Bruce A. Dombrowski,
Acting Secretary.

[FR Doc. 85–24664 Filed 10–15–85; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bank of Boston Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and §225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in §225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not only suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserved Bank indicated or the offices of the Board of Governors not later than November 1, 1985.

A. Federal Reserve Bank of Boston. (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Boston Corporation,* Boston, Massachusetts; to acquire American Financial Systems Corporation, Tampa, Florida, and thereby engage in marketing, origination, underwriting, funding, warehousing, and packaging for its own account and for the account of others of loans and extensions of credit secured by real estate, and the sale of such loans and extensions of credit in the secondary market pursuant to §225.25(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, October 9, 1985.

William W. Wiles,
Secretary of the Board.

[FR Doc. 85–24620 Filed 10–15–85; 8:45 am]
BILLING CODE 6210–01–M

First Financial Bancorporation; Formations of; Acquisitions by and Mergers of Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 85–23516), published at page 40237 of the issue for Wednesday, October 2, 1985. The correct name of the Applicant is First Financial Bancorporation, Iowa City, Iowa City, Iowa.

Board of Governors of the Federal Reserve System, October 9, 1985.

William W. Wiles,
Secretary of the Board.

[FR Doc. 85–24621 Filed 10–15–85; 8:45 am]
BILLING CODE 6210–01–M

Pennbancorp et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 4, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Pennbancorp*, Titusville, Pennsylvania; to engage *de novo* through its subsidiary, Pennbancorp Brokerage Services Company, Erie, Pennsylvania, in brokerage activities on account of customers as agent, including the trading of stocks, bonds, options and U.S. government and municipal securities pursuant to brokerage agreements and self-directed individual retirement account arrangements, without providing securities underwriting or investment advice or research services pursuant to § 225.25(b)(15) of Regulation Y.

2. *PNC Financial Corp.*, Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, PNB Brokerage Services, Inc., Pittsburgh, Pennsylvania, in providing securities brokerage services, related securities credit activities, and incidental activities such as offering custodial services, individual retirement accounts and cash management services pursuant to § 225.25(b)(15) of Regulation Y.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Boulevard Bancorp, Inc.*, Chicago, Illinois; to engage *de novo* directly in an executive officer compensation program. Such program will entail making short-term extensions of credit to its officers and directors as well as those of its subsidiaries pursuant to § 225.25(b)(1) of Regulation Y. These activities would be conducted in the Chicago and surrounding areas.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Bellevue Capital Co.*, Bellevue, Nebraska; to continue to engage in the activity of making and servicing mortgage loans pursuant to § 225.25(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, October 9, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-24622 Filed 10-15-85; 8:45 am]

BILLING CODE 6210-01-M

United Jersey Banks et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 6, 1985.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *United Jersey Banks*, Princeton, New Jersey; to merge with Franklin Bancorp, Somerset, New Jersey, thereby indirectly acquiring Franklin State Bank, Somerset, New Jersey and Hillsborough National Bank, Belle Meade, New Jersey.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Citizens Bankshares, Inc.*, Shawano, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank, Shawano, Wisconsin.

2. *Citizens Community Bankshares, Inc.*, Wittenburg, Wisconsin; to acquire 100 percent of the voting shares of the FS Bancshares, Inc., Stetsonville, Wisconsin.

3. *Merchants National Corporation*, Indianapolis, Indiana; to merge with Hancock Bancshares Corporation, Greenfield, Indiana, thereby indirectly acquiring Hancock Bank & Trust, Greenfield, Indiana.

Board of Governors of the Federal Reserve System, October 9, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-24623 Filed 10-15-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in

open public hearings before FDA's advisory committees.

Meetings

The following advisory committee meetings are announced:

Science Advisory Board to the National Center for Toxicological Research

Date, time, and place. November 13, 9 a.m., Bldg. 13, Director's Conference Rm., National Center for Toxicological Research (NCTR), Jefferson, AR.

Type of meeting and contact person. Open committee discussion, 9 a.m. to 12 m.; open public hearing, 1 p.m. to 2 p.m.; open committee discussion, 2 p.m. to 5 p.m.; Ronald F. Coene, NCTR (HFT-2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3155.

General function of the Board. The Board advises the Director, NCTR, in establishing and implementing a research program that will assist the Commissioner of Food and Drugs in fulfilling his regulatory responsibilities. The Board provides the extra-agency review in ensuring that research programs at NCTR are scientifically sound and pertinent to its stated goals and objectives.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the board. Those desiring to make formal presentations should notify the contact person before November 8, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their comments.

Open committee discussion. The Board will continue discussions on research initiatives for the NCTR in areas of: (1) The evaluation of the assumptions underlying risk assessment; and (2) modulating factors in toxicology. Additional items are being considered for review by the Board and a final agenda will be available on November 1, by notifying the contact person.

Microbiology Devices Panel

Date, time, and place. November 15, Rms 503A-529A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of divices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 1, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) A premarket approval application (PMA) for a test to detect Hepatitis B core antibody (Anti-HB); and (2) a PMA a test to detect Hepatitis delta antibody (Anti-HD).

Dermatologic Drugs Advisory Committee

Date, time, and place. November 18, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg. 5600 Fishers Lane, Rockville, MD.

Type of meeting and contant person. Open public hearing, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 4:30 p.m.; Thomas E. Nightingale, Center for Drugs and Biologics (HFN-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of investigational and markerted prescription drugs for use in dermatologic disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee. Those desiring to make formal presentations should notify the contact person .

Open committee discussion. The committee will discuss: (1) Requirements for testing of ultra violet A radiation (UVA) sunscreens; (2) the petition by Health Research Group to remove all iodochlorhydroxyquin (Vioform) containing drugs from the market; and (3) whether 1 percent hydrocortisone or hydrocortisone acetate should be allowed to be sold without prescription.

The committee's discussions and conclusions regarding requirements for testing of ultra violet A radiation (UVA) sunscreens may be considered by the agency in its preparation of a tentative final monograph on over-the-counter (OTC) sunscreen drug products. Such a monograph is being developed as part of the OTC drug review. The advance notice of proposed rulemaking for these products was published in the **Federal Register** of August 25, 1978 (43 FR 38206).

The Committee's discussion and conclusions regarding iodochlorhydroxyquin (Vioform) will be considered by the agency in taking appropriate action, e.g., in reviewing the current marketing status or labeling of the drug or in preparing a tentative final monograph on OTC topical anti-fungal drug products. The advance notice of proposed rulemaking for these products was publised in the **Federal Register** of March 23, 1982 (47 FR 12480).

The committee's discussion and conclusions regarding 1 percent hydrocortisone or hydrocortisone acetate will be considered by the agency in its preparation of a final monograph on OTC external analgesic drug products. Such a monograph is being developed as part of the OTC Drug Review. The tentative final monograph (proposed rulemaking) for these products was published in the **Federal Register** of February 8, 1983 (48 FR 5852).

Orthopedic and Rehabilitation Devices Panel

Date, time, and place. November 25 and 26, 10 a.m., Rm. 416, 12720 Twinbrook Parkway, Rockville, MD.

Type of meeting and contact person. Open public hearing, November 25, 10 a.m. to 11 a.m.; open committee discussion, 11 a.m. to 5 p.m.; open committee discussion, November 26, 9 a.m. to 5 p.m.; Robert E. Mansell, Center for Devices and Radiological Health (HFZ-20), Food and Drug Administration, 12720 Twinbrook Parkway, Rockville, MD 20857, 301-443-3516.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 11, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for bone growth stimulation devices and prosthetic ligament devices used for the treatment of nonunion fractures and anterior cruciate ligament insufficiencies, respectively.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearings, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures to expedite electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: October 9, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–24598 Filed 10–15–85; 8:45 am]

BILLING CODE 4160–01–M

Social Security Administration

Reallotment of Funds for FY 1985; Low Income Home Energy Assistance Program (LIHEAP)

October 1, 1985.

AGENCY: Social Security Administration, HHS.

ACTION: Notice of preliminary determination of funds available for reallotment.

SUMMARY: Section 2607(b)(1) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8621), as amended by the Human Services Reauthorization Act of 1984, requires that if the Secretary of the Department of Health and Human Services determines that, as of September 1 of any fiscal year, an amount allotted to a State for any fiscal year will not be used by that State during the fiscal year, the Secretary must notify the Chief Executive Officer of the State and publish a notice in the **Federal Register** that such funds may be reallotted. As the Secretary's designee, I have determined that a total of $665,486.35 of FY 1985 LIHEAP funds may be subject to reallotment. I have based that determination on reports from the State of Colorado and the Narragansett Indian Tribe of Rhode Island which were submitted to the Office of Family Assistance as required by 45 CFR 96.81. The Chief Executive Officers of the State of Colorado and the Narragansett Indian Tribe were notified by certified mail that $641,822 and $23,664.35 of their FY 1985 LIHEAP funds, respectively, may be reallotted. In accordance with section 2607(b)(3), the Chief Executive Officers have 30 days from the date of the letters to submit comments to me. That 30-day period expired September 29, 1985. After considering any comments submitted, I will notify the Chief Executive Officers of any decision to reallot funds and will publish my decision in the **Federal Register**. If funds are reallotted, they will be allocated in accordance with section 2604 and will be treated as an amount appropriated for Fiscal Year 1986.

FOR FURTHER INFORMATION CONTACT: Norman L. Thompson, Director, Office of Energy Assistance, (202) 245–2030.

Martha A. McSteen,

Acting Commissioner.

[FR Doc. 85–24659 Filed 10–15–85; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[N–39040]

Nevada; Realty Action; Exchange of Public and Private Lands in Humboldt County

The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Mount Diablo Base & Meridian

T. 43 N., R. 41 E.,
Sec. 3, Lots 3, 4, S½NW¼, SW¼;
Sec. 4, Lot 1, S½NE¼, E½SW¼, SE¼;
Sec. 9, NE¼, E½SE½;
Sec. 10, W½;
Sec. 15, N½NW¼;
Sec. 16, NE¼NE¼.
T. 44 N., R. 41 E.,
Sec. 33, E½SW¼, NW¼SE¼;
Sec. 34, S½SW¼.
Comprising 1,561.74 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from Les Stewart:

Mount Diablo Base & Meridian

T. 42 N., R. 41 E.,
Sec. 1, SW¼NE¼, SE¼NW¼;
Sec. 5, Lot 2, SE¼NW¼, NW¼SW¼.
T. 43 N., R. 41 E.,
Sec. 28, W½NE¼, NW¼SE¼, SE¼SW¼;
Sec. 32, E½SE¼, SW¼SE¼, SE¼NE¼;
Sec. 33, N½NW¼, SW¼NW¼.
T. 44 N., R. 42 E.,
Sec. 31, NE¼NE¼;
Sec. 32, NW¼NW¼.
T. 43 N., R. 42 E.,
Sec. 19, S½NE¼, N½SE¼.
T. 44 N., R. 41 E.,
Sec. 26, N½SW¼, SE¼SW¼;
Sec. 34, NW¼SE¼, NE¼NE¼, S½NE¼;
Sec. 35, N½NW¼.

T. 42 N., R. 40 E.,
Sec. 14, SE¼NE¼;
Sec. 35, E½SW¼.
T. 40 N., R. 40 E.,
Sec. 4, NE¼SW¼.

The purpose of this exchange is to acquire the non-Federal lands which have high public values for wildlife habitat, recreation, and livestock grazing. The lands are contiguous with Federal lands in the vicinity of Martin Creek, which is one of the principal outdoor recreation areas for hunting, fishing, and other outdoor recreation pursuits. The public interest will be served by completing this exchange.

The values of the land to be exchanged are approximately equal, full equalization of values will be achieved by acreage reduction of the offered lands, if required or by payment to the United States by Les Stewart of funds in an amount not to exceed 25% of the total value of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. A right-of-way for ditches and canals constructed by the Authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. Those portions of the selected lands in the vicinity of Martin Creek and Charlie Young Canyon that have established roads and trails, specifically located:

Mount Diablo Base and Meridian

T. 44 N., R. 41 E.,
Sec. 33, E½SW¼, NW¼SE¼.
T. 43 N., R. 41 E.,
Sec. 9, W½NE¼.

As easement, 60 feet in width along the above mentioned road or trail for public utilities and to insure continued ingress and egress to the adjacent lands.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the BLM office.

4. Upon publication of this notice, the public lands described therein are hereby segregated from entry under the public lands laws, including location under the mining laws.

Further information concerning the exchange, including the environmental analysis, is available for review at the Winnemucca District, Bureau of Land Management, 705 East 4th Street, Winnemucca, Nevada 89445.

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to Frank Shields, District Manager, Winnemucca District, Bureau of Land Management, 705 East 4th Street, Winnemucca, Nevada 89445.

Dated: October 7, 1985.

Frank C. Shields,

District Manager.

[FR Doc. 85-24657 Filed 10-15-85; 8:45 am]

BILLING CODE 4310-HC-M

Montrose District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Montrose District Advisory Council meeting.

SUMMARY: Notice is hereby given in accordance with section 309 of Pub. L. 94-579 and 43 CFR Subpart 1784, a meeting of the Montrose District Advisory Council will be held in Montrose, Colorado.

DATE: Thursday, November 14, 1985.

ADDRESS: Montrose District Office, Bureau of Land Management, 2465 South Townsend Avenue, Montrose, Colorado 81401.

FOR FURTHER INFORMATION CONTACT: Anyone wishing to make an oral statement or to send written comments to the Council should contact Paul W. Arrasmith, District Manager, 2465 South Townsend Avenue, Montrose, Colorado 81401 (303-249-7791).

SUPPLEMENTARY INFORMATION: The District Advisory Council will meet in the District Conference room and will convene at 10:00 a.m. The meeting is open to the public. Public statements can be made between 11 a.m. and noon.

The agenda will include:

- Discussion of the final Gunnison Gorge Recreation Area Management Plan
- Discussion of the draft American Flats-Silverton Recreation Area Management Plan
- Review, analysis and recommendations of proposed alternatives for the Uncompahgre Resource Management Plan.

Dated: October 8, 1985.

Paul W. Arrasmith,

District Manager.

[FR Doc. 85-24654 Filed 10-15-85; 8:45 am]

BILLING CODE 4310-JB-M

Realty Action; Modified Competitive Sale of Public Land in Williams County, ND

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—Competitive sale M-66975 (ND).

SUMMARY: The following described lands have been examined and identified as suitable for sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than the appraised fair market value of $7,000.00:

Fifth Principal Meridian, North Dakota

T.153N., R.99W.,
Sec. 28, NW¼NE¼, NW¼NW¼.
Containing 80 acres.

The lands will be offered for sale by sealed bid utilizing modified competitive bidding procedures. Williston Radiology Consultants, P.C. Pension and Profit Sharing Trust (the prospective purchaser of the adjacent private land) or the adjacent landowner of record on the sale day will be offered the right to meet the highest bid. Refusal or failure to meet the highest bid shall constitute a waiver of such bidding procedure.

The lands described are hereby segregated from appropriation under public land laws, including mining laws, pending disposition of this action.

The subject lands are located approximately eleven air miles southeast of Williston, North Dakota. There is legal access; however, there is no physical access, other than pedestrain, on the legal route due to the topographical relief. The lands are small isolated tracts and are unusable by the general public. They do not contain significant resource values that would justify retention. They are difficult and uneconomical to manage as part of the public land system and not suitable for management by another federal agency.

The proposed sale is consistent with the Bureau's planning system. Since the lands have low resource value, the transfer of them into private ownership will benefit the public interest and provide for more efficient land management.

Terms and Conditions

1. Reservation of all minerals to the United States together with the right to explore, prospect for, mine and remove same under applicable law and regulations;

2. Reservation of right-of-way for ditches or canals to the United States pursuant to 43 U.S.C. 945;

3. All valid and existing rights and reservations of record.

Bid Opening

The bid opening for the modified competitive sale of the above-described public land will be held on December 16,

1985, at 10 a.m. in the Gate City Community Room, 204 Sims Street, Dickinson, North Dakota.

If the land is not sold at this sale, the preference right will be lost and it will be offered for sale over the counter until sold or until the sale is cancelled.

Comment Period

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 204 Sims Street, P.O. Box 1229, Dickinson, North Dakota 58602.

And adverse comments will be evaluated by the BLM Montana State Director, who may vacate or modify this realty action and issue a decision for the Department of Interior. Parties adversely affected by the decision have the right to appeal to the Interior Board of Land Appeals. In the absence of any action by the State Director, this realty action will become a final determination of the Department of the Interior.

FOR FURTHER INFORMATION: Detailed information concerning this sale, including planning documents, the environmental assessment and the land report is available for review at the Dickinson District Office.

SUPPLEMENTARY INFORMATION: Bidder Qualifications: The bidder must be a United States citizen, or in the case of a corporation, subject to the laws of any state or the United States. A state, state instrumentality or political subdivision submitting a bid must be authorized to hold property. Any other entity submitting a bid must be legally capable of holding and conveying lands or interests therein under the laws of the State of North Dakota.

Bids must be made by the principal or his agent.

Bid Standards

No bid will be accepted for less than the appraised value of $7,000.00.

Method of Bidding: The land will be sold by sealed bid only. Bids delivered or sent by mail will be considered only if received by the Bureau of Land Management, Dickinson District Office, Box 1229, 204 Sims Street, Dickinson, ND 58602 prior to 10 a.m. on December 16, 1985. Each sealed bid must be accompanied by a certified check, postal money order, bank draft, or cahsiers check made payable to the Department of Interior, Bureau of Land Management for not less than one-fifth of the amount bid. The sealed bid envelope must be marked, with the sale date and case number, in the lower left-hand corner as follows:

Public land sale M-66975 (ND)

December 16, 1985.

If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing. The drawing, if required, shall be held immediately following the opening of the sealed bids. The highest qualifying bid shall then be publicly declared.

Modified Bidding

For a period of 30 days following the date of the sale, Williston Radiology Consultants, P.C. Pension and Profit Sharing Trust (the prospective purchaser of the adjacent private lands) or the adjacent landowner of record on the day of the sale will be offered the right to meet the highest bid. If the highest bid is met, the land will be sold to them and the other bid will be returned. Refusal to meet the highest bid shall constitute a waiver of such bidding provisions.

Final Details

Once a high bid is accepted, the successful bidder shall submit the remainder of the full bid price prior to the expiration of 30 days from the date of the sale. Failure to submit the required amount within the allotted time will result in cancellation of the sale, and the deposit will be forfeited.

All bids will either be returned, accepted or rejected within 60 days of the sale date.

Dated: October 8, 1985.

William F. Krech,

District Manager.

[FR Doc. 85-24660 Filed 10-15-85; 8:45 am]

BILLING CODE 4310-DN-N

[CA 7777 WR]

California; Proposed Continuation of Withdrawal

Correction

In the document beginning on page 38218 in the issue of Friday, September 20, 1985 make the following corrections on page 38218.

1. In the second line "two" should read "the"; and "withdrawals" should read "withdrawal".

2. In the seventh line from the bottom of the column the heading **"San Bernardion Meridian"** should read **"San Bernardino Meridian".**

3. On page 38219, first column, the FR document number reading "FR Doc. 85-22529K" should read, "FR Doc. 85-22529".

BILLING CODE 1505-01-M

[LA 0135132 WR]

California; Proposed Continuation of Withdrawal

Correction

In FR Doc. 85-22532 beginning on page 38220 in the issue of Friday, September 20, 1985, make the following corrections in the second column on page 38220.

1. In the second full paragraph, fourteenth line, "1985" should read "1958".

2. In the third full paragraph, third line, insert a space between "comments" and "in".

3. In the third full paragraph, seventh line, "Branck" should read "Branch".

4. In the fourth full paragraph, last line "determinatin" should read "determination".

BILLING CODE 1505-01-M

[CA 7042 WR and LA 099557 WR]

California; Proposed Continuation of Withdrawals

Correction

In FR Doc. 85-23055 beginning on page 39050 in the issue of Thursday, September 26, 1985 make the following correction on page 39050.

In the first column under the heading **San Bernardino Meridian** the fifth line should be corrected to read, "Tps. 3 and 4 N., R. 12 E.,"

BILLING CODE 1505-01-M

Minerals Management Service

Development Operations Coordination Document; Texas Gas Exploration Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Texas Gas Exploration Corporation has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 4401 and 6583, Blocks 317 and 329, respectively, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Chenier, Louisiana.

DATE: The subject DOCD was deemed submitted on October 1, 1985. Comments must be received within 15 days of the

date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisina (Office Hours: 9 a.m. to 3:30 p.m. Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44395, Baton Rouge, Louisiana 70805..

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plan Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: October 2, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-24601 Filed 10-15-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the seventy-third meeting of the Board for International Food and Agricultural Development (BIFAD) on November 8, 1985.

The major purpose of this meeting is to explore issues relating to Pub. L. 480 and their implications for Title XII objectives and activities. Presentations will be made by John Mellor, Director, International Food Policy Research Institute, Leo Mayer, Associate Administrator, Foreign Agricultural Service of the United States Department of Agriculture, and Julia Chang Bloch, A.I.D. Assistant Administrator of Food for Peace and Foreign Voluntary Assistance. A panel, possibly including G. Edward Schuh, Director, Agriculture and Rural Development Department of the World Bank and Allison Herrick, A.I.D. Deputy Assistant Administrator, Program and Policy Coordination will provide reactions and introduce a general discussion. The Board will also receive a report from the Joint Committee on Agricultural Research and Development; and a new Board member, L. William McNutt, Jr. will be sworn in.

The meeting will begin at 9:00 a.m. and adjourn at 12:30 p.m., and will be held in Conference Room B, Pan American Health Organization, 525 23rd Street NW., Washington, DC. The meeting is open to the public. Any interested person may attend, may file written statements with the Board, before or after the meeting, or may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meeting permits.

Erven J. Long, Director, Research and University Relations, Bureau for Science and Technology, Agency for International Development, is designated as A.I.D. Advisory Committee Representative at this meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, International Development Cooperation Agency, Washington, DC 20523, or telephone him at (703) 235-8929.

Dated: October 9, 1985.

Erven J. Long,

A.I.D. Advisory Committee Representative, Board for International Food and Agricultural Development.

[FR Doc. 85-24602 Filed 10-15-85; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30676]

Interstate Scrap & Salvage Co., Exemption From 49 U.S.C. Subtitle IV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts Interstate Scrap & Salvage Co. from the requirements of 49 U.S.C. Subtitle IV (except 10905(f)(4) with respect to the acquisition and operation of a 0.5-mile line of railroad in Allegheny County, PA.

DATES: This exemption will be effective on November 1, 1985. Petitions for reconsideration must be filed by November 5, 1985. Petitions for stay must be filed by October 28, 1985.

ADDRESSES: Send pleadings referring to Docket No. 30676 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representatives: Kathleen D. Hendrickson, Esq., 1500 Oliver Building, Pittsburgh, PA 15232.

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: September 20, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Strenio concurred with a separate expression. Commissioner Andre dissented with a separate expression. Commissioner Sterrett did not participate in the disposition of this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 85-24632 Filed 10-15-85; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 328]

Investigation of Tank Car Allowance System

AGENCY: Interstate Commerce Commission.

ACTION: Correction of dates of procedural schedule; Extension of time.

SUMMARY: On September 23, 1985 at 50 FR 38594, the Commission published a notice of its proposal to adopt and prescribe an agreement superseding the Tank Car Allowance Agreement approved in the decision served June 15, 1979, generally relating to the formula for the computation of tank car allowance. The action is proposed under 49 U.S.C. 11122, 10747, and 10324(b). The Commission also announced its intention to establish a new service list for the proceeding.

The purpose of this notice is to correct and extend some of the filing dates set forth in the procedural schedules. These modifications are necessary because conflicting dates where announced in the Commission's decision in this matter, which was served September 20, 1985.

DATES: The revised procedural schedule for this proceeding is as follows:

(1) Response to the notice of intent to establish a new service list due by October 3, 1985.

(2) Comments to the proposed agreement must be filed November 4, 1985 or 7 days after service of a revised service list whichever is later.

(3) Reply comments must be filed November 25, 1985 or 27 days after service of a revised list whichever is later.

ADDRESS: Send an original and 15 copies of comments referring to Office of the Secretary, Commission Service Section, Room 2203, Interstate Commerce Commission, Washington, DC 20423.

All comments and reply comments must be served on all parties.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: The procedure schedule for this proceeding is being revised to resolve the conflicting dates set forth in the Commission's decision in this proceeding and the **Federal Register** notice. The filing dates for comments and replies are being extended to the later dates set forth in the Commission's decision so that the public will have sufficient time to participate in the proceeding.

Decided: October 9, 1985.

By the Commission.

James H. Bayne,

Secretary.

[FR Doc. 85-24665 Filed 10-15-85; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-68]

National Environmental Policy Act; Finding of No Significant Impact

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of finding of no significant impact.

SUMMARY: Solar terrestrial research has been a primary objective of NASA since the beginning of space exploration. The motivations for this activity are to produce a better understanding of the environment and to study a complex physical system which contains processes of fundamental importance in astrophysics and plasma physics. The goals of solar terrestrial research in the decade of 1980–1990 are to move from an era of exploration and discovery to a mature research field performing experiments to study the dynamic physical and chemical processes which are active in the upper atmosphere and space plasma environments.

The Combined Release and Radiation Effects Satellite (CRRES) program is proposed to meet NASA solar terrestrial research needs for the 1980–1990 decade. This program involves scientific investigations of the solar terrestrial environment by means of chemical release techniques. Critical to the program is the CRRES, a Shuttle-launched facility designed to conduct multidisciplinary scientific investigations of the solar terrestrial environment. CRRES will release chemicals into the space environment in a precisely planned and controlled manner in order to conduct experiments designed to increase our understanding of the physical and chemical processes in these regions. CRRES will be deployed from the Shuttle and subsequently operate as an orbiting spacecraft, for a nominal mission lifetime of 6 months, and will be designed to accommodate a large number of individual chemical release canisters with the exact complement determined by the scientific requirements of a mission. The chemicals used will be substances such as metal vapors (typically barium and lithium) which display strong vapor resonance lines, chemiluminescent materials such as trimethyl-aluminum, and various common vapors and gases such as water vapor, nitrogen, argon, and carbon dioxide. The total mass released per mission will be in the range 1,000–1,500 kilograms. None of the materials will be radioactive.

Possible alternatives to this action are as follows:

(a) No expansion of the solar terrestrial research program using chemical releases. The solar terrestrial research needs of NASA require a program of active experiments, and many of these experiments can only be done with chemical release techniques. This is so because of requirements for chemical perturbations, mechanical perturbations, modification of plasma electrical properties, and for tracers deployed over large physical and temporal dimensions. Deletion of chemical release techniques from the inventory of research tools would have a severe negative effect upon this research program.

(b) An alternative to the CRRES program was considered which would consist of a mixture and, in some cases, significant expansion of present research techniques. Some, but certainly not all, of the experimental objectives addressed by CRRES could be addressed by an alternative program. A large number, on the order of 200, sounding rocket probes would be required carrying both chemical release payloads and conventional instrumented payloads. The number of sounding rocket launch sites would be increased in order to provide the wide area coverage inherent in CRRES capabilities and required for many investigations. Additional aspects of the program would involve powerful ground-based radio transmitters for modification experiments, high altitude large conventional explosions to generate localized perturbations, and significant enhancements in the techniques of space environment simulation in laboratory chambers. The environmental effects of the alternative program would be similar in that chemical releases would be involved. Additional effects would result from increased sounding rocket launch activity and other localized facilities activity but these effects are either considered insignificant or within the bounds of presently accepted actions. The effects of accepting this alternative program would be a more costly, less coherent research effort. This effort would be severely constrained by the absence of the unique capabilities of CRRES which include wide area

coverage, releases over large horizontal dimensions, and the availability of orbiting kinetic energy to increase the strength of the experimental interactions.

