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Wednesday
January 29, 1986

Briefings on How To Use the Federal Register—
For information on briefings in St. Louis, MO, and Denver, CO, see announcement on the inside cover of this issue.

Selected Subjects

Agricultural Research
Agricultural Marketing Service

Asbestos
Environmental Protection Agency

Fisheries
National Oceanic and Atmospheric Administration

Flood Insurance
Federal Emergency Management Agency

Food Assistance Programs
Food and Nutrition Service

Freedom of Information
National Labor Relations Board

Household Appliances
Federal Trade Commission

Housing
Farmers Home Administration

Income Taxes
Internal Revenue Service

Natural Gas
Federal Energy Regulatory Commission

Pesticides and Pests
Environmental Protection Agency

Poultry and Poultry Products
Food Safety and Inspection Service

CONTINUED INSIDE

Selected Subjects

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

Public Lands
Land Management Bureau

Refugees
Social Security Administration

Trade Practices
Federal Trade Commission

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.

ST. LOUIS, MO

WHEN: March 11; at 9 am.

WHERE: Room 1612,
Federal Building,
1520 Market Street, St. Louis, MO.

RESERVATIONS: Delores O'Guin,
St. Louis Federal Information Center,
314-425-4109

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239,
Federal Building,
1961 Stout Street, Denver, CO.

RESERVATIONS: Elizabeth Stout
Denver Federal Information Center,
303-236-7181

Contents

Federal Register
Vol. 51, No. 19
Wednesday, January 29, 1986

Agricultural Marketing Service
PROPOSED RULES
Honey research, promotion, and consumer information program, 3605

Agriculture Department
See also Agricultural Marketing Service; Farmers Home Administration; Food and Nutrition Service; Food Safety and Inspection Service
NOTICES
Agency information collection activities under OMB review, 3638

Commerce Department
See Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration

Conservation and Renewable Energy Office
NOTICES
Energy conservation program:
Affordable housing through energy conservation; availability, 3644

Copyright Office, Library of Congress
NOTICES
Berne Convention, Ad Hoc Working Group on United States Adherence; draft report availability, 3706

Defense Department
NOTICES
Committees; establishment, renewals, terminations, etc.:
Air Force Reserve Officer Training Corps Advisory Committee, 3643
Meetings:
Ada Board, 3643
Electron Devices Advisory Committee, 3643

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation petitions:
Gas Ventures, Inc., 3645
Midwestern Gas Transmission Co., 3645
Northwest Pipeline Corp., 3646
Powerplant and industrial fuel use; prohibition orders exemption requests, etc.:
General Electric Co., 3647

Education Department
See National Council on the Handicapped

Energy Department
See also Conservation and Renewable Energy Office; Economic Regulatory Administration; Federal Energy Regulatory Commission
PROPOSED RULES
Uranium enrichment services criteria, 3624
NOTICES
Meetings:
National Petroleum Council, 3644

Environmental Protection Agency
RULES
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
Diclofop-methyl, 3598
PROPOSED RULES
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione, 3632
Pesticides; tolerances in foods:
3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione, 3635
Toxic substances:
Asbestos; mining and import restrictions, ~~3630~~ 3738

Farmers Home Administration
RULES
Construction and repair:
Administrative instructions for field personnel, 3569

Federal Communications Commission
NOTICES
Meetings; Sunshine Act, 3733

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
Rhode Island et al., 3600
PROPOSED RULES
Flood elevation determinations:
Texas; correction, 3637
NOTICES
Disaster and emergency areas:
Florida, 3656

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act:
Ceiling prices; maximum lawful prices and inflation adjustment factors, 3582
Incremental pricing; acquisition cost thresholds, 3583
NOTICES
Electric rate and corporate regulation filings:
Consumers Power Co. et al., 3648
Natural gas certificate filings:
KN Energy, Inc., et al., 3649
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 3652
Consolidated Gas Transmission Corp., 3652
East Tennessee Natural Gas Co., 3652
Great Lakes Gas Transmission Co., 3652
Mielke, Frederick W., Jr., 3653
Natural Gas Pipeline Co. of America, 3653
Northern Natural Gas Co., 3653
Transcontinental Gas Pipe Line Corp., 3654
Transwestern Pipeline Co., 3654
(2 documents)
Trunkline Gas Co., 3655

Federal Maritime Commission
NOTICES
Casualty and nonperformance certificates:
Windstar Cruises I, Ltd., et al., 3656

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 3733
Applications, hearings, determinations, etc.:
Fidelcor, Inc., 3656
Financial Services Bancorp, Inc., et al., 3656
Key Bancshares of New York, Inc., et al., 3657

Federal Trade Commission
RULES
Appliances, consumer; energy cost and consumption information in labeling and advertising:
Dishwashers; comparability ranges, 3581
Prohibited trade practices:
Federated Department Stores, Inc., 3580
Weider Health & Fitness, Inc., et al., 3580
NOTICES
Premerger notification waiting periods; early terminations, 3658

Food and Drug Administration
NOTICES
Human drugs:
Feldene (piroxicam), 3658

Food and Nutrition Service
PROPOSED RULES
Child nutrition programs:
Child care food program—
Key element reporting system, 3603

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Broilers and cornish game hens; streamlined inspection system, 3569
PROPOSED RULES
Meat and poultry inspection:
Broilers and cornish game hens; facility and equipment requirements for streamlined inspection system, 3621

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Florida, 3638, 3639
(2 documents)
Illinois, 3639
Indiana, 3640

Health and Human Services Department
See Food and Drug Administration; Health Resources and Services Administration; Public Health Service

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements:
Indian health professions preparatory and pregraduate scholarship programs and Indian health scholarship program, 3660

Housing and Urban Development Department
NOTICES
Agency information collection activities under OMB review, 3661

Interior Department
See Land Management Bureau; National Park Service

Internal Revenue Service
RULES
Excise taxes:
Crude oil windfall profit tax—
Exemption qualification definitions; correction, 3597
Income taxes:
Target corporation assets; section 338 implementation, 3583
PROPOSED RULES
Income taxes:
Target corporation assets; section 338 implementation; cross reference, 3634

International Trade Administration
NOTICES
Antidumping:
Low-fuming brazing copper rod and wire from—
South Africa, 3640
Applications, hearings, determinations, etc.:
Brookhaven National Laboratory, 3641
University of California at Berkeley, 3641
University of Chicago; correction, 3642
University of Hawaii, 3642
University of Maryland, 3642
University of Utah, 3642

Justice Department
NOTICES
Pollution control; consent judgments:
Aerojet-General Corp. et al., 3664
Privacy Act; systems of records, 3664

Land Management Bureau
RULES
Land disposition and leases and permits:
Patents for granted school sections and small tract act lease or sale; removed, 3599
Public land orders:
Arizona, 3599
NOTICES
Environmental statements; availability, etc.:
Chopaka Mountain wilderness study area, WA, 3662
Exchange of lands:
California, 3663
Resource management plans:
Ukiah District, CA, 3663
Sale of public lands:
Idaho; correction, 3664

Library of Congress
See Copyright Office, Library of Congress

National Aeronautics and Space Administration
NOTICES
Agency information collection activities under OMB review, 3707

National Communications System
NOTICES
Meetings:
National Security Telecommunications Advisory Committee, 3707

National Council on the Handicapped
NOTICES
Meetings; Sunshine Act, 3733

National Labor Relations Board
RULES
Freedom of Information Act; implementation, 3597
NOTICES
Meetings; Sunshine Act, 3733

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Tanner crab off Alaska, 3602
NOTICES
Permits:
Marine mammals, 3642, 3643
(2 documents)

National Park Service
NOTICES
Concession contract negotiations:
Dudley Food & Beverage, Inc., 3664
Meetings:
Appalachian National Scenic Trail Advisory Council, 3664

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Yankee Atomic Electric Co., 3708
Operating licenses, amendments; no significant hazardous considerations:
Bi-weekly notices, 3708
Applications, hearings, determinations, etc.:
Maine Yankee Nuclear Power Co., 3728
METCOA, Inc., 3730
Pennsylvania Power & Light Co., 3731

Postal Rate Commission
NOTICES
Post office closings; petitions for appeal:
Quaker Street, NY, 3731

Public Health Service
NOTICES
Meetings; advisory committees:
February, 3661

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 3734
Self-regulatory organizations; unlisted trading privileges:
Philadelphia Stock Exchange, Inc., 3732
(2 documents)

Selective Service System
PROPOSED RULES
Selective service regulation; processing of registrants, 3635

State Department
PROPOSED RULES
Protection and welfare of citizens and their property:
Incarcerated U.S. citizens abroad; life-or-limb saving care, emergency medical loans, 3633

Treasury Department
See also Internal Revenue Service
NOTICES
Notes, Treasury:
V-1988 series, 3732

United States Information Agency
NOTICES
Athletes, coaches, and officials for international games for handicapped held in United States; international exchange; reimbursement of expenses, 3732

Separate Parts In This Issue

Part II
Environmental Protection Agency, 3638

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.

7 CFR
1924 3569
Proposed Rules:
226 3603
1240 3605

9 CFR
381 3569
Proposed Rules:
381 3621

10 CFR
Proposed Rules:
762 3624

16 CFR
13 (2 documents) 3580
305 3581

18 CFR
271 3582
282 3583

21 CFR
Proposed Rules:
193 3632

22 CFR
Proposed Rules:
71 3633

26 CFR
1 3583
51 3597
Proposed Rules:
1 3634

29 CFR
102 3597

32 CFR
Proposed Rules:
1602 3635
1605 3635
1609 3635
1618 3635
1621 3635
1624 3635
1630 3635
1633 3635
1636 3635
1639 3635
1642 3635
1648 3635
1651 3635
1653 3635
1656 3635
1657 3635

40 CFR
180 3597
Proposed Rules:
180 3635
763 3738

43 CFR
2620 3599
2910 3599
Public Land Orders:
3305 (Amended by 6612) 3599
6612 3599

44 CFR
64 3600
Proposed Rules:
67 3637

50 CFR
671 3602

Rules and Regulations

Federal Register
Vol. 51, No. 19
Wednesday, January 29, 1986

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1924

Construction and Repair; Administrative Instructions

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Construction and Repair regulations to provide for a change in administrative instructions to this subpart. This action is necessary because of the addition of Guide 4 to Subpart A of Part 1924 of this chapter. The intended effect is to reference a Guide for FmHA field personnel use to assist applicants in modifying the American Institute of Architects (AIA) Document B141, 1977 Edition, Standard Form of Agreement Between Owner and Architect, to comply with FmHA regulations and policy.

EFFECTIVE DATE: January 29, 1986.

FOR FURTHER INFORMATION CONTACT: Vernon M. Rozas, Architect, Program Support Staff, FmHA, USDA, 14th and Independence Avenue, SW., Washington, DC 20250—Telephone (202) 382–1499.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established by Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking, since it involves internal Agency management and publication for comment is unnecessary.

Guide 4 is intended for the use of FmHA field offices staff in assisting the applicant. The Guide contains information and suggestions for modifications to the provisions of the AIA Document B141 to achieve compliance with FmHA regulations and policy which pertain to such services. The use of the information in the Guide is not mandatory but is intended to serve as a uniform model for FmHA field personnel in modifying architect's services agreement primarily for FmHA Rural Rental Housing Loan Program projects. (Guides 2 and 3 are reserved for future publication).

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.415 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.)

This final action has been reviewed in accordance with FmHA Instruction 1940–G "Environmental Program." FmHA has determined that this final rule action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1924

Construction and repair, Energy conservation, Housing, Loan programs—Housing and community development, Low and moderate income housing.
Accordingly, Subpart A of Part 1924 of Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for Part 1924 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301, 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Planning and Performing Construction and Other Development

§ 1924.13 [Amended]

2. In § 1924.13, the introductory text of paragraph (a) is amended by adding the following sentence to the end of the text:

(a) * * * See Guide 4, Attachment 1, "Attachment to AIA Document—Standard Form of Agreement Between Owner and Architect" for further information (Guide 4 is available in any FmHA office.)

* * * * *

Dated: January 9, 1986.

Vance L. Clark,
Administrator, Farmers Home Administration.

[FR Doc. 86–1943 Filed 1–28–86; 8:45 am]
BILLING CODE 3410–07–M

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 85–035I]

Streamlined Inspection System for Broilers and Cornish Game Hens

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal poultry products inspection regulations to establish a method of post-mortem inspection known as the "Streamlined Inspection System" (SIS). The new system is to be implemented in establishments now operating under Modified Traditional Inspection. SIS incorporates new post-mortem inspection prodedures requiring one or two inspectors and a Finished Product Standards (FPS) program for evaluating the wholesomeness and acceptability of finished product. Establishments are responsible for performing the necessary trim of designated defects on passed carcasses and for operating the FPS program. The new system will allow increased efficiency in the use of FSIS resources and those of the poultry industry, while still providing consumers with wholesome and unadulterated products. This system is an outcome of recent work by FSIS veterinarians and technical experts. The new system is being established on an emergency

basis in response to suddenly increased demands on Agency resources. At the same time, the Agency is soliciting comments to determine what changes to the new system will be necessary before the interim rule is made final.

DATES: Effective January 29, 1986; comments must be received on or before March 31, 1986.

ADDRESS: Written comments to: U.S. Department of Agriculture, Food Safety and Inspection Service, Policy Office, ATTN: Hearing Clerk, Room 3803, South Agriculture Building, Washington, DC 20250. Oral comments, as provided by the Poultry Products Inspection Act, should be directed to Dr. Douglas L. Berndt, (202) 447-3219. (See "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Dr. Douglas L. Berndt, Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Service, FSIS, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3219.

Executive Order 12291 and Effect on Small Entities

The Administrator of FSIS has determined that immediate implementation of this rule on an interim basis is necessary to provide FSIS and the poultry industry with an inspection procedure for broilers and cornish game hens that meets the requirements for inspection within available resources.

Analysis of the procedures set forth in this rule under Executive Order 12291 and the Regulatory Flexibility Act is not practicable at this time since stringent budgetary limitations on FSIS require immediate inspection workforce reductions while meeting the inspection demands of increased poultry production and consumption. Certain changes in plant facilities will be required in the near future of establishments that operate under SIS; however, these changes, which are proposed elsewhere in this issue of the **Federal Register** are expected to result only in minor expenditures. The industry may realize some gains through reduced charges for overtime inspection (because there will be fewer inspectors per line), reduced workspace requirements for inspection teams, and increased productivity by maintaining optimal line speeds. Until the facility requirements are implemented, establishments operating under SIS will follow the current Modified Traditional Inspection (MTI) facility requirements and in addition must meet the space and facility requirements for trimming and for performing carcass reinspection.

Pursuant to the provisions for emergency rules in section 8 of the Executive Order and 5 U.S.C. 608, there is an urgent need to provide a revised inspection procedure for broilers and cornish game hens. The required analyses will be made prior to publication of a final rule.

Comments

Interested persons are invited to submit comments concerning this action within a period of 60 days after publication of this interim rule. Written comments must be sent in duplicate to the address shown above and should reference the docket number located in the heading of this document. Any person desiring an opportunity for an oral presentation of views should make such request to Dr. Berndt so that arrangements can be made for such views to be presented. A transcript will be made of all views orally presented. All comments submitted pursuant to this action will be available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

The Poultry Products Inspection Act (PPIA; 21 U.S.C. 451 *et seq.*) requires, among other provisions, that the Secretary of Agriculture, through appointed inspectors, conduct a post-mortem inspection of the carcass of each bird processed in every official establishment that processes poultry for commerce or that is otherwise subject to the Act and the condemnation of adulterated product. The post-mortem inspection is performed by veterinarians or trained food inspectors under veterinary supervision. Working at a moving production line, inspectors view the exterior, interior, and viscera (internal organs) of each bird slaughtered for the purpose of detecting disease or other conditions that might render the carcass or any part thereof unfit for human food or otherwise adulterated. In carrying out the examination, the inspectors follow standardized inspection procedures and initiate actions consistent with their findings. The procedures are designed to assure that only wholesome and unadulterated carcasses and carcass parts are passed for human food.

Post-mortem inspection of livestock and poultry accounts for the largest portion of the Department's expenditures for meat and poultry inspection. Therefore, use of the most efficient and effective post-mortem inspection procedures and staffing standards is essential to minimizing costs while protecting the public health.

The responsibility of the Department to make the most efficient use of its resources is now more important than ever because FSIS's resources are decreasing at the same time that demands for inspection services have been increasing. On September 19, 1985, a hiring freeze on permanent full-time (PFT) employment by FSIS was ordered to reflect a potential fiscal year (FY) 1986 operating budget that could be $10 million less than necessary to support current employment. At the time the freeze was ordered, action by the House of Representatives showed a proposed budget of $358.5 million for FSIS, while the Senate has approved $370 million.

In addition to freezing PFT employment, the hiring freeze restricted the conversion of temporary, intermittent, or part-time employees to PFT status. Also, use of part-time and other employment was to be held at 1985 levels. Personnel actions that involved moving employees between major program areas, from the field to headquarters, and from line to staff positions were also frozen.

Since the beginning of FY 1986, FSIS has been subject to the terms of a series of Continuing Resolutions which have had the effect of restricting the funds available to the Agency to the amount appropriated by the House of Representatives ($358.5 million). This amount is $6.1 million below the 1985 appropriation.

On November 15, FSIS found it necessary to order additional cost-saving measures beyond those then in place to be able to operate within available funding levels. These measures included a continuation of the freeze on PFT employment, a one-third reduction in non-inspection-related travel, suspension of all non-technical training, and reductions in various contracts. All other costs were limited to the 1986 base level or below (1985 level less any non-recurring activities).

For at least the first part of calendar year 1986, the Agency expects to be operating at an authorized level of $362.1 million, which is less than the FY 1985 funding level. The Congressional Record of December 19, 1985 (S 18131), indicates that additional money may become available later on in the fiscal year after a formal Administration request for supplemental appropriation. However, it is not certain that such a request will be made and if additional funds do become available, a short fall would still exist. The Agency's funding level has necessitated a continuation of the hiring freeze and consequent reduction in employment. This reduction is influenced by such economic factors

as inflation and rising employee benefit costs. However, even if the Agency were able to maintain last year's employment level, it would still be unable to meet the rising industry demands for inspection service.

Besides the budget short fall that has arisen in the wake of this year's appropriation process, the Agency faces long-term constraints on its operations. The passage of the Gramm-Rudman-Hollings Balanced Budget Amendment of 1985 makes it likely that FSIS will be compelled to economize much further in the coming years. Appropriations for FY 1986 are expected to be subject to reductions of as much as 4.6 percent to meet the requirements of Gramm-Rudman-Hollings, and increasingly larger cuts are mandated for the following fiscal years.

FSIS spends about 85 percent of its operating budget on employee salaries and benefits. This makes it impossible to absorb funding reductions or accommodate increased costs except through personnel reductions. The great majority of Agency staff are field inspectors and veterinarians. Thus, any budgetary reductions are almost immediately felt in day-to-day inspection operations.

Even though the Agency continues to operate under severe budgetary constraints, it must fulfill its responsibilities under the law. A House-Senate Conference deliberating on one of the Continuing Resolutions recently took the position that "in administering the Federal Meat Inspection Act and the Poultry Products Inspection Act, the Administrator of FSIS is expected to take whatever action is necessary to ensure that requests for inspection service required by law are promptly accommodated. On-site inspection should receive priority over some other Agency functions."

At the same time that the Agency has been confronted with new budgetary limits, the poultry industry has been demanding increased inspection service. The operators of federally inspected poultry processing establishments have requested inspectional coverage for new production lines and expanded operations. Many establishments that have previously operated single-working shifts have expanded to two shifts or are planning to do so in the near future. The growth of the poultry products industry is accelerating. Production in FY 1985 was increased 5.5 percent over production in FY 1984 and is expected to increase by a similar percentage in FY 1986. In previous years, poultry production had increased by smaller percentages. In terms of per capita consumption, poultry is now second only to beef among all meat and poultry food products.

To accommodate the demands of increasing consumption and production and to absorb workforce reductions without denying inspection service, the Agency must take immediate action to revise its poultry inspection procedures. FSIS believes that this change can be brought about through the introduction of a new system in establishments that slaughter broilers and cornish game hens. These establishments constitute the largest section of the poultry industry in terms of output. The revision of inspection procedures in these establishments will enable the Agency to shift qualified inspection personnel to areas where their services can be more efficiently and productively employed. This change has become possible not merely because of the exigencies of present and future budgets, but because of the useful experience the Agency has gained over recent years in operating several types of poultry inspection.

Before this interim rule, there were three systems used for the inspection of broilers and cornish game hens, namely traditional inspection, modified traditional inspection, and the "New Line Speed" (NELS) inspection system. Also, a New Turkey Inspection (NTI) system was recently implemented in turkey slaughter establishments. SIS is a new method that has been developed on the basis of experience gained in operating the previous inspection systems.

A. Traditional Inspection

Under traditional inspection, one inspector examines a whole bird and is responsible for the proper disposition of the bird, including any required trimming, before it leaves the inspection station. Traditional inspection was satisfactory to FSIS and the poultry industry for many years and is still performed in some slaughter establishments.

B. Modified Traditional Inspection (MTI)

In the middle 1970's, the development of automated evisceration equipment, as well as improvements in genetics, nutrition, health, and flock management, allowed the poultry industry to present uniform lots of birds to inspectors faster than inspectors could properly inspect the birds under the traditional methods. Therefore, a new inspection procedure known as "Modified Traditional Inspection" was developed in 1978 which allowed better use of inspection resources and permitted the poultry industry to take advantage of these new technologies and production improvements. MTI allowed industry to run an eviscerating line at speeds of up to 70 birds per minute.

MTI reduces the number of motions required for each of three inspectors on the line by splitting post-mortem inspection into two functional tasks. One task (performed by one inspector) is the outside inspection of each uneviscerated prepositioned carcass, using a mirror to observe surfaces not directly visible. The second task (performed by two inspectors), inside/viscera inspection, is performed after the bird is eviscerated and establishment personnel reposition the carcass and its attached viscera. The trimming of carcass defects is performed by establishment employees, known as helpers or trimmers, who are positioned next to and act under the direction of the inspectors.

C. New Line Speed (NELS) Inspection System

After the implementation of MTI, the poultry industry continued to make significant technological advances. Consequently, many establishments were able to present uniform lots of birds to inspectors faster than 70 birds per minute. This advance was made possible by improved automated equipment and better control of the production process. In these establishments, the inspection process again became a limiting factor in establishment productivity and restricted the return-on-investment for the development and installation of modern, innovative equipment and facilities. It became apparent to the Agency that these restraints could not be overcome through expanded use of MTI. Also, various studies had shown that Federal inspection was more efficient and effective in establishments where quality control was emphasized.

Establishments without the facilities, personnel, or procedures necessary to assure the highest practicable degree of quality control sometimes tended to rely on Federal inspection as a substitute for the proper control of their own operations. In those establishments, Federal inspectors were sometimes placed in a burdensome, quasi-supervisory role not appropriate under the PPIA.

The NELS system eliminated much of the need for post-mortem inspectors to act in such a role. In requires that participating establishments have and maintain good control of their facilities, personnel, and processing procedures, as spelled out in a written partial quality control agreement with the Agency. This agreement assures the inspector-in-

charge that all functions critical to the processing of an acceptable product are being effectively performed by the establishment.

The NELS inspection system uses three post-mortem inspectors on each eviscerating line. Each inspects the outside (with the aid of a mirror), the inside, and the viscera of every third bird presented. The inspectors determine whether the bird should be condemned, salvaged, retained for disposition by a veterinarian, reprocessed, or permitted to move down the line as a passed bird subject to trim and reinspection. After post-mortem inspection is completed at the inspection station, establishment employees perform any necessary trim on all passed carcasses after the giblets are harvested.

The complete NELS inspection system consists of three inspectors performing the NELS inspection procedure and one inspector monitoring the application of an approved partial quality control (QC) program designed to assure that the production process is under control and producing acceptable product. This program—the Poultry Carcass On-Line Quality Control (PCOLQC) Program—is a statistically based sampling system designed to assure the control of an establishment's processing operations. It is the basis for the approval of the use of the NELS inspection system in any establishment.

The maximum line speed achievable under NELS is 91 birds per minute. This speed may be reached when all plant conditions are optimal. The inspector-in-charge is responsible for reducing the line speed when, in his or her judgment, the existing NELS system does not permit adequate inspection because the birds are not presented properly or the health conditions of a particular flock dictate a need for a more extended inspection procedure.

D. New Turkey Inspection (NTI) System

For many years, the traditional inspection procedure was the only one available to turkey processors, and was satisfactory to both FSIS and the turkey industry. As in the traditional procedure applied to broilers and cornish game hens, traditional turkey inspection involved the examination of the whole bird by one inspector who was responsible for proper disposition of the bird, including any required trim, before the bird left the inspection station. In the last several years, the turkey industry has grown and matured to the point that merely expanding the use of the traditional procedure would be impractical and inefficient, and would place demands on resources that would be difficult for the Agency to meet. Therefore, in September of last year, FSIS established the NTI system.

As in NELS, the NTI system places upon establishments the responsibility of developing and maintaining good control of their facilities, personnel, and processing procedures, as detailed in a written partial quality control program, approved by the Agency, that assures the inspector-in-charge that critical processing functions are being effectively performed by the establishment. The NTI system requires one or two inspectors on each eviscerating line. The inspector inspects the outside, inside, and viscera of every bird presented. The inspector determines whether the bird should be condemned, salvaged, retained for disposition by a veterinarian, reprocessed, or permitted to move down the line as a passed bird subject to trim and reinspection.

After post-mortem inspection has been completed at the inspection station(s), establishment employees perform any necessary outside trim on all passed carcasses after the giblets are harvested. Under traditional inspection, the inspector is responsible for identifying those carcasses that must be trimmed, directing the establishment employee to trim the defects, and verifying that the bird has been properly trimmed. However, NTI shifts the responsibility of performing specific outside trim to the establishment employees.

The complete NTI system is like NELS in that it consists of one or two inspectors performing whole bird inspection, and one inspector monitoring the application of an approved partial quality control program to assure that the program is being followed. As in NELS, an acceptable poultry carcass on-line quality control program is the basis for approving use of the NTI system in any establishment. Under NTI, FSIS inspectors are responsible for inspecting the carcasses, monitoring the establishment's application of the partial QC program, conducting regular verification and evaluation sampling and observations to assure that the establishment's data are accurate and truthful, and assuring that ready-to-cook poultry conforms to all applicable regulatory requirements.

The NELS and NTI systems were subject to effectiveness studies comparing them with previously existing inspection procedures. Thus, NELS was operationally tested in three establishments and compared with both MTI and traditional inspection. Similarly, effectiveness studies to test the NTI system and compare it with the traditional inspection procedure were conducted in three establishments. The effectiveness test results indicated that there were no significant differences between NELS, MTI, and traditional inspection for broilers and cornish game hens, or between NTI and traditional inspection for turkeys.

The NELS and NTI systems represent notable advances in the development of efficient, scientifically based inspection systems. The tests conducted on these systems were the most exhaustive ever performed on new inspection procedures. The valuable lessons gained from the development and application of the systems have enabled FSIS to prepare for future inspection systems that will rely extensively on automated equipment and the analysis of computerized data for objective monitoring of inspection performance and the incidence of carcass defects and disease conditions. Moreover, the experience gained by FSIS in operating NELS and NTI has provided the basis for developing SIS.

Development of SIS

Since the inception of NELS and NTI, top Agency veterinarians and technical specialists have devoted many hours to the analysis of work measurement studies, disposition data, and other information from tests of the systems and from inplant operations. The specialists found that a new sequence of hand-eye movements would provide the most efficient and effective inspection procedures.

The analysis of technical information from the NELS and NTI tests, including the new work measurement findings, enabled the Agency to begin preliminary work on a two-inspector NELS system in May 1984. Since that time, the Agency has explored other one- and two-inspector procedures.

Work measurement studies on the two-inspector NELS procedure were begun last year and were carried out over several months. On the basis of these studies, the Agency informed the broiler industry of the potential availability of one- or two-inspector NELS systems. The implementation of these systems would permit additional establishments operating under the older MTI procedure to convert to the NELS system. In addition to permitting increased productivity in the poultry industry, FSIS would be able to fulfill its inspection responsibilities in a more uniform manner within NELS establishments and from establishment to establishment.

The two-inspector NELS system has not yet been formally proposed or

implemented because of a few unresolved problems in establishing uniform approaches to inspection in various settings. Also, during the short time in which the system has been under development there has been no opportunity to demonstrate the two-inspector system under operational conditions.

Nevertheless, the experience gained in developing this system has enabled the Agency to conceive an innovative approach to poultry inspection. Rather than being implemented in the NELS setting, however, the new Streamlined Inspection System is to be applied in MTI establishments. In those establishments, the Agency has accumulated vast inspection experience and is able to sustain a uniform approach to inspection.