The environmental effects of the CRRES program which have been identified will be visible light emissions at high altitudes and the release of materials into the terrestrial environment. The potential environmental impacts of visible light emissions are:

(a) Sightings of chemical release optical emission by the public.

(b) Impact upon astronomical observations by visible emissions (light contamination).

The potential impacts of the introduction of materials into the environment are:

(a) Release of trace amounts of hazardous materials into the biosphere.

(b) Possible triggering of magnetospheric substorms which may produce magnetic and auroral activity similar to that occurring naturally several times a week.

(c) Temporary perturbations of the ionosphere in turn causing temporary perturbation of communications links.

(d) Modification of trace element concentrations in the upper atmosphere.

(e) Contamination of nearby spacecraft by release materials.

The conclusions of various analyses are that these impacts are all either vanishingly small (in most cases, smaller than naturally-occurring variations) or highly improbable. The effects of visual emissions, light contamination of astronomical observations, or localized disturbances to orbiting spacecraft can be reduced to insignificant levels by proper planning and operational procedures.

SUPPLEMENTARY INFORMATION: The CRRES program is an outgrowth of two former programs, both of which were terminated due to funding constraints. The first of these was the Chemical Release Module Facility (CRMF), which was to have been a Shuttle/Spacelab facility dedicated exclusively to chemical releases from a free-flying satellite, the Chemical Release Module (CRM). The second of these was the RADSAT program, a Department of Defense satellite designed to survey the high energy radiation belts. The CRRES program combines the two missions utilizing a common spacecraft to carry both the chemical release experiments and the RADSAT experiments. The RADSAT experiments consist of a number of inert instruments used to measure the effect of the radioaction environment on various semiconductors.

An environmental analysis of the CRM program was completed by Pressman Enterprises, Lexington, Massachusetts, under the direction of NASA in February 1980. An environmental assessment of CRM was completed by NASA in June 1980 and updated for CRRES in May 1985.

Conclusion

Since advance publicity will be given in order to minimize public concern, and releases will be programmed so as not to occur in the vicinity of other spacecraft or in locations where critical ground-based operations would be affected, the conduct of the CRMF program will not result in any environmental impacts of a long-term or deleterious nature. No Environmental Impact Statement is required for the subject activity.

DATE: Comments must be received within 30 days of the date of the **Federal Register** notice.

ADDRESS: National Aeronautics and Space Administration (Code EED), Washington, DC 20546.

FOR FURTHER INFORMATION, CONTACT: Mr. Dick S. Diller at (202) 453–1723.

C. Robert Nysmith,

Associate Administrator for Management.

October 4, 1985.

[FR Doc. 85–24593 Filed 10–15–85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

1. Date: November 4, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications in the field of Near Eastern and Classical Studies submitted to the translations category of the Text Program, Division of Research Programs, for projects beginning after April 1, 1986.

2. Date: November 4–5, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 316–2
Program: This meeting will review American Studies applications submitted to the Access category, Reference Materials Program, Division of Research Programs, for projects beginning after April 1, 1986.

3. Date: November 12, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications in the field of Asian and Indic Studies submitted to the Transactions category of the Text Program, Division of Research Programs, for projects beginning after April 1, 1986

4. Date: November 18, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications in Romance languages submitted to the Translations category of Texts Program, Division of Research Programs, for projects beginning after April 1, 1986.

5. Date: November 25, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications in Germanic and Slavic Studies submitted to the Translations category of Texts Program, Division of Research Programs, for projects beginning after April 1, 1986.

6. Date: November 14–15, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 415
Program: This meeting will review applications submitted for the Humanities Projects in Media, Division of General Programs, for projects beginning after April 1, 1986.

7. Date: November 18–19, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 415
Program: This meeting will review applications submitted for the Humanities Projects in Media, Division of General Programs, for projects beginning after April 1, 1986.

8. Date: November 25–26 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 415
Program: This meeting will review applications submitted for the Humanities Projects in Media, Division of General Programs, for projects beginning after April 1, 1986.

9. Date: November 1, 1985
Time: 9:00 a.m. to 5:00 p.m.
Room: 316–2
Program: This meeting will review applications submitted for Humanities Projects for Adults, Constitutional projects, Division of General Programs/Office of the Bicentennial of the U.S. Constitution, for projects beginning after April 1, 1986.

The proposed meetings 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 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings 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 about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 85-24634 Filed 10-15-85; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Statement of Organization

A. Creation and Authority

The National Science Foundation (NSF) is an independent agency of the U.S. Government, established by the National Science Foundation Act of 1950, as amended, and related legislation, 42 U.S.C. 1861 *et seq.*, and was given additional authority by Title IX of the National Defense Education Act of 1958 (72 Stat. 1601; 42 U.S.C. 1876-1879), the Science and Technology Equal Opportunities Act (42 U.S.C. 1885), and Titles I and III of the Education for Economic Security Act (98 Stat. 1267, 20 U.S.C. 3911 to 3954 and 3981 to 3988). The Foundation consists of the National Science Board of 24 part-time members and a Director (who also serves as *ex officio* National Science Board member), each appointed by the President with the advice and consent of the U.S. Senate. Other senior officials include a Deputy Director and four Assistant Directors who are appointed by the President with the advice and consent of the U.S. Senate, and three additional Assistant Directors.

The Foundation's organic legislation authorizes it to engage in the following activities:

1. Initiate and support, through grants and contracts, scientific and engineering research and programs to strengthen scientific and engineering research potential, and education programs at all levels, and appraise the impact of research upon industrial development and the general welfare.

2. Award graduate fellowships in the sciences and in engineering.

3. Foster the interchange of scientific information among scientists and engineers in the United States and foreign countries.

4. Foster and support the development and use of computers and other scientific methods and technologies, primarily for research and education in the sciences.

5. Evaluate the status and needs of the various sciences and engineering and take into consideration the results of this evaluation in correlating its research and educational programs with other Federal and non-Federal programs.

6. Maintain a current register of scientific and technical personnel, and in other ways provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and technical resources in the United States, and provide a source of information for policy formulation by other Federal agencies.

7. Determine the total amount of Federal money received by universities and appropriate organizations for the conduct of scientific and engineering research, including both basic and applied, and construction of facilities where such research is conducted, but excluding development, and report annually thereon to the President and the Congress.

8. Initiate and support specific scientific and engineering activities in connection with matters relating to international cooperation, national security, and the effects of scientific and technological applications upon society.

9. Initiate and support scientific and engineering research, including applied research, at academic and other nonprofit institutions and, at the direction of the President, support applied research at other organizations.

10. Recommend and encourage the pursuit of national policies for the promotion of basic research and education in the sciences and engineering. Strengthen research and education in the sciences and engineering, including independent research by individuals, throughout the United States.

11. Support activities designed to increase the participation of women and minorities and others underrepresented in science and technology.

B. Organization

The Foundation is organized along functional and disciplinary lines corresponding to program support of science, engineering, and science and engineering education.

1. National Science Board

The National Science Board is composed of 25 members, including the Director of the Foundation *ex officio*. Members serve for 6-year terms and are selected because of their distinguished service in the fields of the basic, medical, or social sciences, engineering, agriculture, education, public affairs, or research management. They are chosen in such a way as to be representative of scientific and engineering leadership in all areas of the Nation. The officers of the Board, the Chairman and Vice Chairman, are elected by the Board from among its members for 2-year terms. The Board exercises authority granted it by the NSF Act, including establishing policies for carrying out the purposes of the Act. Meetings of the Board are governed by the Government in the Sunshine Act (Public Law 94-409) and the Board's Sunshine regulations (45 CFR 614). The policies of the Board on the support of science and engineering and development of human resources are generally implemented through the various programs of the Foundation. The National Science Board is required by statute to render a biennial report on indicators of the state of science and engineering to the President for submission to the Congress.

2. Director

The Director of the National Science Foundation is the Chief Executive Officer of the Foundation and serves *ex officio* as a member of the National Science Board and as Chairman of its Executive Committee. The Director is responsible for the execution of the Foundation's programs in accordance with the NSF Act and other provisions of law. The Director is also responsible for duties delegated to him by the Board and for recommending policies to the Board. The Director is assisted by a Deputy Director who is appointed by the President, with the advice and consent of the Senate. The Senior Science

Advisor serves as science advisor to the Director providing broad policy-level advice, assistance and support on a wide range of scientific and policy matters relevant to the mission of the Foundation.

C. Activities of the Foundation

The activities of the Foundation are carried out by a number of Foundation components reporting to the Director through their respective senior officers.

1. Staff Offices

a. *National Science Board Office.* NSBO is responsible for operating and representing of the National Science Board, identifying policy issues for consideration by the Board, developing congressional testimony for Board members, and providing liaison between the Board and the Director and his staff.

b. *Office of Advanced Scientific Computing.* OASC is responsible for the development and management of a comprehensive program in advanced scientific computing, including communication networks, computing centers, and research on numerical algorithms; coordinating of NSF activity with the university community, other Federal agencies and the private sector; provision of leadership in building a community of experienced users of the most advanced computing resources available; dissemination of information about the research and other activities through the program; and provision of staff support for a Directorate Liaison Committee and the Advisory Committee for Advanced Scientific Computing.

c. *Office of Budget, Audit, and Control.* OBAC is responsible for the Agency's budgeting activities including coordination with OMB and Congress and independent analyses of programmatic issues. OBAC monitors budget execution and program plans, manages the NSF operating plan, and develops and maintains budget/management procedures and data bases. OBAC is also responsible for post hoc sampling of proposed actions and post-award administration to evaluate documentation and adherence to stated procedures; assessing overall system performance and recommendations for improved and simplified procedures; investigating charges of improper actions by NSF staff and monitoring the decision reconsideration system; conducting financial, evaluation, and program audits; and monitoring and coordinating procedures for scientific oversight undertaken by disciplinary advisory panels.

d. *Office of Equal Opportunity.* OEO is responsible for assisting management in developing, maintaining, and carrying out a continuing Agency-wide affirmative action program and for developing all other aspects of the Agency's equal opportunity program to eradicate every form of prejudice or discrimination based on race, color, religion, sex, age, national origin, or mental or physical handicap.

e. *Office of Information Systems.* OIS is responsible for development, operation, maintenance, and oversight of automated systems that provide management information and support program and administrative staff activities throughout the Foundation's business cycle. Included are policy development, technical assistance, systems analysis, computer programming, operation of the central computer facility, implementation/coordination of distributed processing systems and external computing services, and a variety of services for document handling and data entry for proposals.

f. *Office of Legislative and Public Affairs.* OLPA is responsible for representing the Foundation, the Director, and key associates in relationships with the Congress, the communications media and the public, various academic groups and professional societies, institutions, and other NSF clientele. Legislative responsibilities include providing the coordination, analysis, liaison, and other assistance necessary for the annual congressional consideration of the NSF budget as well as all science-related legislative issues and providing information and advice to the Director and key NSF staff on interactions with the Congress. Public Affairs and communications responsibilities include informing and educating the general and specialized publics about NSF programs, activities, and services; maintaining relations with the public and news media (both print and electronic media); preparing and issuing reports, audio-visual materials, and publications (including MOSIAC, NSF's magazine) that serve the general and specialized publics; and responding to both Freedom of Information requests and general inquiries from the public. The Office is also responsible for coordinating special projects and activities such as National Science Week; overseeing the work of the NSF Historian; and approving and coordinating publications created by other NSF offices, in accordance with OMB requirements.

g. *Office of the General Counsel.* OGC provides legal advice to the Director, the National Science Board, and NSF staff and represents them in legal matters, including the development of laws and regulations likely to affect the NSF, science, or the use of science. Prepares and coordinates NSF comments on proposed legislation.

2. Directorates

a. *Assistant Director for Administration.* The Assistant Director serves as the principal advisor to the Director on all administrative and general management activities of the National Science Foundation. This responsibility encompasses: grants and contracts administration, personnel management and employee-oriented programs, financial management systems, management analysis, and general administrative and logistic support functions. In addition to the activities described below, the Administration Directorate includes a Health Services Unit and a Reform '88 Project Coordination Staff. The Staff assists the Assistant Director for Administration in carrying out the requirements of Reform '88 by developing appropriate policies and procedures, maintaining liaison with OMB and other organizations, and providing oversight and review of the Foundation's Reform '88 activities.

(1) *Division of Administrative Services.* DAS is responsible for the management and direction of administrative services in the following areas: official travel and conference arrangements; procurement and issuance of supplies, materials, and equipment, including maintenance; space management; telecommunications and building maintenance; records disposition; mail (including mailing list control) and messenger services; property accountability records; document and building security matters; printing, typesetting, graphics and reproduction and binding services, including publications distribution and storage; copiers; and the NSF Library.

(2) *Division of Financial Management.* DFM is responsible for the development, coordination, and direction of financial management policies, programs, and operations, and for the design of modern automated business management systems. This Division provides fund control, payroll and disbursing services, and maintains accounting systems to manage the financial aspects of Foundation operations and to produce timely and accurate data for financial management and budgetary purposes.

(3) *Division of Grants and Contracts.* DGC is responsible for the award process including negotiation and administration of grants and contracts or other arrangements in accordance with existing laws, regulations, and Foundation policy and procedures.

Negotiation includes those activities necessary to obtain agreement on the arrangements between the grantee or contractor and the Foundation prior to the making of an award. Administration includes those activities necessary to execute the award, monitor performance, and close out the grant or contract, as well as audit resolution, procurement reporting, intergovernmental reviews, FOIA and proposal release, Small and Disadvantaged Business programs, contracting out, and other special activities. This Division also develops and coordinates the implementation of Foundation grant, contract and cooperative agreement administration policies and procedures with both staff and external groups, including other Federal agencies and national organizations of performing institutional representatives.

(4) *Division of Personnel and Management.* DPM is responsible for planning, developing, and implementing the personnel management program of the Foundation to provide for the effective acquisition, retention, motivation, development, and use of NSF personnel. The Division is also responsible for improvement of Foundation management systems and procedures and management of the NSF Internal Issuance System and the Committee Management Program.

b. *Assistant Director for Astronomical, Atmospheric, Earth, and Ocean Sciences.* The Assistant Director is appointed by the President, with the advice and consent of the Senate and serves as the principal advisor to the Director in the development and implementation of research and facilities support policies, annual programs and budgets, long-range plans and the establishment of research priorities to further national goals and strengthen the scientific research potential in the areas of astronomical, atmospheric, earth, and ocean sciences and the multidisciplinary research conducted in the polar regions, within the framework of statutory and National Science Board authority. The Directorate, composed of five Divisions reporting to the Assistant Director, is structured primarily along disciplinary and functional lines. Each Division is managed by a Division Director and subdivided into Sections and Programs, as required for appropriate management and oversight. Each Division supports research seminars, conferences, and symposia, in addition to the specific areas of research and facility support described below.

(1) *Division of Astronomical Sciences.* The objectives of the Division are to increase our understanding of the physical nature of the universe, particularly that of the solar system, individual stars, star clusters, galaxies, and special objects in space such as molecular clouds and quasars. Through its astronomy project support programs, the Division supports researchers in all areas of ground-based astronomy, including research on the sun, the solar system, the structure and evolution of the stars, stellar distances and motions, the composition and distribution of interstellar gas and dust, and galaxies and quasars. Also, support is provided for the operation of several major university observatories and for the development and acquisition of new instrumentation incorporating the latest technology for the detection and analysis of radiation through the electromagnetic spectrum. In addition, the Division provides developmental and operational support for the five National Astronomy Centers, operated and managed by nonprofit organizations or universities, under contract to NSF. The Centers provide a variety of optical, infrared, radio and other specialized instrumentation, on a competitive basis, to scientists throughout the Nation. Scientific and support staff are maintained at the Centers to support the research programs of visiting scientists, to develop advanced instrumentation, and to participate in national research programs.

(2) *Division of Atmospheric Sciences.* The objectives of the Division are to increase our knowledge of the behavior of the earth's atmosphere from the earth's surface to outer space and to provide basic knowledge that can be used to underpin applications by mission-oriented Federal agencies. Through its grants support programs, the Division supports research that will expand fundamental knowledge of the physics, chemistry, and behavior of the atmospheres of the earth, other planets, and the sun including the physical behavior of climate and weather; the global cycles of gases and particles in the earth's atmosphere and the chemical and physical processes that control them; understanding the composition and dynamics of the upper atmospheric systems; and enhanced knowledge of the sun and neighboring planets as they relate to our understanding of the earth's upper atmosphere and space environment. In addition, the Division provides developmental and operational support for the National Center for Atmospheric Research (NCAR), a nonprofit consortium offering doctoral programs in atmospheric sciences and the Upper Atmospheric Facilities (UAF), the Nation's four large incoherent-scatter radar facilities.

(3) *Division of Earth Sciences.* The objective of the Division is an increased understanding of the solid earth—its composition and structure, its historical evolution, and the dynamic processes, both internal and external, which formed and continue to modify its features. The Division supports basic research across the broad nature of geoscience disciplines including: research on the fundamental nature of earthquakes; research on hydrothermal and magmatic systems and their relationship to mineral deposits; research on earth history as reflected by rock stratigraphy, the fossil record, and other evidence of both cataclysmic and gradual events; research on the structures and properties of rocks and minerals at the pressures and temperatures existing within the earth; and research on volcanoes and their historical patterns of eruption. The Division also supports the development, updating, and acquisition of research instrumentation for the Nation's college and university laboratories in the geological sciences.

(4) *Division of Ocean Sciences.* The Division's principal objective is to support all aspects of ocean sciences research directed towards an improved basic understanding of the sea and its relationship to human activities. The Division supports studies that seek an improved understanding of the factors controlling physical, chemical, geological, and biological processes in the ocean and at its boundaries, and supports research ships and specialized shared-used facilities and operational capabilities at key locations in the academic community. The Division also supports the development of research instrumentation that has the potential for wide use and research to enhance understanding of the composition and processes of the submerged portion of the earth's crust through the use of advanced drilling technology.

(5) *Division of Polar Programs.* The Division is responsible for the management and funding of the U.S. national program in Antarctica and for the Arctic Research Program. The U.S. Antarctic Program supports national goals to: maintain the Antarctic Treaty, ensure that the continent will continue to be used for peaceful purposes only, foster cooperative research to contribute to the solution of regional and worldwide problems, protect the environment, and ensure equitable and wise use of living and nonliving

resources. Scientific research is the principal expression of U.S. national interest and policy in Antarctica. The Division manages the U.S. Antarctic Program under two specific subactivities: the U.S. Antarctic Research Program supports scientific research intended to increase knowledge of the antarctic continent and the surrounding oceans by developing an understanding of the antarctic ice sheets and the antarctic physical, biological, geological, meteorological, atmospheric, chemical, and oceanographic processes; and the Operations Support Program provides direct support of science activities and the maintenance of an effective U.S. presence in Antarctica, through the operation and maintenance of four antarctic stations, charter of airlift, sealift, and research ships. The objective of the Arctic Research Program is the advancement of scientific knowledge in selected areas of fundamental research that are best or uniquely pursued in the Arctic. In addition, the Division of Polar Programs is assigned staff functions to fulfill the Foundation's assignment as lead agency responsible for implementing Arctic research policy and for insuring that the requirements of the Interagency Arctic Research Policy Committee are fulfilled.

c. *Assistant Director for Biological, Behavioral, and Social Sciences.* Appointed by the President, with the advice and consent of the Senate, the Assistant Director serves as principal advisor to the Director in the development of long-range plans, annual programs, and research policy in the biological, behavioral, and social sciences as established by statute and the National Science Board authority. The Assistant Director is also responsible for developing and implementing programs to strengthen scientific research potential in these sciences. The Directorate, composed of six Divisions and one Office reporting to the Assistant Director, is structured primarily on a disciplinary basis. Each Division, headed by a Division Director, is subdivided into Programs. Several divisions support collaborative research at the interface of biology and chemistry through the Chemistry of Life Processes program. Divisions also may support dissertations, research conferences and workshops, meetings, and specialized research facilities and equipment.

(1) *Division of Behavioral and Neural Sciences.* BNS is responsible for basic and applied research in anthropology, linguistics, memory and cognitive processes, social and developmental psychology, developmental neuroscience, integrative neural systems, molecular and cellular neurobiology, psychobiology, and sensory physiology and perception. The Division also provides support for systematic anthropological collections. The major goals of the Division are to advance understanding of the structure and function of nervous systems and to comprehend better the biological, psychological, and cultural mechanisms underlying behavior.

(2) *Division of Biotic Systems and Resources.* BSR is responsible for research in ecology, ecosystem studies, population biology and physiological ecology, and systematic biology. The Division provides support for biological research resources such as systematic collections, controlled environmental facilities, field research facilities, and culture collections. The research supported by this Division is to enhance knowledge of the attributes and interrelations or organisms, populations, and communities as they exist in their natural environment.

(3) *Division of Information Science and Technology.* IST is responsible for programs to increase understanding of the properties and structure of information and information transfer, to contribute to the store of scientific and technical knowledge which can be applied in the design of information systems, and to improve understanding of the economic and other impacts of information science and technology.

4. *Division of Molecular Biosciences.* DMB is responsible for supporting research in the fields of biochemistry, biophysics, metabolic biology, prokaryotic aspects of genetic biology, and biological instrumentation. Research in plant biology is emphasized in all programs, and the Division supports a limited number of postdoctoral research fellowships in molecular plant biology.

(5) *Division of Cellular Biosciences.* DCB is responsible for supporting research in the fields of cell biology, cellular physiology, developmental biology, eukaryotic aspects of genetic biology, and regulatory biology. Although major emphasis is on research on cellular mechanisms, the scope of the research includes the study of life processes at the subcellular, cellular, and organismal levels. General topics supported include how plants, animals, and microorganisms develop, grow, reproduce, and regulate their physiological activity. Research in plant biology is emphasized in all programs. Together with the Division of Molecular Biosciences, 20 postdoctoral fellowships in plant biology are awarded each year.

(6) *Division of Social and Economic Science.* SES is responsible for basic and applied disciplinary and multidisciplinary research in economics, geography and regional science, history and philosophy of science, law and social sciences, political science, sociology, measurement methods and data improvement, and decision and management science. The Division supports research on social and economic systems, organizations and institutions, and individual social behavior. Support is also provided for data collection and improvement and for methodological and measurement research.

(7) *Office of Biotechnology Coordination.* OBC is responsible for maintaining an agency-wide biotechnology information and accounting system for all grant and contract activities to improve its ability to plan, budget for, and report its functions in this area.

d. *Assistant Director for Engineering.* The Assistant Director participates with the Director in planning, analyzing, and evaluating activities and in establishing and maintaining an effective liaison with the Congress, other Federal agencies, the educational and scientific communities, professional societies, and other interested parties. The Directorate seeks to promote the progress of engineering and technology and to ensure national prosperity and security through the support of engineering research and education at all levels and in all fields of engineering. The overall goals are to ensure that the United States is at the leading edge of engineering research in all fields, to help U.S. engineering schools to produce the world's best engineers, to find new ways for the Nation to benefit from the full research potential of universities, colleges, industry, and Government resources, and to ensure that sufficient fundamental knowledge and expertise are available, along with cross-disciplinary activities, to stimulate advances in private-sector engineering. Five Divisions and one Office report to the Assistant Director.

(1) *Division of Engineering Science in Chemical, Biochemical, and Thermal Engineering.* CBTE supports research to expand the engineering knowledge base for a large number of industrial processes involving the transformation and transport of matter and energy. The industries served, directly or indirectly, include aerospace, electronics, natural resources, petroleum, biochemical, materials, food and allied industries that use chemical, biochemical and thermal processes.

(2) *Division of Engineering Science in Mechanics, Structures, and Materials Engineering.* MSME supports research to expand the knowledge base in areas associated with the design, construction, and efficient operation of machines, engineered facilities, and various types of major structures. It includes support for research on solid and geomechanics, geotechnology, hydraulics, fluid hydrodynamics, coastal and ocean engineering; friction and wear and the laws that describe them; algorithms and generic control principles necessary for a range of engineering applications; materials processing methods which improve performance and durability; and efforts to improve the use of natural resources.

(3) *Division of Engineering Science in Electrical, Communications, and Systems Engineering.* ECSE supports research designed to increase the knowledge base in areas dealing with basic electrical phenomena and in the synthesis and analysis of devices, circuits, and systems. Support covers research on automated data acquisition and analysis; signal processing and communications; lasers, beams, and plasmas; solid-state devices, large-scale systems, operations research, and related topics.

(4) *Division of Science Base Development in Design, Manufacturing, and Computer Engineering.* DMCE develops a knowledge base in design methodology, manufacturing systems, and computer engineering, areas which lack a broad base of scientific knowledge. Support covers design methodology; computer aided engineering and system integration; theoretical, experimental, and design investigations in computer building blocks and systems; Very Large Scale Integrated (VLSI) design; algorithms and architectures; design tools; factory automation; and software and data base engineering.

(5) *Division of Fundamental Research in Emerging and Critical Engineering Systems.* ECES supports fundamental research to increase the knowledge and manpower base in emerging and critical engineering systems, areas that cut across traditional engineering disciplinary lines. Emerging Engineering Systems show great promise for enhancing the Nation's economy, safety, and security but require development of a strong science base and the academic infrastructure necessary to establish the manpower and research capability for important new industrial fields. Major research topics include biotechnology, bioengineering, research to aid the handicapped, and lightwave technology. Critical Engineering Systems are those essential to the Nation's safety, well-being, and international competitiveness. Research thrusts include earthquake hazard mitigation, the mitigation of other natural and man-made hazards, environmental engineering, and systems engineering for large structures.

(6) *Office of Cross-Disciplinary Research.* CDR supports university research cutting across academic disciplinary lines and includes participation of industrial scientists and engineers. The programs of this office focus research teams on scientific and engineering areas where the infusion of knowledge from several disciplines and viewpoints will enhance the probability of innovative and industrially relevant research. The objectives of the office are: to support cross-disciplinary engineering and scientific research; to improve the flow of fundamental engineering and scientific research from universities into industry; to strengthen the links between university research scientists and engineers and their industrial counterparts; and to better prepare students for engineering practice and industrial research. The programs consider three types of university-industry cooperation: Engineering Research Centers, Industry/University Cooperative Research Centers, and Industry/University Cooperative Research Projects.

e. *Assistant Director for Mathematical and Physical Sciences.* Appointed by the President, with the advice and consent of the Senate, the Assistant Director serves as an advisor to the Director in the development of long-range plans, annual programs, and research policy in the areas of mathematical and physical sciences, as established under statutory and National Science Board authority; and is responsible for developing and carrying out a program to accomplish the Foundation's research support mission in these areas. Five Divisions report to the Assistant Director for Mathematical and Physical Sciences. Each Division is headed by a Division Director and generally is subdivided on a disciplinary or functional basis into Sections and/or Programs. In addition to the specific areas of support discussed below, each Division supports appropriate conferences, symposia, and research workshops in the areas of science for which it has responsibility.

(1) *Division of Chemistry.* CHEM is responsible for the support of fundamental research in all areas of chemistry, to improve understanding and make possible new applications of chemistry beneficial to other sciences, engineering and technology. The broad subfields supported are inorganic and organic synthesis, chemical dynamics and thermodynamics, structural chemistry, quantum chemistry, and chemical analysis. In addition, a special program exists to assist departments and individual investigators in acquiring advanced instrumentation critical to modern chemical inquiry.

(2) *Division of Computer Research.* DCR is responsible for research in computer science and engineering, including research in theoretical computer science, the structure and design of computer systems, both hardware and software, computational methods and algorithms, and other areas which help increase understanding of computing processes and computer technology. Special programs exist to assist departments and individual investigators acquire advanced instrumentation, promote modern computer research, and improve academic opportunities for experimental research.

(3) *Division of Materials Research.* DMR is responsible for the support of multidisciplinary research designed to gain a deeper understanding of the properties of materials in terms of their composition, structure and processing history and the interactions between their constituents. The broad subfields supported are condensed matter physics, materials chemistry, materials science and engineering, and special programs in materials. The latter includes an instrumentation program, the materials research laboratories, materials research groups, and national facilities for materials research.

(4) *Division of Mathematical Sciences.* DMS is responsible for providing research support in mathematics and statistics, and in their applications to other sciences. The Division has special programs to support conferences, to provide support for postdoctoral fellows, and to assist groups of researchers in acquiring computational equipment.

(5) *Division of Physics.* PHY is responsible for providing support for research which concentrates on the most fundamental aspects of the properties and interactions of matter and energy. Support is provided through programs in atomic, molecular and plasma physics, nuclear physics, elementary particle physics, theoretical physics, intermediate energy nuclear physics, and gravitational physics. In addition, support is provided for university physics research facilities.

f. *Assistant Director for Science and Engineering Education.* The Assistant Director is responsible for the initiation of and support for programs to strengthen science education at all levels and to maintain the vitality of science and engineering education in the United States. This responsibility includes improving science and mathematics education of all precollege students and addressing the long term development of a strong human resource base to meet the needs of science and technology. The Directorate has four major long-range goals: to help ensure that a high-quality precollege education in science is available to every child in the United States, thereby enabling those who are interested and talented to pursue technical careers; to help ensure the best possible professional education in science and engineering; to help ensure that college-level opportunities are available to broaden the science backgrounds of nonspecialists; and to support informal science education programs for the public. The Directorate is organized into three Divisions and two Offices.

(1) *Division of Materials Development and Research.* DMDR supports a wide range of projects to expand the knowledge base about effective teaching and learning of mathematics, science and technology, and provide models and materials resources to improve our precollege educational system in these fields. The Division supports basic and applied research and development projects in the areas of: Instructional Materials Development, Materials and Methods for Teacher Preparation, Application of Advanced Technologies, and Research in Teaching and Learning.

(2) *Division of Research Career Development.* DRCD works to assure a steady flow of talented science and engineering students from all sectors and regions through the Nation's educational and research training systems. Specific activities include: Graduate Fellowships, Minority Graduate Fellowships, NATO Postdoctoral Fellowships in Science, Advanced Institute Travel Awards, and Presidential Young Investigator Awards.

(3) *Division of Teacher Enhancement and Informal Science Education.* DTEISE works to further develop precollege teacher capabilities in science, mathematics, and technology, to retain good teachers in the school systems, and to provide a rich and stimulating environment for recreational learning. Specific activities include: Leadership Activities for Precollege Teachers, Informal Science Education Program, Science and Mathematics Education Networks, Local and Regional Teacher Development Program, and Presidential Awards for Excellence in Science and Mathematics Teaching.

(4) *Office of College Science Instrumentation.* OCSI works to assure the achievement and maintenance of strong, high-quality science and engineering programs among the predominantly undergraduate four-year colleges of the United States. This program will provide matching support for the purchase of laboratory and instructional equipment.

(5) *Office of Studies and Program Assessment.* OSPA helps determine the status and condition of precollege science, mathematics, and technology by establishing and maintaining data systems. Its overall goal is to assist the Directorate in policy formulation. Examples of project support include analyses and interpretation of existing data on precollege student achievement in science and mathematics, identification of new and improved indicators on student participation and teacher qualifications, and special studies on segments of precollege students and teacher populations.

g. *Assistant Director for Scientific, Technological and International Affairs.* The Assistant Director serves as a principal advisor to the NSF Director in the development of long-range plans, programs, and policy for scientific, technological, and international affairs. The Assistant Director also has responsibility for providing policy analysis and assessments of scientific and technological issues of interest to decisionmakers in the Executive Office of the President, the National Science Board, and the Congress. The Directorate is responsible for programs designed to: collect and analyze data pertaining to U.S. and international science, engineering and technology; study public policy issues related to science and technology; and support research that cuts across scientific disciplines and is directed toward strengthening the science, engineering and technology base, both nationally and internationally. The Directorate consists of five Divisions and two Offices.

(1) *Division of Industrial Science and Technological Innovation.* ISTI is responsible for small business activities and for the Equipment Donation and Discount Activity. Opportunities are provided under the Small Business Innovation Research Program for small science and technology-based firms to perform research projects leading to more rapid commercialization of new ideas, products, and processes. The Equipment Donation and Discount Program seeks to obtain donations of or reduced prices on equipment used by NSF awardees.

(2) *Division of International Programs.* INT administers programs for international cooperative scientific activities, including joint research projects, seminars, and scientific visits. It facilitates U.S. scientists' access to unique facilities and sites abroad and provides staff support to Joint Commissions and other U.S. international scientific efforts. It manages the use of Special Foreign Currency for programs in research and related activities, and coordinates other National Science Foundation programs with international aspects.

(3) *Division of Policy Research and Analysis.* PRA is responsible for conducting and supporting research and analysis on public policy issues that have substantial science and technology content. Research results and related analyses provide a source of knowledge and information for use by Federal policymakers and the general public. The Division is responsible for maintaining and developing economic and technological data bases and analytic tools, and for continually interacting with other NSF Directorates to gather relevant information on current and emerging issues in science and technology.

(4) *Division of Research Initiation and Improvement.* RII provides programmatic focus and coordination of NSF activities to enlarge and broaden the human and institutional resources base for science and engineering research. These activities include: providing research support to predominantly undergraduate institutions; providing support for women scientists and engineers to conduct research, teaching, and counselling activities as visiting professors at academic institutions; providing increased access to research opportunities for women and for minority scientists and engineers; improving research environments at predominantly minority institutions; supporting and facilitating efforts to improve the research capabilities of institutions in states that receive little Federal research support; and supporting research and related activities that improve public and professional understanding of issues of ethics and values in science and engineering.

(5) *Division of Science Resources Studies.* SRS is responsible for development and maintenance of a data base dealing with the characteristics,

magnitude, and utilization of the Nation's human and financial resources for S&T activities. Studies and analyses provide information on scientific, engneering, and technical personnel, science education, scientific institutions, the funding of S&T activities, the nature and relationship of different types of research and development (R&D) activities, the economic impact of F&D, and related topics. The Division also supports studies designed to develop new or improved techniques for analyzing S&T resources data and new or improved indicators of the inputs, outputs, and impacts of S&T activities.

(6) *Office of small Business Research and Development.* OSBRD is responsible for fostering communication between the National Science Foundation and the Small business community; collecting, analyzing, compiling, and publishing information concerning grants and contracts awarded to small businesses by the Foundation; assisting small businesses in obtaining information regarding programs, policies, and procedures of the Foundation; and recommending to the Director and to the National Science Board any changes in procedures and practices which would enable the Foundation to use more fully the resources of the small business research and development community.

(7) *Office of Small and Disadvantaged Business Utilization.* OSDBU is responsible for NSF compliance with the provisions of Public Law 95–507. It assists small and disadvantaged businesses with information about NSF programs and procurement opportunities.

A. Inquiries and Transaction of Business

All inquiries, submittals, or requests should be addressed to the National Science Foundation, Washington, DC 20550. A member of the public may call at the Foundation offices at 1800 G Street, NW., Washington, DC during normal business hours, 8:30 a.m. to 5:00 p.m., Monday through Friday. The Division of Personnel and Management has a Telephonic Device for the Deaf (TDD) which enables individuals with hearing impairement to communicate with the NSF personnel office for information relating to NSF programs, employment, or general information. The TDD number is 202/357–7492. The information provided below indicates the offices with which members of the public deal on particular matters. If an individual is uncertain as to which office to contact, that person may write to the Foundation's mailing address or visit the National Science Foundation, Public Affairs and Publications Group, Room 527, 1800 G Street, NW., Washington, DC 20550.

B. General Method of Functioning, Procedures, Forms, Description of Programs

The Foundation accomplishes its mission primarily through the award of grants and other agreements to universities, colleges, and other nonprofit organizations, as well as to individuals and profit-making organizations. In instances where NSF has a specially assigned mission, or where services are being procured, contracts are used rather than grants. Generally, a person or organization desiring support should submit a request, application, or proposal, pursuant to NSF guidelines. If the request is accepted, NSF will provide financial support. NSF supports basic and applied research and education in the sciences and engineering. In general, grants are made on the basis of merit after a review process involving several qualified outside commentators drawn from the scientific, educational, and industrial communities.

C. Honorary Awards

The National Science Foundation annually bestows the Alan T. Waterman Award on an outstanding young scientist for support of research and study. This award provides for up to $150,000 for 3 years of research and study at the institution of the awardee's choice. From time to time, the National Science Board presents the Vannevar Bush Award to a person who, through public service activities in science and technology, has made an outstanding contribution toward the welfare of the Nation and mankind. The two awards together are designed to encourage individuals to seek to achieve the Nation's objectives in scientific research and education.

The National Science Foundation also provides support for the President's Committee on the National Medal of Science.

D. Pertinent Publications

The Foundation and the National Science Board publish a variety of booklets and other materials describing the programs and procedures of the Foundation and assessing the status of science in the Nation. All publication and forms may be obtained by writing to the Foundation's mailing address or visiting the National Science Foundation, Public Affairs and Publications Group, Room 527, 1800 G Street, NW., Washington, DC 20550, unless otherwise indicated below. The following are key publications of the Foundation.

1. *Grants for Scientific and Engineering Research (NSF 83–57)*—Provides basic guidelines and instructions for investigators applying to the Foundation for scientific and engineering research project support and other closely related programs, such as the support of foreign travel, conferences, symposia, and specialized research equipment and facilities. Complete details are given on application procedures. The brochure also provides information on the merit review of proposals for support. Available from the Forms and Publications Unit, National Science Foundation, 1800 G Street, NW, Washington, DC 20550 or calling the Foundation at 202/357–7861.

2. *NSF Grant Policy Manual*—A compendium of basic NSF grant administration policies and procedures generally applicable to most types of NSF grants and to most categories of recipients. The Manual includes fiscal regulations regarding expenditure reporting and use of NSF granted funds and other specific administrative procedures and policies. This manual, identified by GPO as NSF 77–47, was last revised in April 1983 and is updated periodically. The NSF Grant Policy Manual (GPM) is available only by subscription, $12.00 domestic and $16.25 foreign, from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. GPM subscription rules and prices are subject to change by GPO.

3. *NSF Bulletin*—A monthly publication that summarizes program announcements, deadlines and target dates for proposal submissions, and other NSF activities.

4. *NSF Annual Report*—An annual presentation to the President for submission to the Congress highlighting the activities of the Foundation for the fiscal year. Accomplishments in research project support activities and science and engineering education are reflected in a series of brief synopses illustrating and explaining recent undertakings and results which have been brought about through NSF grants. Other data relating to the Foundation staff, financial reports, patents, research center contractors, advisory committees and panels and their membership are contained in the appendices. Available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

5. *National Science Board Reports*—National Science Board assessments of the status and health of science and

engineering. A report on indicators of the state of science and engineering in the United States is rendered biennially to the President for submission to the Congress. Available from the Forms and Publications Unit, National Science Foundation, 1800 G Street, NW., Washington, DC 20550 or by calling the Foundation at 202/357-7861. Other reports on policy matters related to science and engineering and education in science and engineering are provided from time to time. The last two reports that have been submitted are:

University—Industry Research Relationships: Myths, Realities and Potentials (Fourteenth NSB Report, 1982)

Science Indicators—1982 (Fifteenth NSB Report, 1983)

6. *Publications of the National Science Foundation*—Provides a listing of issued NSF publications available to the public, with prices where they apply.

7. *Guide to Programs*—Contains general information for individuals interested in participating in NSF support programs. Program listings describe the principal characteristics and basic purpose of each activity, as well as eligibility requirements, closing dates (where applicable), and the address from which more detailed information, brochures, or application forms may be obtained. Available from the Forms and Publications Unit, National Science Foundation, 1800 G Street, NW., Washington, DC 20550 or calling the Foundation at 202/357-7861.

8. *Individual Program Announcements*—Detailed program publications are issued by individual program areas of the Foundation, announcing and describing award programs and containing critical dates and application procedures.

9. *Important Notices*—The primary means of general communication by the Director, NSF, with organizations receiving or eligible for NSF support. These notices convey important announcements of NSF policies and procedures or other subjects determined to be of interest to the academic community and to other selected audiences.

10. *Internal Issuances*—The Foundation maintains a system of internal issuances for communication within the Agency on matters of policy, procedures, and general information. The internal issuances are published to establish organizations, define missions, set objectives, assign responsibilities, delegate or limit authorities, establish program guidelines, delineate basic requirements affecting activities of the Foundation, etc.

a. *Staff* Memoranda—Issuances reserved for use by the Director and Deputy Director, for communication with the staff on subjects of their choice.

b. *Circulars*—A series of issuances to communicate Agency policies, regulations, and procedures of a continuing nature. (NSF is in the process of converting all policy and procedures contained in Circulars, Staff Memoranda, and Bulletins into a series of Manuals.)

c. *Manuals*—Contain NSF policy and detailed information on operating procedures, requirements, and criteria.

d. *Handbooks*—Contain essential information on NSF programs in a brief form.

e. *Bulletins*—Issuances to communicate urgent information concerning changes in policy or procedure prior to their incorporation into a Circular or Manual, and to communicate information that is pertinent generally for a period of less than 2 years.

11. *Mosaic*—An interdisciplinary magazine of basic and applied research. Published six times a year. Edited for nonspecialists in the sciences as a way for the Foundation to report on the scientific research it supports. Available from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Subscription is $11.00 per year in the United States and possessions. A single copy may be purchased for $2.75.

12. *Antarctic Journal of the United States*—A magazine, published quarterly, available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Subscription is $16.75 per year in the United States and possessions. A single copy may be purchased for $1.50.

13. *Arctic Bulletin*—A quarterly publication, available from the Division of Polar Programs, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

E. Availability of Information

Persons desiring to obtain information, including documents, may submit a request by telephone or in writing to Public Affairs and Publications Group or to other Foundation units. If not satisfied with the response, they may submit a formal request under terms of the NSF Freedom of Information Act regulations, 45 CFR Part 612, or, if applicable, the NSF Privacy Act regulations, 45 CFR Part 613. All documents will be made available for inspection or copying, except for those which fall within the exemptions specified in the law and the withholding of which is deemed absolutely necessary.

Sources of Information

Grants

Individuals or organizations planning to submit grant proposals should refer to the *NSF Guide to Programs*, and the *Grants for Scientific and Engineering Research* brochure or other appropriate program brochures and announcements. Single copies of these documents may be obtained by writing to the Forms and Publications Unit, National Science Foundation, 1800 G Street, NW., Washington, DC 20550 or calling the Foundation at 202/357-7861.

Contracts

The Foundation publicizes contracting and subcontracting opportunities in the *Commerce Business Daily* and other appropriate publications. Organizations seeking to undertake contract work for the Foundation may contact the Division of Grants and Contracts, 202/357-7842, Room 640, or the Division of Administrative Services, 202-357-7922, Room 237, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Small Business

Information concerning NSF research and procurement opportunities for small, disadvantaged, or women owned businesses may be obtained from the Office of Small Business Research and Development/Office of Small and Disadvantaged Business Utilization, 202/357-7464, Room 1250, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Engineering Information Resources

Information concerning engineering resources may be obtained from the Office of the Assistant Director for Engineering, Room 537, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

National Science Board Documents

Schedules of Board meetings, agendas, and summary minutes of the open meetings of the Board may be obtained from the NSB Office, 202/357-9582, Room 545, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Committee minutes

Summary of meeting minutes may be obtained from the contacts listed in the Notice of Meetings published in the **Federal Register**. General information about the Foundation's advisory groups may be obtained from the Division of

Personnel and Management, Management Analysis Section, 202/357-9520, Room 217-A, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Freedom of Information Act (FOIA) Inquiries

Requests from the public for Agency records should be clearly identified as "FOIA REQUEST" and addressed to Public Affairs and Publications Group, Room 527, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Privacy Act Inquiries

Persons desiring to obtain personal records that are legally available to the individual under the Privacy Act of 1974 should submit a request in accordance with the NSF Privacy Act Regulations, 45 CFR Part 613.

Reading Room

Persons who wish to inspect or copy records should contact the NSF Public Affairs and Publication Group, 202/357-9498, Room 531, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Employment

Inquiries may be directed to the National Science Foundation, Division of Personnel and Management, 202/357-9859, Room 212, 1800 G Street, NW., Washington, DC 20550. The National Science Foundation is an equal opportunity employer.

Dated: October 8, 1985.

Jeff Fenstermacher,

Assistant Director for Administration.

[FR Doc. 85-24500 Filed 10-15-85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket 70-1257]

Finding of No Significant Impact; Amendment of Special Nuclear Materials License No. SNM-1227, Exxon Nuclear Company, Inc., Richland, WA

The U.S. Nuclear Regulatory Commission (the Commission) is considering amending Special Nuclear Materials License No. SNM-1227 for the dry conversion of low-enriched UF_6 to UO_2 at Exxon Nuclear Company, Inc.'s (ENC) uranium fuel fabrication facility in Richland, Washington.

Environmental Assessment

Identification of the Proposed Action: The proposed action would authorize ENC for the dry conversion of low-enriched UF_6 (<5% w/o U-235) to UO_2. The maximum throughput for the proposed dry process line is 1.0 MTU/day, however, total throughput of the facility will remain unchanged.

The Need for the Proposed Action: The UO_2 produced by the dry conversion process will be placed in a few demonstration fuel assemblies. These assemblies will be loaded into various reactor cores to determine the behavior of the dry converted oxide under actual operating conditions and to gain customer acceptance of the product.

Environmental Impacts of the Proposed Action: The ENC facility at Richland, Washington, has been licensed to manufacture uranium fuel for light water reactors since 1974. Based on the last Environmental Impact Appraisal associated with the renewal of SNM-1227, effluent releases from present opeations result in offsite doses that are well below the 25 mrem limits set by the U.S. Environmental protection Agency for the uranium fuel cycle facilities (40 CFR 190). Therefore, as discussed below, an increase in release of effluents as a result of the proposed dry conversion process can be accommodated without exceeding established controls for environmental protection.

Since the dry conversion operations will be housed within the existing UO_2 production building, gaseous emissions will be treated by existing scrubber and filtration systems. Projected releases of uranium and fluorides due to the dry conversion process are not expected to significantly change the release rate of air effluents from present operations.

Liquid effluents will be processed for the removal of uranium and ammonia. After processing, the effluent will be sampled and discharged into the sewer. The discharge will meet the State of Washington Waste Discharge Permit 3919 and 10 CFR Part 20.303 requirements.

Solid waste will consist of general contaminated trash such as papers, filters, clothing, etc. These items will be packaged into approved containers for disposal offsite.

Conclusion

Based upon the information presented above, the environmental impact associated with the proposed dry conversion process at ENC's Richland facility is expected to be insignificant. Increases in liquid and/or airborne effluents as a result of the dry conversion process can be accommodated without significant impact to the environment.

Alternative to the Proposed Action

The principal alternative would be to deny the requested amendment. That alternative, in effect, is the same as the "no action" alternative. This alternative would only be considered if significant issues of public health and safety cannot be resolved to the satisfaction of the regulatory authorities involved.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the U.S. Nuclear Regulatory Commission's Environmental Impact Appraisal dated August 1981 related to ENC's uranium fuel fabrication facility.

Agencies and Persons Consulted

The NRC staff reviewed the Licensee's application dated June 12, 1985, and its supplement dated August 29, 1985, and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Assessment related to the amendment for the dry conversion of low-enriched UF_6 to UO_2 at ENC's uranium fuel fabrication facility. On the basis of this Assessment, the Commission has concluded that the environmental impact created by the proposed action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 427-4510 or by writing to the Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Silver Spring, Maryland, this 7th day of October 1985.

For the U.S. Nuclear Regulatory Commission.

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 85-24686 Filed 10-15-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-143]

Nuclear Fuel Services, Inc., (Erwin Facility); Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by letter dated September 3, 1985, the Oil, Chemical and Atomic Workers International Union raised allegations with respect to the operation of and safety practices at the Nuclear Fuel Services, Inc. Erwin facility. The letter requested that the Commission: intervene to halt the reduced operations caused by a labor dispute presently being conducted at the Erwin facility; order an investigation of the allegations raised in the letter; require a formal hearing with notice prior to any future request to operate the Erwin facility; and hold a public hearing in the Erwin, Tennessee area to establish that operations can be conducted at the facility without affecting the public health, safety or interest. The Union's letter is being treated as a request for action pursuant to 10 CFR 2.206 of the Commission's regulations and accordingly, appropriate action will be taken within a reasonable time.

Copies of the petition are available for public inspection in the Commission's Public Document Room, located at 1717 H Street, NW., Washington, DC 20555.

Dated at Bethesda, Md., this 9th day of October, 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85-24685 Filed 10-15-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8698]

Plateau Resources Ltd.; Final Finding of No Significant Impact Regarding the Renewal of Source and Byproduct Material License SUA-1371 for Interim Shutdown of the Shootaring Canyon Uranium Processing Facility Located in Garfield County, UT.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of finding of No Significant Impact.

(1) Proposed Action

The U.S. Nuclear Regulatory Commission (the Commission) is issuing a renewed Source and Byproduct Material License SUA-1371 authorizing Plateau Resources Limited to maintain, in an interim shutdown mode, their Shootaring Canyon Uranium Processing Facility located in Garfield County, Utah.

(2) Reasons for finding of No Significant Impact

The Commission's Uranium Recovery Field Office has prepared an Environmental Assessment for the proposed action. Based on this assessment, the Commission has determined that an Environmental Impact Statement for this particular action is not warranted.

The Environmental Assessment prepared by the Commission's staff evaluated potential impacts on surface and ground water due to accidents, seepage, reclamation, and decommissioning activities. Additionally, the assessment evaluated potential impacts on-site and off-site due to reaiological releases which may occur during the course of the interim shutdown. Documents used in preparing the final assessment included operational data from the licensee's prior milling activities, the licensee's Environmental Report dated November 26, 1984, as revised by submittals of March 22, 1985, April 12, 1985, and August 13, 1985, the Final Environmental Statement prepared by the Commission staff for the original Shootaring Canyon project license dated July, 1979, and the Safety Evaluation Report prepared by the Commission staff in support of this action.

Based on these evaluations, the Commission's staff has determined that the proposed shutdown will not have a significant effect on the quality of the human environment. Specific reasons for making this determination are as follows:

(a) The ground water monitoring program in effect at the Shootaring Canyon Facility is sufficient to detect releases and thereby minimize any impact on ground water.

(b) Radiological effluents from the facility during indefinite shutdown of the mill will be minimal and will be continuously monitored.

(c) Environmental monitoring is comprehensive enough to detect any significant radiological release from the milling facilities.

(d) No additional radioactive wastes will be produced or disposed of in the tailings area during the shutdown period. The existing wastes will be stabilized and reclaimed in accordance with applicable Federal and State regulations.

In accordance with 10 CFR Part 51.33(a), the Director, Uranium Recovery Field Office, made the determination to issue a draft Finding of No Significant Impact. A draft Finding of No Significant Impact was published on September 5, 1985, and no comments were received. In accordance with 10 CFR Part 51.33(e), the Director, Uranium Recovery Field Office, made the determination to issue a final Finding of No Significant Impact.

This finding, together with the Environmental Assessment setting forth the basis for the finding, and other related documents are available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, CO and at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC.

Dated at Denver, Colorado, this 8th day of October, 1985.

For the Nuclear Regulatory Commission.

Harry J. Pettengill,

Chief, Licensing Branch 2, Uranium Recovery Field Office, RIV.

[FR Doc. 85-24684, Filed 10-15-85; 8:45 am]

BILLING CODE 7590-01-M

[Dockets No. 50-338 and 50-339]

Virginia Electric and Power Co. et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-4 and NPF-7, issued to Virginia Electric and Power Company and Old Dominion Electric Cooperative (the licensee), for operation of the North Anna Power Station, Units No. 1 and No. 2 located in Louisa County, Virginia, in accordance with the licensee's application for amendments dated September 19, 1985.

The amendments would add a statement to Technical Specification (TS) 3.7.10 specifying which snubbers shall be operable and deleting Tables 3.7-4a and 3.7-4b. The proposed change would remove the requirement to update the TS when a snubber is added or deleted from NA 1&2. These changes are in accordance with NRC Generic Letter 84-13 dated May 3, 1984 entitled "Technical Specification for Snubbers." Generic Letter 84-13 recommended that Tables 3.7-4a and 3.7-4b be eliminated from the TS. Generic Letter 84-13 also recommended that the TS be modified to specify which snubbers are required to be operable. This revision included a statement specifying "All snubbers utilized on safety related systems shall be OPERABLE. For those snubbers utilized on non-safety related systems, each snubber shall be OPERABLE if a failure of that snubber or the failure of

the non-safety related system would have an adverse effect on any safety related system." A list of snubbers will still be maintained as part of the plant records as required by TS 4.9.7.f. TS 4.9.7.f requires "a record of the service life of each snubber, the date at which the designated service life commenced and the installation and maintenance records on which the designated service life is based shall be maintained." The addition or deletion of a snubber will be documented in the NA–1&2 plant records. These changes are in accordance with the recommendations of Generic Letter 84–13. In addition references to Tables 3.7–4a and 3.7–4b have been deleted from the presently specified NA–1&2 TS.

The proposed change will also add a statement to surveillance requirement 4.7.10.a regarding the early inspection of snubbers. Early inspections can be used to set a new reference inspection date. However, the results of such early inspections cannot be used to increase the inspection interval. This statement is present in the bases section of the technical specifications and is being added to the surveillance requirements for clarification purposes. This statement is also consistent with the recommendation of Generic Letter 84–13. In section 4.7.10.c, the expression that is used to determine the sample size for additional functional testing of snubbers (should it be required) has been modified in accordance with Generic Letter 84–13. Finally, exemptions from functional testing for large snubbers greater than 50 kips during the Cycle 3 refueling and maintenance outage for Unit 1, and the Cycle 1 refueling and maintenance outage for Unit 2 have been deleted since these outages have been completed.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided examples of changes that constitute no significant hazards consideration in Federal Register, Volume 48, page 14870. Example (i) is a purely administrative change to technical specifications, for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. Example (vii) is a change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations in keeping with the regulations. The proposed changes to delete one time exemptions which have expired and to add a statement to the surveillance requirement which is presently in the Bases section are similar to example (i) in that they are administrative in nature. The proposed changes to delete the snubber tables and modify the expression determining sample size are similar to example (vii) in that they are consistent with the guidance provided in Generic Letter 84–13. Based on the above, the proposed changes are enveloped by examples (i) and (vii), and therefore, the staff proposes to determine that the proposed amendments do not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Records Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Monday through Friday.

By November 15, 1985, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses 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 amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The

final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission my issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, 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 Edward J. Butcher: (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 Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212, attorney for the licensee.

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 September 19, 1985 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Bethesda, Maryland, this 4th day of October, 1985.

For the Nuclear Regulatory Commission.

Leon B. Engle,

Acting Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 85-24687 Filed 10-15-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding the Withdrawal From Warehouse of Certain Alloy Tool Steel Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice permits the withdrawal from warehouse for consumption of not more than forty-five tons of certain alloy tool steel products.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Joseph Papovich, Office of the United States Trade Representative, (202) 395-4510.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 5074 of July 19, 1983 (48 FR 33233), provides for the temporary imposition of increased tariffs and quantitative restrictions on certain stainless steel and alloy tool steel products imports into the United States. Headnote 10(d), part 2A of the Appendix to the Tariff Schedules of the United States (TSUS) authorizes the U.S. Trade Representative to adjust the restraint level for any such steel to be exceeded during any restraint period.