SIS includes an inspection procedure that involves whole bird disposition in which each inspector examines the viscera and the inside and outside surfaces of the carcass. The innovation represented by SIS, besides enhancing inspection productivity in existing MTI establishments, may also provide some incentive to establishments now operating under traditional inspection to convert to a system that can permit them to increase their output.

After post-mortem inspection under SIS has been completed at the inspection station(s), establishment employees perform any necessary outside trim on all passed carcasses after all the giblets are harvested. The inspector's helper may perform some trim if time permits.

SIS is being implemented in official establishments now processing broilers and cornish game hens under the MTI procedure. While SIS is an alternate inspection method, its use is not voluntary in those establishments; the new system will be implemented in existing MTI establishments on the basis of the Administrator's determination that SIS will increase inspector efficiency. Establishments not yet operating under MTI may request the implementation of SIS; the request will be approved if the Administrator determines that the system will result in no loss of inspector efficiency.

The chief difference between SIS and MTI is that under the new system there is no mirror inspection station. Rather, there are one or two inspection stations located on the processing line after the birds have been eviscerated. Each inspector examines the outside, inside, and viscera of the birds presented for inspection. The one-inspector form of SIS is known as SIS–1; the two-inspector configuration is known as SIS–2. Inspection under both SIS–1 and SIS–2 is conducted in two phases—a post-mortem inspection phase and a reinspection phase. Under SIS–1, every bird on each production line is presented to a single inspector for examination. Under SIS–2, there are two inspection stations at which each inspector examines the outside, inside, and viscera. Every other bird on the moving production line is presented to each inspector with the backside of the carcass toward the inspector and the viscera uniformly trailing or leading. In both SIS–1 and SIS–2, an establishment employee (termed a helper) is positioned next to each inspector. The maximum inspection rate for SIS–1 is 35 birds per minute; the maximum inspection rate for SIS–2 is 70 birds per minute per inspector team—the same maximum rate as that permitted under MTI.

The inspection rates, or line speeds, are determined by the inspector-in-charge of an official establishment on the basis of his or her professional judgment. Line speeds are dependent on the appropriate presentation of carcasses for inspection. The adequacy of carcass presentation, in turn, depends on such factors as disease conditions in poultry flocks, plant operating conditions, lighting, and facilities. The Agency has developed guidelines for the presentation of carcasses in official poultry slaughter establishments.[1] These guidelines provide objective criteria for determining acceptable presentation and for reducing the line speeds when presentation is less than acceptable for inspecting birds at 70 birds per minute. These guidelines will be applied by the Agency as a part of the SIS.

In the inspection phase of SIS, inspectors determine which birds must be salvaged, reprocessed, condemned, retained for disposition by the veterinarian, or allowed to be moved down the line as a passed bird subject to reinspection. If an inspector finds that some poultry carcasses have certain defects not requiring condemnation of the whole carcass, the inspector may pass the carcass, which is then subject to reinspection to assure that the defects are physically removed. The helper, at the inspector's direction, marks these carcasses for trim unless the defects are obvious. Trimming of birds passed subject to reinspection is performed by establishment employees after all giblets have been harvested. The inspector's helper may perform some trim if time permits.

The reinspection station or stations are located at the end of the processing lines and after each chiller. At the prechill station, inspectors examine carcasses that have been passed subject to reinspection by visually monitoring, checking data, or gathering samples at the station. SIS incorporates a Finished Product Standards program which is analogous to the Acceptable Quality Limits (AQL) program in the traditional and modified traditional systems and to the Finished Product Standards in the NELS system. The Finished Product Standards program for SIS is applied in two phases, before and after the carcass chilling process. In the prechill phase, the carcasses are checked for processing and trimming defects; in the postchill phase, the birds are checked for defects caused by the chilling operation.

The AQL program used in the traditional inspection systems was designed to be applied either before or after the chilling process. In practice, the AQL has been applied almost exclusively after the chill. (Some turkey processing establishments conduct prechill AQL checks.) The poultry industry has chosen to have AQL checks made after chilling because of production line configurations and space availability. Under the traditional system, the trimming of carcasses was not the responsibility of the establishment, and the performance of AQL checks after the chilling process was therefore acceptable to the Agency. Under this arrangement, however, problems that necessitated a large amount of reworking of product occasionally developed because the finished products were found not to be in compliance with AQL standards.

With the advent of NELS and NTI, the responsibility for trimming carcasses was shifted from Agency inspectors to the establishment. The Agency's experience in developing the finished product standards for NELS and NTI and in applying the PCOLQC program for those systems led to the conclusion that a more responsive system is now available to keep the amount of product rework to a minimum. Data collected during the development of the finished product standards showed that the poultry chilling system itself contributes to carcass defects. The postchill AQL program applied under the traditional systems checks for defects that occur during processing and chilling. It was found that applying the PCOLQC and the finished product standards for NELS and NTI involved the use of two product-checking systems—a prechill

[1] These guidelines are available for public inspection in the office of the FSIS Hearing Clerk. Copies may be obtained free upon request from the Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250

system and postchill system. The prechill system measures the degree of product nonconformance with processing and trimming standards, while the postchill system measures product nonconformance that occurs in the chilling process.

The prechill and postchill testing systems for NELS and NTI were designed to allow the industry to enhance its responsiveness to process changes and to minimize the amount of rework. As in NELS and NTI, the Finished Product Standards program for SIS includes a prechill test that measures the effectiveness of processing controls and a postchill test that reflects changes taking place during the chilling process.

Products not complying with the finished product standards will be determined by the Agency to be adulterated. The standards for nonconformance used in the Finished Product Standards program for SIS are adapted from those applied in the NELS and NTI systems. These standards were based on data collected on passed birds in a group of (15) randomly selected broiler establishments. In developing the standards, all defects and trimming errors found on the passed birds were recorded. The birds were then passed through the chilling process. Data from observations of the processed birds were compared with data used to set the AQL standards for the traditional inspection systems. The NELS and NTI finished product standards were then provisionally established, after consultation with industry, using criteria similar to those used for the existing AQL. The standards were compared under plant operating conditions with the existing AQL standards and found to be valid. Product evaluated under the new finished product standards was equivalent in quality to product evaluated according to the old AQL standards. Thus, the specific values in the finished product standards and the list of nonconformances for SIS are the same as those already in use in the NELS system, and are based on studies and experience with that system over the last 2 years.

The operation of the Finished Product Standards program is the responsibility of the official establishment. Under SIS, data on the finished product evaluations are recorded using the cumulative sum (CUSUM) concept. In the CUSUM statistical method, the data collected on a given day are compared with previously collected data to determine the establishment's conformity with product standards. Guidelines on the Finished Product Standards program are available upon request from the Slaughter Inspection Standards and Procedures Division at the address given in footnote 1. These guidelines include information on form preparation and CUSUM calculations, and provide examples to clarify the application of the Finished Product Standards program.

SIS–1 requires that the establishment provide one inspection station for each line and reinspection facilities adequate for the removal and examination of carcasses from each line of evaluation. SIS–2 requires the establishment to provide two inspection stations for each line and similarly adequate reinspection facilities. The implementation of SIS will thus entail certain facility changes in the affected establishments. As mentioned previously, the SIS requirements for facilities at the inspection and reinspection stations are proposed in a separate document in this issue of the **Federal Register**. Until these requirements are made final, the facility requirements listed under 9 CFR 381.36(c) for MTI shall be applied for SIS, and in addition establishments must meet the space and facility requirements for trimming and for performing carcass reinspection.

The Interim Rule

In summary, FSIS believes that the recent imposition of budgetary constraints and the demands by the poultry industry for increased inspection service provide the justification and opportunity for innovative change in the inspection of broilers and cornish game hens. The agency is compelled to make substantial economies and to increase productivity with limited resources. At the same time, because of significant advances in poultry inspection methodology—especially the development and implementation of the NELS and NTI systems—it is now possible to apply more efficient inspection systems in establishments where MTI and traditional systems have been in operation. In the professional judgment of senior FSIS veterinarians and technical specialists, the new systems assure consumers of a wholesome, unadulterated product. The new budgetary situation, industry demands, and the recent technical achievements of the Agency combine to make immediate implementation of SIS urgently essential.

List of Subjects in 9 CFR Part 381

Poultry products inspection, Post-mortem.

The Poultry products inspection regulations (9 CFR Part 381) are amended as follows:

PART 381—[AMENDED]

1. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq;* 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

2. Section 381.76 (9 CFR 381.76) is amended by revising the heading and paragraph (b) as follows:

§ 381.76 Post-mortem inspection, when required; extend; traditional, Streamlined Inspection System (SIS), New Line Speed (NELS) Inspection System and the New Turkey Inspection (NTI) System; rate of inspection.

* * * * *

(b)(1) There are four systems of post-mortem inspection: Streamlined Inspection System (SIS) and the New Line Speed (NELS) Inspection System, both of which shall be used only for broilers and cornish game hens; the New Turkey Inspection (NTI) System, which shall be used only for turkeys; and Traditional Inspection.

(i) The SIS shall be used only for broilers and cornish game hens if:

(*a*) The Administrator determines that SIS will increase inspector efficiency; or

(*b*) The operator requests SIS and the Administrator determines that the system will result in no loss of inspection efficiency.

(ii) The NELS Inspection System shall be used only for broilers and cornish game hens if:

(*a*) The operator requests the NELS Inspection System, and

(*b*) The Administrator determines that the establishment has the intent and capability to operate at line speeds greater than 70 birds per minute, and meets all the facility requirements in § 381.36(d) and receives approval of its partial quality control program as specified in paragraph (c) of this section.

(iii) The NTI System shall be used only for turkeys if:

(*a*) The operator requests it, and

(*b*) The Administrator determines that the establishment meets all the facility requirements in § 381.36(e), and receives approval of its partial quality control program as specified in paragraph (c) of this section.

(iv) Traditional inspection shall be used for turkeys when the NTI System is not used. For other classes of poultry, Traditional Inspection shall be used when neither the SIS nor the NELS Inspection System is used.

(2) The requirements of paragraph (a) of this section are applicable to all four inspection systems.

(3) The following requirements are applicable to SIS:

(i) *Definitions.* For purposes of this subparagraph, the following definitions shall apply:

(*a*) *Cumulative sum (CUSUM).* A statistical concept used by the establishment and monitored by the inspector whereby compliance is determined based on sample results collected over a period of time. For purposes of determining compliance with the finished product standards, the CUSUM is equal to the sum of prior test results plus the weighted result of the current test minus the tolerance, with the condition that the resulting CUSUM cannot go below zero.

(*b*) *Tolerance number.* A weighted measure that equates to product being produced at a national product quality level. See Table 2.

(*c*) *Action number.* A level reached by the CUSUM where the process is out of control and product action is required by the establishment or the inspector. See Table 2.

(*d*) *Start number.* A value halfway between zero and the action number used to determine the CUSUM for the following shift and to reset the CUSUM after reaching the action number. See Table 2.

(*e*) *Subgroup.* A 10-bird sample collected before product enters the chiller and after product leaves the chiller.

(*f*) *Subgroup absolute limit.* The tolerance number plus 5. See Table 2.

(*g*) *Prechill testing.* Testing conducted by the establishment to determine the CUSUM on consecutive 10-bird subgroup samples collected prior to product entering the chilling system.

(*h*) *Postchill testing.* Testing conducted by the establishment to determine the CUSUM on consecutive 10-bird subgroup samples collected as the product leaves the chilling system

(*i*) *Rework.* Reprocessing the product to correct the condition or conditions causing the nonconformances listed in Table 1.

(ii) *General.*

(*a*) Under SIS, one inspector inspects the outside, inside, and viscera of each bird. There may be two inspectors on one processing line, each inspecting every other bird. For the establishment to run its processing line(s) at maximum speed, optimal conditions must be maintained so that inspection may be conducted efficiently. The inspector in charge determines the speed at which each processing line may be operated to permit inspection. A variety of conditions may affect this determination including the health of each flock and the manner in which birds are being presented to the inspector for inspection.

(*b*) SIS may be performed by one inspector (SIS–1) or two inspectors (SIS–2). SIS–1 requires that the establishment provide one inspection station for each line and adequate reinspection facilities so carcasses can be removed from each line for evaluation. The maximum line speed for SIS–1 is 35 birds per minute. SIS–2 requires that the establishment provide two inspection stations for each line and adequate reinspection facilities so carcasses can be removed from each line for evaluation. The maximum line speed for SIS–2 is 70 birds per minute.

(*c*) Under all inspection systems, including SIS, inspectors conduct post-mortem inspection and look for a number of conditions, as specified elsewhere in this subpart, which may indicate adulteration. Adulterated product is condemned and destroyed, except that carcasses and parts which may be made unadulterated by reprocessing (reworking) may be so reprocessed under the supervision of an inspector and reinspected. Under SIS, inspectors also reinspect product by sampling finished birds (both before and after chilling) for nonconformances with finished product standards (see Table 1). If such nonconformances are present at certain statistical levels, it may indicate process difficulties requiring corrective action by the establishment. If the establishment does not take adequate corrective action, the inspector shall initiate corrective actions such as conducting closer post-mortem inspections and requiring reprocessing and reinspection of previously processed carcasses and parts. Thus, SIS is conducted in two phases—a post-mortem inspection phase and a reinspection phase. The following paragraphs describe the inspection requirements (not addressed elsewhere in this subpart) under each.

(iii) *Post-mortem inspection.*

(*a*) Facilities: Each inspection station must comply with the facility requirements in § 381.36(c).

(*b*) Presentation: Each inspector shall be flanked by an establishment employee assigned to be the inspector's helper. The one inspector on the SIS–1 line shall be presented every bird. Each inspector on the SIS–2 line shall be presented every other bird on the line. An establishment employee shall present each bird to the inspector properly eviscerated with the back side toward the inspector and the viscera uniformly trailing or leading. Each inspector shall inspect the inside, viscera, and outside of all birds presented.

(*c*) Disposition: The inspector shall determine which birds shall be salvaged, reprocessed, condemned, retained for disposition by the veterinarian, or allowed to proceed down the line as a passed bird subject to trim and reinspection. Carcasses with certain defects not requiring condemnation of the entire carcass shall be passed by the inspector, but shall be subject to reinspection to ensure the physical removal of the defects. The helper, under the supervision of the inspector, shall mark such carcasses for trim when the defects are not readily observable. Trimming of birds passed subject to reinspection shall be performed by: (*1*) the helper, time permitting, and (*2*) one or more plant trimmers positioned after all giblets are harvested and prior to reinspection.

(iv) *Reinspection.*

(*a*) Facilities: Reinspection stations are required at both the prechill and postchill locations. The Agency will determine the number of stations needed in those establishments having more than one processing line or more than one chiller. One or more prechill reinspection stations shall be conveniently located at the end of the line or lines prior to chilling. One or more postchill stations must be conveniently located at the end of the chiller or chillers. The prechill and postchill reinspection stations must meet the following provisions:

(*1*) Floor space shall consist of 3 feet along each conveyor line. The space shall be level and protected from all traffic and overhead obstructions.

(*2*) A table at least 2 feet wide and 2 feet deep and 3 feet in height designed to be readily cleanable and drainable shall be provided for reinspecting the sampled birds.

(*3*) A minimum of 200 foot-candles of shadow-free lighting with a minimum color rendering index of 85 on the table surface.

(*4*) A separate clip board holder shall be provided for holding the recording sheets.

(*5*) Hangback racks designed to hold 10 carcasses shall be provided for and positioned within easy reach of the person at the station.

(*b*) Disposition: An inspector shall monitor the establishment's application of the Finished Product Standards program and shall take corrective action including retaining product to prevent adulterated product from leaving the establishment when the inspector determines that the establishment has

failed to apply the program as prescribed in paragraph (b)(3)(iv)(*c*).

(*c*) Finished Product Standards: Finished Product Standards (FPS) are criteria applied to processed birds before and after chill to ensure that the product being produced is consistently wholesome and unadulterated. These criteria consist of nonconformances (listed in Table 1), the incidence of which is determined from 10 bird subgroup samples, reduced to a CUSUM number, and measured against the standards (Table 2). The standards are applied to permit the Agency to estimate when the production process is in control and when it is out of control. The establishment is responsible for maintaining FPS which, in turn, is monitored by the inspector. FPS is applied in two separate parts. The first is called prechill testing. It is designed to ensure that the slaughter and evisceration procedures are in control. Compliance is measured by determining the CUSUM on consecutive 10-bird subgroup samples collected prior to product entering the chilling system. The second part of the FPS is called postchill testing. It is designed to monitor the production through the chill system to ensure that it meets the postchill FPS. This test is independent of the prechill test. Compliance is measured by determining the CUSUM on consecutive 10-bird subgroup samples as they exit the chilling system. When the system is operating within compliance, the establishment applies the FPS to product samples at the prechill reinspection station. Testing time and time between tests are such that birds represented by the test are still within the chiller. If an out-of-compliance condition is found, the product leaving the chiller is segregated for rework and retested before it may proceed into commerce. A second 10 bird subgroup sample of the birds is taken after they leave the chiller to ensure that the product meets the postchill FPS. Since the product is closer to the end of processing, the controls on releasing reworked product are stricter than controls under prechill testing, again to ensure that no adulterated product enters into commerce.

(*d*) *Prechill testing.* The prechill FPS have been divided into processing and trim categories. The processing category is designed to monitor the output of the dressing and evisceration procedures. The trim category monitors the establishment's ability to remove unwholesome lesions and conditions from inspected and passed carcasses. Each category is monitored independently of the other category using a separate CUSUM for each category.

(*1*) *Actions to be taken when the process is in control.* If the CUSUM is less than the action number and the subgroup absolute limit is not exceeded, the process is judged to be in control.

(*i*) Establishment Actions. The establishment shall:

(*a*) Randomly select and record subgroup sampling times for each production unit of time before product reaches the prechill reinspection station on the production line. In no case shall the time between tests exceed 1 hour of production time.

(*b*) Conduct a 10-bird subgroup test at a random time on each poultry slaughter line. These times are preselected by the establishment and available to the inspector prior to the start of the shift/day's operations. All 10 samples of the subgroup shall be collected at the random time.

(*c*) Obtain the weighted value of each nonconformance by multiplying the number recorded for each nonconformance by the "factor" in Table 1, sum the total of all the nonconformances, and calculate the CUSUM value for that test.

(*ii*) Inspector actions. The inspector shall:

(*a*) Select random times for monitoring subgroup tests for each half-shift on the evisceration line. In establishments that have multiple evisceration lines on a production shift, monitor all lines of product at the random times.

(*b*) Collect the subgroup samples to be monitored at preselected times. All 10 samples of the subgroup shall be collected at the random time selected in (*ii*)(*a*) above.

(*c*) Conduct the 10-bird monitoring subgroup test.

(*2*) *Actions to be taken when the subgroup absolute limit is exceeded.* If either an inspector or establishment subgroup test exceeds the subgroup absolute limit of tolerance plus 5 (T+5), the establishment shall determine if any of the immediate past 5 plant prechill subgroups for that category (processing or trim) resulted in a CUSUM above the start number.

(*a*) If all of the past 5 plant prechill subgroups are at or below the start number, the establishment shall immediately conduct a retest subgroup on that category of prechill to determine sample validity. If retest subgroup total equals tolerance or less, the establishment resumes random time testing. If the retest subgroup total exceeds tolerance, the establishment shall proceed as if CUSUM reaches the action number and shall begin process actions as set forth in paragraph (b)(3)(iv)(*d*)(*4*). In either case, the prechill retest results will be used to calculate CUSUM.

(*b*) If any of the past 5 plant prechill subgroups resulted in a CUSUM above the start number, the establishment shall proceed as if CUSUM reaches the action number and shall begin process actions as set forth in paragraph (b)(3)(iv)(*d*)(*4*).

(*3*) *Actions to be taken when a trimmable lesion/condition is found.* If either inspection or plant monitoring finds any trimmable lesion or condition as specified in item B(7) of Table 1 during a prechill subgroup test, the establishment shall immediately conduct an additional prechill subgroup test for the same trimmable lesion/condition category. This is a requirement on the subgroup testing for the prechill trim nonconformance that is in addition to the CUSUM test described in subdivision (*1*).

(*a*) If no additional item in the same category is found on retest, the establishment shall resume random time sampling.

(*b*) If an additional item in the same category is found on retest, the establishment shall proceed as if CUSUM reaches the action number and shall initiate corrective action set forth in paragraph (b)(3)(iv)(*d*)(*4*) for this category only.

(*4*) *Actions to be taken when the CUSUM reaches the action number.* Once CUSUM reaches the action number, the process is judged to be not in control.

(*i*) Establishment Actions. The establishment shall:

(*a*) Immediately notify the inspector in charge and the production supervisor responsible for the affected evisceration line.

(*b*) Suspend random time prechill testing of the affected nonconformance category (processing or trim). Suspend random time postchill subgroup testing when the processing category is the affected nonconformance category.

(*c*) Conduct subgroup retests on carcasses leaving the chill system. Apply the prechill criteria in Table 1 (A) or (B), depending upon which category caused the action, and apply prechill Finished Product Standards as listed in Table 2 to determine product compliance. In no case shall the time between retests exceed 30 minutes of production time. Apply prechill standard criteria at the postchill location after notifying the establishment's production supervisor. If any of these subgroup retests on product leaving the chill system result in a subgroup total exceeding tolerance, identify for rework

subsequent product at the postchill location. All noncomplying product will be brought into compliance prior to release into commerce. Product from the chiller will continue accumulating for rework until a subsequent subgroup test results in a subgroup total equal to or less than tolerance.

(*d*) Conduct additional subgroup tests at the prechill reinspection station to determine the adequacy of production corrective action. If the prechill tests results in a subgroup total exceeding the tolerance, notify the production supervisor. The number of additional tests at the postchill reinspection station using prechill standards is increased as required to include the product in the chiller represented by this additional prechill test.

(*e*) After two consecutive additional prechill subgroup tests result in subgroup totals equal to or less than tolerance:

(*1*) Resume random time prechill subgroup testing as set forth in actions to be taken when the process is in control at paragraph (b)(3)(iv)(*d*)(*1*).

(*2*) Identify product entering the chill system that will mark the end of the retest action upon arrival at the postchill sampling location. Such identification may include tagging or empty space in chillers, depending upon the establishment's identification method.

(*3*) If two consecutive additional prechill subgroup tests demonstrate process control with subgroup totals equal to or less than tolerance, but they do not cause CUSUM to fall to the start line or below, reset CUSUM at the start number.

(*ii*) Inspector Actions. The inspector shall monitor product and process actions by making spot-check observations to ensure that all program requirements are met.

(*e*) *Postchill testing.* Postchill subgroups shall be collected after the product leaves the chiller but before the product is divided into separate processes. Each bird sampled shall be observed and its conformance measured against the postchill criteria. The subgroup nonconformance weights shall be totaled and the CUSUM calculated by subtracting the tolerance from the sum of the subgroup total and the starting CUSUM.

(*1*) *Actions to be taken when the process is in control.* If the CUSUM is less than the action number and the subgroup absolute limit is not exceeded, the process is judged to be in control.

(*i*) Establishment Actions. The establishment shall conduct a 10-bird subgroup test for each chiller system at a randomly selected time of production. In no case shall the time between tests exceed 2 hours of production time.

(*ii*) Inspector Actions. The inspector shall:

(*a*) Select random times for postchill monitoring.

(*b*) Monitor each chill system twice per shift.

(*c*) Conduct subgroup tests at preselected random times.

(*2*) *Actions to be taken when the subgroup absolute limit is exceeded.* If either an inspector or establishment subgroup test exceeds the subgroup absolute limit of tolerance plus 5(T+5), the establishment shall determine if any of the last 5 postchill monitoring subgroups resulted in a CUSUM above the start number.

(*a*) If all of the past 5 postchill monitoring subgroups resulted in a CUSUM at or below the start number, the establishment shall immediately retest a subgroup to determine sample validity. If this retest subgroup total exceeds tolerance, the establishment shall proceed as if CUSUM reaches the action number and shall begin process actions as set forth in paragraph (b)(3)(iv)(*e*)(*3*).

(*b*) If any of the past 5 postchill monitoring subgroups resulted in a CUSUM above the start number, the establishment shall proceed as if CUSUM reaches the action number and shall begin process actions as set forth in paragraph (b)(3)(iv)(*e*)(*3*).

(*3*) *Actions to be taken when the CUSUM reaches the action number.* Once CUSUM reaches the action number, the process is judged to be not in control.

(*i*) Establishment Actions. The establishment shall:

(*a*) Notify the inspector in charge and the production supervisor responsible for product in the chiller.

(*b*) Suspend random time postchill subgroup testing.

(*c*) Immediately conduct an additional postchill subgroup test. If the retest subgroup total exceeds tolerance, the establishment shall identify subsequent product for rework. Product will continue accumulating for rework until a subsequent subgroup test results in a subgroup total equal to or less than tolerance.

(*d*) After two consecutive additional postchill subgroup tests results in subgroup totals equal to or less than tolerance:

(*1*) Resume random time postchill subgroup testing as set forth in actions to be taken when the process is in control at paragraph (b)(3)(iv)(*e*)(*1*).

(*2*) If the two consecutive additional postchill subgroup totals equal to or less than tolerance do not cause CUSUM to fall to the start number or below, reset CUSUM at the start number.

(*ii*) Inspector Actions. The inspector shall monitor product and process actions to ensure that program requirements are met.

(v) When the prechill or postchill product has been identified as having been produced when the process was not in control, additional online subgroup testing by the establishment is required to determine its conformance to the standard. If any of the additional plant subgroup testing results in a subgroup total exceeding tolerance, offline product corrective actions must take place. The responsibilities of the establishment and the inspector change depending on the CUSUM.

All corrective actions such as identifying affected product, segregating product, and maintaining control through rework actions are the establishment's responsibility. Corrective actions by the inspector depends upon the establishment's ability to control rework of affected product. If the establishment fails in its responsibilities, the inspector will identify, segregate, and retain affected product to prevent adulterated product from reaching consumers.

(*a*) Offline product. The establishment shall identify the affected product so that it may be segregated and accumulated offline for rework. The inspector shall spot check the establishment's identification, segregation, and control of reworked product to ensure that program requirements are met.

(*b*) Reworked product. Reworked product must be tested by the establishment with a randomly selected subgroup test of the accumulated reworked lot. Before product is released, the random subgroup test must result in a subgroup total equal to or less than tolerance. If the subgroup test of a reworked lot results in a subgroup total exceeding tolerance, the lot must be reworked again before another subgroup is selected. The following actions are required.

(*1*) Establishment Actions. The establishment shall:

(*i*) Select the random subgroup from throughout the lot only after the total lot has been reworked.

(*ii*) Conduct the subgroup test using the same criteria (prechill or postchill) that resulted in the rework action.

(*iii*) Release the lot if the reworked subgroup test resulted in a subgroup total equal to or less than tolerance.

(*iv*) Identify and control the lot to be reworked if the reworked subgroup total again exceeds tolerance.

(2) Inspector Actions: The inspector shall spot check the rework procedure to ensure that plant monitoring and production meet the requirements of the program.

(vi) After the 10 bird subgroup tests are completed, the prechill and postchill processing nonconformances shall be corrected on all bird samples prior to returning the samples to the product flow. Samples with trim nonconformances shall be returned to the trim station for correction prior to their return to the product flow.

Table 1.—*Definitions of Nonconformances*

A Processing Nonconformances

1 Extraneous material ≤1/16"
—Include any specks, tiny smears, or stains of material that measure 1/16" or less in the greatest dimension.
Examples: Ingesta, feces, unattached feathers, grease, bile remnants, and/or whole gall bladder or spleen, embryonic yolk, etc.
—Factor is one.
—1 to 5=1 defect: 6 to 10=2 defects; 11 or more=3 defects. A maximum of three incidents per carcass.

2 Extraneous material >1/16" to 1"
—The same material as line 1, but measuring >1/16" to 1" in the longest dimension.
—Factor is one.
—A maximum of three incidents per carcass.
Note: Feces that is 1/8" or greater should be classified under number 8 Feces.

3 Extraneous material >1"
—The same material as lines 1 to 2, but measuring greater than one inch.
—Factor is two.
—A maximum of two incidents per carcass.

4 Oil glands remnant—less than two whole glands
—Recognizable fragment(s) of one or both oil glands equals one incident.
—Factor is one.
—Maximum of one incident per carcass.

5 Oil glands—two whole glands
—Both whole oil glands with no missing fragments equals one incident. If the oil glands are cut, but no fragment is removed, consider them to be whole. But if even a small fragment is removed, use line 4.
—Factor is two.
—A maximum of one incident per carcass.

6 Lung >¼" whole
—Any portion less than a whole lung, and equal to or greater than ¼" at the greatest dimension, equals one incident.
—Factor is one.
—A maximum of two incidents per carcass.

7 Lung—whole
—Each whole lung equals one incident.
—Factor is two.
—A maximum of two incidents per carcass.

8 Feces >1/8"
—Any material determined to be from the lower gastrointestinal tract, measuring 1/8" or more, equals one incident.
—Factor is five.
—A maximum of one incident per carcass.

9 Intestine
—Any identifiable portion of the terminal portion of the intestinal tract with a lumen (closed circle) present, or split piece of intestine large enough to be closed to form a lumen.
—Factor is five.
—A maximum of one incident per carcass.

10 Cloaca
—Any identifiable portion of the terminal portion of the intestinal tract with mucosal lining.
—Factor is five.
—A maximum of one incident per carcass.

11 Bursa of Fabricius
—A whole rosebud, or identifiable portion with two or more mucosal folds.
—Factor is two.
—A maximum of one incident per carcass.

12 Esophagus
—Any portion of the esophagus with identifiable mocosal lining.
—Factor is two.
—A maximum of one incident per carcass.

13 Crop—partial—with mucosa
—Any portion of the crop that includes the mucosal lining.
—Factor is two.
—A maximum of one incident per carcass.

14 Crop—whole
—Any complete crop.
—Factor is five.
—A maximum of one incident per carcass.

15 Trachea ≤1"
—Identifiable portion of trachea less than or equal to one inch long.
—Factor is one.
—A maximum of one incident per carcass.

16 Trachea >1"
—Identifiable portion of trachea greater than one inch.
—Factor is two.
—A maximum of one incident per carcass.

17 Hair >¼" 26 or more.
—Hair which is one-fourth inch long or longer measured from the top of the follicle to the end of the hair. 26 or more hairs equal one incident.
—Factor is one.
—A maximum of one incident per carcass.

18 Feather and/or Pinfeathers ≤1"
—Attached feathers or protruding pinfeathers less than or equal to one inch long. Scored 5 to 10 per carcass as one incident, 11 to 15 per carcass as two incidents, and 16 or more as three incidents.
—Factor is one.
—A maximum of three incidents per carcass.

19 Feathers >1"
—Attached feathers longer than one inch. Scored 1 to 3 per carcass as one incident 4 to 6 per carcass as two incidents, and 7 or more as three incidents.

Table 1.—*Definitions of Nonconformances*—Continued

—Factor is one.
—A maximum of three incidents per carcass.

20 Long Shank—both condyles covered
—If the complete tibiotarsal joint is covered, it equals one incident.
—Factor is two.
—A maximum of two incidents per carcass.

B Trim nonconformances

1 Breast blister
—Inflammatory tissue, fluid, or pus between the skin and keel must be trimmed if membrane "slips" or if firm nodule is greater than ½" in diameter (dime size).
—Factor is two.
—A maximum of one incident per carcass.

2 Breast blister—partially trimmed
—All inflammatory tissue, including that which adheres tightly to the keel bone, must be removed.
—Factor is two.
—A maximum of one incident per carcass.

3 Bruise ½" to 1"
—Blood clumps or clots in the superficial layers of tissue, skin, muscle or loose subcutaneous tissue may be slit and the blood completely washed out. When the bruise extends into the deeper layers of muscle, the affected tissue must be removed. Very small bruises less than ½" (dime size) and areas showing only slight reddening need not be counted as defects.
—Factor is one.
—A maximum of five incidents per carcass.

4 Bruise >1"
—Same criteria as in line three, but greater than one inch in greatest dimension.
—Factor is two.
—A maximum of three incidents per carcass.

5 Bruise black/green ¼" to 1"
—Bruises ¼" to 1" that have changed from red to a black/blue or green color due to age.
—Factor is two.
—A maximum of three incidents per carcass.

6 Bruise Black/green >1"
—Same as line 5, but measuring greater that 1" in greatest dimension.
—Factor is five.

Table 1.—*Definitions of Nonconformances*—Continued

—A maximum of two incidents per carcass.

7 Trimmable lesions/Condition
—A tumor or identifiable portion of a tumor on any part of the carcass.
—Synovitis/airsacculitis lesions that have not been removed.
—Factor is five.
—A maximum of one incident per carcass.

8 Failure to complete task as indicated by marking system
Example: Synovitis, airsacculitis, inflammatory process, contamination, etc.
—When plants have an approved marking system, the helper, under the inspector's direction, will apply a mark to the carcass, indicating to the trimmer(s) that specific action must be taken on that carcass. When airsac and kidney cleanout, or synovitis part removal, or carcass removal from the line is not completed, or only partially completed, this occurrence is recorded as one defect.
—Factor is five.
—A maximum of one incident per carcass.

9 Compound fracture
—Any bone fracture (i.e., leg or wing) that has caused an opening through the skin. May be accompanied with a bruise, but not always. Do not count the bruise in line 3 of 4 if it is associated with the compound fracture.

10 Wingtip compound fracture
—Same criteria as line 9, but only for wingtips.
Note: Bruises not associated with the fracture should be recorded in the appropriate lines.
—Factor is one.
—A maximum of two incidents per carcass.

11 Untrimmed short hock
—When no cartilage of the hock surface is present and no tendons are attached to the bone.
—Factor is two.
—A maximum of two incidents per carcass.

12 Sores, scabs, inflammatory process, etc. <½"
—Any defects such as sores, abscesses, scabs, wounds, dermatitis, inflammatory process, that measure less than or equal to ½" in the greatest dimension.

Table 1.—*Definitions of Nonconformances*—Continued

—Factor is two.
—A maximum of two incidents per carcass.

13 Sores, scabs, inflammatory process, etc. >½"
—Same as line 12, but greatest dimension is greater than ½", or a cluster of smaller lesions in close proximity >½", this category also includes turkey leg edema.
—Factor is five.
—A maximum of one incident per carcass.

14 External mutilation
—Mutilation to the skin and/or muscle that is caused by the slaughter, dressing or eviscerating processes. Skinned elbows (bucked wings) do not trim require unless affected wing joint capsule is also opened.
—Factor is one.
—A maximum of three incidents per carcass.

C Postchill nonconformances—(Designed to monitor those nonconformances added to product during the chilling process)

1 Extraneous material <1/16"
—Include specks, grease, or unidentifiable foreign material that measure 1/16" or less in the greatest dimension.
—Example: Ingesta, grease, or unidentifiable foreign material.
—Factor is one.
—3 to 7=1 defect; 8 to 12=2 defects; 13 or more=3 defects. A maximum of three incidents per carcass.

2 Extraneous material >1/16" to 1"
—This includes ingesta, grease, or unidentifiable foreign material measureing >1/16" to 1" longest dimension.
—Factor is one.
—A maximum of three incidents per carcass.

3 Extraneous material >1"
—The same material as line 2, but measuring greater than one inch.
—Factor is two.
—A maximum of two incidents per carcass.

Table 2.—*Finished Product Standards*

	SIS
Prechill Processing Nonconformance	
Tolerance number (T)	25
Subgroup Absolute Limit (T+5)	30
Action number	22

Table 2.—*Finished Product Standards*—Continued

	SIS
Start number	11
Prechill Trim Nonconformance	
Tolerance number (T)	12
Subgroup Absolute Limit (T+5)	17
Action number	15
Start number	8
Postchill Nonconformance	
Tolerance number (T)	5
Subgroup Absolute Limit (T+5)	10
Action number	10
Start number	5

* * * * *

Pursuant to the authority in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this amendment at this time are impracticable and contrary to public interest, and good cause is found for making this amendment effective less than 30 days after publication of this document. A final document discussing comments received and any amendment required will be published in the **Federal Register** as soon as possible.

Done at Washington, DC, on: January 13, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86-1883 Filed 1-28-86; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C-3175]

Federated Department Stores, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Cincinnati, Ohio retailer and its division operating 14 department stores in Texas (Foley's), among other things, to inform rejected credit applicants if it used information from credit reporting agencies as a basis for denying credit, and the name and address of the credit reporting agencies used. The order requires respondents to comply with the provisions of the Fair Credit Reporting Act, and is binding on all of Federated's divisions. Additionally, Foley's is required to review all credit applications rejected between January 1983 and February 1985 and spend appropriate FCRA notices to all consumers who did not receive them.

DATE: Complaint and Order issued December 30, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Kristen L. Malmberg, Dallas Regional Office, Federal Trade Commission, 8303 Elmbrook Dr., Dallas, TX 75247, (214) 767-7050.

SUPPLEMENTARY INFORMATION: On Wednesday, Aug. 28, 1985, there was published in the **Federal Register**, 50 FR 34859, a proposed consent agreement with analysis In the Matter of Federated Department Stores, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its modified order to cease and desist, as set forth below, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Collecting, Assembling, Furnishing or Utilizing Consumer Reports: § 13.382 Collecting, assembling, furnishing or utilizing consumer reports; 13.382-5 Formal regulatory and/or statutory requirements; 13.382-5(a) Fair Credit Reporting Act. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-20 Disclosures; 13.533-37 Formal regulatory and/or statutory requirements; 13.533-45 Maintain records. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1852 Formal regulatory and/or statutory requirements.

List of Subjects in 16 CFR Part 13

Consumer credit, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 84 Stat. 1128-36; 15 U.S.C. 1681-1681t)

Emily H. Rock,

Secretary.

[FR Doc. 86-1885 Filed 1-28-86; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

16 CFR Part 13

[Dkt. 9182]

Weider Health and Fitness, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Woodland Hills, Calif. manufacturer and distributor of nutrient supplements and three corporate officers, among other things, to make refunds to purchasers of "Anabolic Mega-Pak" or "Dynamic Life Essence." If the refunds total less than $400,000, respondents are required to donate the difference to fund research on the relationship of nutrition to muscle development. Respondents are required to publish notices of the refund offer in two bodybuilding magazines. Additionally, respondents are prohibited from: (1) Making unsubstantiated claims that its products promote muscular development, produce human-growth hormone or that its products are unique; and (2) misrepresenting any scientific test, research article, survey or other scientific opinion or data as it applies to their products.

DATE: Complaint issued July 26, 1984. Decision issued December 11, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Michael Sirota, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, IL 60603. (312) 353-4423.

SUPPLEMENTARY INFORMATION: On Wednesday, August 21, 1985, there was published in the **Federal Register**, 50 FR 33778, a proposed consent agreement with analysis In the Matter of Weider Health and Fitness, Inc., a corporation, Joseph Weider, individually and as an officer of Weider Health and Fitness, Inc., M.L.E., Holding Co. Ltd., a corporation, and Ben Weider, individually and as a director of Weider Health and Fitness, Inc., and as an officer of M.L.E. Holding Co. Ltd., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form

[1] Copies of the Complaint and Decision and Order are filed with the original document.

contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: 13.170 Qualities or properties of product or service; 13.170–52 Medicinal, therapeutic, healthful, etc. Subpart—Corrective Actions and/or Requirements: 13.533 Corrective actions and/or requirements; 13.533–45 Maintain records; 13.533–45(a) Advertising substantiation.

List of Subjects in 16 CFR Part 13

Nutrient supplements, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Emily H. Rock,

Secretary.

[FR Doc. 86–1888 Filed 1–28–86; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 305

Rules for Using Energy Costs and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Dishwashers

AGENCY: Federal Trade Commission.

ACTION: Publication of ranges of comparability for dishwashers.

SUMMARY: Under the Federal Trade Commission's Appliance Labeling Rule, each required label or fact sheet for a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. These ranges show the highest and lowest energy costs or efficiencies for the various size or capacity groupings of the appliances covered by the rule. The Commission publishes the ranges annually in the Federal Register if the upper or lower limits of the range change by 15 percent or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range is still applicable for the next year.

The ranges of energy costs for dishwashers have not changed by as much as 15 percent since the last publication. Therefore, the ranges published on November 17, 1983 remain in effect until new ranges are published.

EFFECTIVE DATE: January 29, 1986.

FOR FURTHER INFORMATION CONTACT: James Mills or Lucerne D. Winfrey, Attorneys, Division of Enforcement, Federal Trade Commission, Washington, DC 20580, (202) 376–8934.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) [1] required the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Under the statute, the Department of Energy (DOE) is responsible for developing test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule [2] covering seven of the thirteen appliance categories: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces.

The rule requires that energy efficiency ratings or energy costs and related information be disclosed on labels, fact sheets and in retail sales catalogs for all covered products manufactured on or after May 19, 1980. Certain point-of-sale promotional materials must disclose the availability of energy cost or energy efficiency rating information. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Pursuant to § 305.8 of the rule, manufacturers submitted reports to the Commission by January 21, 1980. These reports contained the estimated annual cost or energy efficiency rating, derived from tests performed pursuant to the DOE test procedures, for all models of the seven categories of appliances. The reports also contained the model, the number of tests performed on each model, and the capacity of each model. From the information, the Commission compiled and published [3] ranges of comparability for each product, as required by § 305.10 of the rule.

Section 305.8(b) of the rule requires that manufacturers, after filing this initial report, shall report the same information annually by specified dates for each product type.[4] If an analysis of the new data indicates that the upper or lower limits of any of the ranges have changed by more than 15%, the Commission must, under § 305.10 of the rule, publish a revised version of the new range or ranges. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for dishwashers have been received and analyzed and it has been determined that neither the upper nor lower limits of the ranges for this product category have changed by 15% or more since the last publication of the ranges of November 17, 1983.[5]

In consideration of the foregoing, the present ranges for dishwashers will remain in effect for the next year.

List of subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86–1887 Filed 1–28–86; 8:45 am]

BILLING CODE 6750–01–M

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[1] Pub. L. 94–163, 89 Stat. 871, 42 U.S.C. 6201 (1975).

[2] 44 FR 66466, 16 CFR Part 305 (November 19, 1979).

[3] 45 FR 13998 (March 3, 1980), 45 FR 19520 (March 25, 1980), 45 FR 26036 (April 17, 1930), 46 FR 3829 (January 16, 1981).

[4] Reports for clothes washers are due by March 1; reports for water heaters, room air conditioners and furnaces are due by May 1; reports for dishwashers are due by June 1; reports for refrigerators, refrigerator-freezers and freezers are due by August 1.

[5] 48 FR 52292 (November 17, 1983).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80-53]

Natural Gas: Ceiling Prices; Maximum Lawful Prices and Inflation Adjustment Factors

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order of the director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 357.307(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under Title I of the Natural Gas Policy Act (NGPA) for the months of February, March and April, 1986. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: February 1, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Director, OPPR, (202) 357-8500.

Order of the Director, OPPR

In the matter of Publication of prescribed maximum lawful prices under the Natural Gas Policy Act of 1978; Docket No. RM80-53.

Issued: January 24, 1986.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in Title I of the NGPA before the beginning of any month for which such figures apply.

Pursuant to this requirement and § 375.307(1) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of February, March and April, 1986 are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1)(2), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to February 1986 are found in the tables in §§ 271.101 and 271.102.

List of Subjects in 18 CFR Part 271

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

§ 271.101 [Amended]

1. Section 271.101(a) is amended by inserting the maximum lawful prices for February, March and April, 1986 in Tables I and II.

* * * * *

TABLE I.—NATURAL GAS CEILING PRICES

[Other than NGPA sections 104 and 106(a)]

Subpart of Part 271	NGPA Section	Category of Gas	Maximum lawful price per MMBtu for deliveries in—		
			February 1986	March 1986	April 1986
B	102	New Natural Gas, Certain OCS Gas[4]	$4.191	$4.216	$4.241
C	103(b)(1)	New Onshore Production Wells[5]	3.074	3.083	3.092
	103(b)(2)	New Onshore Production Wells[5]	3.633	3.650	3.667
E	105(b)(3)	Intrastate Existing Contracts	4.149	4.171	4.193
F	106(b)(1)(B)	Alternative Maximum Lawful Price for Certain Intrastate Rollover Gas[1]	1.759	1.764	1.769
G	107(c)(5)	Gas Produced from Tight Formations[2]	6.148	6.166	6.184
H	108	Stripper Gas	4.486	4.513	4.540
I	109	Not Otherwise covered	2.546	2.553	2.560

[1] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas is deregulated. (See Part 272 of the Commission's regulations.)

[2] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in Subpart C of Part 271. The maximum lawful price for tight formation gas applies on or after July 16, 1979. (See § 271.703 and § 271.704.)

[4] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) is deregulated. (See Part 272 of the Commission's regulations.)

[5] Commencing January 1, 1985, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 is deregulated. (See Part 272 of the Commission's regulations.)

TABLE II.—NATURAL GAS CEILING PRICES: NGPA SECTIONS 104 AND 106(A)

[Subpart D, Part 271]

Category of natural gas	Type of sale or contract	Maximum lawful price per MMBtu for deliveries made in—		
		February 1986	March 1986	April 1986
Post-1974 gas	All producers	$2.546	$2.553	$2.560
1973-1974 Biennium gas	Small producer	2.153	2.159	2.165
	Large producer	1.644	1.649	1.654
Interstate Rollover gas	All producers	.946	.949	.952
Replacement contract gas or recompletion gas	Small producer	1.208	1.211	1.214
	Large producer	.927	.930	.933
	Small producer	.613	.615	.617
Flowing gas	Large producer	.515	.516	.517
Certain Permain Basin gas	Small producer	.720	.722	.724
	Large producer	.639	.641	.643
Certain Rocky Mountain gas	Small producer	.720	.722	.724
	Large producer	.613	.615	.617
Certain Appalachian Basin gas	North subarea contracts dated after 10-7-69	.582	.584	.586
	Other contracts	.537	.539	.541
Minimum rate gas [1]	All producers	.317	.318	.319

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.

* * * * *

§ 271.102 [Amended]

2. Section 271.102(c) is amended by inserting the inflation adjustment for the months of February, March and April, 1986 in Table III.

* * * * *

TABLE III—INFLATION ADJUSTMENT

Month of delivery 1986	Factor by which price in preceding month is multiplied
February	1.00287
March	1.00287
April	1.00287

[FR Doc. 86-1913 Filed 1-28-86; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 282

[Docket No. RM79-14]

Natural Gas Policy Act; Publication of Incremental Pricing Acquisition Cost Thresholds

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Prescribing Incremental Pricing Thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: February 1, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 357-8500.

Order of the Director, OPPR

In the matter of publication of prescribed incremental pricing acquisition cost threshold of the NGPA of 1978; Docket No. RM79-14.

Issued: January 24, 1986.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of February 1986 are issued by the publication of a price table for the month. The incremental pricing acquisition cost threshold prices for months prior to those reflected on the table are found in § 282.304.

The threshold price for February which is based upon 130% of the cost of No. 2 fuel oil landed in New York City reflects data gathered by the Energy Information Administration for an earlier month and may not be truly indicative of actual experience for the month of February, particularly in view of the recent decline in crude oil prices. Nevertheless, the threshold price is meaningful for its purpose which is to establish a level above which amounts paid for high-cost gas would be subject to an incremental pricing surcharge. Since little, if any, natural gas is being purchased at prices even approximating the threshold, there should be no impact upon the pipelines and their customers.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Calendar Year 1985												
Incremental Pricing Threshold	$2.373	$2.378	$2.383	$2.388	$2.399	$2.410	$2.421	$2.427	$2.433	$2.439	$2.446	$2.453
NGPA Section 102 Threshold	3.869	3.890	3.911	3.932	3.962	3.992	4.022	4.045	4.068	4.091	4.116	4.141
NGPA Section 109 Threshold	2.452	2.457	2.462	2.467	2.478	2.489	2.500	2.506	2.512	2.518	2.525	2.532
130% of No. 2 Fuel Oil in New York City Threshold	7.170	7.310	7.090	6.920	7.210	7.120	7.400	7.000	6.520	6.630	6.940	7.140
Calendar Year 1986												
Incremental Pricing Threshold	$2.460	$2.467										
NGPA Section 102 Threshold	4.166	4.191										
NGPA Section 109 Threshold	2.539	2.546										
130% of No. 2 Fuel Oil in New York City Threshold	7.370	7.930										

[FR Doc. 86-1923 Filed 1-28-86; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8072]

Income Taxes; Temporary Regulations Under Section 338(b) of the Internal Revenue Code of 1954; Basis of Target Corporation Assets

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to section 338(b) of the Internal Revenue Code of 1954 ("Code") as added by the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"). This document also contains amendments to other temporary regulations under section 338. The temporary regulations provide guidance to taxpayers concerning the application of section 338. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the **Federal Register**.

DATES: These regulations are effective January 29, 1986. These temporary regulations under section 338(b) and the amendments to the temporary regulations generally apply to stock acquisitions made after August 31, 1982.

FOR FURTHER INFORMATION CONTACT: Patricia Wendlandt or Bennett C. Steinhauer of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T (202-566-3458, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document adds new temporary regulations §§ 1.338(b)–1T through 1.338(b)–3T to Part 1 of Title 26 of the Code of Federal Regulations to implement section 338(b) of the Code. Section 338(b) was originally added by section 224 of TEFRA (Pub. L. 97–248; 96 Stat. 485) and was amended by section 712(k) of the Tax Reform Act of 1984 (TRA) (Pub. L. 98–369; 98 Stat. 948).

Explanation of Provisions

Introduction

Section 338, generally, provides that, if the stock of a corporation ("target") is acquired by another corporation ("purchasing corporation") in a qualified stock purchase, the purchasing corporation may elect (or may be deemed to elect under certain consistency rules) to have the target treated as if it had sold in a single transaction all of its assets (as "old target") and then purchased those assets (as "new target"). The deemed sale of assets by old target takes place at the close of the day on which the purchase occurred ("acquisition date") and generally is governed by the nonrecognition provisions of section 337. New target is deemed to purchase those assets ("acquisition date assets") at the beginning of the day after the acquisition date. Section 338(b) sets forth the framework for determining the aggregate amount of new target's deemed purchase price of old target's assets ("adjusted grossed-up basis") and allocating this amount among new target's acquisition date assets.

The temporary regulations implement section 338(b) in three sections. The first, § 1.338(b)–1T, provides rules to determine adjusted grossed-up basis generally as of the beginning of the day after the acquisition date. Section 1.338(b)–2T provides rules for allocating adjusted grossed-up basis, as determined under § 1.338(b)–1T, among the acquisition date assets of new target. Sections 1.338(b)–1T and 1.338(b)–2T also apply to certain increases (or decreases) in adjusted grossed-up basis that are attributable to increases (or decreases) in amounts paid for old target's stock, to reductions in old target's liabilities that were taken into account in determining adjusted grossed-up basis, or to liabilities of old target that become fixed and determinable if such events (collectively referred to as "adjustment events") occur during new target's first taxable year. The third, § 1.338(b)–3T, provides rules for determining and allocating adjusted grossed-up basis attributable to adjustment events occurring after new target's first taxable year.

Adjusted Grossed-Up Basis

Adjusted grossed-up basis is the sum of (1) the basis of target's recently purchased stock (grossed-up to account for minority interests by multiplying the basis by the fraction set forth in section 338(b)(4)), (2) the basis of target's nonrecently purchased stock, (3) the liabilities of new target as of the beginning of the day after the acquisition date (other than liabilities that were not liabilities of old target), and (4) other relevant items. As previously stated, adjusted grossed-up basis is ordinarily determined at the beginning of the day after the acquisition date. However, adjustment events occurring by the close of new target's first taxable year are taken into account in determining adjusted grossed-up basis as if they had occurred at the beginning of the day after the acquisition date.

The liabilities of target accounted for in adjusted grossed-up basis include the liabilities to which its assets are subject. Except in the case of a qualified stock purchase for which an election is made under section 338(h)(10), liabilities also include income tax liabilities of old target resulting from the deemed sale of its assets. For a liability to be included in adjusted grossed-up basis, it must be a bona fide liability of target at the beginning of the day after the acquisition date that is properly includible in basis under principles of tax law that would apply if target had acquired its assets as of the beginning of the day after the acquisition date from an unrelated party and, as part of the transaction, had assumed or taken property subject to the liability. Liabilities excluded under that rule, however, are taken into account under principles of tax law that would apply if target had acquired its assets from an unrelated person and, as part of the transaction, had assumed or taken property subject to those liabilities. See § 1.338(b)–3T for application of these principles of tax law to certain contingent liabilities that are initially excluded from adjusted grossed-up basis.

Grossed-up basis is also adjusted for "other relevant items." For this purpose, "other relevant items" include adjustment events occurring after new target's first taxable year. The rules governing the timing and allocation of these adjustments are in § 1.338(b)–3T. If the amount of adjusted grossed-up basis of a target allocated to the stock of its subsidiary that is also a target is subsequently increased (or decreased) by reason of an other relevant item, the grossed-up basis of the subsidiary's stock (and adjusted grossed-up basis) is also increased (or decreased) as if the increase (or decrease) in basis of the subsidiary's stock was an adjustment to the purchase price deemed paid by the target parent.

Upon the examination of a return the Internal Revenue Service also may increase (or decrease) adjusted grossed-up basis under the authority of section 338(b)(2) for other items and allocate such amounts to target assets under the authority of section 338(b)(5) so that adjusted grossed-up basis and the basis of target assets properly reflect the purchasing corporation's cost of those assets. Such items may include distributions from target to the purchasing corporation, capital contributions from the purchasing corporation to target during the 12-month acquisition period, or acquisitions of target stock by the purchasing corporation after the acquisition date from minority shareholders at an average price which is lower than the average cost of recently purchased stock. In determining whether an adjustment is appropriate when stock is purchased after the acquisition date from minority shareholders at an average price which is lower than the average cost of recently purchased stock, the Internal Revenue Service will take into account all the facts and circumstances, which may include the amount of the price differential and the reason therefor, the number of shares purchased after the acquisition date, the timing of the purchase, and the source of the additional shares.

Allocation of Adjusted Grossed-Up Basis

Adjusted grossed-up basis is generally allocated among the target assets as of the beginning of the day after the acquisition date. Prior to any allocation, adjusted grossed-up basis is reduced by the amount of cash, deposits in banks and similar depository institutions, and any other similar cash items designated by the Internal Revenue Service ("Class I assets"). The balance is generally allocated among the remaining assets of

target in proportion to their fair market values as of the beginning of the day after the acquisition date in the following order:

1. Certificates of deposit, U.S. government securities, certain readily marketable stocks and securities, foreign currency, and any other similar items designated by the Internal Revenue Service ("Class II assets");

2. All other assets of target except assets in the nature of goodwill and going concern value ("Class III assets"); and

3. Intangible assets in the nature of goodwill and going concern value ("Class IV assets").

Because of the difficulty in valuing goodwill and going concern value, it was decided to value and assign basis to other assets first, with the residual excess (*i.e.*, the amount of adjusted grossed-up basis over the amount allocated to those other assets), if any, being assigned to goodwill and going concern value.

Section 1.338(b)–2T(c)(3) prescribes a special rule (the pro rata rule) for allocation of adjusted grossed-up basis when the purchasing corporation holds nonrecently purchased stock with an average basis lower than the average basis of its recently purchased stock. This special rule is provided in order to prevent an insufficient allocation of basis to assets in the nature of goodwill or going concern value. Solely for the purpose of allocating adjusted grossed-up basis, the fair market value of goodwill or going concern value is deemed to be the excess, if any, of the hypothetical purchase price (determined in accordance with § 1.338(b)–2T(c)(3)(ii)) over the sum of the amount of Class I assets and the fair market values of Class II and III assets. The hypothetical purchase price is the basis of recently purchased stock (grossed-up to account for minority interests and nonrecently purchased stock), plus target's liabilities and other relevant items that are taken into account in determining adjusted grossed-up basis. Finally, adjusted grossed-up basis is allocated (after reduction by the amount of Class I assets of target) among the Class II, III, and IV assets in proportion to their fair market values as of the beginning of the day after the acquisition date. Changes in the price paid for recently or nonrecently purchased stock after the close of new target's first taxable year are not taken into account in determining whether this special basis allocation rule applies.

The amount of adjusted grossed-up basis allocated to an asset, other than those in the nature of goodwill and going concern value, cannot exceed its fair market value. The "fair market value" of an asset is its fair market value determined without regard to mortgages, liens, pledges, or other liabilities.

Under the foregoing allocation rules (and unlike the rules under pre-TEFRA section 334(b)(2)), liabilities to which an asset is subject are no longer to be specifically allocated to the asset. The so-called specific lien rule has not been followed for purposes of allocating basis because in certain circumstances the rule could inappropriately shift the allocation of basis from some assets to others.

In general, § 1.1001–2(a)(3) provides that the discharge of a liability incurred by reason of the acquisition of property is not included in the amount realized from the sale or other disposition of the property to the extent the liability was not taken into account in determining the transferor's basis of such property. For purposes of applying § 1.1001–2(a) in determining the amount realized on a sale or other disposition of property deemed purchased by new target, the amount of any liability included in adjusted grossed-up basis is considered to be an amount taken into account in determining new target's basis in the property which is secured by such liability. Thus, if a liability is included in adjusted grossed-up basis, § 1.1001–2(a)(3) shall not prevent the amount of such liability from being treated as discharged within the meaning of § 1.1001–2(a)(4).

If the amount of basis of an asset acquired in a sale or exchange is limited under a provision of the Internal Revenue Code or principles of tax law, then the amount of adjusted grossed-up basis allocated to the asset is so limited. Thus, for example, the amount of the adjusted grossed-up basis allocated to a player contract described in section 1056 cannot exceed the limitation imposed by that section.