Accordingly, I have determined that an amount not to exceed forty-five short tons of the following alloy tool steel product, commonly referred to as modified 4340 alloy steel (34 CrNiMo6), provided for in Tariff Schedules of the United States (TSUS) item 926.21, may be entered for consumption or withdrawn from Customs bonded warehouse, in excess of the restraint level provided for the period July 20, 1985-October 19, 1985 for the "Other" foreign country category:

Bars of alloy steel, annealed, centerless and ground, not less than 5.8 millimeters and not more than 30 millimeters in diameter and 12 feet in length, containing, in addition to iron, each of the following elements by weight in the amount specified:

Carbon: not less than 0.30 percent; not more than 0.38 percent
Manganese: not less than 0.40 percent; not more than 0.70 percent
Silicon: not less than 0.15 percent; not more than 0.40 percent
Phosphorous: not more than 0.038 percent
Sulphur: not more than 0.035 percent
Chromium: not less than 1.4 percent; not more than 1.7 percent
Nickel: not less than 1.4 percent; not more than 1.7 percent
Molybdenum: not less than 0.15 percent; not more than 0.30 percent

certified by the importer of record or the ultimate consignee at the time of entry for use in the manufacture of drill bits.

In addition, an identical amount shall be deducted from the quota quantity allocated to the "Other" foreign country category for TSUS 926.22 for the restraint period October 20, 1985-January 19, 1986. This determination supersedes the provisions of the notice of October 20, 1983 (48 FR 48888), to the extent inconsistent herewith.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 85-24642 Filed 10-15-85; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Technical Standard Order; Airborne Area Navigation Equipment Using Multi-Sensor Inputs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comment.

SUMMARY: The proposed TSO-C115 prescribes the minimum performance standard that Airborne Area Navigation Equipment Using Multi-Sensor Inputs

must meet in order to be identified with the marking "TSO–C115.:

DATE: Comments must identify the TSO file number and be received on or before February 4, 1986.

ADDRESS: Send all comments on the proposed TSO to:

Federal Aviation Administration, Policy and Procedures Branch, AWS–110, Aircraft Engineering Division, Office of Airworthiness, File No. TSO–C115, 800 Independence Avenue, SW., Washington, DC 20591.

Or deliver comments to: Room 335, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Policy and Procedures Branch, AWS–110, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone (202) 426–8395.

Comments received on the proposed TSO may be inspected, before and after the comment closing date at Room 335, FAA Headquarters Building (FOB–10A) 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they may desire. Communications should identify the TSO file number and be submitted to the address specified above. All communications received on or before the closing date for comments specified will be considered by the Director of Airworthiness before issuing the final TSO.

How to Obtain Copies

A copy of the proposed TSO may be obtained by contacting the person under "For Further Information Contact." TSO–C115 references Radio Technical Commission for Aeronautics (RTCA) Document No. 187 dated November 1984, for the minimum performance standard, RTCA Document No. DO–178 dated November 18, 1981, for the software requirement test procedures. RTCA Document Nos. Do–187, DO–178, and DO–160A may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005.

Issued in Washington, DC, on October 1, 1985

Thomas E. McSweeny,

Manager, Aircraft Engineering Division, Office of Airworthiness.

[FR Doc. 85–24591 Filed 10–15–85; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. IP85–14; Notice 1]

Metzeler Kautschuck GmbH; Receipt of Petition for Determination of Inconsequential Noncompliance

Metzeler Kautschuck GmbH, of Munchen, West Germany, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.119, Motor Vehicle Safety Standard No. 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars.* The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This Notice of Receipt of a petition for a determination of inconsequentiality is published in accordance with Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S6.5(d) of Standard No. 119 requires tires to be marked with the maximum load rating and corresponding inflation pressure. Previous agency interpretations of this requirement have arisen in this area and the decision has been made that only one load rating may appear on the sidewall of tires. Metzeler has manufactured 9,000 ME88 Marathon motorcycle tires, in tire size designations, 150/90H15, 140/90H16, 130/90H17 and 120/90H18, wherein a second maximum load rating has been marked for operational purposes. These "H" speed rated motorcycle tires are designed for a maximum load at speeds up to, but not exceeding 130 mph. The second maximum load rating on these tires has been labeled for operations not exceeding 60 mph, and the maximum load rating has been adjusted accordingly. All other labeling is correct.

Metzeler argues that the noncompliance is inconsequential because the failure to label properly has no impact on safety and the tires otherwise comply with all requirements of Standard No. 119. Metzeler contends that they are providing information useful to riders who are using these motorcycle tires that are designed for heavily loaded touring motorcycles. They indicate that the violation only involves additional information, and not the lack of safety labeling. The subject tires were manufactured during the period from March through July 1985. Metzeler further states that when apprised of the agency interpretation on August 8, 1985, Metzerler discontinued the use of the second load rating on August 9, 1985.

Interested persons are invited to submit written data, views and arguments on the Metzeler petition, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 15, 1985.

(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: October 10, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85–24627 Filed 10–15–85; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 4, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance

Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: IRS Form 8308
Type of Review: New
Title: Report of a Sale or Exchange of Certain Partnership Interests
Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Financial Management Service

OMB Number: 1510-0018
Form Number: TFS 133C
Type of Review: Extension
Title: Claim Against the United States for the Proceeds of Government Check or Checks
Clearance Officer: Douglas Lewis (202) 287-4500, Financial Management Service, Room 163, Liberty Loan Building, 401 14th Street, NW., Washington, DC 20228
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 85-24658 Filed 10-15-85; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirement Submitted to OMB for Review

Dated: October 9, 1985.

The Department of Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0106
Form Number: None
Type of Review: Extension
Title: Special Form of Entry of Articles for Exhibition

OMB Number: 1515-0069
Form Number: CF 3461, CF 3461A
Type of Review: Revision
Title: Immediate Delivery Entry
Revision: Immediate Delivery/Entry

OMB Number: 1515-0112
Form Number: None
Type of Review: Revision
Title: 19 CFR Part 10, Customs Regulations Concerning Documentary Evidence of Country of Origin Under the Caribbean Basis Initiative and the Generalized System of Preferences
Clearance Officer: Vince Olive (202) 566-9181, U.S. Custom Service, Room 6321, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Alcohol, Tobacco & Firearms

OMB Number: 1512-0128
Form Number: ATF 3066 (5210.10)
Type of Review: Extension
Title: Record of Small Cigars and Large and Small Cigarettes

OMB Number: 1512-0030
Form Number: ATF F 4483-A (5300.11)
Type of Review: Extension
Title: Quarterly Firearms Manufacturing and Exportation Report

OMB Number: 1512-0129
Form Number: ATF Forms 4473, Part I and Part II
Type of Review: Extension
Title: Record Retention Period and Certain Firearms Records
Clearance Officer: Howard Hood (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 2228, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 85-24636 Filed 10-15-85; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirement Submitted to OMB for Review

Dated: October 7, 1985.

The Department of Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: New
Form Number: None
Type of Review: New
Title: National Paper Check Awareness Campaign—Awareness and Attitude Study
Clearance Officer: Douglas Lewis (202) 287-4500, Financial Management Service, Room 163, Liberty Loan Building, 401 14th Street, NW., Washington, DC 20228
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 85-24637 Filed 10-15-85; 8:45 am]

BILLING CODE 4810-25-M

Office of Revenue Sharing

Final Date of Adjustment Demands and Close of Data Definitions

AGENCY: Office of Revenue Sharing, Treasury.

SUMMARY: This notice announces that: on September 30, 1985 the Revenue Sharing allocations to eligible governments for Entitlement Period 15 became final, unless a demand for adjustment was received before October 1, 1985; and the data definitions are final for Entitlement Period 17.

DATE: September 30, 1985 effective date.

FOR FURTHER INFORMATION CONTACT: Matthew Butler, Manager, Data and Demography Division, Office of Revenue Sharing, 2401 E Street, NW., Washington, DC 20226, telephone (202) 634-5166.

SUPPLEMENTARY INFORMATION: The Revenue Sharing Act (31 U.S.C. 6702(c)) provides that for entitlement periods beginning after December 31, 1976, no adjustment shall be made in a government's payments for an entitlement period, unless a demand for adjustment has been made by the recipient government or the Secretary of the Treasury within one year after the end of that entitlement period. A demand by the Director or Deputy Director of the Office of Revenue Sharing is treated as a demand for adjustment by the Secretary.

Therefore, the allocations to recipient governments for Entitlement Period 15 (October 1, 1983–September 30, 1984) became final, unless a government or the Secretary of the Treasury had a

demand for adjustment pending with the Office of Revenue Sharing on September 30, 1985. A demand accompanied by adequate supporting documentation pending at the close of business on the September 30, 1985, deadline will be researched, and a written decision on the data challenge will be rendered. Any government which receives a data change as a result of an adjustment demand will be notified of any adjustment amount at the completion of the adjustment process.

The Office of Revenue Sharing also announces that the data definitions upon which the allocations are based for Entitlement Period 17 (October 1, 1985–September 30, 1986) became final on September 30, 1985. These data definitions were published in the **Federal Register** on August 9, 1985 (50 FR 32378).

The so-called "Memphis Rule" (31 U.S.C. 6709(a)(3)), allows the Governor of a State to clarify for the computation of local tax effort, that certain county sales taxes are eligible to be credited to local governments in the country. That certification must have been received by the Office of Revenue Sharing on or before September 30, 1985, to be effective for Entitlement Period 17.

This notice is issued under the authority of the 31 CFR 51.1.

Dated: October 9, 1985

Michael F. Hill

Director, Office of Revenue Sharing.

[FR Doc. 24663 Filed 10-15-85; 8:45 am]

BILLING CODE 4810-28-M

UNITED STATES INFORMATION AGENCY

Bureau of Educational and Cultural Affairs; University Affiliations Program: Application Notice for Fiscal Year 1986

Correction

In FR Doc. 85-23752, beginning on page 40651, in the issue of Friday, October 4, 1985, make the following corrections:

On page 40651, in the third column, in the eleventh line from the bottom of the page, "Iran" should read "Iraq".

And on page 40653, in the third column, the contact person for Europe should read "Mr. George Jewsbury".

BILLING CODE 1505-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 200
Wednesday, October 16, 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).

CONTENTS

1

FEDERAL ELECTION COMMISSION

DATE AND TIME: Thursday, October 17, 1985, at the conclusion of the Open Meeting.

PLACE: 1325 K Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

DATE AND TIME: Thursday, October 17, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, DC (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings
Correction and Approval of Minutes
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Majorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85-24681 Filed 10-11-85; 8:46 am]

BILLING CODE 6715-01-M

2

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 10, 1985.

TIME AND DATE: 10:00 a.m., Thursday, October 17, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. The NACCO Mining Company, Docket No. LAKE 85-87-R. (Issues include the report of alleged ex parte communication.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85-24792 Filed 10-11-85; 3:16 am]

BILLING CODE 6735-01-M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, October 21, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 11, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-24797 Filed 10-11-85; 3:16 pm]

BILLING CODE 6210-01-M

4

PAROLE COMMISSION

DATE AND TIME: Monday, October 28, 1985-2:00 p.m.-5:00 p.m.

PLACE: 1718 Peachtree Street, NW., Atlanta, Georgia 30309.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Consideration of information of a personal nature regarding certain inmates, parolees, investigative, enforcement, or administrative personnel or others, the disclosure of which would constitute a clearly unwarranted invasion of their personal privacy. Consideration of information containing investigative techniques and procedures.
2. Consideration of revision of the agency's personnel rules and/or practices, and related personnel matters.

CONTACT PERSON FOR MORE INFORMATION: Ms. Mary Armstrong, Chairman's Office, (301) 492-5990.

Dated: October 10, 1985.

Joseph A. Barry,

General Counsel, United States Parole Commission.

[FR Doc. 85-24780 Filed 10-11-85; 2:22 pm]

BILLING CODE 4410-01-M

5

POSTAL RATE COMMISSION

TIME AND DATE: October 28, November 8, 1985—Periodic meetings.

PLACE: Postal Rate Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268-0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Discussion of issues and recommended decisions re Tri-Parish (C85-2).

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission Room 300, 1333 H Street, NW Washington DC 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 85-24794 Filed 10-11-85; 3:16 pm]

BILLING CODE 7715-01-M

federal register

Wednesday
October 16, 1985

Part II

Department of Agriculture

Animal and Plant Health Inspection Service

Brucellosis Prevention; List of Specifically Approved Stockyards; Notice

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 85-091]

Brucellosis Prevention; List of Specifically Approved Stockyards

The regulations in 9 CFR Part 78 contain restrictions on the interstate movement of cattle, bison, and other domestic animals to prevent the spread of brucellosis. This document lists certain stockyards as specifically approved for purposes of Part 78.

The stockyards preceded by an asterisk are specifically approved for the purposes of §§ 78.7, 78.8, 78.9, 78.12a, 78.15, 78.16, and 78.17, Title 9, Code of Federal Regulations, concerning brucellosis reactor and exposed cattle, cattle from herds not known to be affected with brucellosis, cattle from quarantined areas, brucellosis reactor and exposed bison, and bison from herds not known to be affected with brucellosis.

The stockyards not preceded by an asterisk are specifically approved for the purposes of §§ 78.9 and 78.17, Title 9, Code of Federal Regulations, concerning cattle and bison from herds not known to be affected with brucellosis.

Alabama

*Alabama Livestock Auction, Inc., Uniontown
*Barrett Livestock Market, Inc., Wetumpka
*Capital Stockyard, Montgomery
*C.L. Chambers and Son, Brundidge
*Chatom Livestock Auction, Chatom
*Cherokee County Stockyard, Inc., Centre
*Conecuh Stock, Evergreen
*Cullman Stockyard, Cullman
*Dothan Livestock Company, Division of Chipley Livestock, Inc., Dothan
*Escambia County Cooperative, Inc., Brewton
*Farmers Cooperative Market, Frisco City
*Farmers Cooperative Market, Inc., Opp
*Farmers Livestock Co-op, Inc., Elba
*Fayette Stockyards, Inc., Fayettee
*Fisk and Allison Stockyard, Scottsboro
*Florence Trading Post, Florence
*Fort Payne Stockyard, Inc., Fort Payne
*Geneva County Livestock, Geneva
*Gray and Sons Stockyard, Clanton
*Henry County Livestock, Abbeville
*Limestone County Stockyard, Inc., Athens
*Linden Stockyard, Inc., Linden
*Livingston Stockyard, Livingston
*Louisville Livestock Market, Louisville
*McLane-Garret Cattle Company, Inc., Montgomery
*W.G. Mercer Livestock Company, Chancellor
*Montgomery Cattle Company, Inc., Burkville
*Moulton Stockyard, Inc., Burkville
*North Alabama Livestock Sales, Anniston
*Northwest Alabama Livestock, Inc., Russellville
*Owens Stockyard, Inc., Montgomery
*Parkman Cattle Company, Inc., Hope Hull
*Ranburne Livestock Sales, Inc., Ranburne
*Roanoke Stockyard, Inc., Roanoke
*Robertsdale Livestock Auction, Inc., Robertsdale
*L.A. Roll and Son Cattle Company, Montgomery
*Sand Mountain Livestock Market, Inc., Crossville
*Scott Livestock Commission, Inc., Hamilton
*Stokes and Brogden Stockyard, Inc., Andalusia
*Triple S Stockyards, Inc., Montgomery
*Valley Stockyard, Decatur
*W and W Arab Stockyard, Arab
*Wallace Stockyard, Ashville
*West Alabama Stockyard, Eutaw

Arizona

*Arizona Livestock Auction, Inc., Phoenix
Rawhide Livestock Auction, Chandler
Valley Livestock Auction, Sun Valley
Willcox Livestock Auction, Willcox

Arkansas

*Ash Flat Livestock Auction, Inc., Ash Flat
*Atkins Livestock Auction, Atkins
*Batesville Livestock Auction, Batesville
*Beebe Auction Company, Beebee
*Bentonville Livestock Auction, Bentonville
*Boone County Livestock Auction, Harrison
*Carroll County Livestock Auction, Berryville
*Cattlemen's Livestock Market, Glenwood
*Cattleman's Commission Company, Batesville
*Central Arkansas Auction, Inc., Morrilton
*Charlotte Livestock Auction Barn, Inc., Charlotte
*County Line Sale Barn, Inc., Ratcliff
*Clark County Livestock Auction, Inc., Arkadelphia
*Craighead County Auction, Jonesboro
*Decatur Livestock Auction, Decatur
*Drew County Auction Sale, Monticello
*Eudora Livestock Commission, Eudora
*Farmers and Ranchers Livestock Auction, Inc., Charlotte
*Farmers and Ranchers Livestock Auction, Mountain View
*Farmers Livestock Auction, Inc., Springdale
*Glover Livestock Commission Company, Inc., Pine Bluff
*Harrison Livestock Auction, Harrison
*Hays Livestock Auction, Searcy
*Hope Livestock Auction, Inc., Hope
*Bob Gordon and Sons, Mena
*Lafayette County Livestock, Lewisville
*Lewis Livestock Co., Inc., Conway
*Livestock Producers, Eudora
*Magnolia Livestock Auction, Magnolia
*Malvern Livestock Commission Company, Malvern
*Montgomery County Livestock, Mt. Ida
*Mountain Home Livestock Auction, Inc., Mountain Home
*Nashville Livestock Commission, Nashville
*North Arkansas Livestock Auction, Green Forest
*Ola Livestock Auction, Ola
*Paragould Stockyards, Inc., Paragould
*Pocahontas Livestock Auction, Pocahontas
*Richardson Livestock Commission Co., Inc., Little Rock
*Salem Livestock Auction, Salem
*Saline Ouachita Valley Commission Company, Warren
*Scott County Livestock Auction, Waldron
*Searcy County Auction Company, Marshall
*Siloam Springs Sale Barn, Siloam
*Washington County Sales Company, Inc., Fayetteville

California

Atwater Livestock Auction Company, Atwater
Cattle Palace Auction, Inc., Elk Grove
Carl Johnson Livestock Auction, Eureka
*Corona Livestock Auction, Corona
*Dixon Livestock Auction, Dixon
*Escalon Livestock Market, Escalon
Humboldt Auction Yard, Fortuna
Oakdale Livestock Auction, Oakdale
*Producer's Livestock Marketing Association, Chino
Shasta Livestock Auction, Inc., Cottonwood
Siskiyou Stockyards, Yreka
*Stockton Livestock Market, Stockton
Templeton Livestock Market, Templeton
*Turlock Livestock Auction Yard, Turlock
Western Stockman's Market, Famoso

Colorado

*Alamosa Auction, Almosa
*Calhan-Cash Auction Market, Calhan
*Centennial Livestock Auction Company, Fort Collins
*Colorado Livestock Market, Inc., Brush
*Cortez Livestock Auction, Inc., Cortez
*Delta Sales Yard, Delta
*Demmler Livestock Commission Company, Pueblo
*Fowler Auction Company, Fowler
*Garfield Livestock, Silt
*Hi-Country Cattle Co., Fair Field Farms, Inc., Ignacio
*Hotchkiss Sale Yard, Hotchkiss
*La Junta Livestock Commission Company, La Junta
*Limon Livestock Exchange, Limon
*Livestock Exchange, Inc., Brush
*Monte Vista Livestock Auction Company, Monte Vista
*National Western Livestock Center, Denver
Otis NFO Collection Point, Otis
*Producers Livestock Marketing Assn. of Greeley, Greeley
*Rangers and Farmers Livestock Auction, Burlington
*Ranchland Livestock Commission Co., Inc., Wray
*Salida Livestock Sales, Inc., Salida
*Sterling Livestock Commission Company, Sterling
*Stratton Livestock, Inc., Stratton
*Tri-County Livestock Commission Company, Broomfield
*Valley Livestock Auction Company, Fruita
*Western Slope Livestock Auction, Montrose
*Winter Livestock Commission Company, La Junta

Connecticut

Southern New England Livestock Company, North Franklin
Middlesex Livestock Auction, Durham

Delaware

*Carroll's Sale Company, Inc., Felton

Florida

*Chipley Livestock, Inc., Chipley
*Columbia Livestock Inc., Lake City

*Gainesville Livestock Market, Inc., Gainesville
*Jay Livestock Auction Market, Jay
*Madison Stockyards, Inc., Madison
*Monticello Stockyard, Inc., Monticello
*North Florida Farmers Livestock Market, Inc., Lake City
Quincy Livestock Auction Market, Quincy
*Tindel Livestock Auction Market, Inc., Graceville
*West Florida Livestock Auction Market, Inc., Marianna

Georgia

*Bainbridge Auction Market, Inc., Bainbridge
*Carroll County Livestock Salesbarn, Carrollton
*Columbus-Muscogee Livestock Auction, Inc., Columbus
*Coosa Valley Livestock Company, Rome
*Franklin County Livestock Market, Inc., Carnesville
*Gainesville Livestock Center, Gainesville
*Georgia Farmers Livestock Commission, Inc., Cumming
*Georgia Farm Products Corporation, Thomaston
*La Grange Stockyards, La Grange
*W.L. Mosley Livestock Company, Inc., Blakely
*Peoples Livestock Market, Inc., Cartersville
*Pierce County Stockyard, Inc., Blackshear
*Pulaski County Stockyard, Hawkinsville
*Seminole Livestock, Inc., Donalsonville
*Sumter Livestock Association, Americus
*Thomas County Stockyards, Inc., Thomasville
*Tri-County Livestock Auction Company, Social Circle
*Tri-County Stockyard, Sylvania GA
*Hugh Watson Stockyard, Gainesville
*Wayne County Stockyard, Jesup
*Wheeler Brothers Livestock Market, Inc., Eastonollee
*Wilkes County Stockyard, Inc., Washington

Idaho

*Blackfoot Livestock Commission Company, Blackfoot
*Bonners Ferry Livestock Inc., Bonners
*Burley Livestock Commission, Burley
*Cache Valley Livestock Auction, Inc., Preston
*Cattlemen Livestock Auction, Inc., d.b.a. Treasure Valley Livestock Auction, Caldwell
*Coeur d'Alene Livestock Yards, Coeur d'Alene
*Cottonwood Sales Yard, Cottonwood
*Custer County Livestock Marketing Association, Mackay
*Emmett Valley Auction Company, Emmett
*Gooding Livestock Commission Co., Inc., Gooding
*Idaho Livestock Auction, Idaho Falls
*Lewiston Livestock Market, Inc., Lewiston
*Nampa Livestock Markets, Inc., Nampa
*OK Livestock Exchange, Caldwell
*Producers Livestock Marketing Association, Jerome
*Rexburg Livestock Auction, Rexburg
*Shoshone Salesyard, Shoshone
*Twin Falls Livestock Commission Company, Twin Falls
*Valley Livestock Commission Company, Rupert
*Weiser Livestock Commission Company, Weiser

Illinois

*Barry's Livestock Marketing Center, Pacatonia
*Bloomington Livestock Commission Company, Bloomington
*Breed's Livestock Sales, Elizabeth
*Carthage Livestock Auction, Carthage
*Chicago Atkinson Livestock Market, Inc., Atkinson
*Chicago-Joliet Livestock Marketing Center, Joliet
*Danville Livestock Commission Co., Danville
*Deckers Livestock Inc., Milford
*DeWane Livestock Exchange, Belvidere
*Farmers Choice Marketing Center, Winslow
*Greenville Livestock, Inc., Greenville
*Goreville Livestock Auction, Inc., Goreville
*Hammond's Livestock Marketing Center, Salem
*Heinold Cattle Market, Brookport
*Illinois Auction Commission Company, Paris
*Interstate Producers Livestock Association, Shelbyville
*Jennings Sale Company, Macomb
*Kankakee Livestock Company, Bourbonnais
*Kewanee Sale Barn, Kewanee
*Mercer County Livestock Auction, Viola
*Olney Livestock, Inc., Olney
*Peoria Union Stockyards Company, Peoria
Pittsfield Community Sale, Inc., Pittsfield
*Rock Island Livestock Auction, Inc., Rock Island
*Harry Schrader Marketing Center, Dakota
*Schuyler Livestock Sales, Rushville
*St. Louis National Stockyard, National Stockyards
*Vienna Livestock Market, Vienna

Indiana

*Bozwell Livestock Commission Company, Boswell
*Chandler National Farmer's Stockyard, Chandler
*Claypool Livestock Sales, Silver Lake
*Evansville Livestock Market, Evansville
*Henry County Livestock Auction, Newcastle
Ireland National Farmers Stockyard, Ireland
Johnson County Sale Pavilion, Amity
*Indianapolis Stockyards, Indianapolis
*Lowell Livestock Auction, Inc., Lowell
*Loy's Sale Barn, Portland
Mariah Packing, Inc., Columbus
*Morton Livestock Auction, Morton
*Morton Sale Barn, Greencastle
*Ohio Producers, Fort Wayne
*Producers Marketing Association, Centerville
*Producers Marketing Association, Montpelier
*Producers Livestock Association, Vincennes
*Rochester Livestock Auction, Rochester
*Shipshewana Auction, Inc., Shipshewana
*Star Salebarn, Greensburg
*Stoney Pike Livestock Auction, Inc., Logansport
*Topeka Livestock Auction, Topeka
*White's Livestock Auction, Brookville

Iowa

Ackley Sale Pavilion, Ackley
Adams County Auction, Corning
Adel Sales Pavilion, Adel
Albia Sales Company, Inc., Albia
Algona Livestock Auction and Exchange, Algona
Ambrose Hess and Company, Worthington
Anamosa Livestock Auction, Anamosa
Anita Livestock Auction, Anita
Aplington Livestock Auction, Aplington
Audubon County Livestock Exchange, Audubon
Avoca Livestock Auction, Inc., Avoca
Baxter Sales Company, Baxter
Bedford Sales Company, Bedford
*Belle Plaine Livestock Auction, Inc., Belle Plaine
*Bingley and Dykstra Sales Company, Knoxville
Bleil and Chapman Livestock Auction, Kingsley
Bloomfield Livestock Market, Inc., Bloomfield
Carroll Livestock Sales, Carroll
Cascade Sales Barn, Cascade
*Central Iowa Stockyards, Webster City
Centerville Sales Company, Centerville
Chariton Livestock Exchange, Chariton
Phil Clark and Sons Sales Company, Knoxville
Clarinda Auction Company, Clarinda
Clear View Cattle Company, Inc., Blairsburg
Coggon Livestock Sales Company, Coggon
Colfax Livestock Sales Company, Colfax
*Cresco Livestock Market, Cresco
Creston Livestock Auction, Creston
Darwin Dralle Livestock, Greene
Decatur County Livestock Auction, Inc., Leon
Decorah Sales Commission, Decorah
*Denison Livestock Auction, Inc., Denison
DeVries Auction, Buffalo Center
*Dunlap Livestock Auction, Dunlap
Dyersville Salesbarn, Dyersville
Eastern Iowa Livestock Commission, Mechanicsville
Edgewood Livestock Auction, Inc., Edgewood
Elkader Sales Barn, Elkader
Fairfield Livestock Commission, Fairfield
Farmers Livestock Auction, Carroll
Farmers Auction Market, Eldora
Forest City Cow Palace, Jennings Bros., Inc., Forest City
Grinnell Livestock Exchange, Grinnell
*Guthrie Stock Pavilion Co., Inc., Guthrie Center
Haweye Livestock Auction, Fairfax
Heckathorn Livestock Auction Company, Storm Lake
Highview Cattle Company, Cylinder
*Humeston Livestock Auction, Humeston
Independence Sales Company, Independence
Interstate Producers Livestock Association, Waukon
Kalona Sales Barn, Inc., Kalona
Keoco Auction Company, Sigourney
*Keosaugua Sale Co., Inc., Keosaugua
Kimballton Auction Company, Kimballton
Jake Zoet Livestock Company, Sheldon
Jim Lahr, Hopkinton
*Lamoni Livestock Sales Company, Lamoni
Le Mars Livestock Sales Company, Le Mars
Lenox Livestock Auction, Lenox
Lizer Livestock Auction, Inc., Gowrie
Madison County Auction, Winterset
*Manchester Livestock Auction, Inc., Manchester
Mapleton Livestock Auction Company, Mapleton
Maquoketa Livestock Sales, Maquoketa
Massena Livestock Auction, Massena