Amendments are made to § 1.338–4T to require, in cases in which section 338(h)(10) is not elected, that the fair market value of an asset (other than goodwill or going concern value) used to determine the amount of any gain (or loss) recognized under section 338 (a)(1) or (c)(1) to be the same as the fair market value used to allocate basis under these temporary regulations. Similarly, the allocation fraction described in § 1.338–4T(h)(3) *answer 2* (vi)(E) (relating to allocation of aggregate deemed sale price under the elective formula under section 338(h)(11)) must assign the same fair market value to a given asset that is assigned to such asset for purposes of the basis allocation rules. The amounts assigned as fair market values are subject to section 7701(g) (relating to fair market value in the case of nonrecourse indebtedness).

Section 1.338–4T is also amended to prescribe that aggregate deemed sale price calculated under the elective formula must be allocated in a manner consistent with the allocation of adjusted grossed-up basis. Thus, aggregate deemed sale price, after reduction for Class I assets, generally is allocated among Class II assets, then among Class III assets, with the residual excess, if any, allocated to Class IV assets.

Subsequent Adjustments to Adjusted Grossed-Up Basis

Section 1.338(b)–3T provides rules for adjustments to adjusted grossed-up basis for adjustment events occurring after the close of new target's first taxable year. It also provides rules for the allocation of those adjustments among target's acquisition date assets. These rules provide for the incorporation of general principles of tax law which are applicable to the determination of the basis of assets acquired in actual asset purchases. See the discussion in the following section for the application of similar principles with respect to adjustments of the aggregate deemed sale price of old target's assets.

Contingent amounts paid by the purchasing corporation for target stock held on the acquisition date and liabilities of old target that become fixed and determinable after the close of new target's first taxable year (basis increase amounts) are taken into account in adjusted grossed-up basis when the amount becomes fixed and determinable. Basis increase amounts are allocated among target's acquisition date assets in accordance with the general allocation rules set forth in § 1.338(b)–2T, subject to the limitation rules contained in that section. Thus, in general, the aggregate amount of adjusted grossed-up basis allocated to an acquisition date asset may not exceed the asset's fair market value at the beginning of the day after the acquisition date, except for assets in the nature of good will or going concern value.

If an acquisition date asset has been disposed of (or depreciated, amortized, or depleted) before a basis increase amount is included in adjusted grossed-up basis, the amount of adjusted grossed-up basis that would otherwise be allocated to the asset under § 1.338(b)–2T is treated under principles of tax law applicable when part of the cost of an asset is paid after the asset

has been disposed of (or depreciated, etc.). Thus, for example, an amount of adjusted grossed-up basis otherwise allocable to a disposed of capital asset may be deducted by new target as a capital loss. See *Arrowsmith* v. *Commissioner*, 344 U.S. 6 (1952).

The rule for reductions (or rebates) in the amount paid for target stock held on the acquisition date and reductions in old target's liabilities that were taken into account in determining adjusted grossed-up basis (basis decrease amounts) is similar to the one for basis increase amounts, except that basis decrease amounts are allocated to target's acquisition date assets in the reverse of the order in which adjusted grossed-up basis is allocated under §1.338(b)–2T. Thus, as general rule, basis decrease amounts are allocated first among the acquisition date assets in the nature of goodwill and going concern value to the extent of their bases, and then as a reduction in the basis of target's other acquisition date assets.

The basis decrease amount is taken into account for purposes of calculating adjusted grossed-up basis and basis of target's assets when the reduction occurs. Similar principles of tax law apply to amounts that are allocable to acquisition date assets that have been disposed of (or depreciated, etc.) as those that apply to basis increase amounts.

If the pro rata rule was used to allocate basis, special rules apply to account for basis increase amounts (or basis decrease amounts).

The temporary regulations provide a special rule for allocating a basis increase amount (or basis decrease amount) resulting from adjustment events that directly relate to the income produced by a particular intangible asset, such as a patent, copyright, or secret process ("contingent income assets"), as along as the basis increase amount (or basis decrease amount) does not relate to other target assets. Subject to the limitations in § 1.338(b)–2T(c) (1) and (2), the basis increase amount (or basis decrease amount) is first allocated to the contingent income asset and then to other target assets. Solely for purposes of applying the various limitation rules to a contingent income asset, its fair market value may be redetermined as of the time when the basis increase amount (or basis decrease amount) is taken into account. In appropriate cases, the Internal Revenue Service may apply the principles of this provision to reallocate a basis increase amount (or basis decrease amount) among some of target's assets to the extent such allocation is necessary to reflect properly the consideration that relates to each of those assets.

Old Target's Deemed Sale

Section 1.338(b)–3T(h) provides that the price at which old target is deemed to have sold its assets must be adjusted to take into account events occurring after the acquisition date as required under general principles of tax law. In making this determination, the recognition of income, loss, or other amount shall not be precluded because old target is treated as a new corporation after the acquisition date. For example, if an elective formula under section 338(h)(11) is used to determine the aggregate deemed sale price, that price generally must be increased by the amount of any additional payments made to the seller for recently purchased stock. Accordingly, to the extent general tax law principles would require seller to account for adjustment events, target (or a member of the selling consolidated group in the event of an election under section 338(h)(10)) must make such an accounting, which may result in reporting income, loss, or other amount.

If no election is made under section 338(h)(10), any income, loss, or other amount resulting from such change is included in new target's income tax return for the taxable year in which the adjustment event occurs. Although included in new target's return, such income, loss, or other amount is separately accounted for as an item of income, loss, or other amount of old target. Therefore, such income, loss, or other amount may not be offset by income, loss, etc. of new target. Any increase (or decrease) in new target's income tax liability by reason of this rule is allocated among new target's acquisition date assets. Also, if no election is made under section 338(h)(10), net operating losses and net capital losses of old target may be carried forward to offset income items described above. Similarly, any ordinary or capital loss of old target accounted for as a separate item after the acquisition date may be carried back to taxable years of old target. For these purposes, new target's taxable years shall not be taken into account in applying the taxable-year limitation (generally 15 years for ordinary losses and 5 years for capital losses) on loss carryovers or the taxable-year limitation (generally 3 years) on loss carrybacks. Thus, if old target has an unexpired net operating loss at the close of its taxable year in which the deemed asset sale occurred which could have been carried forward to a subsequent taxable year, such loss may be carried forward until it is absorbed by old target's income. A similar rule allows tax credit carryovers of old target to offset any tax on the income items of old target described above.

If an election is made under section 338(h)(10), any income, loss, or other amount resulting from such change is accounted for and reported by the appropriate member of the selling consolidated group for the taxable year in which the adjustment event occurs. In applying carryover and carryback limitations in such cases, the special rules relating to the application of the taxable-year limitation for losses provided in the preceding paragraph are inapplicable.

Amendments to § 1.338(h)(10)–1T

Section 1.338(h)(10)–1T is amended to provide rules for the adjustment of the selling consolidated group's basis in unacquired target stock when the MADSP formula election is made or revoked after disposition of the unacquired stock. The amendment provides that if such unacquired target stock has been disposed of before the adjustment to the basis of such stock is made, the adjustment shall be treated under principles of tax law applicable when part of the cost of an asset is paid after the asset has been disposed of.

Comments Requested

Comments are requested on the contingent payment, etc. rules of § 1.338(b)–3T with a view toward simplifying the method of taking such payments, etc. into account and allocating them to target's assets. Such comments should address the concern that any simplified method should not distort the character of the gain (or loss) recognized by a taxpayer. For example, if the general rules of § 1.338(b)–3T would treat a basis increase amount as a capital loss with respect to an acquisition date asset that had been disposed of, the simplified method should not transmute that capital loss into a reduction of ordinary income as might occur if the basis increase amount were merely allocated to other depreciable assets held by target when the adjustment event occurs.

Comments are also requested on the need for an adjustment to adjusted grossed-up basis when stock is purchased from minority shareholders after the acquisition date at an average price greater than the purchaser's average per share basis in recently purchased stock. If such adjustment is considered appropriate, commentators should recommend the appropriate

mechanism for implementing such adjustment. In this regard, commentators should address the manner in which all other relevant adjustments (*e.g.*, depreciation) should be made.

The temporary regulations reject the specific lien rule by providing that liabilities to which an asset is subject are not specifically allocated to the asset. Comments are requested on under what circumstances, if any, it may be appropriate to follow the specific lien rule for purposes of allocating adjustment grossed-up basis.

Regulatory Flexibility Act; Executive Order 12291

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Drafting Information

The principal authors of these temporary regulations are Bennett C. Steinhauer and Patricia Wendlandt of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.301–1—1.383–3

Income taxes, Corporations, Corporate adjustments, Reorganizations.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805; * * * §§ 1.338(b)–1T through 1.338(b)–3T, 1.338–1T, 1.338–4T, and 1.338(h)(10)–1T are also issued under 26 U.S.C. 338.

Par. 2. Section 1.338–1T is amended as follows:

1. The first sentence of paragraph (b)(8) is amended by inserting "for the taxable year ending at the close of the acquisition date" after " income tax return of old target".

2. Paragraph (f)(3)(i) is amended by inserting a new sentence at the end thereof, to read as set forth below.

3. Paragraph (f) is amended by adding a new paragraph (9) at the end thereof, to read as set forth below.

§ 1.338–1T Elections under section 338(g) of the Internal Revenue Code of 1954 (temporary).

* * * * *

(f) *Certain consequences of section 338 election.* * * *

(3) *Old target's final taxable year otherwise included in consolidated return of selling group*—(i) *General rule.* * * * A "deemed sale return" includes a "combined return" as defined in § 1.338–4T(k)(6).

* * * * *

(9) *Cross reference.* See § 1.338(b)–3T(h) for certain rules relating to any change in the aggregate deemed sale price of old target's assets.

* * * * *

Par. 3. Paragraph (h) of § 1.338–4T is amended as follows:

1. A new sentence is added at the end of paragraph (h)(1) to read as set forth below.

2. A new sentence is added at the end of paragraph (h)(2)(i) to read as set forth below.

3. The last two sentences of paragraph (h)(2)(iii) are revised to read as set forth below.

4. New subdivision (vi) is added at the end of paragraph (h)(2) to read as set forth below.

5. The last sentence of paragraph (h)(3) *Answer 1* (i) is removed and in its place two new sentences are added to read as set forth below.

6. The first two sentences of paragraph (h)(3) *Answer 2* (vi) are removed and in their place three new sentences are added to read as set forth below.

7. *Example (1)* (ii) in paragraph (h)(3) *Answer 2* (vi) is amended by removing the second sentence and by adding two new sentences at the end to read as set forth below.

8. In *Example (2)* in paragraph (h)(3) *Answer 2* (vi)—

a. The first word of the footnote is removed and there is added in its place the words "For an item of section 1245 property, section".

b. Two new sentences are added at the end thereof to read as set forth below.

9. In *Example (3)* in paragraph (h)(3) *Answer 2* (vi)—

a. The first table is amended by removing the word "Goodwill" and adding in its place the word "Land".

b. Two new sentences are added immediately before the words "The following table breaks the ADSP of $190,173 down". The new sentences read as set forth below.

10. New *Examples* (4) through (9) are added at the end of paragraph (h)(3) *Answer 2* (vi) to read as set forth below.

11. Paragraph (j)(1) is amended by adding after the second sentence a new sentence to read as set forth below.

12. A new sentence is added at the end of paragraph (j)(2) *Answer 6* to read as set forth below.

§ 1.338–4T Questions and answers relating to miscellaneous issues under section 338 (temporary).

* * * * *

(h) *Determination of section 338(a)(1) deemed sale price*—(1) *Introduction.* * * * See § 1.338(b)–3T (h) and (j) for certain rules and examples relating to any change in the aggregate deemed sale price of old target's assets.

(2) *Definitions*—(i) *ADSP.* * * * In the absence of a subscript, "ADSP" refers to ADSP for Class III assets only. See § 1.338(b)–2T(b).

* * * * *

(iii) *Allocable ADSP amount.* * * * Except as provided in section 7701(g) (relating to fair market value in the case of nonrecourse indebtedness), the ADSP is allocated among T assets for this purpose in accordance with the rules in § 1.338(b)–2T (without regard to § 1.338(b)–2T(c)(2)). Recapture gain on a T asset under the elective ADSP formula is computed by reference to the allocable ADSP amount for that asset.

* * * * *

(vi) *Classes of assets.* The four classes of assets are defined in § 1.338(b)–2T(b). Examples of each class are: Class I, cash; Class II, marketable securities; Class III, assets other than Classes I, II, and IV; and Class IV, goodwill and going concern value.

(3) *Determination of ADSP.*

Question 1: * * *

Answer 1: (i) *General rule.* * * * Except as provided in section 7701(g) (relating to fair market value in the case of nonrecourse indebtedness), for assets other than Class IV assets (*i.e.*, goodwill and going concern value), the same fair market values shall be used for purposes of this paragraph (h) (old T's aggregate deemed sale price) and for purposes of § 1.338(b)–2T (b) and (c)(1) or (c)(3) (allocating new T's adjusted grossed-up basis to its assets). If the elective ADSP formula is not used, a proper appraisal of Class IV assets will

be considered evidence of their fair market value.

* * * * *

Question 2: * * *

Answer 2: * * *

(vi) *Sample elective ADSP formula.* The sample ADSP formual shown below takes into account the existence of recapture gain arising under sections 1245 and 338(c)(1). For illustrative purposes, *Examples (1)* through *(3)* of this subdivision (vi) assume that the target has only Class III assets (*e.g.*, property other than certain cash items, certain securities, and goodwill, etc.). For examples illustrating the effect on the elective ADSP formula of Class I, II, or IV assets, see *Examples (4)* through (9) of this subdivision (vi). * * *

Example (1). * * *

(ii) * * * Since the ADSP for T ($88,616) does not exceed the fair market value of T's one asset ($100,000), a Class III asset, its entire ADSP is allocated to that asset. See § 1.338(b)–2T(c)(1) (relating to fair market value limitation).

Example (2). * * * Since the ADSP for T ($89,127.12) does not exceed the fair market value of T's one asset ($100,000), a Class III asset, its entire ADSP is allocated to that asset. See § 1.338(b)–2T(c)(1) (relating to fair market value limitation).

Example (3). * * * Since the ADSP for T ($190,172.76) does not exceed the sum of the fair market values of all of T's assets ($215,000), and those assets are all Class III assets, its entire ADSP is allocated to those assets. See § 1.338(b)–2T(c)(1) (relating to fair market value limitation). * * *

Example (4). Assume the same facts as in *Example (1)*, except that P purchases all of the stock of T for $85,000 and that T has $10,000 of cash, a Class I asset. The sample elective ADSP formula as applied to these facts is modified by referring to the amount of the Class I assets as "I". This modified formula is as follows:

$$ADSP = G - I + L + t_R \times [(\text{Lesser of R or } ADSP) - B]$$
$$ADSP = (\$85,000/1) - \$10,000 + \$0 + .46 \times [(\text{Lesser of } \$80,000 \text{ or } ADSP) - \$50,400]$$
$$ADSP = \$75,000 + 0 + .46 \times [(\text{Lesser of } \$80,000 \text{ or } ADSP) - \$50,400]$$

The remainder of the calculation and result are the same as in *Example (1)*.

Example (5). Assume the same facts as in *Example (2)*, except that P purchases the 80 shares for $68,000 and that T has $10,000 of cash, a Class I asset. The elective ADSP formula used in *Example (4)* as applied to these facts is as follows:

$$ADSP = G - I + L + t_R \times [(\text{Lesser of R or } ADSP) - B] + C \times t_R \times [ADSP - Cb)$$
$$ADSP = (\$68,000/.8) - \$10,000 + 0 + .46 \times [(\text{Lesser of } \$80,000 \text{ or } ADSP) \times \$50,400] + .20 \times .28 \times [ADSP - (\text{Lesser of } \$80,000 \text{ or } ADSP)]$$
$$ADSP = \$85,000 - \$10,000 + .46 \times [(\text{Lesser of } \$80,000 \text{ or } ADSP) - \$50,400] + .20 \times .28 \times [ADSP - (\text{Lesser of } \$80,000 \text{ or } ADSP)]$$
$$ADSP = \$75,000 + .46 \times [(\text{Lesser of } \$80,000 \text{ or } ADSP) - \$50,400) + .20 \times .28 \times [ADSP - (\text{Lesser of } \$80,000 \text{ or } ADSP)]$$

The remainder of the calculation and result are the same as in *Example (2)*.

Example (6). Assume the same facts as in *Example (5)*, except that T does not hold any cash. Assume further that T holds marketable securities, a Class II asset, it acquired 10 years ago having a fair market value of $10,000 and a basis of $4,000. The sample elective ADSP formula as applied to these facts is modified by referring to the fair market value of the Class II asset as "II" and the basis of that asset as "B_{II}." This modified formula for calculating the ADSP of the section 1245 property is as follows:

$$ADSP = G - II + L + t_R \times [(\text{Lesser of R or } ADSP) - B] + C \times t_R \times [(ADSP - Cb) + (II - B_{II})]$$
$$ADSP = (\$68,000/.8) - \$10,000 + 0 + .46 \times [(\text{Lesser of } \$80,000 \text{ or } ADSP] - \$50,400] + .20 \times .28 \times [ADSP - (\text{Lesser of } \$80,000 \text{ or } ADSP)] + (\$10,000 - \$4,000)]$$

In this case, assume that for the item of section 1245 property, the recomputed basis is less than the allocable ADSP amount for that item. The elective ADSP formula computation, as applied to this assumption, is as follows:

$$ADSP = \$85,000 - \$10,000 + 46 \times (\$80,000 - \$50,400) + 056 \times [(ADSP - \$80,000) + (\$6,000)]$$
$$ADSP = \$75,000 + (.46 \times 29,600) + .056ADSP - \$4,480 + \$336$$
$$ADSP = \$75,000 + \$13,616 + 056ADSP - \$4,480 + \$336$$
$$ADSP - .056ADSP + \$84,472$$
$$.944ADSP/.944 = \$84,472/.944$$
$$ADSP = \$89,483.05$$

Since the ADSP for T's Class III asset ($89,483.05) does not exceed its fair market value, its entire ADSP for its Class III assets is allocated to its one asset in the class. See § 1.338(b)–2T (b) and (c)(1). The deemed selling price for the marketable securities (Class II assets) is their fair market value ($10,000).

Summary of Calculation

1. Grossed-up basis of P's recently purchased T stock	$85,000.00
2. Less: Deemed selling price of Class II assets	10,000.00
3. Subtotal	75,000.00
4. Tax on section 1245 depreciation recapture gain	13,616.00
5. Tax on section 338(c)(1) gain on all property ($531.05* + $336)	867.05
6. ADSP for Class III property (Sum of lines 3+4+5)	89,483.05

*.056 × ($89,483.05 + $80,000).

Example (7). Assume the same facts as in *Example (1)*, except that T has goodwill with an appraised value $10,000. The result is the same as in *Example (1)* when the elective ADSP formula is used because the appraised value of goodwill is not taken into account under the formula, and, so long as the ADSP for T's Class III asset does not exceed its fair market value, goodwill does not arise under the formula.

Example (8). Assume the same facts as in *Example (7)*, except that P purchases all of the stock of T for $100,000 and the recomputed basis of the section 1245 property is $210,000. The elective ADSP formula as applied to these facts is as follows:

$$ADSP = G + L + t_R \times [(\text{Lesser of R or } ADSP) - B]$$
$$ADSP = (\$100,000/1) + \$0 + .46 \times [(\text{Lesser of } \$210,000 \text{ or } ADSP) - \$50,400]$$

ADSP—Recomputed basis measurement:

$$ADSP = \$100,000 + .46 \times (\$210,000 - \$50,400)$$
$$ADSP = \$173,416$$

ADSP—ADSP measurement:

$$ADSP = \$100,000 + .46(ADSP - \$50,400)$$
$$ADSP = \$100,000 + (.46 \times ADSP) - \$23,184$$
$$ADSP = \$76,816 + .46\ ADSP$$
$$ADSP - .46\ ADSP = \$76,816$$
$$.54ADSP/.54 = \$76,816/.54$$
$$ADSP = \$142,251.85$$

Accordingly, under the elective ADSP formula, as initialy applied, the ADSP of T would be $142,251.85, *i.e.*, the ADSP measurement ($142,251.85) which is less than the recomputed basis measurement ($173,416). Since this ADSP for T ($142,251.85) exceeds the fair market value of T's Class III ($100,000), ADSP allocated to that asset is limited to the asset's fair market value under § 1.338 (b)–2T(c)(1). Thus, the elective ADSP formula must be applied to compute the ADSP for T's Class IV property (*e.g.*, goodwill). The sample ADSP formula as applied to this computation is modified by using III to refer to the fair market value of the Class III asset (*i.e.*, the section 1245 property) and $ADSP_{IV}$ to refer to the ADSP for Class IV property. This modified formula is as follows:

$$ADSP_{IV} = G - III + L + t_R \times [(\text{Lesser of R or } III) - B]$$
$$ADSP_{IV} = \$100,000 - \$100,000 + 0 + .46 \times (\text{Lesser of } \$210,000 \text{ or } \$100,000) - \$50,400)$$
$$ADSP_{IV} = .46 - (\$100,000 - \$50,400)$$
$$ADSP_{IV} = \$22,816$$

Thus, the ADSP for the Class IV property is $22,816. Note that the appraised value of the goodwill is irrelevant.

Summary of Calculation

1. Grossed-up basis of P's recently purchased stock	$100,000
2. Less: Deemed selling price of Class III property	100,000
3. Subtotal	0
4. Tax on section 1245 recapture gain	22,816
5. ADSP for Class IV property	22,816

Example (9). Assume the same facts as in *Example (8)*, except that P purchases only 80 of the 100 outstanding shares of T's only class of stock for $96,000. Assume further that T's assets, all of which have been held for more than one year, are as follows:

	Class	Basis	Fair market value
1. Cash	I		*$10,000
2. Marketable security	II	$4,000	10,000
3. Section 1245 property (recomputed basis $210,000).	III	50,400	100,000
4. Goodwill	IV	3,000	**15,000

*Amount.
**Appraised value.

The elective ADSP formula as applied to these facts is modified by referring to items for a class of property by using Roman subscripts. (Since there is only one asset in each class, subscripts as used in *Example (3)* are not necessary.) The modified formula is as follows:

$ADSP = G - I - II + L + t_R \times [(\text{Lesser R or } ADSP) - B_{III}] + C \times t_R \times [(ADSP - {}^{C}B_{III}) + (II - B_{II})]$

$ADSP = (\$96,000/.8) - \$10,000 - \$10,000 + 0 + .46 \times [(\text{Lesser } \$210,000 \text{ or } ADSP) - \$50,400] + .20 \times .28 \times [(ADSP - (\text{Lesser of } \$210,000 \text{ or } ADSP)) + (\$10,000 - \$4,000)]$

In this case, the allocable ADSP amount for the one Class III asset is less than its recomputed basis. The modified elective ADSP formula, based on these assumptions, is applied as follows:

$ADSP = \$120,000 - \$0,000 + .46(ADSP - \$50,400) + .20 \times .28 \times (\$10,000 - \$4,000)$* * *)

* * *Section 338(c)(1) gain does not exist in this case since the measure of section 1245 depreciation recapture is the ADSP measure. See the footnote in *Example (2)*.

$ADSP = \$100,000 + .46ADSP - \$23,184 + .056 \times (\$6,000)$
$ADSP = \$100,000 + .46ADSP - \$23,184 + \$336$
$ADSP = .46ADSP = \$77,152$
$.54ADSP/.54 = \$77,152/.54$
$ADSP = \$142,874.07$

Accordingly, under the modified elective ADSP formula, as initially applied, the ADSP of T would be $142,874.07, an amount that exceeds the fair market value of T's one Class III asset ($100,000). Thus, ADSP allocated to that asset cannot exceed $100,000 under § 1.338(b)(-2T(c)(1). It follows that the elective ADSP formula must be applied to compute the ADSP for T's Class IV property (e.g. goodwill). The modified ADSP formula, as used initially in this example, is further modified in the manner shown in *Example (8)*. In this example, the application of this further modified formula assumes that the measure of section 1245 depreciation recapture is fair market value so that section 338(c)(1) gain cannot exist. (See the preceding footnote.) This further modified formula is as follows:

$ADSP_{IV} = G - I - II - III + L + t_R \times (III - B_{III}) + C \times t_R \times [(II - B_{II})(ADSP_{IV} - B_{IV})]$

$ADSP_{IV} = \$120,000 - \$10,000 - \$10,000 - \$100,000 + 0 + .46 \times (\$100,000 - \$50,400) + .20 \times .28 \times [(\$10,000 - \$4,000) + (ADSP_{IV} - \$3,000)]$

$ADSP_{IV} = .46 \times \$49,600 + .056 \times (\$6,000 + ADSP_{IV} - \$3,000)$
$ADSP_{IV} = \$22,816 + \$336 + .056ADSP_{IV} - \$168$
$ADSP_{IV} = .056ADSP_{IV} = \$22,984$
$.944ADSP_{IV}/.944 = \$22,984/.944$
$ADSP_{IV} = \$24,347.46$

Thus, the ADSP for the Class IV property is $24,347.46. Note that the appraised value for the goodwill is irrelevant.

Summary of calculation:

1. Grossed-up basis of P's recently purchased stock	$120,000.00
2. Less: deemed selling price of—	
a. Class I property	10,000.00
b. Class II property	10,000.00
c. Class III property	100,000.00
d. Total	120,000.00
3. Subtotal	0
4. Tax and section 1245 recapture gain	22,816.00
5. Tax on section 338(c)(1) gain on—	
a. Class II property	336.00
b. Class IV property	1,195.46*
c. Total	1,531.46
6. ADSP for Class IV property (Sum of lines 3 + 4 + 5)	24,347.46

*.056 x ($24,347.46 = $3,000).

(j) *Determination of basis of target assets after section 338 election*—(1) *Introduction.* * * * Rules relating to allocation of adjusted grossed-up basis among T's assets are provided in §§ 1.338(b)–2T and 1.338(b)–3T. * * *

(2) *Determination of adjusted grossed-up basis.*

* * * * *

Question 6: * * *

Answer 6: * * * See also § 1.338(b)–1T(d)(2).

* * * * *

Par. 4. § 1.338(h)(10)–1T is amended by adding a new sentence at the end of paragraph (f)(4) and by adding a new paragraph (f)(5). The added provisions read as follows:

§ 1.338(h)(10)–1T Elective recognition by selling consolidated group of deemed sale gain or loss on target's assets (temporary).

* * * * *

(f) *Deemed sale price.* * * *

(4) *Procedure for electing MADSP formula and revoking that election.* * * * If such unacquired T stock has been disposed of before the adjustment to its basis is made, the members of the S group shall treat the adjustment under principles of tax law that apply when the purchase price of an asset is changed after the asset has been disposed of.

(5) *Cross-reference.* See § 1.338(b)–3T(h) for adjustments to the aggregate deemed sale price of old target's assets because of events occurring after the acquisition date.

* * * * *

Par. 5. There are added in the appropriate place the following new sections to read as follows:

§ 1.338(b)–1T Adjusted grossed-up basis (temporary).

(a) *Scope.* This section provides rules under section 338(b) to determine the adjusted grossed-up basis of a target for which a section 338 election is made. Adjusted grossed-up basis is allocated among the assets of target in accordance with § 1.338(b)–2T to determine the price at which the assets of the target are deemed to have been purchased. Subsequent adjustments to grossed-up basis and the allocation of such adjustments to target's assets may be made under § 1.338(b)–3T. This section does not apply to transactions to which section 224(d)(5) of the Tax Equity and Fiscal Responsibility Act of 1982 (as added by section 306(a)(8)(B)(i) of the Technical Corrections Act of 1982) applies. For rules relating to such transactions, see § 1.338–2T.

(b) *Nomenclature and definitions*—(1) *Nomenclature.* The nomenclature set out in § 1.338–4T(b)(1) also applies to this section.

(2) *Definitions*—(i) *In general.* The definitions in section 338 and §§ 1.338–1T and 1.338–4T also apply to this section.

(ii) *Adjustment events.* "Adjustment events" are increases (or decreases) in the consideration paid for recently or nonrecently purchased stock, reductions in target's liabilities included in adjusted grossed-up basis as of the beginning of the day after the acquisition date, and old target liabilities that become fixed and determinable.

(c) *General rule*—(1) *Adjusted grossed-up basis.* "Adjusted grossed-up basis" is the sum of (i) the grossed-up basis of recently purchased stock (as defined in paragraph (d) of this section), (ii) the basis of nonrecently purchased stock (as defined in paragraph (e) of this section), (iii) the liabilities of target (as defined in paragraph (f) of this section), and (iv) other relevant items (as defined in paragraph (g) of this section).

(2) *Time when adjusted grossed-up basis determined.* Adjusted grossed-up basis is initially determined at the beginning of the day after the acquisition date of target. However, adjustment events that occur during new target's first taxable year are taken into account for purposes of determining adjusted grossed-up basis and basis of target's assets as if they had occurred at the beginning of the day after the acquisition date.