Millinkamp Cattle, Inc., Dyersville
Montezuma Sale Company, Inc., Montezuma
Monticello Sales Barn, Monticello
Moorhead Livestock Auction, Moorhead
Mount Ayr Livestock Market, Mount Ayr
N.E. Iowa Sales Commission, Waukon
Nesvik Livestock Market, Spirit Lake
*New Liberty Livestock Market, New Liberty
North Iowa Livestock Exchange, Garner
Northside Sales Company, Sibley
Orient Sales Company, Orient
Oskaloosa Livestock Market, Inc., Oskaloosa
Perry Sales Pavilion, Perry
Peterson Sheep and Cattle Company, Aubudon
Petersen Sheep and Cattle Company, Inc., Spencer
Red Oak Livestock Market, Inc., Red Oak
*Riceville Sale Pavilion, Riceville
Rubey Auction Company, Red Oak
Postville Sale Barn, Postville
Russell Livestock Auction, Inc., Russell
Sheldon Livestock Sales, Inc., Sheldon
Shenandoah Livestock Auction, Shenandoah
*Sioux City Stockyards, Sioux City
Spencer Livestock Sales, Inc., Spencer
Stanton Livestock Auction, Stanton
Story City Livestock Auction Company, Story City
Stuart Sales Company, Stuart
*Tama Livestock Auction, Inc., Tama
Tri-State Livestock, Ltd., Sioux Center
United Livestock Commission Company, Maquoketa
Walker Sales Company, Walker
*Wapello Livestock Sales, Inc., Wapello
Waverly Sale Co., Inc., Waverly
Wayland Livestock Auction, Inc., Wayland
West Union Auction Exchange, West Union
Winneshiek Coop Sales Commission, Decorah
Wood Brothers Market, Sioux City

Kansas

*Allen County Livestock Auction, Gas City
*Anderson County Sale Company, Garnett
*Anthony Livestock Company, Anthony
*Atchison County Auction Co., Inc., Atchison
*Atwood Sales Barn, Inc., Atwood
*Beloit Livestock Auction, Inc., Beloit
*Chanute Livestock Auction, Chanute
*Coffey County Livestock Market, Burlington
*Caldwell Sales Company, Caldwell
*Cedarvale Sales Company, Cedarvale
*Central Livestock Corporation, South Hutchinson
*Chandler Livestock Auction, Smith Center
*Clay Center Livestock Company, Inc., Clay Center
*Coffeyville Stockyards, Coffeyville
*Colby Livestock Commission, Inc., Colby
*Coldwater Livestock Sale Company, Inc., Coldwater
*Council Grove Livestock Commission Company, Council Grove
*Douglas Livestock Commission Company, Douglass
*El Dorado Livestock Auction, Inc., El Dorado
*Emmett Livestock Sales, Emmett
*Emporia Livestock Sales Co., Inc., Emporia
*Eureka Livestock Auction Company, Eureka
*Farmers and Ranchers Commission Company, Salina
*Farmer's Livestock Commission Co., Inc., Washington
*Farmers Livestock Exchange, Inc., Wakarusa
*Fort Scott Sale Company, Inc., Fort Scott
*Franklin County Sale Company, Inc., Ottawa
*Fredonia Livestock Sales Company, Inc., Fredonia
*Garden City Livestock Sales, Garden City
*Glasco Livestock Exchange, Glasco
*Great Bend Livestock Commission, Inc., Great Bend
*Hansen Livestock Auction, Concordia
*Hays Livestock Market Center, Hays
*Herington Livestock Auction Company, Herington
*Hiawatha Auction Company, Hiawatha
*Hill City Livestock Commission Co., Inc., Hill City
*Holton Livestock Exchange, Inc., Holton
*Hoxie Livestock Sale, Hoxie
*Hutchinson Livestock Commission Company, Hutchinson
*Iola Community Sale, Iola
*J. and J. Commission Company, Effingham
*Junction City Livestock Sales, Junction City
*Kingman Community Sale, Kingman
*Kingman Livestock and Sales Company, Kingman
*Kiowa Sales Company, Kiowa
*Larned Livestock Market Center, Larned
*Lawrence Livestock Sale Co., Inc., Lawrence
*Leavenworth Livestock Auction Company, Leavenworth
*Lineo Commission Company, Sylvan Grove
*Manhattan Commission Company, Inc., Manhattan
*Mankato Livestock, Inc., Mankato
*Marysville Livestock Commission Company, Marysville
*Medicine Lodge Sale Company, Inc., Medicine Lodge
*McKinley-Winter Livestock Commission Co., Inc., Dodge City
*McPherson Sales Barn, Inc., McPherson
*Miami County Livestock Co., Inc., Paola
*Moline Auction Company, Moline
*Norton Livestock Auction, Inc., Norton
*Oakley Livestock Commission, Inc., Oakley
*Oberlin Livestock Commission Company, Inc., Oberlin
*Onaga Livestock Commission Company, Onaga
*Osaga County Livestock, Overbrook
*Osborne Livestock Commission Co., Inc., Osborne
*Overbrook Livestock Auction, Overbrook
*Parsons Livestock Market, Inc., Parsons
*Phillipsburg Livestock, Inc., Phillipsburg
*Plainville Livestock Company, Plainville
*Pratt Livestock Commission Company, Pratt
*Quinter Livestock Commission Company, Quinter
*Ranch Francis Livestock Marketing Center, St. Francis
*Rezac Livestock Commission Company, St. Mary's
*Rush County Livestock Sale, La Crosse
*Russell Livestock Commission, Inc., Russell
*Sabetha Livestock Auction, Sabetha
*Southwestern Livestock, Inc., Dodge City
*The Stockmans Livestock Exchange, Belleville
*Syracuse Sale Company, Inc., Syracuse
*Turon Sale Company, Turon
*Wakeeney Livestock Commission Company, Inc., Wakeeney
*Weltmer Livestock Auction, Smith Center
*Wichita Union Stockyards, Wichita
*Winfield Livestock Auction Co., Inc., Winfield

Kentucky

*Albany Stockyard, Inc., Albany
*R.B. Berry and Son Livestock Company, Inc., Clinton
*Blue Grass II Stockyard, Inc., Lexington
*Blue Grass Stockyard, Inc., Lexington
*Breckinridge Livestock Center, Irvington
*Bourbon Stockyards Company, Louisville
*Brown Livestock, Clinton
*Bowling Green Livestock, Inc., Bowling Green
*Boyle County Stockyards, Inc., Danville
*Burris Bullitt County Stockyard, Inc., Shepherdsville
*Catlettsburg Livestock Company, Inc., Catlettsburg
*Central Kentucky Livestock Market, Inc., Stanford
*Choates Stockyard, Upton
*Christian County Livestock Market, Hopkinsville
*Crittenden County Livestock, Marion
*Cross-Walton Livestock Market, Walton
*Eastern Livestock Company, Providence
*Farmers Commission Co., Inc., Tompkinsville
*Farmers Livestock Market, Glasgow
*Farmers Livestock, Mayfield
*Farmers Stockyard, Inc., Flemingsburg
*Franklin-Simpson Livestock, Franklin
*Garrard County Stockyard, Inc., Lancaster
*Glasgow Livestock, Glasgow
*Graves County Livestock Company, Inc., Mayfield
*Grayson County Stockyard, Leitchfield
*Green County Stockyards, Greensburg
*Green River Stockyard, Munfordville
*Kentuckiana Livestock Market, Owensboro
*Kentucky-Tennessee Livestock Market, Guthrie
*King Livestock, Hopkinsville
*Lake Cumberland Livestock Market, Inc., Somerset
*Laurel Sales Company, London
*Lee City Livestock Company, Inc., Lee City
*London Farmers Livestock Market, Inc., London
*Madison Sales Company, Inc., Richmond
*Mammoth Cave Marketing Coop, Smith's Grove
*Mantle Stockyard, Bardwell
*Maysville Stockyard, Maysville
*Morganfield Stockyard, Morganfield
*New Farmers Stockyard, Mt. Sterling
*NFO Reload, Elizabethtown
*NFO Reload, Mt. Herman
*Owsley County Stockyard, Booneville
*Paducah Livestock, Ledbetter
*Paintsville Livestock Market, Paintsville
*Paris Stockyards, Inc., Paris
*John M. Riley Livestock, Mayfield
*Russell County Stockyards, Russell Springs
*Russellville Livestock Market, Russellville
*Schneider Sales Barn, Walton
*Taylor County Stockyards, Campbellsville
*Tri-County Stockyards, Inc., Smithfield
*Walton NFO Collection Point Stockyard, Walton
*Washington County Livestock Center, Inc., Springfield
*Wayne County Livestock Market, Inc., Monticello

*Williamstown Stockyards, Inc., Williamstown

Louisiana

*Abbeville Commission Company, Abbeville
*Amite Livestock Company, Inc., Amite
*Bastrop Livestock Auction, Inc., Bastrop
*Charlie Brown's Livestock, Baton Rouge
*Clark Livestock Auction Company, Inc., Bossier City
*Delhi Livestock Auction, Inc., Delhi
*DeQuincy Livestock Commission Company, DeQuincy
*DeRidder Livestock Commission Company, DeRidder
*A. Dominique's Cow Palace, Inc., Marksville
*Dominique Stockyards, Inc., Baton Rouge
Dominique's Inc., Opelousas
*Eunice Stockyards, Inc., Eunice
*Fairchchild Livestock Sales, Inc., d.b.a. North Tangipohoa Stockyard, Kentwood
*Farmer and Stockman Auction, Inc., Clarence
*Franklin Livestock Auction, Winnsboro
*Franklinton Stockyards, Inc., Franklinton
*Grand Cane Livestock Sales, Inc., Grand Cane
*W.H. Hodges and Company, Inc., Alexandria
*W.H. Hodges and Company, Inc., New Roads
*Homer Livestock Sales, Homer
*Kentwood Livestock Sales, Kentwood
*Livestock Producers, Inc., Bossier City
*Lum Brothers Stockyards, Inc., Vidalia
*Mansfield Livestock Auction, Mansfield
*Raceland Stockyards, Raceland
*Red River Livestock Auction Company, Coushatta
*Southwest Stockyard, Inc., Lake Charles
*Vermilion Livestock Company, Inc., Abbeville
*Voiron's Stockyard, Thibodaux
*West Monroe Livestock Auction, Inc., West Monroe

Maine

*Ben Tilton and Sons, Corinth
*Massow's Livestock Sales, Corinna

Maryland

*Aberdeen Sales Company, Inc., Aberdeen
*Baltimore Livestock Exchange, West Friendship
*Cumberland Stockyards, Inc., Cumberland
*Farmers Market and Auction, Charlotte Hall
*Four States Livestock Sales, Hagerstown
*Frederick Livestock Auction, Frederick
*Friends Stockyards, Accident
*Grantsville Livestock Auction, Grantsville
*Harry Rudnick and Sons, Inc., Galena
*Hunter's Sale Barn, Inc., Rising Sun
*Westminster Livestock Auction, Westminster
*Woodsboro Livestock Sales, Inc., Woodsboro

Massachusetts

Farmers Live Animal Market Exchange, Inc. (FLAME), Littleton
New England Commission Auction, South Easton
Northampton Coop. Auction Association, Inc., Whately

Michigan

*Andy Adams Sale Barn, Hillsdale
*Coldwater Livestock Auction, Coldwater
*Michigan Livestock Exchange, Manchester
*Napoleon Livestock Commission Co., Napoleon

Minnesota

Arends Sale Yard Inc., Blue Earth
BLD Livestock, Inc., Ivanhoe
Benson Livestock Exchange, Benson
Canby Livestock Sales, Inc., Canby
East Central Livestock Auction Market, Inc., Mora
Edgerton Livestock Auction Market, Edgerton
Farmers Livestock Auction Market, Caldeonia
Harmony Livestock Sales, Harmony
Hoehne Brothers Export Facility, Pine Island
Kasson Livestock Exchange, Kasson
Lanesboro Sales Commission, Inc., Lanesboro
Lee and John's Livestock Market, Harmony
Lewiston Livestock Market, Lewiston
Long Prairie Livestock Auction Market, Inc., Long Prairie
Luverne Livestock Auction, Luverne
*Pipestone Livestock Auction Market, Pipestone
Rush City Livestock Auction, Rush City
Sleepy Eye Auction Market, Inc., Sleepy Eye
Spring Grove Livestock Exchange, Inc., Spring Grove
Spring Valley Sales Company, Spring Valley
*St. Paul Union Stockyards, St. Paul
Top Livestock Company, Edgerton
West Central Livestock Sales, Fergus
Windom Sales Co., Inc., Windom
Zumbrota Livestock Auction Market, Inc., Zumbrota

Mississippi

*Alcorn County Stockyards, Corinth
*Batesville Livestock Commission Company, Batesville
*Billingsley's Auction Sale, Inc., Senatobia
*Central Mississippi Livestock Commission Co., Carthage
*Chickasaw Livestock Auction, Inc., Houston
*Corinth Stockyard, Inc., Corinth
*East Mississippi Farmers Livestock Company, Philadelphia
*George County Stockyard, Inc., Lucedale
*Glynn Robinson Stockyard, Inc., West Point
*Grenada Livestock Exchange, Grenada
*Harrell's Stockyard, Morton
*Kosciusko Livestock Sales, Inc., Kosciusko
*Lincoln County Livestock Commission, Inc., Brookhaven
*Lipscomb Bros. Livestock Market, Inc., Como
*Livestock Producers Association AAL, Tylertown
*Lucedale Auction, Inc., Lucedale
Macon Stockyard, Macon
*Meadows Livestock Auction, Inc., Mize
*Meridian Stockyards, Inc., Meridian
*M and W Cattle Company, Hattiesburg
*M and W Cattle Company, Starkville
*Mid-Mississippi Cattle Co., Inc., Canton
*Mississippi Livestock Producers Association, Bay Springs
*Mississippi Livestock Producers Association, Hazlehurst
*Mississippi Livestock Producers Association, Jackson
*Natchez Stockyards, Inc., Natchez
*New Albany Sales Company, New Albany
*Pike County Livestock Sales, Inc., Hazlehurst
*Pontotoc Stockyards, Pontotoc
*Poplarville Stockyards, Inc., Poplarville
*Reagan Stockyards, Greenville
*Ripley Sales Company, Guntown
*Southeast Mississippi Livestock Farmers Assn., Hattiesburg
*Southwest Stockyard, Lorman
*Southwest Stockyard, Port Gibson
*Stockyard Beef Sale, Inc., Tupelo
*Stockyard Dairy Sale, Inc., Tupelo
*Tadlock Stockyards, Forest
*Tri-County Stockyard, Tupelo
*Walnut Sale Company, Walnut
*Wilbanks Stockyards, Carthage
*Winona Stockyard, Winona
*Winston County Community Sale, Louisville

Missouri

Bollinger County Livestock Producers Assn., Marble Hill
*Blansit Dairy and Stock Cattle Co., Inc., Ozark
*Brookfield Livestock Auction, Inc., Brookfield
*Brunswick Livestock Auction, Brunswick
Buffalo Livestock Center, Inc., Buffalo
*Callaway Stock Sales, Inc., Fulton
*W.R. Cantrell and Sons Sale Company, Archie
*Cassville Livestock Market, Inc., Cassville
*Central Livestock Market, Poplar Bluff
*Central Missouri Livestock Auction, Mexico
*Central Missouri Sales Company, Sedalia
*Chillicothe Livestock Market, Chillicothe
*Circle "S" Livestock Auction, Stanberry
*Clark County Sale Company, Kahoka
*Columbia Livestock Auction, Columbia
*Concordia Livestock Auction, Concordia
Dent County Livestock Improvement Assn., Salem
*Diamond Livestock Market, Diamond
*Donald Ghere Sales Company, Butler
*Douglas County Cattle and Auction Company, Ava
*Downing Stockyards, Downing
*Eastern Missouri Livestock Market, Inc., Bowling Green
*Edina Auction Market, Edina
*El Dorado Sales Company, Inc., El Dorado Springs
*Fair Play Livestock Sales and Auction, Fair Play
*Farmers and Traders Commission Company, Palmyra
*Farmers Livestock Auction, Inc., Boonville
*Farmington Livestock Market, Inc., Farmington
Fortuna NFO Collection Point, Fortuna
4 Corners (NFO) Collection Point, Hunnewell
*Fredericktown Auction Company, Fredericktown
*Fruitland Livestock, Inc., Jackson
*Gallatin Livestock, Inc., Gallatin
Gasconade County Livestock Improvement Assn., Owensville
*Grant City Livestock Market, Inc., Grant City
*Green City Livestock Auction, Green City
*I-70 Farmers Livestock Market, Higginsville
Interstate Producers Livestock Association, Cuba
*Johnson County Livestock Market, Warrensburg
*Joplin Stockyards, Joplin

*Kansas City Stockyards Company, Kansas City
*Kennett Sales, Inc., Kennett
*Kingsville Livestock Auction, Kingsville
*Kirksville Livestock Market, Inc., Kirksville
*Kohoka Sale Company, Kohoka
*Lakeland Livestock, Inc., Lowry City
*Lexington Livestock Auction, Lexington
*Licking Livestock Auction Company, Licking
*Lolli Livestock Market, Macon
Maries County Livestock Producers Association, Vienna
*Marshall Livestock Auction, Inc., Marshall
Meta Collection Point, Meta
*M.F.A. Cattlemen Auction Company, Humansville
*Mid-West Livestock Market, Inc., Nevada
*Milan Livestock Auction, Inc., Milan
*Mo Cow Company Livestock Exchange, Lancaster
*Montgomery County Livestock Auction, Montgomery
Morgan County Inter-County Livestock Producers Association, Versailles
*Mountain View Livestock Auction, Mountain View
*New Cambria Livestock Auction Market, Inc., New Cambria
*Nevada Livestock Auction Company, Inc., Nevada
NFO Collection Point, Callao
*Nixa Livestock Auction, Nixa
*Odessa Community Sale, Odessa
*Olean Livestock Market, Inc., Eldon
Osage County Livestock Producers Association, Linn
*Ozarks Regional Stockyard, West Plains
Patten Jct. N.F.O. Collection Point, Patten
*Poplar Bluff Sales Company, Inc., Poplar Bluff
*Potosi Livestock Market, Potosi
Putnam County Marketing Association, Unionville
Puxico Stockyards, Puxico
Charles Reed Livestock Market, Mountain Grove
Reynolds County Livestock Producers Assn., Ellington
*Rich Hill Sales Company, Rich Hill
Ripley County Livestock Producers Assn., Inc., Doniphan
4-Rivers Collection Point, Labadie
*Roberts Bros. Livestock Commission Company, Bolivar
*Rolla Livestock Auction, Rolla
*St. Joseph Stockyards, St. Joseph
*Salem Auction Company, Salem
*Sarcoxie Community Sales, Inc., Sarcoxie
Savannah Livestock Auction, Savannah
*Scotland County Livestock Auction, Memphis
*Sedgewickville Auction Market, Inc., Sedgewickville
*Shelbina Auction Company, Shelbina
*South Central Livestock Market, Inc., Vienna
*Springfield Regional Stockyards, Springfield
*St. Clair Livestock Auction, St. Clair
Ste. Gen County Livestock Producers Assn., Ste. Genevieve
Ste. Genevieve Livestock Collection Point, Ste Genevieve
*Stewart Sale Pavilion, Cameron
Sydney Moore Livestock, Memphis
*Tina Livestock Auction, Inc., Tina
*Trenton Livestock Market, Inc., Trenton
*Uder Livestock Auction Company, Lebanon
*Unionville Sale Company, Unionville
Urbana Auction Company, Urbana
*Versailles Auction, Versailles
*Warsaw Auction Company, Inc., Warsaw
Washington County Producers Association, Potosi
Wayne County Livestock Producers Association, Greenville
*Wheaton Livestock Auction, Inc., Wheaton
*Windsor Livestock Auction, Windsor
*Wright County Livestock Auction, Inc., Mountain Grove

Montana

Beaverhead Livestock Auction, Dillon
Billings Livestock Commission Company Inc., Billings
Glendive Auction Market, Glendive
Kalispell Livestock Auction, Kalispell
Livestock Auction, Inc., Baker
Miles City Livestock Center, Miles City
Missoula Livestock Auction, Missoula
Montana Livestock Auction, Butte
Public Auction Yards, Billings
Sidney Livestock Market Center, Sidney

Nebraska

*Ainsworth Livestock Market, Ainsworth
*Alma Livestock Commission Company, Alma
*Atkinson Livestock Market, Inc., Atkinson
*Bassett Livestock Auction, Bassett
*Beatrice 77 Livestock Sales Company, Beatrice
*Beatrice Sales Pavilion, Beatrice
*Blackwell Livestock Auction, Blackwell
*Blue Hill Livestock, Blue Hill
*Butte Livestock Market, Butte
*Chadron Sales Company, Inc., Chadron
*Chappell Livestock Auction, Chappell
*Cherry County Livestock Auction Co., Inc., Valentine
*Columbus Sales Pavilion, Inc., Columbus
*Crawford Livestock Auction Market, Crawford
*Crete Livestock Market, Crete
*Fairbury Livestock Company, Inc., Fairbury
*Falls City Auction Company, Inc., Falls City
*Franklin Livestock Market, Franklin
*Gordon Livestock Auction Company, Gordon
*Grand Island Livestock Auction, Inc., Grand Island
*Hebron Livestock Commission Company, Hebron
*Humboldt Sale Barn, Humboldt
*Huss Platte Valley Auction, Inc., Kearney
*Imperial Auction Market, Imperial
Kearney Livestock Market, Inc., Kearney
*Kimball Livestock Auction Company, Kimball
*Laurel Sale Company, Inc., Laurel
*Midwest Livestock Commission Company, Inc., McCook
*Nebraska City Salebarn, Inc., Nebraska City
*Norfolk Livestock Market, Norfolk
*Ogallala Livestock Auction Market, Ogallala
*Omaha Livestock Market, Omaha
*O'Neill Livestock, Inc., O'Neill
*Oxford Livestock Commission Company, Oxford
*Pawnee Livestock, Pawnee
*Pender Livestock, Inc., Pender
Platte Valley Livestock Auction, Inc., Gering
*Red Cloud Livestock Commission Co., Inc., Red Cloud
*Rushville Livestock Commission Company, Rushville
*Sallisaw Livestock Auction, Sallisaw
*Sioux County Livestock Auction, Harrison
*Superior Livestock Commission Company, Inc., Superior
*Southeast Nebraska Livestock Market, Palmyra
*Sutton Livestock Commission Company, Sutton
*Tecumseh Livestock Market, Inc., Tecumseh
*Tri-State Auction Market, Inc., Hettinger
*Tri-State Livestock Commission Company, McCook
*Verdigre Livestock Market, Verdigre
*Wahoo Livestock Market, Wahoo
*West Point Sales Company, West Point
*Western Livestock Auction Company, North Platte
*York Livestock Sale Company, York

Nevada

*Gallagher Livestock, Inc., Fallon

New Jersey

*Community Livestock Auction, Woodstown
*Cowtown Auctioneer, Inc., Woodstown
*Livestock Cooperative Auction Market Association of North New Jersey, Hackettstown
*Jaeger's Livestock Auction Market, Sussex

New Mexico

*Cattlemen's Livestock, Inc., Belen
*Clovis Livestock Market, Clovis
*Deming Livestock Auction, Inc., Deming
*Dulce Livestock Auction, Dulce
*Five States Livestock Auction, Clayton
*Las Vegas Livestock Commission Company, Inc., Las Vegas
*Lea County Livestock Market, Lovington
*Portales Livestock Commission Company, Portales
*Roswell Livestock Auction Company, Roswell
*San Juan Livestock Auction, Inc., Aztec
*Socorro Livestock Market, Inc., Socorro
*Valley Livestock Auction, Inc., Albuquerque

New York

Best Livestock Exchange, Watertown
Burton Livestock Exchange, Inc., Vernon
Cambridge Valley Livestock Market, Cambridge
D.R. Chambers and Sons, Inc., Unadilla
Chatham Area Auction Co-op, Chatham
Cherry Creek Livestock Market, Cherry Creek
Empire Livestock Market, Adams
Empire Livestock Market, Bath
Empire Livestock Market, Caledonia
Empire Livestock Market, Dryden
Empire Livestock Market, Gouverneur
Empire Livestock Market Cooperative, Little Falls
Empire Livestock Market, Oneonta
Empire Livestock Market, Pavilion
Finger Lakes Livestock Exchange, Inc., Canandaigua
Gentner Commission Market, Springville
Hicks and Spingler Livestock, Inc., Sennett
Kimbal Stand Livestock Market, Jamestown
Langless Brothers Auction, Cherry Creek
Lazy S Livestock, Norwich
Lewis County Livestock Market, Lowville
Luther's Livestock, Wassaic
Maplehurst Livestock Market, Hinsdale

Millers Livestock Market, Argyle
Millerton Livestock Market, Hillsdale
North County Livestock Exchange, Chazy
Northern New York Farmers Marketing Coop., Inc., Lowville
Norvel Reed and Son's, Inc.—Kimball Stand Market, Gerry
Norvell Reed and Son's, Inc., Sherman
Seymour Commission Sale, DeKalb Junction
Sherman Livestock Market, Sherman
Sunny Acres Livestock Market, Bombay
Owego Livestock Sales, Owego
Welch Livestock Market, West Edmonston

North Carolina

Ashe Stockyards, Jefferson
*Ashley Livestock Exchange, Ashley
Bridgers' Livestock Company, Rowland
Brite-Tatum Livestock Company, Inc., Elizabeth City
Carolina Stockyard Company, Silver City
Carolina-Virginia Stockyard and Feeder Pig Sale, Windsor
Cattleman's Livestock Market, Canton
Dedmon Livestock Market and Feeder Pig Sale, Shelby
East Carolina Stockyard, Ayden
Elizabethtown Livestock Market, Pembroke
Farmers Cooperative Market, Lexington
Farmers Livestock Barn, Harrisburg
Farmers Livestock Exchange, Marshville
Farmers Livestock Market, Mount Airy
Hickory Livestock, Hickory
W.H. Horney Livestock, Dealer, Silver City
Iredell Livestock Market, Turnersburg
Gus Z. Lancaster Livestock Market, Rocky Mount
Lumberton Auction Company, Lumberton
Mountain Livestock Auction, Murphy
Mount Olive Livestock Market, Mount Olive
Norwood Stockyard Company, Norwood
Oxford Livestock Market, Oxford
Pates Stockyard of Pembroke, Pembroke
Powell Livestock Market, Smithfield
Reaves Livestock, Inc., Rowland
FCX Livestock Market, Hillsborough
Riley's Livestock Market, North Wilkesboro
Southeastern Livestock Market, Chadbourn
Tommi Turner Livestock Market, Pink Hill
Union County Livestock Market and Feeder Pig Sale, Monroe
Wells Livestock Market, Wallace
Western Carolina Livestock, Asheville

North Dakota

*Ashley Livestock Exchange, Ashley
*Edgeley Livetock, Inc., Edgeley
*Carrington Livestock and Sales, Carrington
*Farmer's Livestock Exchange, Bismarck
*Harvey Livestock Auction, Harvey
*Homebase, Auction, Inc., Bowman
*Jamestown Livestock Sales, Jamestown
*Kist Livestock Auction Company, Mandan
*Lake Region Auction, Devils Lake
*Linton Livestock Market, Linton
*McQuade Livestock, Wahpeton
*Minot Livestock Auction Sales, Inc., Minot
*Napoleon Livestock Auction, Napoleon
*Park River Livestock Auction Market, Park River
*Rugby Livestock Exchange, Inc., Rugby
*Stockmen's Livestock Exchange, Inc., Beulah
*Stockmen's Livestock Exchange, Inc., Dickinson
*Triple S Cattle Company, Valley City
*Sitting Bull Auction Company, Williston
*Turkey Lake Livestock Sales, Inc., Turtle Lake
Uecker Livestock Yards, Inc., Hettinger
*Union Stockyards of Fargo, West Fargo
*Western Livestock Company, Dickinson
*Wishek Livestock Market, Wishek