(d) *Grossed-up basis of recently purchased stock*—(1) *In general.* The

term "grossed-up basis of recently purchased stock" means the product of (i) the basis of the recently purchased stock at the beginning of the day after the acquisition date, multiplied by (ii) the fraction set forth in section 338(b)(4). For further detail, see § 1.338–4T(j)(2) *Answer 1* (ii).

(2) *Target subsidiary.* If a target (T) owns stock in an affected target (T1), the grossed-up basis of the recently purchased T1 stock is the product of—

(i) The basis of the T1 stock in the hands of T as of the beginning of the day after T's acquisition date, multiplied by

(ii) The fraction set forth in section 338(b)(4).

Thus, for example, if T is deemed to purchase 80 percent (by value) of T1's stock by reason of section 338(h)(3)(B), the grossed-up basis of recently purchased T1 stock is determined by multiplying 100/80 times the amount of adjusted grossed-up basis of T's stock allocated to T1's stock under § 1.338(b)–2T. See also § 1.338–4T(j)(2) *Answer 6.*

(e) *Basis of nonrecently purchased stock.* In the absence of an election under section 338(b)(3) ("gain recognition election"), the basis of nonrecently purchased stock is the historic basis in that stock. See § 1.338–4T(j)(2) for rules relating to the gain recognition election.

(f) *Liabilities of target*—(1) *In general.* The liabilities of target include its liabilities (and the liabilities to which the target's assets are subject) as of the beginning of the day after the acquisition date (other than liabilities that were neither liabilities of old target nor liabilities to which old target's assets were subject). Unless an election is made under section 338(h)(10), liabilities of target also include income tax liabilities resulting from the deemed sale of its assets under section 338(a)(1).

(2) *Excluded obligations*—(i) *In general.* In order to be included in adjusted grossed-up basis at the beginning of the day after the acquisition date, an obligation must be a bona fide liability of target as of that date which is properly includable in basis under principles of tax law that would apply if new target had acquired old target's assets from an unrelated person and, as part of the transaction, had assumed or taken property subject to the obligation. Thus, for example, if, as of the beginning of the day after the acquisition date, the amount of a contingent or speculative obligation of target is not properly includable in basis under the preceding sentence, the obligation is not initially included in adjusted grossed-up basis.

(ii) *Time when excluded obligations taken into account.* Obligations that, under this subparagraph (2), are initially excluded from adjusted grossed-up basis, shall be taken into account in redetermining adjusted grossed-up basis and the basis of target's assets under principles of tax law that would apply if new target had acquired old target's assets directly from an unrelated person and, as part of the transaction, had assumed or taken property subject to those obligations. For the application of these principles of tax law to certain contingent liabilities that are initially excluded from adjusted grossed-up basis under this subparagraph (2), see § 1.338(b)–3T.

(3) *Liabilities taken into account in determining amount realized on subsequent disposition.* In determining the amount realized on a subsequent sale or other disposition of property deemed purchased by new target, the entire amount of any liability included in adjusted grossed-up basis is considered to be an amount taken into account in determining new target's basis in property which secures such liability for purposes of applying § 1.1001–2(a). Thus, if a liability is included in adjusted grossed-up basis, § 1.1001–2(a)(3) shall not prevent the amount of such liability from being treated as discharged within the meaning of § 1.1001–2(a)(4) as a result of new target's sale or disposition of the property which secures such liability.

(g) *Other relevant items*—(1) *In general.* Adjusted grossed-up basis may be increased (or decreased) for "other relevant items." For this purpose, other relevant items may only arise from adjustment events that occur after the close of new target's first taxable year and adjustments under paragraph (g)(3) of this section. See § 1.338(b)–3T (relating to the treatment of certain subsequent adjustments to adjusted grossed-up basis).

(2) *Flow-through of relevant item adjustment to target subsidiary.* If the amount of adjusted grossed-up basis of a target (T) allocated to the stock of an affected target (T1) is subsequently increased (or decreased) by reason of an other relevant item under this paragraph (g), the grossed-up basis of the T1 stock (and T1's adjusted grossed-up basis) is then also increased (or decreased) as if the increase (or decrease) in the basis of the stock was an adjustment to the purchase price deemed paid by T for such stock. The resulting increase (or decrease) in adjusted grossed-up basis of T1 is then allocated among T1's assets in accordance with §§ 1.338(b)–2T and 1.338(b)–3T.

(3) *Adjustments by the Internal Revenue Service*—(i) *In general.* In connection with the examination of a return, the District Director may increase (or decrease) adjusted grossed-up basis for items other than those described in paragraph (g) (1) and (2) of this section under the authority of section 338(b)(2) and allocate such amounts to target's assets under the authority of section 338(b)(5) so that adjusted gross-up basis and the basis of target's assets properly reflect the cost to the purchasing corporation of its interest in target's assets. Such items may include distributions from target to the purchasing corporation, capital contributions from the purchasing corporation to target during the 12-month acquisition period, or acquisitions of target stock by purchasing corporation after the acquisition date from minority shareholders at an average price lower than the average cost of recently purchased stock. In determining whether an adjustment is appropriate when stock is purchased after the acquisition date from minority shareholders at a price lower than the cost of recently purchased stock, the District Director will take into account all the facts and circumstances of the particular case. Relevant facts and circumstances may include the amount of the price differential and the reason therefor, the number of shares purchased after the acquisition date, the timing of the purchase, and the source of the additional shares.

(ii) *Examples.* The principles of this subparagraph (3) may be illustrated by the following examples:

Example (1). (i) On January 1, 1988, P purchases one-third of the sole class of outstanding stock of T for $300,000. T has no liabilities. On March 1, 1988, T distributes a dividend to all its shareholders consisting of property with a fair market value of $210,000 of which P receives $70,000. On April 15, 1988, P purchases the remaining T stock for $430,000 and makes an express election for T.

(ii) In appropriate circumstances, the District Director may decrease the adjusted grossed-up basis ("AGUB") of T by $59,500 (the nontaxed portion of the dividend, as defined in section 1059(b)) in order to properly reflect the cost to P of its interest in T's assets which P is deemed to have purchased.

Example (2). (i) T's sole asset is a building worth $100,000. It has no liabilities. T has 100 shares of a single class of stock outstanding. On August 1, 1988, P purchases 10 shares of T stock for $3,000. On June 1, 1989, P purchases 50 shares of T stock for $50,000. On June 14, 1989, P contributes a tract of land to the capital of T and receives 10 additional shares of T stock as a result of the contribution. Both the basis and fair market value of the land at that time are $10,800. On June 30 1989, P

purchases the remaining 40 shares of T stock for $40,000 and makes an express election for T.

(ii) In order to prevent the shifting of basis from the contributed property to other assets of T, the District Director may specifically allocate part of T's AGUB to the contributed property as shown in subdivisions (iii) and (iv) of this example.

(iii) The AGUB of T is $108,800.

(iv) $10,800 of the AGUB is allocated to the land, leaving $98,000 to be allocated among T's other assets, here, only the building.

§ 1.338(b)-2T Allocation of adjusted grossed-up basis among target assets (temporary).

(a) *Introduction*—(1) *In general.* This section prescribes rules under section 338(b)(5) for allocating adjusted grossed-up basis among the assets of a target for which a section 338 election is made.

(2) *Nomenclature and definitions*—(i) *In general.* The nomenclature set out in § 1.338–4T(b)(1) also applies to this section. The definitions in section 338 and §§ 1.338–1T, 1.338–4T, and 1.338(b)–1T also apply to this section.

(ii) *Fair market value.* The "fair market value" of an asset is the gross fair market value of that asset (*i.e.*, fair market value determined without regard to mortgages, liens, pledges, or other liabilities).

(b) *General rule for allocating adjusted grossed-up basis*—(1) *Cash and other items designated by the Internal Revenue Service.* Adjusted grossed-up basis is first reduced by the amount of Class I assets. Class I assets are cash, demand deposits and similar accounts in banks, savings and loan associations (and other similar depository institutions), and other items designated in the Internal Revenue Bulletin by the Internal Revenue Service.

(2) *Other assets*—(i) *In general.* Subject to the limitations and other special rules of paragraph (c) of this section, adjusted grossed-up basis (as reduced by Class I assets) is allocated among Class II assets of target held at the beginning of the day after the acquisition date in proportion to their fair market values at such time, then among Class III assets so held in such proportion, and finally to Class IV assets so held in such proportion.

(ii) *Class II assets.* Class II assets are certificates of deposit, U.S. Government securities, readily marketable stock or securities (within the meaning of § 1.351–1(c)(3)), foreign currency, and other items designated in the Internal Revenue Bulletin by the Internal Revenue Service.

(iii) *Class III assets.* Class III assets are all assets of target (other than Class I, II, and IV assets), both tangible and intangible (whether or not depreciable, depletable, or amortizable).

(iv) *Class IV assets.* Class IV assets are intangible assets in the nature of goodwill and going concern value.

(c) *Certain limitations and special rules for basis allocable to an asset*—(1) *Basis not to exceed fair market value.* The amount of adjusted grossed-up basis allocated to an asset (other than Class IV assets) shall not exceed the fair market value of that asset at the beginning of the day after the acquistion date. In assigning fair market values to Class II or III assets for purposes of this paragraph (c), the fact that the target has assets in the nature of goodwill or going concern value (Class IV assets) must be taken into account. For modification of this fair market value limitation with respect to certain contingent income assets, see § 1.338(b)–3T(g).

(2) *Assets subject to other limitations.* The amount of adjusted grossed-up basis allocated to an asset shall be subject to the limitations under the provisions of the Internal Revenue Code or principles of tax law in the same manner as if such asset were acquired from an unrelated person in a sale or exchange. For example, if the deemed sale (and purchase) of assets is a transaction described in section 1056(a) (relating to basis limitation for player contracts transferred in connection with the sale of a franchise), the amount of adjusted grossed-up basis allocated to a contract for the services of an athlete shall not exceed the limitation imposed by that section. For another example, see § 1.338(b)–1T(f)(2), relating to excluded obigations.

(3) *Special rule for allocating adjusted grossed-up basis when purchasing corporation has nonrecently purchased stock*—(i) *Scope.* This paragraph (c)(3) applies if at the beginning of the day after the acquisition date (A) the purchasing corporation holds nonrecently purchased stock for which a gain recognition election under section 338(b)(3) and § 1.338–4T(j)(2) is not made and (B) the hypothetical purchase price determined under paragraph (c)(3)(ii) of this section exceeds the adjusted grossed-up basis determined under § 1.338(b)–1T(c)(1). The determinations required under the preceding sentence shall be made without regard to adjustment events occurring after the close of new target's first taxable year.

(ii) *Determination of Hypothetical purchase price.* Hypothetical purchase price is the sum of the grossed-up basis of recently purchased stock as determined under § 1.338–4T(h)(3) *Answer 2* (ii) and liabilities of target.

(iii) *Allocation of adjusted grossed-up basis.* Subject to the limitations in paragraph (c) (1) and (2) of this section, adjusted grossed-up basis (after reduction by the amount of Class I assets) is allocated among Class II, III, and IV assets of target held at the beginning of the day after the acquisition date in proportion to their fair market values at such time. For this purpose, the fair market value of Class IV assets is deemed to be the excess, if any, of the hypothetical purchase price over the sum of (A) the amount of the Class I assets and (B) the fair market values of Class II and III assets.

(d) *Examples.* The provisions of this section and § 1.338(b)–1T may be illustrated by the following examples:

Example (1). (i) T owns 90% of the only class of outstanding stock of T1. P purchases 100% of the only class of outstanding stock of T for $2,000 and makes an express election for T. The express election for T causes a deemed election for T1 under section 338(f)(1). The grossed-up basis of the T stock is $2,000 *i.e.*, $2,000×1/1.

(ii) Assume that the liabilities of T as of the beginning of the day after the acquisition date (including income tax liabilities arising on the deemed sale of its assets) are as follows:

Liabilities (nonrecourse mortgage plus unsecured liabilities)	$700
Taxes payable	300
Total	1,000

(iii) The adjusted grossed-up basis ("AGUB") of T is determined as follows:

Grossed-up basis	$2,000
Total liabilities	1,000
AGUB	3,000

(iv) Assume that, at the beginning of the day after the acquisition date, T's cash and the fair market values of T's Class II and III assets are as follows:

Asset class	Asset	Fair market value
I	Cash	*$200
II	Portfolio of marketable securities	300
III	Inventory	300
III	Accounts receivable	600
III	Building	1,800
III	Land	200
III	Investment in T1	450
	Total	2,850

*Amount.

(v) Under paragraph (b)(2) of this section the amount of AGUB allocable to T's Class II and III assets is reduced by the amount of cash to $2,800, *i.e.*, $3,000 – $200. $300 of AGUB is then allocated to marketable securities. Since the remaining amount of AGUB is $2,500 (*i.e.*, $3,000 – ($200 + $300)), an amount which exceeds the sum of the fair market values of T's Class III assets, the amount allocated to each Class III asset is its fair market value:

Inventory	$300
Accounts receivable	600
Building	800
Land	200
Investment in T1	450
Total	2,350

(vi) The amount allocated to T's Class IV assets (assets in the nature of goodwill and going concern value) is $150, *i.e.*, $2,500−$2,350.

(vii) The grossed-up basis of the T1 stock is $500, *i.e.*, $450×1/.9.

(viii) Assume that the liabilities of T1 as of the beginning of the day after the acquisition date (including income tax liabilities arising on the deemed sale of its assets) are as follows:

General liabilities	$100
Taxes payable	20
Total	120

(ix) The AGUB of T1 is determined as follows:

Grossed-up basis of T1 stock	$500
Liabilities	120
AGUB	620

(x) Assume that at the beginning of the day after the acquisition date, T1's cash and the fair market values of its Class III assets are as follows:

Asset class	Asset	Fair market value
I	Cash	*$50
III	Patent	350
III	Equipment	200
	Total	600

*Amount.

(xi) The amount of AGUB allocable to T1's Class III assets is first reduced by the $50 of cash.

(xii) Since the remaining amount of AGUB ($570) is an amount which exceeds the sum of the fair market values of T1's Class III assets, the amount allocated to each Class III asset is its fair market value:

Patent	$350
Equipment	200
Total	550

(xiii) The amount allocated to T1's Class IV assets (assets in the nature of goodwill and going concern value) is $20, *i.e.*, $570−$550.

Example (2). (i) Assume that the facts are the same as in *Example (1)* except that P has, for five years, owned 20% of T's stock, which has a basis in P's hands at the beginning of the day after the acquisition date of $100, and P purchases the remaining 80% of T's stock for $1,600. P does not make a gain recognition election under section 338(b)(3).

(ii) Under paragraph (d) of § 1.338(b)-1T, the grossed-up basis of recently purchased T stock is $1,600, *i.e.*, $1,600×(1−.2)/.8.

(iii) The AGUB of T is determined as follows:

Grossed-up basis of recently purchased stock	$1,600
Basis of nonrecently purchased stock	100
Liabilities	1,000
AGUB	2,700

(iv) Since P holds nonrecently purchased stock, the hypothetical purchase price of the T stock must be computed and is determined as follows:

Grossed-up basis of recently purchased stock as determined under § 1.338-4T(h) ($1,600/.8)	$2,000
Liabilities	1,000
Total	3,000

(v) Since the hypothetical purchase price ($3,000) exceeds the AGUB (and no gain recognition election is made under section 338(b)(3)), AGUB is allocated under paragraph (c)(3) of this section.

(vi) The amount of AGUB ($2,700) available to allocate to T's assets is reduced by the amount of cash to $2,500 *i.e.*, $2,700−$200. This $2,500 balance is then allocated among the Class II, III, and IV assets in proportion to, and not in excess of, their fair market values.

(vii) Under paragraph (c)(3) of this section, the fair market value of Class IV assets is deemed to be $150, *i.e.*, the $3,000 hypothetical purchase price minus $2,850 (the sum of T's cash, $200, and the fair market values of its Class II and III assets, $2,650). The allocation is as follows:

Portfolio of marketable securities	*$268
Inventory	268
Accounts receivable	536
Building	714
Land	178
Investment in T1	402
Goodwill (and going concern value)	134
Total	2,500

*All numbers rounded for convenience.

(viii) If the AGUB of T is increased (or decreased) as a result of a subsequent adjustment, the hypothetical purchase price and the deemed fair market value of the Class IV assets shall be redetermined and the increase (or decrease) in AGUB shall be allocated among T's acquisition date assets pursuant to § 1.338(b)-3T(f). The increase (or decrease) in AGUB is allocated pursuant to § 1.338(b)-3T(f) even if the hypothetical purchase price, as redetermined, no longer exceeds AGUB, as redetermined.

§ 1.338(b)-3T Subsequent adjustments to adjusted grossed-up basis (temporary).

(a) *Scope*—(1) *In general.* This section provides rules for redetermining adjusted grossed-up basis to account for adjustment events that occur after the close of new target's first taxable year. These adjustments must be made upon the payment of contingent amounts for recently or nonrecently purchased stock, the change in a contingent liability of old target to one which is fixed and determinable, reductions in the amounts paid for recently or nonrecently purchased stock, and reductions in liabilities of target (and the liabilities to which its assets are subject) that were taken into account in determining adjusted grossed-up basis. Adjusted grossed-up basis is redetermined under this section only if such an adjustment would be required, under general principles of tax law, in connection with an actual asset purchase by new target from an unrelated person. This section also provides rules for the allocation of such adjustments subsequent to the close of new target's first taxable year. For the treatment of adjustments prior to the close of new target's first taxable year, see §§ 1.338(b)-1T and 1.338(b)-2T.

(2) *Exceptions to applicability of section.* This section does not apply to a reduction in indebtedness that is (1) includible in gross income as discharge of indebtedness income (or would be includible but for section 108(a)), (2) due to a contribution to capital, (3) payment of a liability, or (4) the discharge of a liability within the meaning of § 1.1001-2.

(3) *Adjustment of aggregate deemed sale price.* See paragraph (h) of this section for certain rules relating to a change in the aggregate deemed sale price of target's assets.

(b) *Nomenclature and definitions*—(1) *Nomenclature.* The nomenclature set out in § 1.338-4T(b)(1) also applies to this section.

(2) *Definitions*—(i) *In general.* The definitions in section 338 and §§ 338-1T, 1.338-4T, 1.338(b)-1T, and 1.338(b)-2T also apply to this section.

(ii) *Contingent liability.* A contingent liability is a liability of target at the beginning of the day after the acquisition date that is not fixed and determinable by the close of new target's first taxable year.

(iii) *Contingent amount.* The term "contingent amount" means the amount of the consideration to be paid for recently or nonrecently purchased stock that is not fixed and determinable by the close of new target's first taxable year, plus contingent liabilities of target.

(iv) *Reduction amount.* The term "reduction amount" means a reduction after the close of new target's first taxable year in either (A) the consideration paid for recently or nonrecently purchased stock, or (B) a liability of target (or a liability to which one or more of its assets are subject) that has been taken into account in determining adjusted gross-up basis.

(v) *Acquisition date asset.* The term "acquisition date asset" means any asset held by new target at the beginning of the day after the acquisition date (other than Class I assets).

(c) *General rule*—(1) *Time when increases in adjusted gross-up basis taken into account.* A contingent amount

that is taken into account for purposes of calculating adjusted grossed-up basis and the bases of assets of target is taken into account at the time at which such amount becomes fixed and determinable.

(2) *Time when decreases in adjusted grossed-up basis taken into account.* A reduction amount is taken into account for purposes of calculating adjusted grossed-up basis and the bases of assets of target when the reduction in the consideration paid or the reduction of the liability occurs.

(3) *Amount of increases and decreases in adjusted grossed-up basis.* The amount of an increase (or decrease) in adjusted grossed-up basis described in paragraph (c) (1) or (2) of this section is the difference between (i) adjusted grossed-up basis immediately before the increase (or decrease) and (ii) adjusted gross-up basis recomputed by taking into account the increase (or decrease). For example, if an additional amount is paid for recently purchased stock of target, grossed-up basis of recently purchased stock and adjusted grossed-up basis are recomputed by applying the fraction in section 338(b)(4) to the basis of the recently purchased stock at the beginning of the day after the acquisition date, adjusted for additional amounts paid. Any other adjustments required by a change in grossed-up basis would also be taken into account in making the recomputation, such as a change in the basis of nonrecently purchased stock under section 338(b)(3) and, if there has not been a section 338(h)(10) election, any additional income tax liabilities of target resulting from the additional payment.

(d) *Allocation of increases in adjusted grossed-up basis*—(1) *In general.* An increase in adjusted grossed-up basis (as determined under paragraph (c)(3) of this section) is allocated among target's acquisition date assets under § 1.338(b)–2T. Amounts allocable to an acquisition date asset (or with respect to a disposed-of acquisition date asset) are subject to the fair market value limitation and other limitations in § 1.338(b)–2T(c) (1) and (2). Except as provided in paragraph (g) of this section, for the purpose of applying § 1.338(b)–2T(c) (1) and (2), the fair market value is determined at the beginning of the day after the acquisition date. If adjusted grossed-up basis was allocated among target's assets pursuant to § 1.338(b)–2T(c)(3), an increase in adjusted grossed-up basis (as determined under paragraph (c)(3) of this section) is accounted for in accordance with the rules of paragraph (f) of this section.

(2) *Effect of disposition or depreciation of acquisition date assets.* If an acquisition date asset has been disposed of, depreciated, amortized or depleted by new target before a contingent amount is taken into account in redetermining adjusted grossed-up basis, the contingent amount otherwise allocable to such asset is treated under principles of tax law applicable when part of the cost of an asset (not previously reflected in its basis) is paid after the asset has been disposed of, depreciated, amortized or depleted.

(e) *Allocation of decreases in adjusted grossed-up basis*—(1) *In general.* If adjusted grossed-up basis was allocated in accordance with the rules of § 1.338(b)–2T(b)(2), a decrease in adjusted grossed-up basis (as determined under paragraph (c)(3) of this section) is allocated in the following order: (i) first, as a reduction in the bases of target's Class IV acquisition date assets, (ii) second, as a reduction of the bases of target's Class III acquisition date assets in proportion to their fair market values at the beginning of the day after the acquisition date, and (iii) finally, as a reduction of the bases of target's acquisition date assets that are Class II assets in proportion to their fair market values at the beginning of the day after the acquisition date. The decrease in adjusted grossed-up basis allocated to an asset shall not exceed the adjusted grossed-up basis of target previously allocated to the asset. If adjusted grossed-up basis was allocated among target's assets pursuant to § 1.338(b)–2T(c)(3), a decrease in adjusted grossed-up basis (as determined under paragraph (c)(3) of this section) is accounted for in accordance with the rules of paragraph (f) of this section.

(2) *Effect of disposition of assets or reduction of basis below zero.* If an acquisition date asset has been disposed of, depreciated, amortized, or depleted by new target before a reduction amount is taken into account in adjusted grossed-up basis, the decrease in adjusted grossed-up basis attributable to such reduction amount otherwise allocable to such asset is treated under principles of tax law applicable when the cost of an asset (previously reflected in its basis) is reduced after the asset has been disposed of or depreciated, amortized, or depleted. For purposes of this subparagraph (2), an asset is considered to have been disposed of to the extent that its allocable portion of the decrease in adjusted grossed-up basis would reduce its basis below zero.

(3) *Section 38 property.* Section 1.47–2(c) applies to a reduction in basis of section 38 property under this section.

(f) *Special rule for allocation of increases (or decreases) in adjusted grossed-up basis when hypothetical purchase price was used in allocating adjusted grossed-up basis.* (1) *Scope.* This paragraph (f) applies if (i) adjusted grossed-up basis was allocated among new target's Class II, III, and IV assets in accordance with § 1.338(b)–2T(c)(3) and (ii) an adjustment event occurs after the close of new target's first taxable year.

(2) *Allocation of increases (decreases) in adjusted grossed-up basis.* If an adjustment event after the close of new target's first taxable year increases (or decreases) adjusted grossed-up basis, the following items shall be redetermined, taking into account such adjustment event: (i) The hypothetical purchase price, (ii) the deemed fair market value of Class IV assets, and (iii) the adjusted grossed-up basis allocable to each acquisition date asset under § 1.338(b)–2T(c)(3) (the redetermined (c)(3) amount). (The redetermination of the deemed fair market value of Class IV assets under this subparagraph (2) is made by taking into account the target's Class I assets and the fair market values of its Class II and III assets at the beginning of the day after the acquisition date). If the redetermined (c)(3) amount for an acquisition date asset exceeds the amount of adjusted grossed-up basis previously allocated to such asset (taking into account prior adjustments under this paragraph (f)), an amount of adjusted grossed-up basis equal to such excess shall be allocated to such asset. If the amount of adjusted grossed-up basis previously allocated to an acquisition date asset (taking into account prior to adjustments under this paragraph (f)) exceeds the redetermined (c)(3) amount for that asset, an amount equal to such excess shall be allocated as a reduction in the basis of such asset. The rules of paragraph (d)(2) (or (e)(2)) apply for the treatment of amounts allocable under this paragraph (f) to an acquisition date asset that has been disposed of, depreciated, amortized, or depleted.

(3) *Allocation to contingent income assets.* For modification of this rule with respect to certain assets, see paragraph (g) of this section.

(g) *Special rule for allocation of increases (or decreases) in adjusted grossed-up basis to specific assets*—(1) *Patents and similar property*—(i) *Scope.* The rules of this paragraph (g)(1) apply for purposes of allocating an increase (or decrease) in adjusted grossed-up basis to the extent (A) the contingency that results in the increase (or decrease) directly relates to income produced by a particular intangible asset ("contingent income asset"), such as a patent, a

secret process, or a copyright, and (B) the increase (or decrease) is related to such contingent income asset and not to other target assets. Adjusted grossed-up basis, as determined under § 1.338(b)–1T at the beginning of the day after the acquisition date, and any increase (or decrease) to adjusted grossed-up basis to which this paragraph (g) does not apply, are allocated among target's acquisition date assets (including contingent income assets) in accordance with the provisions of § 1.338(b)–2T and paragraph (d), (e), or (f) of this section.

(ii) *Specific allocation.* Subject to the fair market value limitation and other limitations in § 1.338(b)–2T(c) (1) and (2), any increase (or decrease) to adjusted grossed-up basis to which this paragraph (f) applies is allocated (A) first, specifically to the contingent income asset to which the increase (or decrease) relates and, then, (B) in accordance with the provisions of paragraph (d), (e), or (f) of this section. Solely for purposes of applying the fair market value limitation and other limitations of § 1.338(b)–2T(c) (1) and (2) to a contingent income asset, the fair market value of such asset may be redetermined as of the time when the contingent amount (or reduction amount) is taken into account under paragraph (c) of this section. However, the fair market value limitation and other limitations of § 1.338(b)–2T(c) (1) and (2) as they apply to target's other acquisition date assets are not affected by such adjustments.

(2) *Internal Revenue Service authority.* In connection with the examination of a return, the District Director, in appropriate cases, may apply the principles of paragraph (g)(1) of this section to allocate an increase (or decrease) in adjusted grossed-up basis among particular of target's acquisition date assets to the extent such allocation is necessary to reflect properly the consideration that relates to each of those assets.

(h) *Changes in old target's aggregate deemed sale price of assets*—(1) *General rule*—(i) *In general.* Pursuant to general principles of tax law, the price at which old target is deemed to have sold its assets shall be adjusted to take into account adjustment events occurring after the acquisition date. In making such an adjustment, recognition of income (or loss) under this paragraph (h) with respect to the deemed sale of assets is not precluded because the target is treated as a new corporation after the acquisition date. To the extent general tax law principles require seller to account for adjustment events, target (or a member of the selling consolidated group in the event of an election under section 338(h)(10)) shall make such an accounting, which may result in reporting income, loss, or other amount.

(ii) *Redetermination of aggregate deemed sale price if the elective formula under section 338(h)(11) is used.* If the elective formula under section 338(h)(11) is used to determine the aggregate deemed sale price, that price generally shall be redetermined under § 1.338–4T(h) (or § 1.338(h)(10)–1T(f)(2) if an election under section 338(h)(10) is in effect) to take into account, to the extent required by general principles of tax law, adjustment events occurring after the acquisition date. For example, the aggregate deemed sale price generally shall be redetermined to take into account any additional payments made to the seller for recently purchased stock. If an increase (or decrease) in adjusted grossed-up basis is specifically allocated to a contingent income asset (or other asset) under paragraph (g) of this section, then any redetermination of the fair market value of the asset under that paragraph (g) is taken into account in making adjustments to the aggregate deemed sale price allocable to such asset.

(iii) *Redetermination of aggregate deemed sale price if the elective formula under section 338(h)(11) is not used.* If the elective formula under section 338(h)(11) is not used to determine the aggregate deemed sale price, an adjustment to aggregate deemed sale price may be required under this paragraph (h) only with respect to assets described in paragraph (g) (1)(i) and (2) of this section. In such a case, the adjustment to the portion of the aggregate deemed sale price allocable to such asset shall be the amount of the increase (or decrease) in adjusted grossed-up basis specifically allocated to the asset. However, the amount of the increase (or decrease) allocated to such asset shall not increase (or decrease) the portion of the aggregate deemed sale price allocable to the asset (taking into account all previous adjustments under this paragraph (h)) above or below the fair market value of such asset as of the date an adjustment under this paragraph (h) is required.

(2) *Procedure for transactions in which section 338(h)(10) is not elected—(i) Income or loss included in new target's return.* If an election under section 338(h)(10) is not made, any income, loss, or other amount of old target resulting from a change in the aggregate deemed sale price of old target's assets pursuant to paragraph (h)(1) of this section shall be included in new target's income tax return for new target's taxable year in which such change occurs. The amount of such income, loss, or other amount is determined with reference to old target's deemed sale of assets on the acquisition date. Thus, for example, if after the acquisition date there is an increase in the allocable aggregate deemed sale price of section 1245 property for which the recomputed basis (but not the adjusted basis) exceeded the portion of the aggregate deemed sale price allocable to that particular asset on the acquisition date, the additional gain shall be treated as ordinary income to the extent it does not exceed such excess amount. See paragraph (h)(2)(ii) for the special treatment of old target's carryovers and carrybacks. Although included in new target's income tax return, such income, loss, or other amount is separately accounted for as an item of old target and may not be offset by income, loss, credit, or other amount of new target. The amount of tax on income of old target recognized pursuant to this paragraph (h) is determined as if such income had been recognized in old target's taxable year ending at the close of the acquisition date. Any increase (or decrease) in new target's income tax liability by reason of this paragraph (h)(2)(i) shall be allocated among new target's acquisition date assets in accordance with paragraph (d), (e), (f), or (g) of this section when such liability becomes fixed and determinable.

(ii) *Carryovers and carrybacks*—(A) *Loss carryovers to new target taxable years.* A net operating loss or net capital loss of old target may be carried forward to a taxable year of new target, under the principles of section 172 or 1212, as the case may be, but is allowed as a deduction only to the extent of any recognized income of old target for such taxable year, as described in paragraph (h)(2)(i) of this section. For this purpose, however, taxable years of new target shall not be taken into account in applying the 15-taxable-year limitation (or other similar limitation) in section 172(b)(1) or the 5-taxable-year limitation (or other similar limitation) in section 1212(a)(1)(B). In applying sections 172(b) and 1212(a)(1), only income, deductions, and other amounts of old target shall be taken into account. Thus, if old target has an unexpired net operating loss at the close of its taxable year in which the deemed asset sale occurred that could be carried forward to a subsequent taxable year, such loss may be carried forward until it is absorbed by old target's income.

(B) *Loss carrybacks to taxable years of old target.* An ordinary loss or capital loss accounted for as a separate item of old target under paragraph (h)(2)(i) of this Action may be carried back to a taxable year of old target under the principles of section 172 or 1212, as the case may be. For this purpose, taxable years of new target shall not be taken into account in applying the 3-taxable-year limitation (or other similar limitation) in section 172(b) or 1212(a).

(C) *Credit carryovers and carrybacks.* The principles described in paragraph (h)(2)(ii) (A) and (B) of this section apply to carryovers and carrybacks of amounts for purposes of determining the amount of a credit allowable under part IV, subchapter A, chapter 1 of the Code. Thus, for example, credit carryovers of old target may only offset income tax attributable to items described in paragraph (h)(2)(i) of this section.

(3) *Procedure for transactions in which section 338(h)(10) is elected*—If an election under section 338(h)(10) is made, any income, loss, or other amount resulting from a change in the aggregate deemed sale price of old target's assets pursuant to paragraph (h)(1) of this section shall be accounted for in determining the taxable income (or other amount) of the member of the selling consolidated group (or other person) to which such income, loss, or other amount is attributable for the taxable year in which such change occurs. The amount of such income, loss, or other amount is determined with reference to old target's deemed sale of assets on the acquisition date.

(i) [Reserved]

(j) *Examples.* This section is illustrated by the following examples. Any contingent amount or reduction amount described in the following examples is exclusive of interest. For rules characterizing deferred contingent payments as principal or interest, see regulations under section 1274 and 1275 (d) or 483.

Example (1). (i) T's assets and their fair market values at the beginning of the day after the acquisition date are as follows:

Asset class	Assets	Fair market value
III	Building	$100
III	Stock of X (not a target)	200
IV	Goodwill (and going concern value).	35
	Total	335

T has no liabilities other than a contingent obligation and T does not use the elective formula under section 338(h)(11).

(ii) On January 1, 1989, P purchases all of the outstanding stock of T for $270 and makes an express election for T. The grossed-up basis of the T stock and T's adjusted grossed-up basis ("AGUB") are both $270. The AGUB is ratably allocated among T's Class III assets in proportion to their fair market values as follows:

Asset:	Basis
Building ($270 x 100/300)	$90
Stock ($270 x 200/300)	180
Total	270

No amount is allocated to the Class IV assets. New T is a calendar year taxpayer. Assume that the X stock is a capital asset in the hands of new T.

(iii) On January 1, 1990, New T sells the X stock and uses the proceeds of the sales to purchase inventory.

(iv) On June 30, 1991, the contingent liability of old T becomes fixed and determinable. The amount of the liability is $60.

(v) T's AGUB increases by $60 from $270 to $330. This $60 increase in AGUB is first allocated among T's acquisition date assets in accordance with the provisions of § 1.338(b)-2T. Since the redetermined AGUB for T ($330) exceed the sum of the fair market values at the beginning of the day after the acquisition date of the Class III acquisition date assets ($300), AGUB allocated to those assets is limited to those fair market values under § 1.338(b)-2T(c)(1). The remaining AGUB of $30 is allocated to goodwill and going concern value (Class IV assets). The amount of increase in AGUB allocated to each acquisition date asset is determined as follows:

Asset	Original AGUB	Redetermined AGUB	Increase in AGUB
Building	$90	$100	$10
X stock	180	200	20
Goodwill and good concern value	0	30	30
Total	270	330	60

(vi) Since the X stock was disposed of before the contingent liability became fixed and determinable, no amount of the increase in AGUB attributable to such stock may be allocated to any T asset. Rather , such amount, $20, is allowed as a capital loss to T for the taxable year 1991 under the principles of *Arrowsmith* v. *Commissioner*, 344 U.S. 6 (1952). In addition, the $10 increase in AGUB allocated to the building is treated as a basis redetermination in 1991. See paragraph (d)(2) of this section.

Example (2). (i) On January 1, 1988, P purchases all of the outstanding stock of T and makes an express election for T. T does not use the elective formula under section 338(h)(11). Assume that the AGUB of T is $500 and is allocated among T's acquisition date assets as follows:

Asset class	Asset	Basis
III	Machinery	$150
III	Land	250
IV	Goodwill and going concern value.	100
	Total	$500

(ii) On June 1, 1994, P filed a claim against the selling shareholders of T in a court of appropriate jurisdiction alleging fraud in the sale of the T stock.

(iii) On January 1, 1995, the former shareholders refund part of the purchase price to P in a settlement of the 1994 lawsuit. This refund results in a decrease of T's AGUB of $140.

(iv) Under paragraph (e)(1) of this section, the decrease in AGUB is allocated among T's acquisition date assets. First, assuming the basis of the goodwill and going concern value on January 1, 1995, is still $100, then $100 of the decrease in AGUB is allocated to that asset. The remaining decrease in AGUB ($40) is allocated to the Class III assets in proportion to their fair market value at the beginning of the day after the acquisition date. Thus, $15 is allocated to the machinery ($40 x $150/$400) and $25 to the land ($40 x $250/$400).

(v) Assume that, as a result of deductions under section 168, the adjusted basis of the machinery immediately before the decrease in AGUB is zero. The machinery, therefore, is treated as if it were disposed of before the decrease is taken into account. T recognizes ordinary income of $15 for the taxable year 1995 under the principles of *Arrowsmith* v. *Commissioner*, 344 U.S. 6 (1952). And the tax benefit rule. No adjustment to the basis of T's assets is made for any tax paid on this amount.

(vi) In summary, the basis of T's acquisition date assets, as of January 1, 1995, is as follows:

Asset:	Basis
Machinery	0
Land	$225
Goodwill and going concern value	0

Example (3). (i) Assume that the facts are the same as in *Example* (2) of § 1.338(b)-2T (d) except that the recently purchased stock is acquired for $1,600 plus certain additional payments which are contingent upon T's future earnings. Thus, T's AGUB, determined as of the beginning of the day after the acquisition date (after reduction by T's cash of $200), is $2,500 and is allocated among T's Class II, III, and IV acquisition date assets pursuant to § 1.338(b)-2T(c)(3)(iii) as follows:

Portfolio of marketable securities	*$268
Inventory	268
Accounts receivable	536
Building	714
Land	178
Investment in T1	402

Goodwill (and going concern value) ...	134
Total ...	2,500

*All numbers rounded for convenience.

(ii) Subsequent to the close of new target's first taxable year, P pays an additional $200 for its recently purchased T stock.

(iii) T's AGUB increases by $200, from $2,700 to $2,900. This $200 increase in AGUB is accounted for in accordance with the provisions of § 1.338(b)–2T (c)(3)(iii) and paragraph (f) of this section.

(iv) The hypothetical purchase price of the T stock is redetermined as follows:

Grossed-up basis of recently purchased stock as determined under § 1.338–4T(h) ($1,800/.8) ...	$2,250
Liabilities ...	1,000
Total ...	3,250

(v) Under § 1.338(b)–2T (c)(3) the redetermined fair market value of Class IV assets is deemed to be $400, *i.e.*, the hypothetical purchase price, as redetermined, of $3,250 minus $2,850 (the sum of T's cash, $200, and the fair market values of its Class II and III assets, $2,650).

(vi) The amount of AGUB available to allocate to T's Class II, III, and IV acquisition date assets is $2,700 (*i.e.*, redetermined AGUB reduced by cash). AGUB allocable to each of T's acquisition date assets (*i.e.*, the redetermined (c)(3) amount) is redetermined using the deemed fair market value of the Class IV asset from subdivision (v) as follows:

Portfolio of marketable securities ...	*$266
Inventory ...	266
Accounts receivable ...	531
Building ...	708
Land ...	177
Investment in T1 ...	398
Goodwill (and going concern value) ...	354
Total ...	2,700

*All numbers rounded for convenience.

(vii) As illustrated by this example, the application of paragraph (f) of this section results in a basis increase for some assets and a basis decrease for other assets. The amount of increase (or decrease) in AGUB allocated to each acquisition date asset is determined as follows:

Asset	Original AGUB	Redetermined (c)(3) *amount*	Increase (or Decrease) *in AGUB*
Portfolio of marketable securities	$266	$266	$(2)
Inventory	268	266	(2)
Accounts receivable	536	531	(5)
Building	714	708	(6)
Land	178	177	(1)
Investment T1	402	398	(4)
Goodwill (and going concern value)	134	354	220
Total	2,500	2,700	200

(viii) If P made a gain recognition election under section 338 (b)(3) with respect to its nonrecently purchased stock, paragraph (f) of this section would be inapplicable.

Example (4). (i) On January 1, 1987, P purchases all of the outstanding T stock and makes an express election for T. The fair market value of T's assets (other than goodwill and going concern value) as of the beginning of the following day is as follows:

Asset class	Assets	Fair market value
III	Equipment	$200
III	Accounts receivable	100
III	Building	500
	Total	800

(ii) T has elected the elective ADSP formula, in accordance with § 1.338–4T(h)(3) *Answer 2* (ii) (B), to determine the aggregate deemed sale price of old T's assets. Assume that the ADSP as so determined is $700. Assume also that the AGUB is equal to $700. T has no liabilities.

(iii) The AGUB of $700 is ratably allocated among T's Class III acquisition date assets in proportion to their fair market values as follows:

	Basis
Asset:	
Equipment ($700×200/800) ...	$175.00
Account receivable ($700×100/800) ...	87.50
Building ($700×500/800) ...	437.50
Total ...	700.00

No amount is allocated to goodwill (or going concern value).

(iv) P and T file a consolidated return for 1987 and each following year with P as the common parent of the affiliated group.

(v) In 1990, a contingent amount of $117 is paid by P for the stock of old T. As a result, additional income is recognized under section 1245 by old T for 1990 on the deemed sale of old T's assets. This income must be reported on the consolidated return of new T for 1990, but it is separately accounted for and may not be absorbed by losses or deductions of P or of new T. Assume that the tax on this income is $3.

(vi) In 1990, there is an increase in T's AGUB of $120, *i.e.*, $117 + $3. The amount of this increase allocated to each acquisition date asset is determined as follows:

Asset	Original AGUB	Redetermined AGUB	Increase
Equipment	$175.00	$200.00	$25.00
Accounts receivable	87.50	100.00	12.50
Building	437.50	500.00	62.50
Goodwill (and going concern value)	0.00	20.00	20.00
Total	700.00	820.00	120.00

Example (5). (i) On June 1, 1990, P purchases all of the stock of T and makes an express election for T. T has one item of section 38 property whose basis on June 2, 1990 is $100,000. An investment credit of $8,000 is allowed to new T for the equipment because of an election under section 48 (q)(4).

(ii) In 1992, part of the purchase price of the T stock is refunded to P. Assume that the amount of the resulting decrease in AGUB allocated to the machinery is $7,000. Pursuant to § 1.47–2(c), the machinery ceases to be section 38 property to the extent of $7,000 of its original basis.

(iii) The additional tax of $560 (8% ×$7,000) resulting from the machine ceasing to be section 38 property is reported on T's return for 1992. Such amount is not an adjustment to AGUB.

Example (6). (i) T has three assets (other than goodwill and going concern value) whose fair market values as of the beginning of the day after the acquisition date are as follows:

Asset Class	*Assets*	*Fair market value*
III	Building	$100
III	Equipment	50
III	Secret process	50
	Total	200

T has no liabilities. Assume that no election under section 338 (h) (10) or (h) (11) is in effect.

(ii) On January 1, 1989, P purchases all of the outstanding T stock for $225 plus 50 percent of the net profits generated by the secret process for each of the next three years, determinable and payable on January 1 of each following year.

(iii) As of the beginning of January 2, 1989, T's AGUB is $225, allocated as follows:

Asset class	*Assets*	*Basis*
III	Building	$100
III	Equipment	50
III	Secret Process	50
IV	Goodwill and going concern value.	25
	Total	225

(iv) On January 1, 1990, $5 is paid by P for the T stock by reason of the net profits from the secret process. The payments are not attributable in any respect to any of T's other acquisition date assets. As a result, T's AGUB on January 1, 1990, is increased by $5.

(v) Assume that as of January 1, 1990, the fair market value of the secret process is determined to be $52.

(vi) On January 1, 1990, only $2 of the $5 increase in AGUB is allocated to the secret process because the increase in AGUB so allocated cannot increase the basis of the secret process above its redetermined fair market value ($52). The balance of the increase is allocated to goodwill and going concern value because the fair market value limitation of § 1.338 (b)–2T(c) (1) precludes allocating additional AGUB to the Class III assets.

(vii) The price for which old target is deemed to have sold the secret process is increased to reflect the $2 allocated to its basis to new target. See § 1.338–4T (h) (3) and paragraph (h) (1) of this section.

(viii) If the fair market value of the secret process as of January 1, 1990, is unchanged from its fair market value as of the beginning of the day after the acquisition date, then the $5 increase in AGUB is allocated to T's goodwill and going concern value.

Example (7). (i) The facts are the same as in *Example (6)* except that—

(A) The secret process is valued at $75 as of the beginning of the day after the acquisition date, and,

(B) P pays $250 for the T stock and the former T shareholders agree to refund a portion of the purchase price to P for each of the three years that the net income from the secret process is less than $15 per year, determinable and payable on January 1 of the next year.

(ii) Assume the net income from the process is less than $15 for 1989, and on January 1, 1990, P receives a refund that reduces the stock purchase price by $3.

(iii) Assume that as of January 1, 1990, the fair market value of the secret process is redetermined to be $65.

(iv) As of January 1, 1990, the AGUB of T is decreased by $3. This decrease is allocated to the secret process, whose basis becomes $72, (*i.e.*, $75—$3, assuming no adjustments thereto other than the decrease in AGUB).

(v) The price for which old target is deemed to have sold the secret process is decreased to reflect the $3 decrease allocated to its basis to new target. See § 1.338–4T(h)(3) and paragraph (h) of this section.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: January 18, 1986.

J. Roger Mentz,

Acting Assistant Secretary of the Treasury.

[FR Doc. 86–1848 Filed 1–23–86; 4:49 pm]

BILLING CODE 4830–01–M

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26 CFR Part 51

[T.D. 8056]

Excise Taxes; Definitions Relating to Exemptions From the Windfall Profit Tax

Correction

In FR Doc. 85–23936, beginning on page 40966, in the issue of Tuesday, October 8, 1985, make the following corrections:

On page 40968, first column, § 51.4994–1(c)(1)(i), third line "1PO" should read "170"; and in the same column, in the first line of paragraph (c)(1)(ii)(A), the section reference is corrected to read, "170(b)(1)(A)(ii)".

BILLING CODE 1505–01–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Freedom of Information Act, Implementation; Fee Schedule

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The schedule of fees charged by the National Labor Relations Board for document search conducted in response to requests for documents made pursuant to the Freedom of Information Act has not been changed since initially established in February 1975. These revisions serve only to change the rule to reflect the direct personnel cost of document searches under current salary levels.

EFFECTIVE DATE: January 29, 1986.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, NW., Room 701, Washington, DC 20570, Telephone: (202) 254–9430.

SUPPLEMENTARY INFORMATION: Pursuant to its authority under section 6 of the National Labor Relations Act, as amended (61 Stat. 136; 29 U.S.C. 156), and in accordance with the requirements of section 552(a)(4)(A) of the Freedom of Information Act, the National Labor Relations Board is amending its rule establishing a uniform schedule of fees to provide for recovery of the direct costs of record search and duplication incurred in responding to requests for Agency records, made pursuant to section 552(a) (2) and (3) of the Freedom of Information Act, as amended (5 U.S.C. 552(a) (2) and (3)).

The present fee schedule as set forth in § 102.117(c)(2)(iv)(a) of the Board's rules was established in 1975 after rulemaking proceedings (40 FR 2591–2592, January 14, 1975; 40 FR 7290–7291, February 19, 1975) and provides for charges of $1.10 for each one-quarter hour or portion thereof of clerical time and $2.85 for each one-quarter hour or portion thereof of professional time. As stated in the rulemaking notice (40 FR 2582) the charges were based upon the cost to the Agency at that time of salary and personnel benefits for clerical employees at the GS–5 salary level and professional employees at the GS–13 salary level. Current experience is that these grade levels continue to represent the average level at which this work is being performed. The 1985 cost to the Agency of salary and personnel benefits for employees at those grade levels, computed on the basis of 225 days (1800 hours) on-duty time per year, will be $10.15 per hour for clerical employees at Grade 5, Step 5, and $26.51 per hour for a professional employee at Grade 13, Step 5. Therefore, on December 17, 1985, the Board proposed that the schedule of fees be revised to provide for a charge of $2.50 for each one-quarter hour or portion thereof of clerical time and a charge of $6.60 for each one-quarter hour or portion thereof of professional time. The Board did not receive any comments on its proposed revisions. The revisions to the rule will be effective immediately upon publication. The other elements of the schedule of fees, including the 10-cent-per-page charge for duplication of records, will remain unchanged.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Freedom of Information.

Accordingly, 29 CFR Part 102, § 102.117(c)(2)(iv)(a), is amended to read as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for Part 102 is revised to read as follows:

Authority: Section 6 of the National Labor Relations Act, 61 Stat. 136, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under section 552(a)(4)(A) of the Freedom of Information Act, 80 Stat. 383, as amended (5 U.S.C. 552(a)(4)(A).

2. Section 102.117 is amended by revising paragraph (c)(2)(iv)(*a*) to read as follows: (The introductory text of (c)(2)(iv) is shown for the convenience of the reader and remains unchanged.)

§ 102.117 Board materials and formal documents available for public inspection and copying; requests for described records; time limit for response; appeal from denial of request; fees for document search and duplication; files and records not subject to inspection.

* * * * *

(c) * * *

(2) * * *

(iv) Persons requesting records from this agency shall be subject to a charge of fees for the direct cost of document search and duplication in accordance with the following schedules, procedures, and conditions:

(a) Schedule of charges:

(1) For each one-quarter hour or portion thereof of clerical time $2.50

(2) For each one-quarter hour or portion thereof of professional time $6.60

(3) For each sheet of duplication (not to exceed 8½ by 14 inches) of requested records $0.10

(4) All other direct costs of search or duplication shall be charged to the requester in the same amount as incurred by the agency.

* * * * *

Dated, Washington, DC, January 22, 1986.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 86-1877 Filed 1-28-86; 8:45 am]

BILLING CODE 7545-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP5F3295/R811; FRL-2960-1]

Pesticide Tolerance for Diclofop-Methyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the herbicide diclofop-methyl and its metabolites in or on the raw agricultural commodity flaxseed. This regulation to establish a maximum permissible level for residues of the herbicide in or on flaxseed was requested in a petition submitted by American Hoechst Corp.

EFFECTIVE DATE: Effective on January 29, 1986.

ADDRESS: Written objections, identified by the document control number [PP5F3295/R811], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT:

By mail:

Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 9, 1985 (50 FR 41216), which announced that American Hoechst Corp., Agricultural Division, Rte. 202-206, North Somerville, NJ 08876, had filed pesticide petition 5F3295 to EPA proposing to amend 40 CFR 180.385 by establishing a tolerance for the combined residues of the herbicide diclofop-methyl (methyl 2-[4-(2,4-dichlorophenoxy)phenoxy] propanoate) and its metabolites 2-[4-(2,4-dichlorophenoxy)phenoxy] propanoic acid and 2-[4-(2,4-dichloro-5-hydroxyphenoxy)phenoxy] propanoic acid, each expressed s diclofop-methyl, in or on the commodity flaxseed at 0.1 part per million (ppm). No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolorance include a rat oral median lethal dose (LD_{50}) with an LD_{50} of 557 to 580 milligrams per kilogram (mg/kg); a dominant lethal mutagenicity study, negative at 100 mg/kg/day (highest level tested); a micronucleus mutagenicity study, negative at 100 mg/kg/day (highest level tested); an Ames test, negative at 5.0 mg/plate (highest level tested); a mutagenicity study with *Schizosaccharomyces pombe*, negative; a gene conversion study in *Saccharomyces cerevisiae*, negative; an unscheduled DNA synthesis study, negative; a rat teratology study with a teratogenetic no-observed-effect level (NOEL) of 100 ppm (highest dose tested) (equivalent to 5.0 mg/kg of body weight (bwt)); a rabbit teratology study with a teratogenetic NOEL of 3 mg/kg/day (highest dose tested) and a NOEL for fetotoxicity of 3.0 mg/kg/day; a 3-generation rat reproduction study with NOEL of 30.0 ppm (1.5 mg/kg of bwt); a 2-year rat feeding/oncogenicity study with a NOEL of 20 ppm (1.0 mg/kg of bwt) (highest level tested); a 2-year mouse feeding/oncogenicity study with systemic NOEL of 2 ppm (0.3 mg/kg of bwt) and a significant increase in liver neoplasms in males and females at the highest dose tested, 20 ppm (2.5 mg/kg/day); and a 15-month dog feeding study with a NOEL of 8 ppm (0.2 mg/kg of bwt).

The Agency has evaluated dietary exposure to diclofop-methyl residues for the commodities proposed. Assuming that 100 percent of the crop will have residues at the tolerance level (0.1 ppm), using a multi-stage model the "worst case" dietary oncogenic risk is calculated to be one incidence in a million. Actual risk will be less, since not all of the flax crop will be treated and those crops treated and sold will have residues less than 0.1 ppm (the level of sensitivity). The incremental increase in risk for flaxseed in the diet is 0.29 percent of the theoretical maximum residue concentration (TMRC) and does not change the calculated total dietary "worst case" risk from already established tolerance.

Based on the NOEL of 2 ppm in the chronic mouse-feeding study and a 100-fold safety factor, the acceptable daily intake (ADI) has been set a 0.003 mg/kg/day with a maximum permissible intake (MPI) of 0.18 mg/day for a 60-kg person. This tolerance and previously established tolerances result in a TMRC of 0.01711 mg/day in a 1.5-kg diet and use 9.50 percent of the ADI.

The pesticide is considered useful for the purpose for which the tolerance is sought. The metabolism of the pesticide is adequately understood, and an adequate analytical method, gas chromatography using an electron-capture detector, is available for enforcement purposes. There is no expectation of secondary residues in meat, milk, poultry, and eggs. There are no regulatory actions pending against the continued registration of the pesticide. Based on the information cited above, the Agency has determined that the establishment of the tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section of 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: January 15, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.385 is amended by adding and alphabetically inserting the commodity flaxseed, to read as follows:

§ 180.385 Diclofop-methyl; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Flaxseed	0.1
* * * * *	

[FR Doc. 86-1682 Filed 1-28-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2620 and 2910

[Circular No. 2574]

State Grants and Leases; Removal of Provisions Covering Patents for Granted School Sections and Small Tract Act Lease or Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking removes the existing regulations covering Patents for Granted School Sections—43 CFR Subpart 2624 and Small Tract Act—43 CFR Subpart 2913. These regulations are no longer needed because the Federal Land Policy and Management Act of 1976 repealed the Act of June 21, 1934, and the Act of June 1, 1938, as amended by the Act of June 8, 1954. Both of these subparts have been retained to facilitate the handling of applications pending at the time the Acts were repealed.

EFFECTIVE DATE: February 28, 1986.

ADDRESS: Inquiries or suggestions should be sent to: Director (320), Bureau of Land Management, Room 3643, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gary L. Rowe, (202) 343-8693.

SUPPLEMENTARY INFORMATION: Th s final rulemaking removes from the existing regulations provisions covering patents for grant school sections authorized by the Act of June 21, 1934 (43 U.S.C. 871(a)), contained in 43 CFR Subpart 2624. It also removes from the existing regulations the provisions covering the sale or lease of five acre parcels as authorized by the Act of June 1, 1938 (52 Stat. 609), as amended by the Act of June 8, 1954 (43 U.S.C. 682(a)). These statutes have been repealed by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), but the regulatory provisions have been retained to facilitate the processing of applications that were pending at the time the statutes were repealed. All pending actions have been completed and the regulations are no longer needed. This administrative action removes these regulations from the Code of Federal Regulations. Even though all actions covered by these statutes have been completed, rights granted pursuant to the statutes might still exist. The Bureau of Land Management does not expect any issues to arise under these existing rights requiring consideration under the regulations being removed by this final rulemaking. However, should any questions arise concerning rights previously granted under these regulations, earlier editions of the Code of Federal Regulations will remain available to assist in interpretation.

The principal author of this final rulemaking is Gary L. Rowe, Division of Lands, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

There are no information collection requirements contained in this final rulemaking requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects

43 CFR Part 2620

Alaska, Intergovernmental relations, Public lands—grants, Public lands—mineral resources.

43 CFR Part 2910

Airports, Alaska, Mines, Public lands, Recreation areas, Waste treatment and disposal.

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Part 2620, Group 2600 and Part 2910, Group 2900, both of Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations are amended as set forth below.

James E. Cason,

Deputy Assistant Secretary of the Interior.

January 16, 1986.

PART 2620—[AMENDED]

1. The authority citation for Part 2620 continues to read:

Authority: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

Subpart 2624—[Removed]

2. Part 2620 is amended by removing Subpart 2624 in its entirety.

PART 2910—[AMENDED]

3. The authority citation for Part 2910 is added to read:

Authority: 49 U.S.C. 211—214; 43 U.S.C. et seq., 48 U.S.C. 360, 361.

Subpart 2913—[Removed]

4. Part 2910 is amended by removing Subpart 2913 in its entirety.

[FR Doc. 86-1908 Filed 1-28-86; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6612

[AR 032636]

Modification of Public Land Order No. 3305; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies a public land order as to 73.647 acres to change the purpose from a Federal Bureau of Investigation training facility to a Federal corrections facility under the Department of Justice's Bureau of Prisons. The land has been and remains closed to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: January 29, 1986.

FOR FURTHER INFORMATION CONTACT: John T. Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85014 (602) 241–5531.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 3305, which withdrew lands for the Department of Justice, Federal Bureau of Investigation, for a law enforcement training facility, is hereby modified insofar as it affects the following described land to change the purpose to a Federal corrections facility under the administrative jurisdiction of the Department of Justice, Bureau of Prisons.