Ohio

*Allart Trucking Company, Cincinnati
*Rodney A. Howery, d.b.a., Athens Livestock Sales, Albany
*Barnesville Livestock, Inc., Barnesville
*E. Wayne Blake, d.b.a. Belmont Livestock Sales, Belmont
*Glenn Birch, d.b.a. Carrollton Livestock Auction, Carrollton
*George Carmack, d.b.a. Carmack Livestock, Oxford
*Creston Livestock Sales, Inc., Creston
*John Eghert, d.b.a. DeGraff Livestock Sales, DeGraff
*Geauga Livestock Commission, Inc., Middlefield
*Pete (Gerald) J. Howes, d.b.a. Bloomfield Livestock Auction, North Bloomfield
*Glenn Shreve and Larry C. Shreve, d.b.a. Damascus Livestock Auction, Damascus
*Wm. Espel Sons, Inc., Cincinnati
*Farmerstown Sale, Inc., Baltic
*Hoppel Brothers Auction Pavilion, Inc., West Point
*Kidron Auction, Inc., Kidron
*Lugbill Bros., Inc., Archbold
*Lugbill Bros., Inc., Columbus Grove
*Donald L. Hart, Jr., and James A. Kincaid, d.b.a. Marietta Livestock Sale Company, Marietta
Middendorf, Inc., d.b.a. Western Ohio Livestock, Celina
*Muskingum Livestock Sales Company, Zanesville
*Mt. Hope Auction Company, Mt. Hope
*Ohio Valley Livestock Company, Gallipolis
*Pioneer NFO, Waterford
*Producers Livestock Association, Bucyrus
*Producers Livestock Association, Caldwell
*Producers Livestock Association, Coshocton
*Producers Livestock Association, Delta
*Producers Livestock Association, Eaton
*Producers Livestock Association, Findlay
*Producers Livestock Association, Hillsboro
*Producers Livestock Association, Lancaster
*Producers Livestock Association, Marysville
*Producers Livestock Association, Mount Vernon
*Producers Livestock Association, Springfield
*Producers Livestock Association, Wapakoneta
*Producers Livestock Association, Washington Court House
Producers Livestock Association, Wilmington
*Emmet Short and Keith Short, d.b.a. Emmet Short and Son, Stryker
*James R. Snyder, d.b.a. Scio Livestock Auction, Scio
*The Union Stockyard Company, Hillsboro
*Werling and Sons, Inc., d.b.a. Burkettsville Stock Yard, Burkettsville
*William W. Osborne, d.b.a. Sugarcreek Livestock Auction, Sugarcreek
*James H. Wilson and Thomas H. Wilson, d.b.a. Peoples Livestock Exchange, Greenville

Oklahoma

*Ada Livestock Auction, Inc., Ada
*Adair County Livestock Auction, Stilwell
*Alva Sales Company, Alva
*Apache Livestock Sales Company, Apache
*Ardmore Livestock Auction, Ardmore
*Atoka Livestock Auction, Atoka
*Beaver Livestock Auction, Inc., Beaver
*Blackwell Livestock Auction, Inc., Blackwell
*Chandler Livestock Commission Company, Chandler
*Cherokee Sales Company, Cherokee
*Collinsville Livestock Sales, Inc., Collinsville
*Comanche Livestock Auction Market, Comanche
*Covington Livestock, Inc., Covington
*Delaware County Livestock, Inc., Grove
*Dewey Stockyards, Inc., Dewey
*Durant Livestock Market, Inc., Durant
*Enid Livestock Sales, Inc., Enid
*Erin Springs Livestock Auction, Lindsay
*Fairview Sale Barn, Fairview
*Farmers and Ranchers Livestock Auction, Vinita
*Fort Smith Stockyards, Moffett
*Freeman Livestock Auction, Sulphur
*Geary Livestock, Inc., Geary
*Goodner Livestock Commission, Inc., Texhoma
*Grandfield Livestock Auction, Grandfield
*Guymon Livestock Auction, Guymon
*Hennessey Livestock Auction, Hennessey
*Hobart Stockyards, Inc., Hobart
*Holdenville Livestock Auction, Inc., Holdenville
*Hollis Livestock Commission Company, Hollis
*Hugo Sales Commission, Inc., Hugo
*Idabel Livestock Auction, Idabel
*Jones Livestock Auction, Jones
*LeFlore County Livestock Auction, Wister
*Marietta Livestock Auction, Marietta
*Marlow Livestock Auction, Marlow
*McAlester Union Livestock, McAlester
*Meeker Livestock Market, Meeker
*Mid-America Stockyards, Bristow
*Morris Livestock Commission, Antlers
*Muskogee Stockyards and Livestock Auction, Inc., Muskogee
*Newkirk Sales Company, Newkirk
*Oklahoma Auction Yards, Hominy
*Oklahoma Cow Sales, Inc., Chickasha
*Oklahoma National Stockyards, Oklahoma City
*Okmulgee Stockyards, Inc., Okmulgee
*Pauls Valley Livestock Auction, Pauls Valley
*Pawnee Livestock Sales, Inc., Pawnee
*Perkins Y Livestock Auction, Inc., Perkins
*Perry Livestock Center, Inc., Perry
*Purcell Livestock Auction, Purcell
*Pryor Stockman's Auction, Pryor
*Poor Boy Livestock Auction, Wister
*Ranchers and Farmers Livestock Auction, Clinton
*Ringling Livestock Auction, Ringling
*Sayre Livestock Auction, Sayre
*South Coffeyville Livestock Market, Inc., South Coffeyville
*Southern Oklahoma Livestock Auction, Inc., Ada
Stigler Livestock Auction, Stigler
*Tahlequah Sale Barn, Tahlequah
*Tulsa Stockyards, Tulsa
*Watonga Livestock Commission, Inc., Watonga
*Waurika Sales Company, Waurika

*Welch Livestock Auction, Welch
*Woodward Livestock Auction, Inc., Woodward

Oregon

*Baker Valley Auction Yard, Inc., Baker
*Central Oregon Livestock Auction, Madras
*Central Oregon Livestock Auction, Redmond
*Enterprise Livestock Auction, Enterprise
*Klamath Livestock Auction, Klamath
*LaGrande Livestock, LaGrande
*Madras Auction Yard, Inc., Madras
*Mid-Columbia Livestock Exchange, Inc., The Dalles
*Northwestern Livestock Commission Company, Hermiston
*Portland Livestock Market, Inc., Portland
*Redmond Auction Yard, Inc., Redmond
*Rogue Valley Livestock Auction Company, Central Point
*Schricker's Livestock Auction, Inc., Wilbur
*Vale Auction Market, Inc., Vale

Pennsylvania

*Belknap Livestock and Equipment Auction, Dayton
*Belleville Livestock Market, Inc., Belleville
*Carlisle Livestock Market, Inc., Carlisle
Chambersburg Livestock Sales, Inc., Chambersburg
Chesley's Sales, Inc., Northeast
Cowanesque Valley Livestock Auction, Knoxville
Wayne F. Craig and Sons, Shippensburg
Dewart Livestock Market, Dewart
Eighty-Four Auction Sales, Inc., Eighty-Four
G and M Livestock Market, Inc., Duncansville
Greencastle Livestock Market, Inc., Greencastle.
Green Dragon Livestock Sales, Ephrata
Hickory Auction and Sales, Inc., Hickory
Indiana Livestock Market, Inc., Indiana
Jersey Shore Livestock, Inc., Jersey Shore
Keister's Middleburg Auction Sales, Inc., Middleburg
Lancaster Stockyards, Inc., Lancaster
Lebanon Valley Livestock Market, Inc., Fredericksburg
Leesport Market and Auction, Inc., Leesport
Meadville Livestock Auction, Saegertown
Mercer Livestock Auction, Mercer
C. Robert Miller, Watsontown
Morrison Cove Livestock Market, Martinsburg
New Holland Sales Stables, Inc., New Holland
New Wilmington Livestock Auction, Inc., New Wilmington
Nicholson Sales Company, Nicholson
Penns Valley Livestock Auction, Inc., Centre Hall
Pennsylvania Livestock Auction, Inc., Waynesburg
Perkiomenville Livestock and Sales, Inc., Perkiomenville
Quakertown Livestock and Sales, Quakertown
Sechrist Sales Company, Fawn Grove
W.R. Sellers Livestock, Greencastle
Thomasville Livestock Market, Inc., York
Tri-County Livestock Auction, Inc., Brockway
Troy Sales Co-operative, Troy
Union City Livestock Auction, Union City
Valley Stock Yards, Inc., Athens
Vintage Sales Stables, Inc., Paradise
Wayne County Auction Barn, Inc., Honesdale
Weikert's Livestock, Fairfield
Wyalusing Livestock Market, Wyalusing

South Dakota

Aberdeen Livestock Sales Company, Aberdeen
*Avon Livestock Auction, Avon
*Bales Continental Commission Company, Huron
Bales Continental Commission Company, Huron
*Belle Fourche Livestock Exchange, Inc., Belle Fourche
*Bowdle Livestock Sales, Bowdle
*Britton Livestock Market, Britton
*Brookings Livestock Auction Market, Brookings
*Burke Livestock Auction, Burke
Burke Livestock Auction, Burke
*Canton Livestock Sales Company, Canton
Chamberlain Livestock Auction, Chamberlain
Corsica Livestock Sales Company, Corsica
*Edgemont Livestock Market, Edgemont
*Faith Livestock Commission Company, Inc., Faith
*Gregory Livestock Auction, Gregory
Gregory Livestock Auction Market, Gregory
*Herreid Livestock Market, Herreid
*Highmore Livestock Exchange, Inc., Highmore
*Hub City Livestock and Sales, Aberdeen
*Kimball Livestock Exchange, Kimball
Kimball Livestock Exchange, Kimball
*Kramer's Livestock Auction Company, Inc., Sioux Falls
*Lemmon Livestock, Inc., Lemmon
*Lokens Watertown Sales Pavilion, Watertown
Lynch's Foods, Inc., Brown's Valley
*Madden's Livestock Market, Inc., St. Onge
*Madison Livestock Auction Company, Madison
*Magness Livestock Market, Huron
Magness-Faulkton Livestock Market, Faulkton
Magness-Huron Livestock Exchange, Inc., Huron
Martin Auction Co., Inc., Martin
*Martin Livestock Market, Martin
*McLaughlin Livestock Auction, McLaughlin
*Menno Livestock Auction Company, Menno
Miller Livestock Sales Company, Miller
*Mitchell Livestock Auction Company, Mitchell
Mitchell Livestock Auction Company, Mitchell
*Mobridge Livestock Auction Market, Inc., Mobridge
*Philip Livestock Auction Market Inc., Philip
*Platte Livestock Auction Company, Platte
*Potter County Livestock, Inc., Gettysburg
*Presho Livestock Auction Company, Presho
*Redfield Livestock Sales, Redfield
*Sioux Falls Stockyards, Sioux Falls
*Sisseton Livestock Auction, Inc., Sisseton
*South Dakota Livestock Sales Company, Watertown
*Stockman's Livestock Auction Company, Yankton
*Sturgis Livestock Exchange, Sturgis
Thompson Livestock, Whitewood
*Timber Lake Livestock Market, Inc., Timber Lake
Wessington Springs Livestock, Wessington Springs
*Willow Lake Livestock Auction, Willow Lake
*Winner Livestock Auction Company, Winner
*Yankton Livestock Auction Market, Yankton

South Carolina

Cattleman's Livestock Center, Inc., Laurens
Chesnee Livestock Yard, Inc., Chesnee
Chester Livestock Market, Inc., Chester
Darlington Livestock Market Corp., Darlington
Ehrhardt Stockyards, Inc., Ehrhardt
Farmers County Line Stockyard, Andrews
Farmers Livestock Market, Leesville
Farmer's Market, Estill
Homewood Stockyard, Conway
Hutto Stockyard Inc., Holly Hill
Lugoff Livestock Market, Lugoff
Orangeburg Stockyards, Inc., Orangeburg
Palmetto Livestock, Inc., Anderson
Pee Dee Stockyard, Inc., Galivants Ferry
Saluda County Stockyard, Saluda
Springfield Stockyards and Auction Co., Inc., Springfield
John C. Taylor Stockyards, Anderson
Walterboro Stockyards Co., Inc., Walterboro
York County Stockyards Sales, Inc., York

Tennessee

*Athens Livestock Auction Company, Inc., Athens
*Botts Livestock Company, Union City
*C and M Livestock Market, Jamestown
*Cattle Sales, Inc., Troy
*Chattanooga Stockyards, Inc., Chattanooga
*Coffee County Livestock Market, Manchester
*Collierville Stockyard Company, Collierville
*Covington Sales Company, Covington
*Crockett Livestock Sales, Inc., Maury City
*Cross Plains Livestock Market, Cross Plains
*Cumberland City Stockyard, Cumberland City
*DeKalb County Livestock Market, Alexandria
*Dickson Livestock Center, Dickson
*Dixie National Stock Yards, Inc., Memphis
*East Tennessee Livestock Center, Sweetwater
*Farmers Auction, Fayetteville
*Farmers Livestock Exchange, Union City
*Farmers Livestock Market, Inc., Greeneville
*Gamaliel Livestock Market, Gamaliel
*Greeneville Livestock Market, Greeneville
*Hardin County Stockyards, Savannah
*Jackson County Commission Company, Gainesboro
*Jonesboro Livestock Market, Telford
*Kingsport Livestock Auction Corp., Kingsport
*Lawrence County Stockyard, Lawrenceburg
*Lexington Sales Company, Lexington
*Macon Livestock Market, Inc., Lafayette
*Maxwell Livestock Market, Woodbury
*Middleton Sale Company, Middleton
*Mid-South Livestock Commission Company, Columbia
*Morristown Stockyard, Inc., Morristown
*Mullins Livestock Yard, Clinton
*Murfreesboro Livestock Center, Murfreesboro
*New Tazewell Livestock Market, New Tazewell
*Oliver Livestock Company, Union City
*Paris Livestock Sales, Paris

*Peoples Stockyard, Cookeville
*Peoples Stockyard, Fayetteville
*Plateau Livestock Exchange, Crossville
*Pulaski Stockyard, Pulaski
*Rogersville Livestock Market, Rogersville
*Scotts Hill Livestock Company, Scotts Hill
*Sevier County Stockyard, Inc., Seymour
*Shelbyville Livestock Market, Inc., Shelbyville
*Smith County Commission Company, Carthage
*Southern Livestock Auction Company, Columbia
*South Memphis Stock Yards, Inc., Memphis
*Sparta Livestock Market, Inc., Sparta
*Southwestern Sales Company, Huntingdon
*Tennessee Livestock Producers, Thompson Station
*Tennessee Producers, Fayetteville
*Trenton Livestock Sales Company, Trenton
*Tri-County Stockyards, McKenzie
*Trousdale County Livestock Market, Hartsville
*Unionville Livestock Auction Company, Unionville
*Union Stockyards, Inc., Knoxville
*Warren County Livestock Company, McMinnville
*West Tennessee Auction Co., Inc., Martin
*Wilson County Livestock Market, Lebanon
*Wilson Livestock Market, Newport

Texas

*Abilene Auction, Inc., Abilene
*Athens Commission Company, Athens
*Amarillo Livestock Auction Company, Amarillo
*Belton Livestock Auction, Belton
*Bonhan Livestock Commission, Bonham
*Bowie Livestock Commission, Inc., Bowie
*Brownwood Cattle Auction, Brownwood
*Canyon Livestock, Canyon
*Cattleman's Livestock Commission Company, Dalhart
*Cattlemens Livestock Commission Company, Paris
*Center Auction Company, Center
*Coleman Livestock Auction, Coleman
*O.L. Colley Livestock Commission, Mt. Pleasant
*El Paso Livestock Auction, El Paso
*Ennis Auction, Ennis
*Farmers and Ranchers Livestock Auction, Vernon
*Floyada Livestock Sales, Inc., Floyada
*Franklin County Livestock Commission Co., Mt. Vernon
*Fort Worth Stockyard, Fort Worth
*Gainesville Livestock Market, Inc., Gainesville
*Graham Livestock Commission, Inc., Graham
*Greenville Livestock Commission Company, Greenville
*Haskell Livestock Auction Company, Inc., Haskell
*J and J Auction Company, Texarkana
*Jacksonville Livestock Commission, Inc., Jacksonville
*Johnson County Dairy Sale, Cleburne
*Lampasas Cattle Auction, Lampasas
*Livingston Livestock Exchange, Livingston
*Llano Livestock Auction, Llano
*Longview Livestock Commission, Inc., Longview
*Lubbock Stockyards, Lubbock
*Lufkin Livestock Exchange, Lufkin
*McDougal Livestock Auction, Comanche
*McKinney Livestock Commission Company, McKinney
*Meridian Livestock Auction Co., Inc., Meridian
*Mineral Wells Stockyards Company, Mineral Wells
*Mitchell Livestock Commission, Winnsboro
*Morris County Livestock Market, Omaha
*Muenster Livestock Commission Company, Muenster
*Muleshoe Livestock Auction, Muleshoe
*Olney Livestock Auction, Olney
*Paris Livestock Commission Company, Paris
*Patton Livestock, Inc., Nacogdoches
*Pilot Point Livestock Commission, Inc., Pilot Point
*Port City Stockyards, Sealy
*Producer's Livestock Auction, San Angelo
*Rains County Livestock Commission Company, Emory
*Red River Livestock, Clarksville
*Risinger Enterprises, Inc., d.b.a. Terrell Livestock Commission, Terrell
*Southwestern Livestock Auction, Midland
*Sulphur Springs Dairy Auction No. 10 and Sulphur Springs Livestock Comm. Co., Inc., Sulphur Springs
*Texarkana Stockyards, Texarkana
*Tulia Livestock Commission Company, Tulia
*Waxahachie Livestock Commission, Inc., Red Oak
*Wellington Livestock Company, Wellington
*Wills Point Livestock Commission, Wills Point
*Woodville Livestock Commission Company, Woodville
*Wichita Livestock Auction, Wichita Falls
*Winnie Livestock Exchange, Winnie
*Wood County Livestock Commission Company, Mineola

Utah

*Basin Livestock Market, Ballard
*Cedar City Livestock Commission, Cedar City
*Delta Livestock Company, Delta
*Producers Salina Auction, Salina
*Producers Livestock Marketing Association, North Salt Lake
*Spanish Fork Livestock Auction, Spanish Fork
*Richfield Auction Company, Monroe
*Smithfield Livestock Auction, Smithfield
*Utah Livestock Auction, Spanish Fork
*Weber Livestock Auction, Ogden

Vermont

Addison County Commission Sale, E. Middlebury
East Thetford Commission Sale, East Thetford
E.M. Hayes, Enosberg
Morrisville Commission Sale, Inc., Morrisville
Orleans Commission Sale, Orleans
St. Albans Commission Sale, St. Albans
Vergennes Commission Sales, Vergennes

Virginia

*Abingdon Livestock Market, Inc., Abingdon
*Abingdon Livestock Exchange, Inc., T/A Tri-State Livestock Market, Abingdon
*Amherst County Livestock Market, Inc., Amherst
*Charlottesville Livestock Market, Afton
*Christiansburg Livestock Market, Inc., Christiansburg
*Ewing Livestock Market, Inc., Ewing
*Farmers Livestock Exchange, Winchester
*Farmers Livestock Market, Inc., Tazewell
*Fauquier Livestock Exchange, Inc., Marshall
*Fredericksburg Livestock Exchange, Inc., Fredericksburg
*Front Royal Livestock Exchange, Inc., Front Royal
*Galax Livestock Market, Inc., Galax
*Kenbridge-Victoria Livestock Market, Inc., Victoria
*The Farmers Livestock Market, Jonesville
*Lynchburg Livestock Market, Inc., Lynchburg
*Madison Livestock Market, Madison Mills
*Monterey Livestock Sales, Inc., Monterey
*Narrows Livestock Auction Market, Inc., Narrows
*Nokesville Livestock Auction, Inc., Nokesville
*Orange Livestock Market, Orange
*Phenix Livestock, Inc., Phenix
*Pulaski Livestock Market, Dublin
*Roanoke-Hollins Stockyard, Hollins
*Roanoke Livestock Market, Roanoke
*Rockingham Livestock Sales, Harrisonburg
*Shanandoah Valley Livestock Sales, Harrisonburg
*Smithfield Livestock, Inc., Smithfield
*Southampton Stockyards, Inc., Courtland
*South Boston Livestock Market, Inc., South Boston
*South Hill Stockyard, South Hill
*Southside Stockyard, Inc., Farmville
*Southside Stockyards, Inc., Blackstone
*Staunton Livestock Market, Staunton
*Staunton Union Stockyard, Inc., Staunton
*Virginia-Carolina Livestock and Agricultural Market, Inc., Danville
*Wytheville Livestock Market, Wytheville

Washington

*Chehalis Livestock Market, Chehalis
Davenport Livestock Exchange, Davenport
Enumclaw Sales Pavilion, Inc., Enumclaw
Farmers Auction, Everson
Marysville Livestock Auction, Inc., Marysville
Quincy Livestock Market, Quincy
Stockland Livestock Exchange, Spokane
Sunnyside Livestock Market, Sunnyside
Toppenish Livestock Commission Company, Toppenish
Twin City Livestock Market, Inc., Centralia
Walla Walla Livestock Auction, Inc., Walla Walla

West Virginia

*Bluegrass Market, Inc., North Caldwell
*Blueridge Livestock Sales, Inc., Charles Town
*Bridgeport Stockyards, Inc., Bridgeport
*Buckhannon Stockyards, Buckhannon
*Jackson County Livestock Market, Inc., Ripley
*Livestock Exchange, Inc., d.b.a. Alderson Livestock Market, Alderson
*Manning Livestock Sales, Inc., Manning
*Moundsville Livestock Auction Company, Moundsville
*New River Livestock Market, Inc., Beckley
*Ohio County Livestock Auction, Inc., Wheeling

*Pocahontas Producers Cooperative Association, Marlinton
*Randolph County Livestock Marketing Assoc., Elkins
*South Branch Stockyard, Inc., Moorefield
*Spencer Livestock Exchange Company, Spencer
*Terra Alta Livestock Market, Inc., Terra Alta
*United Livestock Sales, Parkersburg
*Weston Livestock Sales Company, Inc., Weston

Wisconsin

*Beetown Livestock Exchange, Beetown
*Belmont Livestock Market, Inc., Belmont
Benoit NFO Livestock Collection Point, Benoit
*Clearlake NFO Collection Point, Clearlake
*Coon Valley Sale Barn, Coon Valley
*Diane Mattes Livestock Market, Thorp
*Ellsworth N.F.O. Collection Point, Ellsworth
*Equity Cooperative Livestock Sales Association, Altoona
*Equity Cooperative Livestock Sales Association, Bonduel
*Equity Cooperative Livestock Sales Association, Johnson
*Equity Cooperative Livestock Sales Association, Monroe
*Equity Cooperative Livestock Sales Association, Richland Center
*Equity Cooperative Livestock Sales Association, Ripon
*Equity Cooperative Livestock Sales Association, Sparta
*H-Bar Arena, Plum City
*Midwest Livestock Producers, Barron
*Matthes Farms, Viola
*Midwest Livestock Producers Cooperative, Dodgeville
*Midwest Livestock Producers Cooperative, Ettrick
*Midwest Livestock Producers Cooperative, Fennimore
*Midwest Livestock Producers Cooperative, Lomira
*Midwest Livestock Producers Cooperative, Marion
*Midwest Livestock Producers Cooperative, Monticello
*Midwest Livestock Producers Cooperative, Shullsburg
*Milwaukee Stockyards, Milwaukee
*Peshtigo Livestock Market, Inc., Peshtigo

Wyoming

*Central Wyoming Livestock Exchange, Inc., Glenrock
*Douglas Livestock Exchange, Douglas
*Greybull Livestock Auction, Greybull
*Lusk Livestock Exchange Company, Lusk
*Powell Auction Market, Powell
*Riverton Livestock Auction, Riverton
*Sheridan Livestock Auction, Sheridan
*Stockman's Livestock Market, Torrington
*Torrington Livestock Commission Co., Torrington
*Worland Livestock Auction Company, Worland

Effective Date: The foregoing notice shall become effective October 16, 1985.

Done at Washington, D.C., this 9th day of October, 1985

G.J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-24689 Filed 10-15-85; 8:45 am]

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federal register

Wednesday
October 16, 1985

Part III

Environmental Protection Agency

Assessment of Ethylene Dichloride (EDC) as a Potentially Toxic Air Pollutant; Notice

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL 2862-2]

Assessment of Ethylene Dichloride (EDC) as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to list EDC under section 112 of the Clean Air Act (CAA) and solicitation of information.

SUMMARY: This notice describes the results of EPA's preliminary assessment of EDC as an air pollutant. Ethylene dichloride is a common name for 1,2-dichloroethane. Based on the health and preliminary risk assessment described in today's notice, EPA now intends to add EDC to the list of hazardous air pollutants for which it intends to establish emission standards under section 112(b)(1)(A) of the CAA. The EPA will add EDC to the list if emission standards are warranted. The EPA will decide whether to add EDC to the list only after studying possible control techniques that might be used to control emissions of EDC and after further assessing public health risks. This notice has no effect on the regulation of EDC as a volatile organic compound in order to attain the national ambient air quality standards (NAAQS) for ozone. In addition, this notice does not preclude any State or local air pollution control agency from specifically regulating emission sources of EDC.

Through this notice, the Agency solicits information on the Notice of Intent to List. In particular new information that has not been available in the preparation of the support for this decision is requested. Such information could be useful in improving health risk estimates (e.g., health information and information that could be used to refine exposure estimates). The Agency also solicits information on air emissions, current control practices, options for additional controls and costs of additional controls from sources that have not already provided this information to the Agency.

ADDRESSES: Submit written materials (duplicate copies are preferred) to: Central Docket Section (A-130), Environmental Protection Agency, Attn: Docket No. A-85-13, 401 M Street SW., Washington, DC. The docket may be inspected between 8:00 a.m. and 4:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

DATES: Comments are to be submitted by December 16, 1985.

Availability of Related Information: The final Health Assessment Document (HAD) for EDC is available through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. For further information on the availability of this document, please contact: ORD Publications, CERI-FR, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268 (Telephone: 513-684-7562 commercial/684-7562 FTS).

The source assessment document for EDC is also available through the National Technical Information Service and can be ordered at the address provided above. The order number, PB 85 155 9271/as, should be included when ordering. Paper copies are available for $16.00 (price code A-08) and microfiche copies are available for $4.50 (price code A-01). A limited number of copies are available through the U.S. EPA Library (MD-35) Research Triangle Park, NC 27711. For additional information on the source assessment document, please contact Mr. Robert Rosensteel (telephone 919-541-5671 commercial/629-5671 FTS).

The HAD was reviewed by the Science Advisory Board (SAB), an independent group of recognized scientists and technical experts that provide advice and critical review of scientific issues of the Administrator. The SBA comments are available from the SAB office (contact Cheryl Bentley, A-101F, U.S. EPA, 401 M Street SW., Washington, DC 20460; phone 202-382-2560 commercial/382-2560 FTS). Transcripts of the SAB meetings are available for inspection and copying from the U.S. Environmental Protection Agency, Committee Management Staff. For additional information, please contact Janet Workcuff, A-101, Room M2515, U.S. EPA, 401 M Street SW., Washington, DC 20460 (telephone 202-382-5036 commercial/382-5036 FTS).

SUPPLEMENTARY INFORMATION:

Introduction

EDC is a clear, colorless, volatile liquid that is stable at ambient temperatures. Ranking 15th in overall chemical production and 4th in organic chemical production in the U.S. for 1984 (6.2×10^6 megagrams (Mg) or 14×10^9 pounds), it is a high volume industrial chemical that generally has increasing demands. EDC is used as a feedstock in the production of a number of chemicals, as an additive in leaded gasoline, in pharmaceutical operations, and a variety of miscellaneous uses. The Chemical Abstract Service (CAS) number, a widely accepted numerical identification code for chemicals, for EDC is 107-06-2.

Available information shows that the vast majority of EDC released to the environment is released to the air. Given that the half-life of EDC in the atmosphere is between 36 to 127 days, releases to the atmosphere may be expected to persist long enough to participate in long-range transport. However, EDC would not persist and accumulate in the atmosphere over years. According to the HAD, chloroacetyl chloride, a degradation product of EDC, may persist in the atmosphere long enough to diffuse to the upper and middle atmosphere and participate in stratospheric ozone depletion.

Sources and Emissions

Table 1 summarizes air emissions for EDC. The information for chemical plants is based upon industry responses to EPA requests for information under section 114 of the CAA. These emissions include those that are reported to result from the production and use of EDC. Fugitive emissions are emissions that result from leaks and may be expected to occur most of the time. Storage tank emissions result from breathing and working losses from storage tanks. Secondary emissions are emissions resulting from handling, treatment and disposal of aqueous liquid and solid wastes generated from plant activities. Finally, process vent emissions arise from the venting of emissions from a process.

Preliminary emission estimates for publicly-owned treatment works (POTWs) are based on existing information on about 1,600 POTWs (there are about 20,000 total nationwide) that treat industrial discharge. Emission estimates are contained in the source assessment (and the exposure assessment) for 95 of the 1600 POTWs with EDC emissions of at least 10 Mg/yr. These estimates were derived using mass balance information from POTWs, which along with information on type of treatment used at POTWs and the Standard Industrial Classification Codes were used to extrapolate EDC emissions. Additional waste treatment emissions of EDC, which are not reflected in Table 1, would result from industrial wastewater pre-treatment facilities. Pre-treatment facilities treat industrial wastewaters before releasing them to public wastewater disposal systems.

TABLE 1.—ETHYLENE DICHLORIDE EMISSIONS [1]

Source category	Current emissions (Milligrams per year)						
	Fugitive	Storage tanks	Secondary [2]	Process vents	Shipping	Unassigned [3]	Total
Chemical Plants [4]	1,900	730	650	420	230		3,930
POTWs			[5]7,300				7,300
Pharmaceutical			500		0	800	1,300
Lead scavenger additive blending and gasoline marketing	11	21	2	41	0	245	320
Miscellaneous						5,300	5,300
Total							18,150

[1] Based on EPA, 1984.
[2] Treatment of EDC laden wastewater.
[3] Specific source of emission not known.
[4] Emissions from production of EDC, vinyl chloride monomer, ethyl chloride, methyl chloroform amines, ethyleneamines, perchloroethylene, and trichlorpethylene are included under chemical plants.
[5] Emission estimate based on mass-balance model.

EDC emissions are also expected to result from the use of EDC as a lead scavenger additive in leaded gasoline as well as other miscellaneous uses. While emissions from gasoline marketing appear essentially negligible, those from automotive evaporative losses or tailpipe emissions have not been quantified because available methods are not sufficiently sensitive to measure trace amounts of EDC. However, because the use of EDC as a leaded gasoline additive is expected to decline as leaded gasoline is phased down, these emissions, and associated public health risks, should decrease as well. Finally, miscellaneous emission sources of EDC include the manufacture and use of paints, coatings, adhesives, extraction and cleaning solvents, grain fumigants, color film, pesticides and herbicides, and copper ore leaching solvents.

A review of available monitoring information indicates that EDC concentrations in urban and rural areas are about 0.6 and 0.1 micrograms per cubic meter of air ($\mu g/m^3$), respectively. Although the accuracy and precision of these estimates is uncertain, there is no reason to suspect that these estimates are biased either high or low.

Health Effects

As an early step in the review of EDC, a comprehensive HAD was prepared that examined scientific information on the effects of EDC on public health and welfare. The availability of the draft document was announced in the **Federal Register** (49 FR 18618; May 1, 1984). A meeting of the SAB was held on November 8, 1984 to review the EDC HAD. The SAB concluded that the document provided an adequate inventory of the scientific literature and evaluation of key toxicological studies of EDC.

Applying the International Agency for Research on Cancer (IARC) classification scheme, the HAD concludes that the positive findings in the experimental animal studies and the absence of human data provide an overall weight-of-evidence ranking of 2B. This ranking means that EDC is considered to be "probably" carcinogenic in humans. Using EPA's classification scheme for evaluating the weight-of-evidence of the carcinogenicity of EDC, the HAD has assigned a ranking of B2. This ranking is consistent with the IARC ranking and means that EDC is "probably" carcinogenic in humans (HAD, p. 9–259).

The SAB recommended that EPA conduct an analysis comparing doses with the number of observed tumors in a positive oral (gavage) study, performed by the National Cancer Institute (NCI, 1978), and an inhalation study that did not find a statistically significant increase in tumors (Maltoni et al., 1980).

In response to the comments of the SAB and in order to better understand the dose-response findings in the EDC cancer studies, the final HAD presents an analysis of metabolism and pharmacokinetic studies. The HAD concludes that there are no significant differences in metabolic pathways and elimination of EDC following administration by the two different routes of exposure (HAD, p. 9–225; Reitz et al., 1982) and that the mice in the inhalation study were subjected to lower effective dose levels than those in the NCI oral mouse study and that the rats were at most comparable to the low-dose group in the NCI oral rat study (HAD, p. 9–210). Thus, this apparent discrepancy in response between the studies may be a result of the dosing regimes as well as a reflection of using different rodent species and strains. As a result of this analysis, the final HAD concludes that there is no conflict between the Maltoni and NCI studies and when all available information is considered, EDC should be considered to be a probable human carcinogen by inhalation.

The HAD provides two plausible estimates for the upper-limit unit risk of cancer from the inhalation of EDC. The first estimate is based on the presumption that the amount of EDC and its metabolites available as an effective dose from inhalation and ingestion are similar, that species and strain differences have a minimum influence on carcinogenic responses, and that absorption by inhalation and ingestion is nearly complete (especially for low concentrations such as those observed in the ambient air). Using the potency estimate based on the NCI oral mouse study, which has calculated from the multistage model, an upper-limit unit risk of $2.6 \times 10^{-5} (\mu g/m^3)^{-1}$ was estimated for EDC. The unit risk typically represents the plausible upper-limit of the additional lifetime probability of cancer risk associated with each incremental increase in exposure (i.e., an increase in the probability of cancer risk for each microgram per cubic meter of air ($\mu g/m^3$) of pollutant that a person is exposed to over his or her lifetime). An upper-limit unit risk number also was developed from the Maltoni inhalation study assuming that a statistically significant carcinogenic response would have been observed if a higher dose had been given. This estimate is $1 \times 10^{-6} (\mu g/m^3)^{-1}$.

The HAD recognizes possible explanations that may be responsible for this difference but concludes that these explanations do not lead to a definitive decision as to which estimate is more appropriate. The two unit risk estimates represent upper-limit unit risk estimates that are based on differing assumptions. Specifically, the HAD concludes that the lower unit risk estimate of 1×10^{-6} is appropriate if the route of exposure was primarily responsible for the discrepant results in tumor response between the oral and inhalation routes. Clearly, the HAD does not demonstrate that such a difference exists, and the use of the higher unit risk estimate of $2.6 \times 10^{-5} (\mu g/m^3)^{-1}$ is more appropriate.

Given the increase in distant site tumors in the oral study, the similarities in pharmacokinetics, and the

uncertainties between exposure/dose and tumor increases (i.e., the exposure in the inhalation study was lower and the assimilated dose may not have been sufficient to elicit a significant response) the Agency has decided that the highest plausible upper-limit unit risk estimate should be used to estimate potential public health risks from the inhalation of EDC. This decision is consistent with other upper-limit unit risk estimates for inhalation that have been developed from ingestion studies for other chemicals. In many of these cases, the chemical was judged to be carcinogenic by inhalation but available studies using the inhalation route of exposure were not sufficient for quantitative assessment. Moreover, the only other known recent analysis of this data, performed independently by the California Department of Health Services for the California Air Resources Board, is consistent with this unit risk estimate. The California analysis also concluded that the exposure regime in the Maltoni study was not sufficient to yield a significant increase in tumors given the sample size used in the study. The unit risk associated with inhalation of EDC estimated in the California study was similar to the ingestion estimate (CARB, 1985).

According to the HAD, EDC also is clearly associated with adverse noncarcinogenic effects due to exposure to high levels of EDC in both short- and long-term studies. These studies show that EDC can cause symptomatic effects at concentrations as low as 1.5 ppm (6 (mg/m^3) after only a few minutes exposure. The majority of studies suggesting adverse effects from exposure to EDC are occupational and case studies, which are often difficult to interpret with confidence because of the presence of other pollutants and difficulties in the control of environmental variables.

Although occupational standards and recommendations are not considered to be protective for the general population, which is likely to include sensitive subgroups, comparison of occupational standards with expected concentrations can be useful in preliminary assessments of potential hazards that might be associated with pollutant exposure. The Occupational Safety and Health Administration (OSHA) has established standards as follows: 8-hour time-weighted average (TWA) of 50 ppm (200 (mg/m^3), and ceiling limits of 100 ppm (400mg/m^3) for any 5 minutes in any 3 hours and 200 (800 mg/m^3) for any 5 minutes in any 8-hour shift. Both the National Institute for Occupational Safety and Health (NIOSH) and the American Conference of Governmental Industrial Hygienists (ACGIH) have also recommended occupational limits to protect workers from air exposures. Unlike the recommendations of the OSHA, the NIOSH and ACGIH recommendations do not reflect a consideration of economics in the selection of the levels. The NIOSH recommendations, which reflect consideration of cancer, are a TWA for a normal 10-hour workday or 40-hour week of 1 ppm (4 mg/m^3) and a ceiling concentration of 2 ppm (8 mg/m^3) that is not to be exceeded over any 15-minute period. The ACGIH recommendations are 10 ppm (40 mg/m^3) TWA and a short-term exposure limit of 15 ppm or 60 mg/m^3 (short-term exposure limits are not to be exceeded more than 4 times per day and for averaging periods of 15 minutes).

Risks to Public Health

In order to assess the potential for both carcinogenic and noncarcinogenic health risks, modeling was primarily used to estimate exposure. Long-term pollutant modeling was used to estimate the likelihood for both noncarcinogenic risks of chronic exposures and cancer risks, while short-term modeling was used to examine the potential for noncarcinogenic effects associated with acute exposures.

In order to assess the health risks of long-term exposure to EDC, EPA's Human Exposure Model was used. This method estimates risks to populations within 50 kilometers (km) of specific sources. Using the outputs of this exercise, two estimates of risk are derived. First, an estimate of the lifetime cancer risk at the highest annual average concentration to which any individual is estimated to be exposed from all sources modeled is calculated. This measure is the maximum individual risk. Second, the cumulative cancer cases per year that would result from exposure within 50 km of all sources in the analysis is estimated. This measure is the aggregate risk estimate. Modeling inputs were only available for chemical plants and POTWs. The results of the modeling analysis are presented in Table 2. Given that the results of the modeling analysis indicate that the maximum long-term annual concentration of 0.17 ppm (0.7 mg/m^3) is lower than levels associated with health effects in the HAD and it also lower than occupational limits, no other risk of chronic exposure was identified.

TABLE 2.—CANCER RISK ASSESSMENT RESULTS [1]

Source category	Maximum individual risk	Aggregate risk (cases/year)
Chemical Plants	1.4×10^{-3}	0.35.
POTWs [2]	4.8×10^{-4}	2.7
Pharmaceutical	Unknown	Unknown.
Automotive tailpipe and evaporate emissions.	Do	Do.
Industrial pre-treatment facilities.	Do	Do.
Miscellaneous	Do	Do.

[1] Zaragoza (1985).
[2] Includes only a subset of POTWs.

In order to assess the potential for noncarcinogenic effects from short-term exposure to EDC, modeling was performed using time/adjusted annual emission rates. This procedure may underestimate actual concentrations because emissions are not continuous and uniform. The modeling results indicate that short-term concentrations of 55 ppm (220 mg/m^3) for 15 minutes would be predicted (Zaragoza, 1985). Given that these are the results of a preliminary assessment, the actual concentrations may be different than those reported above. Moreover, in order to determine the extent to which these emissions might affect public health, it will be necessary to examine the distribution of populations in the vicinity of industrial facilities that emit EDC. As the Agency moves forward toward a decision on listing EDC, efforts to refine this analysis and characterize the risk to populations from short-term exposures will be performed.

There are additional uncertainties associated with the risk analysis. Although an upper-limit unit risk estimate is used for the estimate of cancer risks, there are other considerations that suggest that the risk estimates presented here may lead to an underestimation of risk. First, the atmospheric residence of EDC is sufficiently long to be transported over distances beyond 50 km. Thus, there is additional exposure to populations that is not reflected in the exposure/risk analysis. This helps to explain to some extent the differences in population risk estimates obtained through monitoring and dispersion modeling. Available monitoring information described above would be associated with a nationwide incidence of 41 cases/year (Hunt et al., 1985; Zaragoza, 1985).

There are at least two other factors that should be considered in evaluating the risks associated with the emissions of EDC. First, insufficient information is available to assess the effects of EDC's degradation product, chloroacetyl chloride, on public health and the environment. Chloroacetyl chloride is

reported to exhibit noncarcinogenic health effects following exposure by inhalation and dermal exposure. Moreover, it may contribute to stratospheric ozone depletion. Second, if EDC use and emissions continue to grow, future risks would be greater than those estimated here.

There are also a number of assumptions underlying these estimates that can either over or underestimate the risk posed by EDC. Further study and assessment will not likely narrow the uncertainties associated with some of the inputs to the risk assessment or yield an improvement in some of these assumptions (e.g., the carcinogenic potency of a chemical estimated through the use of a mathematical model for extrapolating animal studies to much lower concentrations present in the ambient air). There are other inputs to the risk estimates that are very preliminary at the current stage of assessment and that will be substantially refined through further study. The primary example of this is the source information: Number and types of sources, their locations, emission rates, stack parameters, variability of emissions, etc. Current source information is based on engineering estimates, data obtained under section 114 of the CAA, and other readily available information in the literature. This information will, in many cases, be improved through plant visits and source tests. The Agency has concluded that the preliminary risk estimates presented here are sufficient to warrant further study for possible regulation. The Agency will improve these estimates, particularly with respect to emissions and exposure, before making a final decision on whether to add EDC to the list under section 112.

The preliminary risk assessment results, associating increased public health risks with the inhalation of EDC from the ambient air, suggest that an increased risk of cancer and possible effects of short-term exposures warrant further study by the Agency. Although Agency efforts will specifically address these areas, the Agency will continue to examine the potential for all health effects in its assessment of public health risks associated with exposure to EDC.

Statement of Intent

Section 112(b)(1)(A) of the CAA defines hazardous air pollutants as air pollutants that contribute to mortality or serious irreversible, or incapacitating reversible, illness. Section 112(b)(1)(A) provides that the Administrator shall maintain ". . . a list which includes each hazardous air pollutant for which he intends to establish an emission standard under this section." In deciding whether to establish such emission standards for carcinogens, EPA considers both public health risks and the feasibility and reasonableness of control techniques (e.g., 49 FR 23522, 23498, 23558 (June 6, 1984) (emission standards for benzene)).

Based on the health and preliminary risk assessment described in today's notice, EPA now intends to add EDC to the section 112(b)(1)(A) list. The EPA will decide whether to add EDC to the list only after studying possible techniques that might be used to control emissions of EDC and after further improving the assessment of the public health risks. The EPA will add EDC to the list if emission standards are warranted. The EPA will publish this decision in the **Federal Register**.

If standards are not warranted under section 112 of the Clean Air Act, the Agency will consider other options as described in EPA's report "A Strategy to Reduce Public Health Risks from Air Toxics," June 1985. For example, in that strategy EPA described other approaches for dealing with routine releases of toxic air pollutants from stationary sources such as working with State or local air pollution control agencies to address problems that do not warrant Federal regulatory action but that account for elevated risks in some areas.

Standards Development Process

The following discussion has been prepared to provide the reader with an explanation of the standards development process and the timing of the process. The standards development process involves two phases, each taking about two years. The first phase is the identification of emission sources and the need and ability to control those sources. The second phase involves Agency decisionmaking and public review prior to a final action.

During the first phase, EPA identifies the sources that are significant emitters of the pollutant and the specific emission points within each source and then determines the quantities of pollution emitted, the alternative control systems available, and their cost and effectiveness in reducing emissions and associated public health risks. A set of alternative regulations is developed and the environmental, economic, energy, and public health risks are evaluated.

The first phase requires investigation of the many different ways in which a candidate pollutant can be emitted and controlled. As indicated earlier, EDC is emitted from production of EDC, vinyl chloride monomer, ethyl chloride, methyl chloride, methyl chloroform amines, ethyleneamies, perchloroethylene, trichloroethylene, and is used as a lead scavenger in additives to leaded gasoline, pesticide production, and is also emitted from a variety of other industrial applications and miscellaneous uses. Within a source category there is a wide variation in designs, sizes, and processes. This variation affects the emission rates, the public health risks, and the cost and controllability of the pollutant. Assessment of source emissions and controls is further complicated by the fact that emissions are not necessarily contained in stacks or ducts (i.e., some are fugitive emissions) and emission test programs are technically difficult and costly.

The decisionmaking and review phase involves a series of EPA internal and external activities. Prior to publication of proposed rules, the Agency reviews all of the technical, cost, and exposure/risk data and makes decisions on the level of standards. The data and conclusions are reviewed publicly by an independent technical advisory committee. Following further Agency consideration, the standard is proposed for public comment. The comment period is open a minimum of two months and a public hearing is held, if requested. Following the comment period, Agency technical staff review the comments and resolve technical issues, an activity that often requires obtaining and analyzing new data.

Miscellaneous

EDC is currently listed as a hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Under section 101(14) of CERCLA, Reportable Quantities (RQs) are established for substances specified in the CERCLA, as well as substances listed or designated under certain sections of the Clean Water Act, the Resource Conservation and Recovery Act, the CAA (section 112) and the Toxic Substances Control Act (50 FR 13456; Apirl 4, 1985). Section 103(a) of the CERCLA requires any release of EDC to the environment (including the air) that is equal to or greater than 5,000 pounds in any 24-hour period must be reported to the National Response Center (NRC) (Telephone 800–424–8802 or 202–426–2675 for the Washington D.C. metropolitan area). The current RQ for EDC does not reflect consideration of its potential as a human carcinogen and is currently under review by the Agency. Since EDC is already listed under section 101(14) of the CERCLA, a

decision to list EDC under section 112 of the CAA would not pose any additional reporting requirements.

Under Executive Order 12291, EPA must judge whether this action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it imposes no additional regulatory requirements on States or sources. This proposal was submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB and any written EPA responses are available in the docket. Pursuant to 5 U.S.C. 605(6), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980

Dated: October 8, 1985.

Lee M. Thomas,

Administrator.

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federal register

Wednesday
October 16, 1985

Part IV

Environmental Protection Agency

Assessment of Cadmium Under Section 122 of the Clean Air Act; Notice

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL 2879-5]

Assessment of Cadmium Under Section 122 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to List Cadmium under section 112 of the Clean Air Act and Solicitation of Information.

SUMMARY: Section 122 of the Clean Air Act (CAA) requires EPA, after notice and an opportunity for public hearing, to decide whether to regulate cadmium (CAS 7440-43-9) under sections 108, 111, or 112 of the Act. This notice describes the results of EPA's preliminary assessment of cadmium as a potentially toxic air pollutant. Based on the health and preliminary risk assessment described in today's notice, EPA now intends to add cadmium to the list of hazardous air pollutants for which it intends to establish emission standards under section 112(b)(1)(A) of the CAA. The EPA will decide whether to add cadmium to the list only after studying possible techniques that might be used to control emissions of cadmium compounds and after further assessing the public health risks. The EPA will add cadmium to the list if national emission standards are warranted. The Agency will coordinate further assessment of cadmium sources with State and local air pollution control agencies including consideration of joint control strategies. This notice, however, does not preclude any State or local air pollution agency from independently regulating emission sources of cadmium.

Through this notice, the Agency solicits public comment on the Intent to List decision. The EPA also solicits information on the potential carcinogenicity of cadmium at ambient exposure levels, the potential respiratory noncarcinogenic effects of cadmium, the effectiveness of controlling cadmium emissions with particulate control equipment, the current levels of control of cadmium sources, and current emission estimates.

If requested, a public hearing will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the intent to list cadmium under section 112.

DATES: Comments. Written comments must be received on or before January 14, 1986.

Public Hearing. Requests for a public hearing must be received by November 15, 1985. If requested, a public hearing will be held December 16, 1985 beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Chris Bennett at (919) 541-5645 to verify that a hearing will be held.

Requests to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by November 15, 1985.

ADDRESSES: Comments should be submitted (in duplicate if possible) to: Central Docket Section (A-130), Environmental Protection Agency, ATTN: Docket No. A-81-37, 401 M Street, SW., Washington, DC 20460. The Central Docket Section is located at the offices of the U.S. Environmental Protection Agency, West Tower Lobby, Gallery I, 401 M Street, SW., Washington, DC. The docket may be inspected between 8:00 a.m. and 4:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

Public Hearing. If a public hearing is requested, the hearing will be held at the Environmental Research Center Auditorium, Research Triangle Park, NC. Persons interested in attending the hearing should call Ms. Chris Bennett at (919) 541-5645 to verify that a hearing will occur.

Persons wishing to present oral testimony should notify Ms. Chris Bennett, Pollutant Assessment Branch (MD-12), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541-5645.

Availability of related information: For information on how to obtain a copy of the final Update Mutagenicity and Carcinogenicity Assessment of Cadmium (EPA-600/8-83-025F), interested parties should contact the ORD Publications Center, CERI-FRN, U.S. Environmental Protection Agency, 26 W. St. Clair Street, Cincinnati, Ohio 45268, telephone: (513) 684-7562. The final Health Assessment Document (HAD) for Cadmium (EPA-600/81-023, May 1981) is available through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. When ordering, specify the NTIS document number: PB82-115163. The cost is $28.00. Copies of the HAD, the Updated Carcinogenicity and Mutagenicity Assessment of Cadmium, and the transcripts of the Science Advisory Board (SAB) meetings to review the cadmium health assessment documents are available for inspection and copying at the U.S. Environmental Protection Agency, Committee Management Staff (contact Janet Workcuff), A-101, Room 2515, 401 M Street, SW., Washington, DC 20460, telephone: Commercial/(202) 382-5036; FTS/382-5036.

FOR FURTHER INFORMATION CONTACT: Robert G. Kellam, Pollutant Assessment Branch (MD-12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, 27711 (Telephone: Commercial—919-541-5645/FTS 629-5645).

SUPPLEMENTARY INFORMATION:

Introduction

Cadmium is emitted into the air during the processing, smelting, and refining of cadmium-containing ores, the combustion of cadmium-containing fuels and wastes, and from end-use applications. There are four major end use applications: electroplating of metals, stabilizers in plastics, cadmium paint pigments and nickel-cadmium batteries. Cadmium is principally emitted into the ambient air in particulate form from sources such as coal- and oil-fired boilers, cadmium, lead and zinc smelters, municipal and sewage sludge incinerators and pigment manufacturing plants. Most of the source categories that emit cadmium in particulate form are at least partially controlled in order to meet the national ambient air quality standards for particulate matter and lead. New or modified sources in the fossil fuel combustion and the municipal and sewage sludge incineration categories are required to meet new source performance standards for particulate matter.

In May 1981, EPA completed a cadmium HAD. This document reached a general conclusion, based upon the available health evidence, that kidney dysfunction should be considered the principal health effect of concern resulting from exposure to cadmium. The available evidence also suggested that ingestion rather than inhalation of cadmium was the principal route of exposure associated with this effect.

Following the release of the assessment document, the Agency became aware of more recent animal and epidemiological studies suggesting cadmium's potential carcinogenicity. The EPA reviewed the studies and updated the carcinogenicity and mutagenicity chapter of the cadmium HAD. The update was released for external review in April 1984 and a review meeting of EPA's SAB was held October 22, 1984. The SAB's comments on the HAD update were transmitted to the Administrator December 5, 1984. The SAB agreed with EPA's conclusion that cadmium should be regarded in the classification system developed by the International Agency for Research on Cancer as a category 2A carcinogen (probable human carcinogen) based

upon sufficient evidence in animal test systems combined with limited evidence in humans. Using EPA's recently proposed updated Cancer Risk Assessment Guidelines (49 FR 46294–46301), cadmium is classified in Group B1 (probable human carcinogen).

Sources and Emissions

Since cadmium is distributed throughout the earth's crust, it is emitted during processes that utilize ores and during combustion of fossil fuels. It is also emitted during processes that manufacture or use cadmium or cadmium compounds during ferrous and non-ferrous metal processing and during waste incineration. Listed in Table 1 are the source categories of cadmium and preliminary estimates of annual cadmium air emissions. The EPA is presently conducting studies to identify additional source categories and to improve the emissions estimates.

The present estimates of cadmium emissions are subject to several sources of uncertainty. These include a general lack of source-specific information that requires the use of simplifying assumptions (e.g., the use of average values for the cadmium content of fossil fuels, municipal waste, and sewage sludge). A second source of uncertainty concerns the levels and effectiveness of current emission controls. The EPA is aware that a number of the identified source categories are already reducing emissions of cadmium through equipment installed to control total suspended particulate matter and lead. There are questions concerning whether the control efficiency for cadmium emissions are equivalent/similar to the control efficiency for total particulate emissions.

TABLE 1.—SUMMARY OF CADMIUM EMISSION ESTIMATES

Source Category	Number of sources	Emission estimates mg (tons)/yr
Primary Cadmium Smelters	5	8.2 (9.1)
Primary Copper Smelters	14	42.1 (46.5)
Primary Lead Smelters	5	26.5 (30.4)
Primary Zinc Smelters [1]	8	5.8 (6.4)
Secondary Copper Smelters	6	0.45 (0.5)
Secondary Lead Smelters	35	0.47 (0.52)
Secondary Zinc Smelters	70	0.1 (0.1)
Municipal Incinerators	103	80.4 (88.5)
Sewage Sludge Incinerators	100	10.3 (11.4)
Iron and Steel Production	145	10.3 (11.4)
Cadmium Pigment Mfg	4	1.3 (1.5)
Cadmium Stabilizer Mfg	5	0.2 (0.2)
Nickel-Cadmium Battery Mfg	8	0.1 (0.1)
Subtotal		186.2 (206.6)
Coal and Oil Combustion:		
Utility	1,100	190 (209)
Industrial	165,000	194 (213)
Commercial-Residential	16,000,000	68 (75)
Subtotal		452 (497)
Total		638.2 (703.6)

[1] Includes zinc oxide smelters.

Sources.—EPA (1981), RADIAN (1984), RADIAN (1985).

Health Effects

The HAD (EPA 1981) and the HAD update (EPA 1985) describe several adverse health effects associated with exposure to cadmium. Epidemiological studies in occupational populations have identified a number of effects associated with cadmium exposure principally affecting the renal (kidney dysfunction) and respiratory (lung cancer, emphysema, bronchitis) systems. There is also fairly good evidence that cadmium is mutagenic in animal and mammalian cell test systems and limited evidence of reproductive effects in test species.