Gila and Salt River Meridian

T. 6 N., R. 2 E.

Sec. 28, that portion of the N½SW¼ and the S½NW¼ more particularly described as follows:

Beginning at the Southwest corner of the North half of the Southwest quarter of said Section 28; Thence, North along the West line of the Southwest quarter of said Section 28 a distance of 1,319.84 feet to the Northwest corner of the Southwest quarter of said Section 28; Thence, North 00 degrees 01'20" West along the West line of the Northwest quarter of said Section 28 a distance of 1,320.06 feet to the Northwest corner of the South half of the Northwest quarter of said Section 28; Thence, South 89 degrees 59'15" East along the North line of the South half of the Northwest quarter of said Section 28 a distance of 1,301.04 feet; Thence, South 00 degrees 00'45" West, 488.24 feet; Thence, South 60 degrees 00'00" West, 760.00 feet; Thence, South 30 degrees 00'00" East, 1,010.00 feet; Thence, South 40 degrees 00'00" East, 1,040.00 feet; Thence, East 590.00 feet; Thence, South 100.00 feet to a point on the South line of the North half of the Southwest quarter of said Section 28; Thence, West along said South line a distance of 2,405.75 feet to the point of beginning.

The area described contains 73.647 acres in Maricopa County.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 86–1909 Filed 1–28–86; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6698]

Suspension of Community Eligibility; Rhode Island et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body has adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities are suspended on the effective date in the third column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable floodplain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the Federal Register.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation.

In each entry a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

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

§ 64.6 List of Eligible Communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Special flood hazard areas identified	Date [1]
Region I				
Rhode Island: Westerly, Town of, Washington County.	445410C	Aug. 14, 1970, Emerg.; July 28, 1972, Reg.; Feb. 5, 1986, Susp.	July 28, 1972, July 1, 1974, Dec. 26, 1975, Oct. 1, 1983 and Feb. 5, 1986.	Feb. 5, 1986.
Region II				
New York:				
Fenner, Town of, Madison County	360399B	Mar. 19, 1976, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	Sept. 13, 1974, May 28, 1976 and Feb. 5, 1986.	Do.
St. Armand, Town of, Essex County	361157B	Aug. 10, 1984, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	Oct. 25, 1974, July 2, 1976 and Feb. 5, 1986	Do.
Region V				
Ohio:				
Killbuck, Village of, Holmes County	390279B	Aug. 27, 1975, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	May 3, 1974, May 21, 1976 and Feb 5, 1986	Do.
Mount Blanchard, Village of, Hancock County.	390248B	Jan. 13, 1976, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	Aug. 9, 1974, May 21, 1976 and Feb 5, 1986	Do.
Wisconsin: LaCrosse, City of, LaCrosse County.	555562B	Dec. 4, 1970, Emerg.; Jan. 15, 1971, Reg.; June 25, 1985, Susp.; July 3, 1985, Rein.; Feb. 5, 1986, Susp.	Jan. 15, 1971, July 1, 1974, May 14, 1976 and May 15, 1985.	Do.
Region VII				
Kansas:				
Hoisington, City of, Barton County	200020C	Feb. 21, 1975, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	Feb. 22, 1974, Oct. 24, 1975, May 24, 1977 and Feb. 5, 1986.	Do.
Salina, City of, Saline County	200319B	July 2, 1974, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	May 24, 1974, Jan. 2, 1976 and Feb. 5, 1986	Do.
Saline County, Unincorporated Areas.	200316B	May 5, 1975, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	June 28, 1977 and Feb. 5, 1986	Do.
Region VIII				
Colorado:				
Carbondale, Town of, Garfield County.	080234A	Feb. 7, 1975, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	Aug. 29, 1975 and Feb. 5, 1986	Do.
Palisade, Town of	080198A	Sept. 27, 1982, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	Feb. 5, 1986	Feb. 5, 1987
Region X				
Oregon: Hubbard, City of, Marion County.	410161B	Apr. 22, 1975, Emerg., Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	May 10, 1974, July 11, 1975 and Feb. 5, 1986.	Feb. 5, 1986.
Washington: Chewelah, City of, Stevens County.	530186B	June 26, 1975, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	June 7, 1974, Jan. 2, 1976 and Feb. 5, 1986	Do.
Minimal Conversions				
Region VIII				
Colorado: Crook, Town of, Logan County.	080111	May 6, 1977, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	Nov. 8, 1974 and Feb. 5, 1986	Do.
Utah: Marysvale, Town of, Piute County	490098A	May 6, 1977, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	Feb. 11, 1977 and Feb. 5, 1986	Do.
Region I				
Connecticut: Westbrook, Town of, Middlesex County.	090070D	Mar. 9, 1973, Emerg.; Dec. 1, 1982, Reg.; Feb. 19, 1986, Susp.	Nov. 23, 1973, Oct. 15, 1976 and Feb. 19, 1986.	Feb. 19, 1986.
Rhode Island: Jamestown, Town of, Newport County.	445399B	Nov. 20, 1970, Emerg.; Apr. 21, 1972, Reg.; Feb. 19, 1986, Susp.	Apr. 20, 1972, July 1, 1974, Feb. 27, 1976 and Feb. 19, 1986.	Do.
Region II				
New Jersey: Englewood, City of, Bergen County.	340031C	Dec. 29, 1972, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	Oct. 29, 1976 and Feb. 19, 1986	Do.
Region IV				
Alabama:				
Elmore County, Unincorporated Areas.	010406B	Jan. 16, 1980, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	Dec. 15, 1978 and Feb. 19, 1986	Do.
Citronelle, City of, Mobile County	010277B	July 23, 1975, Emerg.; June 17, 1977, Reg.; Feb. 19, 1986	Jan. 31, 1975 and Feb. 19, 1986	Do.
Florida: Marineland, Town of, Flagler County.	120570B	Oct. 8, 1982, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	June 10, 1977 and Feb. 19, 1986	Do.
Kentucky: Martin County, Unincorporated Areas.	210166C	Apr. 14, 1977, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	Dec. 13, 1974, June 10, 1977, Dec. 2, 1977 and Feb. 19, 1986.	Do.
Georgia: Burnswick, City of	170656B	Mar. 6, 1974, Emerg.; June 19, 1985, Reg.; Feb. 28, 1986, Susp.	May 24, 1974, Jan. 9, 1976 and June 19, 1985.	Feb. 28, 1986.
Region V				
Illinois: Union County, Unincorporated Areas.	170656B	May 1, 1984, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	Nov. 29, 1974, Sept. 17, 1976 and Feb. 19, 1986.	Feb. 19, 1986.
Michigan: Hamburg, Township of, Livingston County.	260118C	July 23, 1974, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	July 19, 1974, Jan. 21, 1977, Aug. 29, 1980 and Feb. 19, 1986.	Do.
Wisconsin: Lincoln County, Unincorporated Areas.	550585B	Mar. 8, 1976, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	Sept. 22, 1978 and Feb. 19, 1986	Do.
Region X				
Washington: Mukilteo, City of, Snohomish County.	530235A	Feb. 3, 1977, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	July 11, 1975 and Feb. 19, 1986	Do.
Minimal Conversions				
Region I				
Maine: Hope, Town of, Knox County	230226A	Apr. 5, 1976, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	Feb. 21, 1975 and Feb. 19, 1986	Do.
Region II				
New York:				
Altmar, Village of, Oswego County	360646B	Jan. 12, 1976, Emerg.; Feb. 5, 1986, Reg.; Feb. 19, 1986, Susp.	June 25, 1976, Nov. 15, 1974 and Feb. 5, 1986.	Do.
Orwell, Town of, Oswego County	361262A	Jan. 3, 1977, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	Oct. 25, 1974, June 4, 1976 and Feb. 19, 1986.	Do.
Parish, Village of, Oswego County	361575B	Nov. 18, 1975, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	Oct. 29, 1976 and Feb. 19, 1986	Do.
St. Johnsville, Village of, Montgomery County.	360457B	Oct. 23, 1974, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	Feb. 15, 1974, June 18, 1976 and Feb. 19, 1986.	Do.
Region V				
Wisconsin: Genoa City, Village of, Walworth County.	550465B	Mar. 5, 1975, Emerg.; Sept. 4, 1985, Reg.; Feb. 19, 1986, Susp.	Jan. 9, 1974, May 15, 1976 and Sept. 4, 1985.	Do.

[1] Certain Federal assistance no longer available in special flood hazard areas.

Code for reading 5th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: January 23, 1986.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 86-1893 Filed 1-28-86; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 50950-5182]

Fishery Conservation and Management; Tanner Crab Off Alaska

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

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the Tanner crab fishery in the Eastside Section of the Kodiak District of Registration Area J must be closed in order to protect the Tanner crab stock. The Secretary of Commerce therefore issues this notice closing fishing for Tanner crabs by vessels of the United States in the Eastside Section. This action is intended as a management measure to conserve Tanner crabs.

DATE: This notice is effective at noon, Alaska Standard Time (AST), January 24, 1986. Public comments on this notice of closure are invited until February 10, 1986.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m., A.s.t., weekdays) at the 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), 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska, 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 regulations at § 671.27(b) specify that notices of these adjustments will be issued by the Secretary of Commerce under criteria set out in that section.

Section 671.26(e) establishes six districts within Registration Area J in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district. One of these districts is the Kodiak District, which is further subdivided into eight sections also to prevent overfishing of individual Tanner crab stocks. Desired harvest levels are established on the basis of pot and trawl index surveys conducted by the Alaska Department of Fish and Game. The optimum yield for the entire Kodiak District is 11 to 33 million pounds. A preseason guideline harvest forecast for the Kodiak District was 7.5 to 7.65 million pounds, with 2.2 million pounds projected for the Eastside Section, based on the 1985 crab index survey. The 1986 fishing season began on January 15 (50 FR 47549, November 19, 1985). Reasons for the closure follow.

In the Eastside Section, approximately 1.2 million pounds of Tanner crabs have been delivered through January 20. The catch per unit of effort (CPUE) declined from approximately 65 crabs per pot on January 16 to less than 10 crabs per pot on January 20. About 110 vessels with 15,000 pots registered to fish the Eastside Section during the 1986 season. This effort is approximately two-thirds greater than the effort in 1985. To date, most of the larger vessels in the fleet have not made deliveries. Based on the fleet's hold capacity, the preseason guideline harvest estimate of 2.2 million pounds is believed already to have been greatly exceeded. This unexpected level of catch has resulted in the removal of a greater number of Tanner crabs from the population than the preseason forecasts indicated was biologically acceptable. This unanticipated excessive level of catch, therefore, has resulted in the stock conditions in the Eastside Section being substantially different from the condition anticipated at the beginning of the fishing year; i.e., the removal of only 2.2 million pounds. The Eastside Section, therefore, is closed.

In light of this information, the Regional Director has determined that the condition of the Tanner crab stock in the Eastside Section of the Kodiak District is substantially different from the condition anticipated at the beginning of the fishing year and that this difference reasonably supports the need to protect this Tanner crab stock by closing the Eastside Section, as defined in § 671.26(f)(1)(i), from noon, A.s.t., January 24, 1986, until noon, Alaska Daylight Time, April 30, 1986, at which time the closure of this section prescribed in Table 1 of § 671.21(a) will begin.

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

Other Matters

The Tanner crab stock in the Eastside Section of the Kodiak District will be subject to damage by overfishing unless the closure takes effect promptly. The Agency, therefore, finds for good cause that advance opportunity for public comment on this notice of closure is contrary to the public interest and that no delay should occur in its effective date.

This action is taken under the authority of 50 CFR Part 671 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

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

Dated: January 24, 1986.

Carmen J. Blondin,

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

[FR Doc. 86-1953 Filed 1-24-86; 4:54 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 19
Wednesday, January 29, 1986

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Key Element Reporting System

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Child Care Food Program (CCFP) regulations to incorporate a Key Element Reporting System (KERS) into the CCFP review requirements. Under KERS, all agencies which administer the CCFP at the State level will be required to report to the Department specified information on program operations collected during normal reviews conducted through December 31, 1987. This system is designed to (1) improve the evaluation and monitoring process at the institutional level, (2) focus review efforts on those deficiencies that most significantly affect the quality of the program and the efficient use of funds, (3) help program administrators at all levels to evaluate institutional management and compliance with program requirements, and (4) enable the Department to assess the need for specific performance standards.

DATES: To be assured of consideration, comments must be postmarked on or before March 31, 1986.

ADDRESS: Comments should be addressed to Mr. Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura or Mr. James C. O'Donnell at the above address or by telephone at (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This rulemaking has been reviewed in accordance with Executive Order 12291 and has not been classified as major because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have significant economic impact on competition, employment, investment, productivity, innovation or the ability of U.S. enterprises to compete with foreign based enterprises. This rule has also been reviewed with regard to the requirements of Pub. L. 97–354. The Administrator of the Food and Nutrition Service has certified that this rule does not have a significant economic impact on a substantial number of small entities. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting or recordkeeping requirements that are included in this proposed rule have been submitted to the Office of Management and Budget (OMB) for approval. They are not effective until OMB approval has been obtained.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (Cite 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985, as appropriate and any subsequent notices that may apply.)

Background

Under current CCFP regulations, State agencies are required to conduct administrative reviews annually of one-third of all participating institutions, including a sample of facilities administered by sponsoring organizations. In conducting these reviews, State agencies must assess the institutions' compliance with all requirements of the CCFP regulations and instructions. The most significant of these requirements involve meal patterns, financial management standards, family size and income documentation, and non-discrimination regulations. States must maintain documentation of these reviews and of any corrective action and follow-up activity related to them for a period of three years, as specified in the Department's Uniform Federal Assistance Regulations (7 CFR 3015.21).

While this review requirements provides for reasonable coverage of the program, the Department's Office of the Inspector General and the General Accounting Office have, in the past, expressed concern that the effectiveness of the review system as an administative tool is limited by inconsistent administration from State to State and by varying degrees of evaluation by the Department. Historically, the Department has been handicapped in its effort to monitor CCFP operations because of a lack of data which is uniform in type, universally available, and usable as a tool to evaluate program administration. Although several major studies of the CCFP have been conducted by the Department since the program came into existence in 1975, none of them included a comprehensive evaluation of the administration of the program at the institution level. Consequently, the Department has had little objective information to serve as a basis for judging the effectiveness of local program administration.

To remedy this situation, the Department is proposing to implement an information reporting system which is intended to serve as a source of consistent and uniform data. Under this system, States will report the results of all institution and facility reviews and verification reviews, if separate, conducted through December 31, 1987. This data will allow the Department to do a number of things including assessing program administration on the local, State, regional and national levels; evaluating the effectiveness of program regulations and guidance materials; making determinations relative to the need for legislative changes in the program; and developing comprehensive performance standards applicable to the CCFP review system.

In developing this system, the Department has identified a number of "key elements" which are good indicators of the quality of the program administered by an institution. Compliance with the requirements represented by these elements indicates that the insitution is delivering program benefits properly; noncompliance is indicative of potential loss to the program or inadequate delivery of benefits to children. These key elements,

which occupy a significant portion of the State's review of an institution, include compliance with meal component and quantity requirements, verification of free and reduced price applications and maintenance of enrollment, attendance and meal service records adequate to support reimbursement claims. The reporting of data on these key elements will provide the Department with a significant tool for evaluating the overall condition of the program and pursuing remedies, where appropriate. The Department recognizes that State agencies must review program areas not included among these key elements (e.g., procurement standards, health and sanitation, civil rights compliance), and the Department is not proposing to require States to report data on these areas.

The following list represents the data elements which the Department is proposing to have reported through KERS:

I. Center Sponsor/Independent Center

A. Identifying Information—Includes name, address, and (for sponsors) number of centers by type.

B. Income Eligibility.

1. Total number of free and reduced price applications on file.

2. Total number of applications incorrectly classified per review, including the results of income verification in pricing programs.

C. Enrollment—Free, reduced price and paid, per claim and per review.

D. Meal Counts—The total meals/supplements per claim and per review (Claiming Percent/Blended Rate System) or the total number of free, reduced price, and paid meals per claim and per review (Count by Category System).

E. Menus/Meal Patterns—The number of menus reviewed and the number with missing components broken out by breakfasts, AM and/or PM Supplements and lunches/suppers.

F. Title XX Documentation (if applicable).

1. Total number of children enrolled.

2. Total number of documented Title XX eligibles enrolled.

G. Financial Documentation—Does Sponsor/Center maintain cost records as prescribed by the State agency financial management system?

H. Training (Sponsor Only)—Has the Sponsoring Organization conducted staff training within the past 12 months as required? Has it been documented?

I. Monitoring (Sponsors Only)—How many reviews were required by regulation in the last 12 months? How many were completed?

II. Center Facility Under a Center Sponsor

A. Identifying Information—Includes name, address and center type.

B. Enrollment/Attendance.

1. Are daily attendance records maintained?

2. Are enrollment records maintained?

C. Meal Counts.

1. Are meal counts taken at point of service?

2. Are meal counts recorded and maintained?

D. Meal Observed on Day of Visit.

1. Type.

2. Number served to eligible children.

3. Number for which sufficient quantities were prepared.

4. Number for which all components were served to eligible children.

E. Training—Has a representative received training conducted by the sponsor within the last 12 months?

F. Monitoring—Has center received a monitoring visit from sponsor within the last 6 months (3 months if Outside-School-Hours Center)?

III. Day Care Home Sponsor

A. Identifying Information—Includes names and address.

B. Homes Data.

1. Number of approved homes reported as participating in test month.

2. Number of approved homes verified as participating in the test month with current agreements on file.

C. Enrollment—Are enrollment records maintained for all homes?

D. Income Eligibility.

1. Total number of free and reduced price applications on file for all homes.

2. Total number of free and reduced price applications incorrectly approved.

E. Meal Counts—The number of breakfasts, AM and/or PM supplements and lunches/suppers served, per claim and per review.

F. Menus—The number of menus reviewed and the number with missing components broken out by breakfasts, AM and/or PM supplements and lunches/suppers.

G. Administrative Cost Documentation.

1. Costs claimed and costs verified.

2. Do the documented expenses exceed the reimbursement received? If so, is excess covered by a non-USDA funding source?

H. Training—Does the sponsor conduct the required annual training? Has such training been documented?

I. Monitoring—Has the sponsor conducted all required monitoring visits within the past 12 months?

J. Use of Funds.

1. Does the sponsor receive operating advances?

2. If yes, is the full amount of advance due to the homes disbursed?

3. If no,

a. Is the full amount of reimbursement due to the homes disbursed?

b. Are homes reimbursed within 5 days after the sponsor is in receipt of funds?

IV. Day Care Home

A. Identifying Information—Includes name and address.

B. Income Eligibility.

1. Are provider's own children claimed?

2. If yes, is a properly approved application for them on file at the sponsoring organization?

3. Are they claimed only when other enrolled children are in attendance?

C. Attendance—Are daily attendance records maintained?

D. Meal Counts.

1. Are meal counts taken at point of service?

2. Are meal counts recorded and maintained?

E. Meal Observed on Day of Visit.

1. Type.

2. Number served to eligible children.

3. Number for which sufficient quantities were prepared.

4. Number for which all components were served to eligible children.

F. Training—Has the provider received required annual training conducted by the sponsor?

G. Monitoring—Has the provider received a monitoring visit from the sponsor within the past 6 months?

This list is a preliminary one. The particular items described above represent the data which, in the Department's judgement, would provide the best indication of overall program operations. The list has been included in this preamble in order to facilitate commenters' discussion of the proposed system. The Department solicits comments on the appropriateness of these items and encourages commenters to suggest other data elements which should be reported as part of KERS. The Department emphasizes, however, that it is not bound to regard this list as a final, all-inclusive itemizing of KERS data. Additional data elements could be included or certain of these elements could be deleted on the basis of public comments, experience with the system or future changes in program requirements.

The data obtained through KERS will provide the Department with a tool for analyzing the delivery of benefits by all types of institutions and facilities. This

analysis, in turn, will enable the Department to target training and other technical assistance to areas where such efforts are most needed. Given the necessity to use limited funds as efficiently as possible, the Department believes KERS will prove to be highly valuable in this respect. The Department also believes that the data will allow the Department to determine the extent to which policies are applied and enforced throughout the program. Most importantly, the data will provide the Department with a tool for analyzing the effectiveness of the current regulatory requirements for review activity in the CCFP. The Department intends to study the States' data carefully to determine the extent of noncompliance in key areas throughout the program. Based on the results of this study, the Department will then consider the possibility of modifying the current review system to incorporate specific performance standards and guidelines which would be employed by States when reviewing institutions and deciding whether to establish overclaims or conduct follow-up reviews. At that time, the Department will also assess the possibility of incorporating KERS as a permanent feature of the CCFP.

To ensure continuous, orderly processing of information the Department is proposing to require States to report data on key elements within 30 days of the collection of the information. For the most part, therefore, States will report their data on key elements within 30 days of completion of each administrative review. The Department recognizes, however, that some States have elected to collect information on certain key elements in a manner other than administrative reviews. To provide States with needed flexibility, the Department permits States to perform verification of free and reduced price eligibility through audits or separate verification reviews, rather than as part of their administrative reviews. This proposal would not restrict States from electing one of these verification options, but States which do not include verification as part of their administrative reviews would be required to observe the following requirements. First, the verification activity would have to be completed in the same fiscal year as the administrative review, and secondly, the State would have to ensure that the verification data and the key element data collected during the administrative review are reported on one form within 30 days of the date on which complete information becomes available. In this way, the Department can ensure the comparability of data from different fiscal years.

Finally, to ensure uniform reporting of the data, the Department is proposing to require States to use a standard form provided by the Department to organize and report findings on the key elements. These forms will facilitate the process of transferring the data to computers, and this requirement will not create any significant additional reporting burden for State agencies. While the Department acknowledges that KERS would entail some additional reporting burden for State agencies, the Department considers that any increase would be relatively slight, since States will merely complete and mail the form. The Department emphasizes that there will be no increase in the burden associated with collecting the data, because States are already required to review all program requirements, including those reported under KERS. Moreover, there would be no change in the frequency with which States must conduct reviews. Consequently, no significant expenditures in staff time would be necessary because of KERS.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

PART 226—CHILD CARE FOOD PROGRAM

Accordingly, the Department is proposing to amend 7 CFR Part 226 as follows:

1. The Authority citation for Part 226, continues to read as follows:

Authority: Sections 803, 810, and 820, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758, 1766); Section 2, Pub. L. 95–627, 92 Stat. 3603 (42 U.S.C. 1766); Section 10, Pub. L. 89–642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

2. Section 226.2 is amended by adding the definition of "Key Element Reporting System" in alphabetical order, to read as follows:

§ 226.2 Definitions.

* * * * *

"Key Element Reporting System" (KERS) means a comprehensive national system for reporting critical key element performance data on the operation of the program in institutions.

* * * * *

3. Section 226.6 is amended by adding a new paragraph (o) to read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(o) Following its reviews of institutions and facilities under §§ 226.6(k) and 226.23(h) conducted prior to January 1, 1988, the State agency shall report data on key elements of program operations on a form designated by FNS. These key elements include but are not limited to the program areas of meal requirements, determinations of eligibility for free and reduced price meals, and the accuracy of reimbursement claims. These forms shall be submitted within 30 days of the completion of each review, except that if the State has elected to conduct reviews of verification separate from its administrative reviews, the State shall retain review data until all key elements have been reviewed and shall report all data for each institution within 30 days of completion of reviews of all key elements. States shall also ensure that all key element data for an institution is collected during the same fiscal year.

Dated: January 22, 1986.

Sonia F. Crow,

Acting Administrator.

[FR Doc. 86–1836 Filed 1–28–86; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 1240

[Docket No. HRPCIA–1]

Proposed Honey Research, Promotion, and Consumer Information Order; Recommended Decision and Opportunity To File Written Exceptions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written exceptions to a proposed Honey Research, Promotion, and Consumer Information Order. The proposed program would authorize establishment of projects relating to research, consumer education, advertising, sales promotion, producer information, and market development to assist, improve, or promote the marketing, distribution, and utilization of honey and honey products. This program was proposed by the American Beekeeping Federation, Inc.

DATE: Written exceptions to this recommended decision must be filed by February 28, 1986.

ADDRESSES: Send four copies of comments to the Hearing Clerk, United States Department of Agriculture, Room 1079, South Building, Washington, D.C. 20250, where they will be available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, (202) 475–3918.

SUPPLEMENTARY INFORMATION:

Prior documents in this proceeding: Pre-notice press release issued May 29, 1985; Notice of Hearing—Issued June 25, 1985, and published June 28, 1985 (50 FR 26942). Correction of Docket Number, published July 12, 1985 (50 FR 28404).

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

This notice is issued pursuant to the applicable rules of practice and procedure governing proceedings to formulate and amend an order (7 CFR Part 1200). Any order that may result from this proceeding would be effective pursuant to the provisions of the Honey Research, Promotion, and Consumer Information Act, hereafter referred to as the "Act" (7 U.S.C. 4601–4612).

The proposed order was formulated on the record of a public hearing with sessions in Washington, DC, on July 16, 1985, and Denver, Colorado, on July 30, 1985. Notice of the sessions was published in the June 28, 1985, issue of the **Federal Register** (50 FR 26942). That notice contained a proposed order submitted by the American Beekeeping Federation, Inc. (ABF).

Small Business

As stated in the notice of hearing interested persons were invited to present evidence at the hearing on the probable regulatory regulatory and informational impacts of the proposed changes on small business. Based on the record evidence, a sizeable majority of the honey producers and handlers could be considered small businesses for the purposes of the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). In that regard testimony was presented that the production, harvesting, and preparation of honey for market were relatively similar among all honey producers. No clear relationship could be drawn between the size of producers and the corresponding costs. No testimony was presented on handler costs or variations of these costs.

The purpose of the RFA is to fit regulatory action to the scale of businesses subject to such action in order that small businesses will not be unduly or disproportionately burdened. The Act requires the application of uniform rules to persons covered under the order. Promotion orders and implementing rules are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are usually compatible with respect to small business entities. Since the handlers to be covered under this promotion order are predominately small businesses, the order proposed in this proceeding would impose no disproportionate regulatory burdens on any groups of small entities within the industry.

While the order imposes certain regulations on affected businesses and the number of businesses may be substantial, any added burden resulting from these changes should not be significant when compared to the benefits which should accure to such businesses. All entities, small and large, would be treated equitably under the order. Furthermore, the Act and the order clearly provide for the exemption of all honey producers and importers who produce or import less than 6,000 pounds of honey annually. This exemption was included in the Act to reduce the burden on small businesses who would otherwise be required to file reports and keep records under the Act and the order.

Material Issues: The material issues of record are as follows:

(1) The existence of the right to exercise Federal jurisdiction in this instance;

(2) The need for the proposed research, promotion, and consumer information order to effectuate the declared policy of the Act;

(3) The specific terms and provisions of the proposed order including:

(a) Definitions of the commodity, the area, the persons to be assessed, and the other terms set forth in the notice of hearing which are applicable to the provisions of the proposed program;

(b) The establishment, composition, maintenance, powers, duties, and operation of a "Honey Board" which shall serve as the administrative agency of the order;

(c) The authority to establish sales promotion, consumer education, research, marketing, and development projects for honey and honey products;

(d) The authority for the Honey Board to incur expenses and for the Secretary of Agriculture to levy assessments on producers and importers;

(e) The authority to exempt from assessments a producer who produces or an importer who imports less than 6,000 pounds of honey annually and honey exported from the United States;

(f) The procedure for making refunds of assessments to producers and importers who request them;

(g) The authority to establish an operating monetary reserve and set aside funds in the reserve to defray any authorized expenses;

(h) The establishment of reporting and recordkeeping requirements; and

(i) The establishment of other miscellaneous provisions which are set forth in the notice of hearing as §§ 1240.60 through 1240.67.

Findings and Conclusions: The following findings and conclusions on the material issues are based on the record of hearing:

1. Honey is produced and/or marketed in all fifty states including the District of Columbia and the Commonwealth of Puerto Rico. The top twenty honey producing states produce about 80 percent of the total domestic honey production. The record shows that substantial quantities of honey and honey products are imported into and exported from the United States. The record also indicates that there are numerous honey handlers who receive honey from producers, process it, and market it. At least one of these handlers has nationwide distribution.

It was also testified that most of the honey imported was imported by a few large importing companies and sold to handlers for further processing and distribution. There is ample evidence in the record to show that honey is shipped in intrastate, interstate, and foreign commerce and that the intrastate and interstate handling is so inextricably intermingled that all such handling burdens, obstructs, or affects the handling of honey in interstate or foreign commerce. This would require the regulation of honey moving in intrastate, as well as interstate and foreign commerce.

2. Honey production in the United States approximates 200 million pounds annually, although there is some year-to-year fluctation due to weather conditions. The 1981 value of U.S. production of honey was about $90.1 million. This was based on 4.2 million colonies of bees with an average honey yield per colony of 44 pounds.

The record evidence shows that the honey industry is made up of many small entities, and some larger entities, engaged in the production and marketing of honey. In general, there are three categories of honey producers; the

hobbyist, the part-time beekeeper or sideliner, and commercial beekeepers. Because the order exempts persons who produce or import less than 6,000 pounds of honey per year, hobbyist beekeepers and a significant number of sideline beekeepers would not be required to pay assessments under this order. One witness cited a 1975 International Trade Commission study which estimated that there were about 10,000 sideline beekeepers and about 1600 commercial beekeepers in the United States at that time.