Carcinogenicity

At the present, the major health effect of concern, both because of the seriousness of the effect and the absence of an indentifiable exposure threshold, is lung cancer. The key epidemiological study demonstrating carcinogenic effects in humans from the inhalation of cadmium is Thun et al., 1985, summarized in the health update (EPA 1985). The author initially presented the results of this study at the October 22, 1984 SAB review meeting. The study demonstrates a positive dose-response relationship between airborne cadmium exposure and an incidence of lung cancer in occupationally exposed populations. The study is strengthened by allowance for potentially confounding exposures to smoking and inorganic arsenic. The update also includes discussion of other studies which provide evidence, considered circumstantial by the SAB, in support of cadmium's carcinogenic potential.

Available animal studies provide sufficient evidence that cadmium (as cadmium chloride) is carcinogenic in the species tested (EPA 1985). The key study (Takenaka et al., 1983) reported a dose-related increase in primary lung carcinomas in rats following chronic inhalation exposure to cadmium chloride presented as an aerosol. Additional support for the carcinogenicity of cadmium in animals includes the reports of pancreatic islet tumors following parenteral administration of cadmium chloride (Poirier et al., 1983), male mammary tumors following intratracheal instillation of cadmium oxise (Sanders and Mahaffey, 1984), mesotheliomas following intrathoracic injection of powdered cadmium (Furst et al., 1973) and the induction of prostate tumors by local injection of cadmium chloride (Scott and Aughey, 1979). Based on available evidence, cadmium does not appear to be carcinogenic via ingestion.

The mutagenicity of cadmium salts appears to be well documented in cell culture studies. Cadmium's mutagenic activity further supports the animal carcinogenicity studies in that mutagenicity is widely regarded as a possible mechanism for carcinogenesis.

In reviewing the carcinogenic evidence, the SAB agreed with EPA's conclusion that cadmium should be regarded as a category 2A carcinogen (probable human carcinogen) based upon sufficient evidence in animals combined with limited evidence in humans.

In the "Updated Mutagenicity and Carcinogenicity Assessment of Cadmium," EPA derived a numerical estimate of the carcinogenic potency of cadmium (unit risk estimate). This estimate (1.8×10^{-3} per microgram cadmium per cubic meter air) is based upon data from the Thun et al. epidemiological study and represents an estimate of the probability of contracting lung cancer as a result of a lifetime exposure to one microgram cadmium per cubic meter air. This estimate is combined with EPA's assessment of human exposure to develop quantitiative estimates of lung cancer risk described later in this notice.

Non-Carcinogenic Effects

The effects of cadmium via inhalation (other than cancer) can range from respiratory insufficiency, with shock and death of individuals subject to extreme exposures, to centrilobular emphysema and bronchitis from chronic occupatinal exposures to cadmium-oxide fumes, cadmium-oxide dusts, and cadmium-pigment dusts. The acute effects can result from cadmium concentrations of 1000 $\mu g/m^3$ (for 8 hours) while 5000 $\mu g/m^3$ (for 8 hours) can be lethal. The chronic respiratory effects have been observed only after long-term, continuous exposures to cadmium concentrations above 66 $\mu g/m^3$. Decreased pulmonary function, restrictive airway disease, interstitial fibrosis and emphysema result from high occupational exposure levels. There is no evidence that such effects occur as a result of the much lower concentrations characteristic of the ambient air.

The effects of both acute and chronic exposure to cadmium on the renal

system have been demonstrated in both humans and animals. Occupational cadmium exposures are associated with renal tubular dysfunction. In Japan, renal dysfunction has been observed in individuals with environmental exposures to high cadmium levels in food and water as a result of cadmium water pollution. Effects levels for induction of renal tubular dysfunction measured as proteinuria (protein in urine) and aminoaciduria (amino acids in urine) have been established through the use of metabolic models. Exposure to current ambient air cadmium levels would not be expected to result in or contribute significantly to chronic renal effects in humans.

There is limited evidence that injection of cadmium and cadmium compounds may cause reproductive effects in animals (testicular necrosis) but the evidence for such effects in humans is questionable. Increases in embryotoxic and teratogenic effects have been observed in test species at high cadmium dose levels via systematic injections but evidence of these effects is much less certain at the lower levels of cadmium exposure characteristic of the more relevant inhalation and oral exposure routes.

In order to improve EPA's understanding of the association between exposures and related health effects, EPA is requesting through this notice additional information on the non-carcinogenic respiratory effects of cadmium exposure and the concentrations and duration of exposure that may cause these effects.

Ambient Exposure

Estimating public exposure to cadmium in the ambient air is either based on analyzing cadmium metal concentrations in ambient particulate samples or using dispersion modeling for estimating exposure using cadmium emissions estimates for individual plants or, for some source categories, model plants. All estimates are based on exposures to total cadmium. Monitoring of the air in some non-source dominated rural and urban areas of the country has shown annual average cadmium concentrations to be in the range of 0.001 to to 0.034 $\mu g/m^3$. The maximum concentrations reported during any one 24-hour measurement were 10.8 $\mu g/m^3$ (1978) and 2.8 $\mu g/m^3$ (1983). The maximum reported annual average concentration is 1.009 $\mu g/m^3$ (1978).

The EPA has also performed dispersion modeling to estimate the airborne cadmium concentrations in the vicinity of emitting sources. Dispersion modeling allows EPA to develop estimates of the magnitude of cadmium exposure to affected populations. Based on current estimates of emissions the maximum annual average concentration predicted is 1.6 $\mu g/m^3$.

Estimates of Health Risk

In the absence of evidence that measured or predicted ambient levels of cadmium pose risks of non-carcinogenic, adverse health effects, EPA's analysis of cadmium health risks is based on estimates of carcinogenic risks posed by cadmium emissions to populations that reside in the vicinity of emitting sources. Estimates of incremental cancer risk for cadmium were developed through the use of EPA's Human Exposure Model (HEM). The HEM accepts as inputs the locations and emission characteristics of actual or representative sources. This information is combined with census and meteorological data contained in the model to estimate the magnitude and distribution of population exposure. Two measures of excess cancer risk are calculated: the aggregate population risk expressed as an expected annual cancer incidence and the maximum individual lifetime risk expressed as the lifetime probability of cancer for the most exposed population. For cadmium emitted from stationary sources, the attributable cancer incidence is estimated to range between three and seven cases per year and the risk to the most exposed population is estimated at three chances in one thousand (3×10^{-3}). Table 2 provides a breakdown of preliminary risk estimates by stationary source category.

TABLE 2.—PRELIMINARY ESTIMATES OF CANCER RISK

Source category	Number of sources	Estimated annual incidence	Estimated maximum lifetime risk
Primary Cadmium Smelters	5	0.23	2.8×10^{-3}
Primary Copper Smelters	14	0.016	5.97×10^{-4}
Primary Lead Smelters	5	0.029	1.13×10^{-3}
Primary Zinc Smelters [1]	8	0.069	2.1×10^{-4}
Secondary Copper Smelters	6	0.002	1.36×10^{-5}
Secondary Lead Smelters	35	0.017	1.2×10^{-4}
Secondary Zinc Smelters	70	NA [2]	NA [2]
Municipal Incinerators	103	1.64	8.1×10^{-5}
Sewage Sludge Incinerators	100	0.16	2.2×10^{-4}
Iron and Steel Production	145	0.056	7.2×10^{-6}
Cadmium Pigment Mfg.	4	0.051	2.2×10^{-4}
Cadmium Stabilizer Mfg.	5	0.042	1.0×10^{-4}
Nickel-Cadmium Battery Mfg.	8	<0.0001	5.67×10^{-7}
Coal and Oil Combustion: [3]			
Utility	1,100	0.17–1.6	
Industrial	165,000	0.11–1.0	

TABLE 2.—PRELIMINARY ESTIMATES OF CANCER RISK—Continued

Source category	Number of sources	Estimated annual incidence	Estimated maximum lifetime risk
Commercial-Residential	16,800,000	0.24–2.4	
Subtotal		0.52–5.0	1.1×10^{-4}
Total [3]		2.85–7.33	2.8×10^{-3}

[1] Includes zinc oxide smelters.
[2] Not available—risk assessment not conducted; sources have excellent control equipment.
[3] The range of annual incidence—low estimates are based on a State-by-State analysis; the upper estimates on a county-by-county analysis.

There are a number of assumptions underlying these estimates of cancer risk that can yield either over or underestimates of the risk posed by cadmium. Further study and assessment will not likely narrow the uncertainties associated with some of the inputs to the risk assessment or yield some improvement in these assumptions (e.g., the carcinogenic potency of a chemical estimated through the use of a mathematical model for extrapolating high-dose worker or animal studies to the much lower concentrations present in the ambient air). There are other inputs to the risk estimates which are very preliminary at the current stage of assessment and which will be substantially refined through further study. The primary example of this is the source information: number and types of sources, their locations, emission rates, stack parameters, variability of emissions, etc. Current source information is based on engineering estimates and other readily available information in the literature. This information will be improved by requesting information directly from source owners under 114 of the CAA, plant visits, and source tests. The Agency has concluded that the preliminary risk estimates presented here are sufficient to warrant further study for possible regulation. The Agency will improve these estimates, particularly with respect to emissions and exposure, before making a final decision on whether to add cadmium to the list under section 112.

Statement of Intent

Section 112(b)(1)(A) of the CAA defines hazardous air pollutants as air pollutants that contribute to mortality or serious irreversible, or incapacitating reversible, illness. This section also provides that the Administration shall maintain ". . . a list which includes each hazardous air pollutant for which he intends to establish an emission standard under this section." In deciding whether to establish such emission

standards for carcinogens, EPA considers both public health risks and the feasibility and reasonableness of control techniques [e.g., 45 FR 23522; 23498; 23558 (June 6, 1984) (emission standards for benzene)].

Based on the health and preliminary risk assessment described in today's notice, EPA now intends to add cadmium to the section 112(b)(1)(A) list. The EPA will decide whether to add cadmium to the list only after studying possible techniques that might be used to control emissions of cadmium compounds and after further improving the assessment of the public health risks. The EPA will add cadmium to the list if emission standards are warranted. The EPA will publish this decision in the Federal Register.

If standards are not warranted under section 112 of the CAA, the Agency will consider other options as described in EPA's report "A Strategy to Reduce Public Health Risks from Air Toxics," June 1985. For example, in that strategy EPA described other approaches for dealing with routine releases of toxic air pollutants from stationary sources such as working with State or local air pollution control agencies to address problems that do not warrant Federal regulatory action but which account for elevated risks in some areas.

Standard Development Process

The following discussion has been prepared to provide the reader with an explanation of the standards development process and the timing of the process. The standards development process involves two phases, each taking about two years. The first phase is the identification of the emission sources and the need and ability to control those sources. The second phase involves Agency decisionmaking and public review prior to a final action.

During the first phase, EPA identifies those source categories and industrial processes that are significant emitters of the pollutant and the specific emission points within each process. For each category or process the magnitude of emissions is determined as well as available emission control systems and their cost and effectiveness in reducing emissions and associated public health risks. A set of alternative control options is developed and the environmental, economic, energy, and public health risks are evaluated.

The first phase requires investigation of the ways in which a candidate pollutant can be emitted and controlled. As indicated earlier, cadmium is emitted from coal and oil combustion, primary and secondary nonferrous smelting, incineration, chemical manufacturing (pigments and stabilizers) and iron and steel production. Within a source category there is wide variation in designs, sizes, and processes. This variation affects the emission rates, the public health risks, and the cost and controllability of the pollutant. Assessment of source emissions and controls is further complicated by the fact that emissions do not arise only from stacks or ducts (i.e., some are fugitive emissions) and often are technically difficult and costly to measure.

The decisionmaking and review phase involves a series of EPA internal and external activities. Prior to publication of proposed rules, the Agency reviews all of the technical, cost, and exposure/risk data and make decisions on the level of standards. The data and conclusions are reviewed publicly by an independent technical advisory committee. Following further Agency consideration, standards are proposed for public comment. The comment period is open a minimum of two months and a public hearing is held, if requested. Following the comment period, Agency technical staff review the comments and resolve technical issues, an activity that often requires obtaining and analyzing new data.

Call for Information

The EPA seeks information on the following questions:

1. Are there adverse health effects other than cancer associated with exposure to cadmium or any cadmium compounds via inhalation at concentrations below 66 $\mu g/m^3$ continuous exposure or as a result of other exposure patterns (e.g., intermittent peak exposures)?

2. Are there sources other than those listed in Table 1 that are likely to emit significant amounts of cadmium into the air?

3. What are the locations, emission rates and control equipment in place on cadmium sources?

4. Are the control efficiencies for cadmium emission control technology similar to those for total particulate emissions controls?

5. Would there be serious enforcement or implementation problems associated with establishing emission standards for cadmium?

Addresses and dates for the submission of comments and information are provided in the introductory sections of this notice.

Miscellaneous

Cadmium compounds are currently listed as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) section 101(14). The statutory Reportable Quantity (RQ) for cadmium is listed as one pound. Various specific cadmium compounds have been assigned a RQ of 100 pounds by rulemaking under the authority of section 311 (b)(4) of the Clean Water Act (cadmium acetate, cadmium bromide and cadmium chloride) (48 FR 23578 and 50 FR 13456–13506). With regard to cadmium metal, no reporting of massive forms of this substance is required if the diameter of the pieces of the substances released is equal to or exceeds 100 micrometers (0.004 inches).

Pursuant to CERCLA section 103 (a), any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally-permitted release or normal application of a pesticide) of a hazardous substance from such vessel or facility in a quantity equal to or exceeding the RQ determined in any 24-hour period, immediately notifying the National Response Center (NRC); (800–424–8802; in the Washington, DC metropolitan area at 202–426–2675).

Since cadmium and various cadmium compounds are already listed specifically by CERCLA authority as hazardous substances which require reporting of such releases equalling or exceeding a RQ to all media, this notice poses no additional burden on the regulated community, the government or the public. However, all parties are given notice here that such a requirement for reporting exists under the authority of CERCLA. For additional information on CERCLA hazardous reporting, see 48 FR 23552, and 50 FR 13456–13522.

Other EPA regulations and guidance that limit or reduce human exposure to cadmium include drinking water standards, regulation of hazardous and solid waste, guidance on the application of sewage sludge and other wastes on croplands, and requirements for the treatment of water effluents from specific industries and source categories. Cadmium is now defined as a priority pollutant under the Clean Water Act (CWA) and a "pollutant of concern" with municipal sludge incineration. The Agency is also evaluating pesticidal uses of cadmium which may result in restricting or canceling some or all of these uses.

Under Executive Order 12291, EPA must judge whether this action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it imposes no additional regulatory requirements on States or

sources. This proposal was submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB and any EPA responses are available in the docket. Pursuant to 5 U.S.C. 605(6), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980.

Dated: October 8, 1985.

Lee M. Thomas,

Administrator.

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[FR Doc. 85–24648 Filed 10–15–85; 8:45 am]

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Federal Register

Vol. 50, No. 200

Wednesday, October 16, 1985

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Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230
United States Government Manual	523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, OCTOBER

39953-40180.....1
40181-40324.....2
40325-40474.....3
40475-40796.....4
40797-40954.....7
40955-41126.....8
41127-41328.....9
41329-41468.....10
41469-41654.....11
41655-41834.....15
41835-42004.....16

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Presidential Determinations:

No. 85-15 of July 12, 1985.....40183

Memorandums:

September 30, 1985.....40321
September 19, 1985.....41469

Executive Orders:

11145 (Continued by EO 12534).....40319
11183 (Continued by EO 12534).....40319
11287 (Continued by EO 12534).....40319
11776 (Continued by EO 12534).....40319
12131 (Continued by EO 12534).....40319
12190 (Continued by EO 12534).....40319
12196 (Continued by EO 12534).....40319
12216 (Continued by EO 12534).....40319
12293 (Amended by EO 12536).....41477
12296 (Continued by EO 12534).....40319
12332 (Revoked by EO 12534).....40319
12335 (Revoked by EO 12534).....40319
12345 (Continued by EO 12534).....40319
12367 (Continued by EO 12534).....40319
12369 (Revoked by EO 12534).....40319
12382 (Continued by EO 12534).....40319
12395 (Revoked by EO 12534).....40319
12399 (Superseded by EO 12534).....40319
12400 (Revoked by EO 12534).....40319
12401 (Revoked by EO 12534).....40319
12412 (Revoked by EO 12534).....40319
12421 (Revoked by EO 12534).....40319
12426 (Revoked by EO 12534).....40319
12428 (Revoked by EO 12534).....40319
12433 (Revoked by EO 12534).....40319
12439 (Revoked by EO 12534).....40319
12462 (Amended by EO 12533).....40317
12468 (Revoked by EO 12534).....40319
12489 (Superseded by EO 12534).....40319
12499 (Revoked by EO 12534).....40319
12502 (Revoked by EO 12534).....40319
12532 (See EO 12535).....40325
12533.....40317
12534.....40319
12535.....40325
12536.....41477

Proclamations:

5368.....59953
5369.....59955
5370.....59957
5371.....40181
5372.....40323
5373.....40797
5374.....40955
5375.....40957
5376.....40959
5377.....41329
5378.....41331
5379.....41333
5380.....41471
5381.....41473
5382.....41475
5383.....41655
5384.....41657
5385.....41835
5386.....41837
5387.....41839
5388.....41841
5389.....41843

5 CFR

530.....40178
531.....40178
536.....40178
540.....40178

Proposed Rules:

531.....40865
532.....40979

7 CFR

29.....41127
51.....40185, 40961
354.....40186
906.....41659
910.....41659
917.....40961
920.....41660
929.....41659
948.....41659
966.....41659
984.....41659
985.....41479
989.....40475, 40476

1079.....41660
1822.....39959
1864.....40187
1872.....39959
1930.....39959
1944.....39959
1951.....39959, 39967
1980.....39959

Proposed Rules:
51.....40200
701.....40980
958.....40981
981.....40562
982.....40200
1140.....40982
1772.....40865

8 CFR
100.....40327
103.....40327
212.....41314
238.....40799, 40962
341.....41480

9 CFR
50.....40962
78.....40799
91.....40328
92.....40477, 40801
352.....41845

Proposed Rules:
302.....41524
303.....41524
381.....41524

10 CFR
2.....41662
7.....41480
9.....40329, 41127
40.....41852
50.....41128
72.....41662
150.....41852

Proposed Rules:
30.....41904
40.....41904
61.....41904
70.....41904
72.....41904

11 CFR
2.....39968
3.....39968

12 CFR
210.....41335
211.....39974
217.....41672
265.....40329
338.....39986
792.....41673

Proposed Rules:
303.....41361
309.....41361

13 CFR
117.....41646

Proposed Rules:
121.....40032

14 CFR
39.....39990, 40188, 40189, 40802, 40803, 41129, 41130 41336, 41481, 41482, 41674
71.....40035, 30046, 40190, 40479, 41483–41485, 41866
73.....40191
91.....41326

Proposed Rules:
39.....40034, 40201, 40202, 40562, 40866, 40867
61.....40982
71.....40035, 40036, 40203, 40564, 40566, 40868, 41524–41526, 41693, 41904
73.....41904
75.....41905
93.....41906
121.....41452

15 CFR
371.....41131
376.....39993
377.....41131
379.....39993
399.....39993, 41131

16 CFR
3.....41485
13.....41677

Proposed Rules:
13.....41693
1632.....40869

17 CFR
12.....40330, 41678
31.....40963
190.....40963
200.....40479
239.....40479
240.....41337, 41867
249.....40479, 41867
259.....40479
269.....40479
270.....40479
274.....40479

Proposed Rules:
Ch. I.....41696
230.....41162
240.....41162, 41697, 41907
249.....41162
260.....41162

18 CFR
2.....40332
32.....40347
33.....40347
34.....40347
35.....40347
36.....40347
45.....40347
101.....40347
152.....40332
154.....40332
157.....40332
271.....40192, 40193, 40359, 40361
284.....40332
292.....40347
375.....40332, 40347
381.....40332, 40347

Proposed Rules:
35.....41164
290.....41164
410.....41908

19 CFR
101.....41488
113.....40361
141.....40361
172.....40361
177.....40364

Proposed Rules:
101.....40982

20 CFR
302.....39993

21 CFR
175.....40964
178.....40964
436.....41678
446.....41678
510.....40965, 41134, 41340
520.....41488
522.....40965, 41488
524.....41488
540.....41134, 41488
546.....41488
558.....39994, 40521, 41340
561.....41341
1304.....40522

Proposed Rules:
182.....40204
186.....40204
201.....40405
211.....40405
348.....40260
514.....40405
559.....40405
884.....40950

22 CFR
41.....41315
208.....39994

23 CFR
635.....41882

24 CFR
27.....41344
107.....41680
203.....40194
251.....40195
990.....40196, 41699

Proposed Rules:
200.....41680

26 CFR
48.....41490
51.....39998, 40966, 40971
602.....39998, 40966, 40971

Proposed Rules:
1.....40205, 40983
602.....40983

27 CFR
178.....40523
179.....41680

Proposed Rules:
7.....41701
9.....41364
245.....41701

28 CFR
0.....40196
2.....40365–40374
50.....40524
503.....40104
527.....40105
540.....40106

Proposed Rules:
540.....40113–40115
544.....40116

29 CFR
500.....40974
1910.....41491
1960.....40268

Proposed Rules:
1601.....41135
1627.....40870

30 CFR
Ch. VII.....40375

Proposed Rules:
75.....41784
250.....40405
256.....40406
700.....41365
701.....41365
785.....41365
817.....41365
827.....41365
870.....41909
942.....41164

31 CFR
545.....41682

32 CFR
169a.....40804
706.....40526
806b.....40197

33 CFR
51.....41494
100.....40829–40831
117.....40832, 41345, 41684
165.....40832, 41345–41347, 41685

Proposed Rules:
117.....40407, 40871, 41366, 41704
165.....41705

36 CFR
223.....41498

Proposed Rules:
7.....40567
79.....41527
800.....41828

37 CFR
201.....40833

39 CFR
10.....41135
601.....40376

Proposed Rules:
310.....41462
320.....41462

40 CFR
52.....40377, 41348, 41501, 41686
60.....40158
62.....41136, 41137
81.....41138, 41139
152.....41143
163.....41143
164.....41143
165.....41143
166.....41143
167.....41143
169.....41143
170.....41143
171.....41143
172.....41143
173.....41143

180.....41144, 41349
191.....40003
271.....40377, 40526
421.....41144
434.....41296
455.....40672
799.....41885

Proposed Rules:
52.....40872, 41909–41912
60.....40280
65.....41916
152.....40408
155.....41919
158.....40408
228.....40274, 40568
261.....40292, 41125
264.....40412
265.....40412
414.....41528
416.....41528
435.....40983
716.....40874

41 CFR

101-20.....41145
101-45.....41145

42 CFR

400.....41886
405.....40168, 41503, 41886
412.....41886
420.....40003, 41886
433.....41886
462.....41886
466.....41886
473.....41886
474.....41886
476.....41886

43 CFR

3480.....40197

44 CFR

1.....40004
2.....40004
5.....40004
6.....40004
8.....40004
9.....40004
10.....40004
11.....40004
12.....40004
59.....40004
64.....41146, 41512, 41687, 41691
205.....40004
300.....40004
301.....40004
303.....40004
304.....40004
311.....40004
350.....40004
351.....40004

Proposed Rules:
67.....41705

45 CFR

205.....40120
302.....41887
304.....41887
305.....40120, 41887
306.....41887
1321.....41514
1328.....41514

46 CFR

69.....40008

Proposed Rules:
Ch. II.....41531
2.....40413
160.....40036
281.....40876

47 CFR

Ch. I.....40379
0.....40012
1.....40012, 40836, 41151, 41153
2.....40016
21.....41154
25.....40019, 40862
43.....41151, 41153
69.....41350
73.....40012, 40021, 40022, 40395, 41155, 41691, 41692
74.....40012
76.....40012, 40836, 41692
78.....40012, 40862
81.....40023
83.....40023, 40863
87.....40023
90.....40975, 40976
94.....40976
97.....41895

Proposed Rules:
Ch. I.....41714
2.....40880, 41170, 41366
73.....40414, 40415, 41176, 41718
81.....41170
83.....41170
87.....41177

48 CFR

208.....41156
213.....41157
217.....41157
252.....41156, 41157
702.....40528
705.....40976
706.....40528, 40976

Proposed Rules:
27.....40416, 40984
31.....41179
52.....40416, 40984
227.....41180
252.....41180
514.....41180
515.....41180
528.....41180
532.....41180
552.....41180
716.....41367
752.....41367
815.....40420

49 CFR

171.....41516
172.....41092, 41516, 41521
173.....41092, 41516, 41521 41895
174.....41516
176.....41516, 41521
177.....41516, 41521
178.....41521
179.....41516
386.....40304
509.....40023
531.....40528
533.....40398
571.....41356
1002.....40024, 41158, 41899
1003.....40027, 40029
1043.....40029
1047.....40549
1171.....40029
1241.....41899

Proposed Rules:
23.....40422
391.....40040
571.....41368
1039.....40984
1057.....41532
1312.....40985

50 CFR

20.....41359
604.....40977
611.....40977
630.....41159
646.....41692
651.....40558
654.....41159
661.....41159
663.....41159
671.....41159, 41902
672.....41903
675.....40977
681.....40558

Proposed Rules:
17.....40424
611.....41533
641.....40206

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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.**

Last List October 11, 1985

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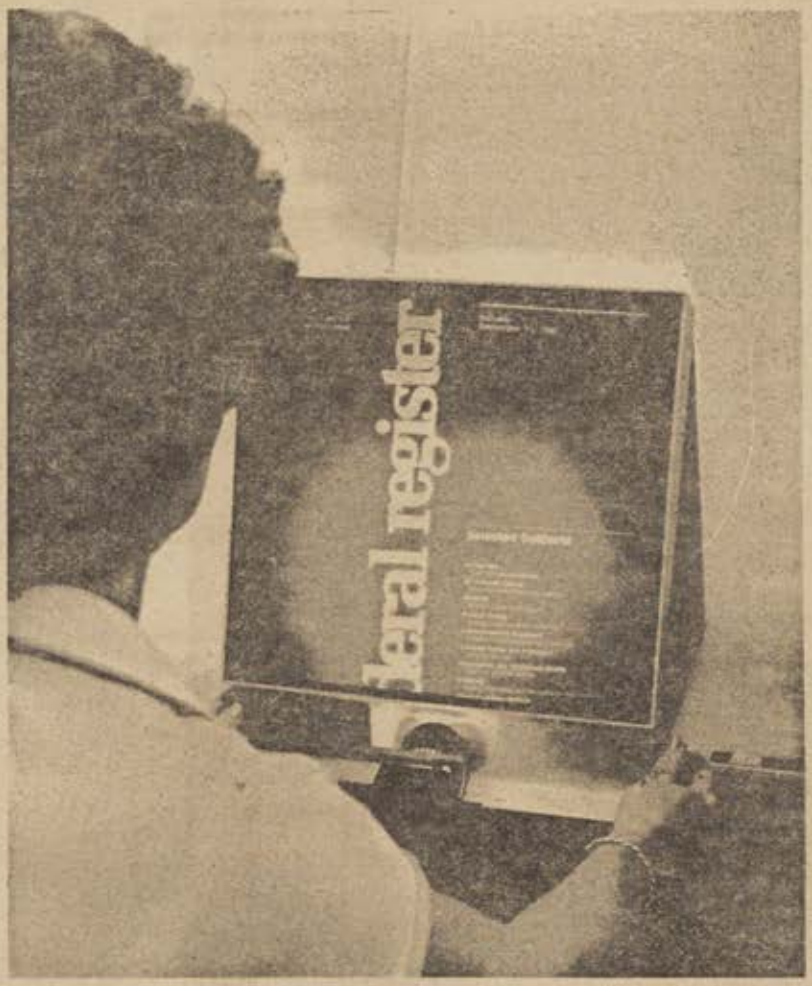

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