Some sideline and commercial beekeepers sell their production locally, thereby acting as handlers on all or a portion of their crop. Many others sell the bulk of their production to handlers who further process the honey, package it, and distribute it for consumption. The major outlets for honey are bakeries, cereal manufacturers, meat processors, and the Federal government.

Beekeeping is labor intensive and most commercial beekeepers employ from one to twenty full time employees and additional seasonal help during honey harvesting. Many beekeeping operations are migratory because the beekeepers move their bees from one area to another several times a year to follow seasonal honey flows and pollinate crops.

The record indicates that the world market price of honey is now far below the cost of production in the U.S. This, coupled with the strength of the U.S. dollar relative to other currencies, has encouraged large quantities of honey to be imported into the United States. According to the record evidence, importations of honey have increased from 10.6 million pounds in 1973 to 128.6 million pounds in 1984. During this period, honey under government loan with the Commodity Credit Corporation increased from zero during the 1970's to almost 115 million pounds in 1984.

The record indicates that various organizations operate promotional activities. Most States have state beekeeping associations which represent a group of people with a common interest, namely to promote honey and beekeeping in that particular State. Some state associations collect an assessment for promotional purposes. The California Honey Advisory Board, which is funded through an assessment program, has been in operation since 1952. It has conducted several honey promotion campaigns and published a well-known honey cook book.

At one time, the American Honey Institute conducted a national promotion effort, which was funded through a voluntary check-off plan. It published recipes and provided information on uses of honey through food service editors. After several years of operation, the contributors became disillusioned with the program and the Institute ceased operations. Since then, the only national promotional effort has been by the American Beekeeping Federation (ABF), which devotes about one-third of its annual budget to promotion. Its promotional efforts include the American Honey Queen Program, printing and distribution of bulk recipes to school food service personnel.

While the efforts of the ABF and others have been helpful, the record evidence is that much more must be done to increase domestic consumption. Statistics in the record indicate that the total per capita consumption of all sweeteners, including honey, in the U.S. is 128 pounds annually. Of that amount, slightly more than one pound is honey, which compares with over three pounds per person in other countries. The evidence of record is that the American honey industry needs a program to promote the domestic consumption of honey and honey products through promotion and advertising and market research to increase consumer awareness of honey and increase its consumption. The evidence also is that funds to finance these activities must be obtained by the honey industry through a structure such as the proposed order to assure industry-wide participation and sufficient income on a regular basis to finance those activities.

It was testified that additional promotion would benefit the honey industry by enabling it to reach more potential consumers. Also, the industry would benefit from an organization unifying those in the industry desiring to promote honey and honey products. This would be achieved by making the contribution of funds by producers and importers mandatory. However, these contributors should have the right to obtain a refund of their assessments if they choose not to support the program.

Evidence indicates that there is a great potential for increasing domestic honey consumption. The changes taking place in the marketing of food products and the eating habits of consumers make it essential that investigations and studies of markets and consumer attitudes be implemented and the results be made available prior to initiating large expenditures for promotion. Research under the order could identify the factors that are important to consumers in purchasing honey and honey products. For example, with such knowledge, producers would have the ability to segregate their floral sources of honey to increase profitability or target promotional efforts to appeal to consumers more effectively. Research could also provide knowledge as to the kinds of information that would be desirable or helpful to consumers. Evidence indicates that many consumers know little about the diverse types of honey, each with its own characteristic flavor, which is determined by the predominant floral source.

Finally, testimony indicates that much of the data available to the honey industry is limited or incomplete. Through reports submitted by handlers, the order could enable the Board to develop more reliable aggregate statistical information and make this available to the honey industry to help it plan its marketing activities.

The record indicates that the research, promotion, and consumer information order proposed at the hearing could provide a method for increasing U.S. per capita honey consumption and reduce the industry's market problems.

3. Certain terms are used frequently throughout the order. These terms are defined as follows to clearly delineate their meaning and to simplify the subsequent provisions in which they are used:

(a) Thus, "Secretary" should be defined to include not only the Secretary of Agriculture of the United States, the official charged by law with the responsibility for this order, but also, in recognition of the fact that it is physically impossible for the Secretary to perform personally all functions and duties imposed by law, any other officer or employee of the U.S. Department of Agriculture who is, or who may be, authorized to act for the Secretary.

The definition of "Act" provides the correct legal citation for the Honey Research, Promotion, and Consumer Information Act, the statute pursuant to which the proposed order may be put into effect and operated, and avoids the need to refer to the citation each time it is used. "Act" should also be defined to include any future amendments that may be made to the Honey Research, Promotion, and Consumer Information Act.

"Person" should be defined in the order to mean any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity. This definition conforms with the definition set forth in the Act.

The term "honey" should be defined to mean the nectar and saccharine exudations of plants which are gathered, modified, and stored in the comb by honey bees. "Honey products" should be defined to mean products wherein honey is a principal ingredient. These

definitions identify the two types of commodities which would be assessed under the proposal. The definitions closely follows the definitions set forth in the Act. Honey may be in the comb, liquid, granulated, whipped or spun for crystallization, and in combinations such as chunks of comb honey with liquid, or comb honey with crystallized or granulated honey. Each of these honeys may have different flavors and color due to different floral sources. This description is not intended to limit the definition of honey to the forms cited, and all forms, flavors, and colors of honey should be subject to the provisions of this order.

Honey is frequently used in combination with other foods for the manufacture of food products because of its favorable image and quality enhancement when used as an ingredient. Because products using honey as an ingredient would be benefitted in the marketplace by the order's promotion activities, it is equitable to assess honey which is used as a principal ingredient in products. In the Act, the term honey products is defined as meaning products produced in whole or in part from honey. The Act does not limit the quantity of honey in products and thus, products containing honey in minimal quantities would be subject to assessment. Since the costs incurred by the Honey Board in collecting assessments on these products could be disproportionately high in relation to the assessments collected, the term "honey products" should be limited to products wherein honey is a principal ingredient. Since the Honey Board, the administrative agency established under the order, would be composed of honey industry representatives with extensive knowledge of the honey market, it should determine the level at which honey becomes a principal ingredient in honey products. This level should be set through the promulgation of rules by the Honey Board, with the Secretary's approval.

"Producer" should be defined in the order to mean any person who produces honey in any State for sale in commerce, and should include any person who harvests honey domestically or owns or shares in the ownership of honey producing equipment so that he/she receives a portion of the crop. The same should be true for persons who lease out colonies of bees for honey production and obtain a portion of that production as rental. According to the record, any person who owns or rents farmland resulting in ownership of any honey or honey products produced thereon should clearly be considered a producer. The same should be true for the person who owns land, but does not farm it. That person may obtain ownership of a portion of the honey and/or honey products produced on it as rental and thus should be regarded as the producer of that portion. A person who receives only a fixed sum in rent on land which is used to produce honey, however, should not be considered a producer. In each of the above situations the person involved in the production, regardless of whether an individual, partnership, association, corporation, or other business entity should be defined in the order as a "person" and should be considered as one producer.

"Handle" should be defined in the order to mean to process, package, sell, transport, purchase or in any other way to place honey or honey products, or cause them to be placed, in the current of commerce. This definition should include selling unprocessed honey that will be consumed without further processing or packaging. However, this term should not include the transportation of unprocessed honey by the producer to a handler, or transportation by a commercial carrier of honey, whether processed or unprocessed, for the account of the handler or producer.

"Handler" should be defined as any person who handles honey or honey products and should be defined to designate the person who is to collect the assessment levied on producers and importers.

"Producer-Packer" should be defined as any person who is both a producer and a handler of honey or honey products. Should the producer-packer also be the first handler of honey, he/she should collect the assessment.

"Importer" should be defined as any person who imports honey or honey products into the United States as principal or as an agent, broker, or consignee for any person who produces honey outside of the United States for sale in the United States. The importer should be considered the first handler of honey or honey products. The term "importer" identifies the person eligible to vote in referenda, responsible for the payment of assessments on foreign-produced honey and honey products imported into the United States, subject to certain recordkeeping requirements, and entitled to vote for nominees for membership on the Board and to be nominated for such membership. The term "importer" should apply to all persons who import honey and honey products. Importation occurs when the commodities originating outside of the United States are released from Customs by the U.S. Customs Service and introduced into the stream of commerce in the United States.

Persons who hold title to foreign-produced honey and honey products immediately upon release by the Customs Service clearly are importers and would be subject to the order. However, a person need not take title to honey or honey products to be an importer. Any person who acts on behalf of others as their agents, brokers, or consignees would be importers if honey or honey products released from Customs as a result of their efforts were introduced into commerce.

The terms "promotion", "research", and "consumer education" should be defined to indicate the types of activities authorized by the order. The definitions of these terms follow those appearing in the Act, except that the order's definition of "research" specifically provides for the systematic study or investigation, and/or the evaluation of any study or investigation to more clearly define the objectives of the order and the Act. The inclusion of this specific activity serves as clarification and does not change the meaning of the term set forth in the Act.

A definition of the term "marketing" should be included in the order to identify those transactions the Board may seek to expand through its activities. Such transactions include not only the sale of honey and/or honey products, but also other disposition of these commodities, such as barter, rental, and donations.

"Committee" should be defined under the order to mean the National Honey Nominations Committee, which will consist of not more than one member from each State, appointed by the Secretary from nominations submitted by each State association.

"State association" or "association" should be defined as the organization which is the most representative of the beekeepers in a State. A number of States have several beekeeping organizations whose membership may vary from hobbyist to commercial beekeepers. Should more than one organization submit nominations to the National Honey Nominations Committee in any one State, testimony indicates the State associations should choose a common delegate, or the Secretary should contact the Secretary of each State association submitting nominations to determine which organization is most representative of persons to be assessed.

The term "Honey Board" should be synonymous with "Board" and should

be defined to identify the administrative agency established under the order. The Board is authorized by the Act, and the definition set forth in the order eliminates the necessity of repeating the Board's full name each time it is used.

"State" should be defined to include all 50 States of the United States, Puerto Rico, and the District of Columbia because honey is produced and/or sold in all of these jurisdictions.

The terms "fiscal period" and "marketing year" should be defined to mean the twelve month period ending on December 31 or such other period as shall be recommended by the Board and approved by the Secretary. This would provide sufficient flexibility to authorize the Board of the Secretary to set the beginning of the fiscal period on the date most practicable and appropriate, and would permit change in the date should experience in operating indicate such changes are needed.

"Plans" and "projects" should be defined to mean those activities established pursuant to §§ 1240.38 and 1240.39 of the order. These "projects" and "plans" refer to the research, promotion, and consumer education studies, programs, and other activities designed to carry out the declared purpose of the Act. One witness pointed out that the reference to § 1240.39 within the definition of "plans" and "projects" was inadvertently omitted in the proposed order as it appeared in the notice of hearing. This reference should be incorporated into the order.

The terms "part" and "subpart" should be defined in the order. "Part" should mean the Honey Research, Promotion, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder. The order should be a "subpart" of such part.

(b) An administrative agency known as the "Honey Board" should be established to administer the order. As provided in the Act, the Honey Board should be composed of 13 members selected by the Secretary from nominations submitted by the "National Honey Nominations Committee".

The "Honey Board" should include seven members and seven alternates who are honey producers, two members and two alternates who are honey handlers recommended to the Committee by industry organizations representing handler interests, two members and two alternates who are honey importers that were recommended by industry organizations representing importer interests, one member and one alternate who are officers or employees of a honey marketing cooperative, and one member and one alternate who will represent the general public. As discussed later, the seven producer members and alternate members of the Board should be nominated from and represent seven regions in the United States; one member and alternate from each region. The remaining six Board members should be nominated by the Committee from names submitted by the industry organizations to represent their respective interests and should be selected from any of the States without regard to those seven regions. In order to enable the Board to carry out its duties and functions, the Committee should nominate persons with the skills and expertise to aid in planning projects in research, promotion, and consumer education.

Board members and their alternates should serve for terms of three years, except that the members of the initial Board should serve as follows: Four members and alternates should serve one-year terms; four members and four alternates should serve two-year terms; and five should serve for three-year terms. Staggered terms would lend continuity to the Board by ensuring that some experienced members would be on the Board at all times. However, so that there is a continual turnover in membership and infusion of new ideas, the order should provide that no member or alternate should serve more than two consecutive terms, except that those members and alternates serving the initial term of one year may serve two additional consecutive three-year terms. After serving two consecutive terms, Board members should be eligible to serve as alternates, or alternates to serve as Board members.

The terms of office for the initial Board should begin immediately on appointment by the Secretary. In subsequent years the terms of office should begin on April 1, unless the Board recommends, and the Secretary approves some other date that will tend to more effectively carry out the declared policy of the Act. Each member and alternate should serve until his/her successor is selected and has accepted. This stipulation would prevent unnecessary vacancies from occurring on the Board. In those circumstances, the member or alternate should remain in office for part of a third consecutive term until a successor has been selected and has accepted.

All nominations to the Board should be made by the National Honey Nominations Committee. The Committee's sole purpose should be to nominate Board members to be recommended to the Secretary for appointment. The Committee should be composed of one member from each State, nominated by the State association within the State, and appointed by the Secretary. In the event more than one beekeepers' organization within a State submits nominations for that State, the Secretary should designate the organization most representative of the honey producers, handlers, and imports not exempt from assessment under this order to make nominations for that State. In the event a State association does not submit a nomination for the Committee, the Secretary may select a member of the honey industry from that State to represent it on the Committee. However, should a State that is not one of the top twenty honey producing States fail to nominate a member to represent the State, as is specified in the Act, record evidence indicates that the subject State should not be represented on the Committee. The top twenty States, for the initial Committee, should be determined by utilizing the most recent USDA statistics introduced at the hearing. Subsequent determinations of the top twenty honey producing States should occur by using the total assessments collected by each State to determine honey production.

Members of the Committee should serve for three year terms, except members of the initial Committee should serve as follows: One-third of the members should serve one-year terms, one-third should serve two-year terms, and one-third should serve three-year terms. If the total number of delegates are not divisible by three, the Committee should apportion the members into three groups of approximately the same size. One method would be for the Committee to draw lots to determine which Committee members serve the initial one, two, and three year terms. No member should serve more than two consecutive three-year terms, except that those members serving the initial one-year term may serve two additional consecutive three-year terms. The terms of office of the initial members should begin immediately upon appointment by the Secretary. Thereafter, the terms should begin January 1.

The Committee should select its chairperson by a majority vote. The members of the Committee should serve without compensation but should be reimbursed for necessary and reasonable expenses incurred by them and approved by the Board while performing their duties as Committee members. These expenses should be paid from assessment funds collected by the Board.

The duties of the Committee include nominating members and their alternates to the Honey Board, and promptly notifying the Secretary of the nominations. As the same time, the Committee should also submit a list of candidates to the Secretary for the public member and alternate public member position. However, the Secretary should not be bound by that list, and the order should provide that the Secretary may choose from that list or, at the Secretary's discretion, select other candidates to fill the public member and alternate member position.

The Committee should meet annually to make such nominations, except after the first annual meeting, at the determination of the chairperson, the Committee may conduct its business by mail ballot in lieu of an annual meeting. This would relieve the Committee of the time and expense of physically meeting to conduct the nominations. A majority of the Committee should constitute a quorum for voting at an annual meeting. In those circumstances when the Committee conducts its nominations by mail, votes must be received from a majority of the Committee to constitute a quorum. In addition, when voting for Board members, at least 50 percent of the top twenty producing States should vote in order that participation is reasonably representative of the honey industry.

For the purpose of nominating producer members of the Board, the Act specifies that there shall be seven geographic regions established based on the production of honey. One producer member should represent each of these regions. Based on the most recent three years for which official Statistical Reporting Service estimates are available, the following regions would have about equal production and should be set forth in the order.

Region 1: Washington, Oregon, Idaho, California, Nevada, Utah, Alaska, and Hawaii. Region 2: Montana, Wyoming, Nebraska, Kansas, Colorado, Arizona, and New Mexico. Region 3: North Dakota and South Dakota. Region 4: Minnesota, Iowa, Wisconsin, and Michigan. Region 5: Texas, Oklahoma, Missouri, Arkansas, Tennessee, Louisiana, Mississippi, and Alabama. Region 6: Florida, Georgia, and Puerto Rico. Region 7: Illinois, Indiana, Ohio, Kentucky, Virginia, North Carolina, South Carolina, West Virginia, Maryland, District of Columbia, Delaware, New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, and Maine. These regions should be established as the initial seven nomination regions.

Every five years, the Board should review the established regions to determine whether new regions should be established. In making its review the Board should give consideration to the average quantity of honey produced during the most recent three years, shifts and trends in quantities of honey produced, the equitable relationship of Board membership and regions, and other relevant factors. This would allow the honey industry to update the regions to reflect changes in production, and other factors which may have a bearing on the necessity of revising the boundaries of the seven regions. Based on this review the Board may recommend for the Secretary's approval the reestablishment of regions so that reestablished regions will be in place in time for nominations to be conducted and before the new nominees are selected and take office. Any establishment of the regions should be made at least 6 months prior to the date on which terms of office of the Board begin each year and should become effective at least 30 days prior to such date.

In order that the membership of the Board can be selected by the Secretary and begin functioning reasonably soon after the order becomes effective, the Committee should meet and submit nominations for the Board within 90 days after issuance of the order or some other time period prescribed by the Secretary if that period is impractical. So that all interested persons will be apprised of the nominations, adequate notice should be provided to producers, importers, and the Secretary, of each nomination meeting. For subsequent years, the Committee should submit its nominations to the Secretary one month before new Board terms begin. The nomination should be in accordance with the composition of the Board as previously discussed.

The record indicates that the Board should recommend, and the Secretary approve, rules and regulations prescribing procedures for situations in which the industry or certain industry organizations are unable to jointly nominate individuals for membership. If the industry is unable to jointly nominate individuals for nominations to an initial Board, the Secretary should select nominees on the basis of the best information available.

In the event that a producer is eligible to represent more than one region on the Board, or a person is eligible to represent more than one industry group (e.g., producer and importer), that person should choose the position he/she desires to represent on the Board prior to being considered as a nominee.

Each person selected as a Board member should qualify by filing with the Secretary a written acceptance indicating a willingness to serve in such capacity. This requirement is necessary so the Secretary will know whether or not a position has been filled. Such an acceptance should be filed within 30 days after notification of appointment so that the composition of the Board will not be unduly delayed.

In the event a vacancy occurs, a successor should be nominated in accordance with procedures established within the order. The order provides for the automatic replacement of a Board member with his/her alternate should such member cease to be a member in his/her category of selection, should such person fail to carry out his/her office, or should his/her office be vacated by death, resignation, or disqualification. A nominee for the alternate position should be chosen at the Committee's next meeting, unless the position of the member and the respective alternate position are both vacated. Should this occur, the Committee should nominate persons to fill the vacant offices as soon as practicable, unless six months or less remain in the vacator's unexpired term. It should be unnecessary to fill an unexpired term of six months or less because the nominations for the successor would be held fairly soon within that period.

The procedure for conducting meetings of the Board should conform with the bylaws to be adopted by the Board. However, such matters as the method of voting and what constitutes a quorum should be set forth in the order. The order should provide that any action taken by the Board require the concurrence of a majority of the votes cast. Nine members of the Board should constitute a quorum at an assembled meeting of the Board, and any action of the Board should require the concurring votes of at least seven members. At any assembled meeting, all votes should be cast in person. The Board should be authorized to vote by mail, telephone, telegraph, or other means of communication when a matter to be considered is so routine that it would be unnecessary or not cost-effective to call an assembled meeting, or when rapid action is necessary because of an emergency. Any votes cast by telephone should be confirmed promptly in writing to provide a written record of the votes so cast.

The Act requires reimbursement of members of the Board, and the members of any special panel, for reasonable out-of-pocket expenses incurred when performing Board business. This is supported by the evidence. It would be unfair to require such persons to bear such expenses personally.

The Board should have the authority to request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members. This provision would allow the Board to receive additional input from the industry when discussing important or controversial issues.

The powers of the Board enumerated in the Act should be repeated in the order, but subject to the order provisions that all fiscal matters, programs or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board should be submitted to the Secretary for his/her approval. Thus, the Board should have the power to administer the order in accordance with the Act. The Board should also have the power to develop and recommend rules and regulations which will specify the procedures by which it will carry out its responsibilities under the order. Such rules and regulations would cover a number of items, especially procedures which must still be worked out, such as when and how producers and importers would pay assessments. Any rules or regulations should be submitted to the Secretary for approval and issuance. It is possible that violations of the regulations may occur. It is the responsibility and duty of the Board to promptly investigate violations and rumors of violations. A policy should be established and a procedure developed for handling violations. The Board should make every effort to collect assessments and settle alleged violations. In those cases when the Board cannot effect proper settlement, it should after completely investigating and documenting such violations, report them to the Secretary for appropriate action. Finally, the Board should have the power to recommend to the Secretary amendments to the order and to the supplementary regulations issued under the order.

The duties of the Board should be set forth in the order to enable it to discharge its responsibilities. These duties are similar to those generally specified for administrative agencies of this character. They are reasonable and necessary if the Board is to function in the manner prescribed under the Act. These specified duties are not necessarily all inclusive, and the Board may have other duties as well as those enumerated.

Thus, the Board should meet and organize and select from among its members a chairperson and such other officers as may be necessary; to select Board members and consultants to serve on Committees and subcommittees and special panels; to recommend to the Secretary such rules and regulations as may be necessary to administer the program; and to adopt such rules and bylaws for its conduct as it may deem advisable.

Since day-to-day activities of the Board cannot be performed by Board members, another duty of the Board should be to employ such persons as the Board deems necessary and to determine the compensation and define the duties of each. The Board should also take steps to protect the handling of Board funds through fidelity bonds.

To enable the Board and all persons paying assessments to plan accordingly, the Board should prepare and submit to the Secretary for his/her approval a budget on a fiscal period basis of its anticipated expenses in the administration of this part including the probable costs of all programs or projects and to recommend a rate of assessment.

The Board should also develop programs and projects and enter into contracts or agreements with the approval of the Secretary for the development and execution of programs or projects of research, development, advertising, promotion, or education, and the payment of the cost thereof with funds collected pursuant to the order.

The Board must maintain records of its activities and disbursement of funds. Accordingly, it should maintain books and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board.

Periodically, the Board should prepare reports of its activities and account on an annual basis for funds it has received and expended. This information should be made available to producers and importers so they are aware of the Board's actions and how their funds are being spent.

In conjunction with the duty to provide an accounting of funds received and spent, the Board should cause its books to be audited by a certified public accountant at the end of each fiscal period and submit a copy of each audit to the Secretary. If a copy of the audit report is made available for inspection by members or alternate members of the Board, and information of a confidential nature should be removed from the report.

So that the Secretary or his/her representative may attend Board meetings, the Board should give the Secretary notice of meetings, and furnish the Secretary with information he/she may request. These provisions are necessary so that the Secretary is able to perform oversight responsibilities.

The Board should keep minutes, books, and records which will clearly reflect all of its acts and transactions and should make such minutes, books, and records available for examination by the Secretary at all times. Minutes assist in answering questions and avoiding confusion as to what transpired at a given meeting and should be kept for both Board and subcommittee meetings. Minutes should include important points of discussion, motions, the results of any vote, and resolutions adopted. Copies of mintues should be furnished to the Secretary and to all members and alternates as soon as practicable following each meeting. The term "books" refers principally to financial records, and the Board should keep a complete set of such records in accordance with established bookeeping procedures. Records should be kept of all other transactions engaged in by the Board.

The Board should notify honey producers, producer-packers, handlers, and importers of all Board meetings. Sufficient advance notice should be provided for all meetings. This could be done through press releases and other means. All Board meetings should be open to the public, and interested persons should be afforded the opportunity to attend and to participate to the extent appropriate.

The Board should be authorized to appoint such subcommittee(s) and special panels as it may deem necessary. Such an arrangement would provide the Board with the advice of knowledgeable persons in all segments of the industry, leading to better informed decisions. Any actions taken by subcommittee(s) or panels should however, be subject to the approval of the Board. Subcommittees should normally be composed of Board members and alternates. However, there may be producers, handlers, or other individuals who are not members or alternates but who are knowledgeable in a particular subject matter or who could serve the Board in a unique way. The Board should be authorized to appoint such individuals as consultants.

and consultants should be permitted to serve on subcommittees in a non-voting capacity. Consultants should also be permitted to serve in an advisory capacity to the Board. Consultants should be paid for any necessary and reasonable expenses they incur while acting in that capacity.

Additionally, utilization of consultants and special panels would provide the Board with a vehicle through which it can coordinate its efforts with those of other industry organizations involved in similar activities. This would aid in eliminating wasteful duplication, especially in the areas of consumer education and marketing research.

(c) The Board should have the authority to determine the types of research, promotion, and consumer education activities to be undertaken, and it should be charged with the responsibility for initiating and recommending to the Secretary the establishment of any plans or projects as are authorized by the Act.

The order should provide for the establishment, issuance, effectuation and administration of appropriate plans or projects for consumer education, advertising, and promotion of honey and honey products designed to strengthen the position of the honey industry in the marketplace and to maintain, develop, and expand markets for honey and honey products. The authority should be broad and flexible to enable the Board to use the most efficient and effective methods for carrying out the purposes and policy of the Act.

Consumer education, advertising, and promotion plans or projects should be designed to stimulate everyday use of honey and could aid in increasing per capita consumption of honey. Such plans or projects could provide a means whereby consumers could be informed of the proper care and handling of honey and honey products and of the wide number of variations in color and taste of honey available.

The use of various promotional techniques, including paid advertising, merchandising and public relations, as contemplated under the order, would provide the Board with a means of stimulating sales and enhancing returns to producers. Therefore, the use of promotional activities to increase consumer knowledge and awareness of honey products and their uses should be authorized.

The evidence indicates that the end purposes of marketing research and development projects should be (1) The acquisition of knowledge pertaining to honey and honey products or how their consumption and use may be encouraged or expanded, and (2) that the marketing and utilization of honey and honey products may be encouraged, expanded, improved, or made more efficient. Since this order deals exclusively as a research, promotion, and consumer education program, any quality control grade standards, supply management, or other programs that would otherwise limit the right of the individual honey producer to produce honey shall not be conducted under, or as part of, the order.

Through studies of consumer buying habits, certain segments of the market which need to be strengthened could be identified. Similar research could be used to determine areas in which the consumer education is needed. In addition, information gathered on consumer preference could aid processors in making decisions regarding the types of products to produce and how they should be distributed.

It is not possible to anticipate all the promotion, consumer education, and research activities that may be required to meet the needs of the industry. Therefore, the authority for the Board to establish such projects should be broad and flexible, and available to the extent permitted under the Act, including the development and expansion of honey and honey product sales in foreign markets.

Record evidence indicates that the Board, in its advertising or other promotion efforts, should treat all honey and honey products covered by the order fairly and equitably. Since references to private brand or trade names could serve to further the interest of individual producers or importers at the cost of the entire industry, such references are prohibited by the Act. In addition, any false or unwarranted claims on behalf of honey or its products, or false or unwarranted statements with respect to the attributes or use of any competing products should be prohibited.

The prohibition on the use of false or misleading claims with respect to honey and honey products or competing products is appropriate and necessary for proper administration of the order. This provision is a safeguard against the possibility of over-zealous claims on behalf of honey and honey products and serves to prevent derogatory statements about competing products.

Although the Board should promote honey and honey products in general, there may be instances where promoting particular products would be reasonable and necessary. The fact that any person dissatisfied with the Board's programs could obtain an assessment refund would further motivate the Board to design a program which is fair and equitable to everyone.

The record also indicates that advertising on a national level may not be effective in cases where differences exist in regional tastes and preferences. The Board should have the discretion to advertise on a regional basis, when circumstances so warrant.

Prior to engaging in any promotion, consumer education, or research projects, the Board should submit the plans for each project to the Secretary for approval. The costs of such a project should be included in the budget submitted for approval, and should be defrayed by the use of assessment funds as authorized by the Act. After a project has been initiated, it should be evaluated periodically and terminated if the Board or the Secretary finds that the project does not further the purposes of the Act.

The record evidence shows that the Board will contract for some or all of its promotion, consumer education, and research projects with private and governmental agencies which are properly staffed and equipped to do the type of work needed. Prior to such contracting, the approval of the Secretary should be obtained to insure that the plans and projects contemplated are consistent with the terms and conditions of the order.

(d) The Board should be authorized to incur such expenses for research, promotion, and consumer education and such other expenses for the administration, maintenance, and functioning of the Board and the Committee as are approved by the Secretary.

The funds to cover the expenses of the Board should be obtained through assessments collected from producers and importers. In addition, testimony from sellers of bees and beekeeping equipment indicates a strong desire to voluntarily contribute to this program in order to assure its success. Thus, provisions for the Board to accept donations of funds from such sources should be included in the order. The Board may obtain additional funds through interest on money, such as the operating reserve placed in savings or other interest-bearing accounts. These funds should also be available to pay Board expenses. The Act specifically authorizes the Secretary to approve the incurring of such expenses by any authority or agency established under an order, and require that an order contain provisions requiring producers and importers to pay their pro rata share of the assessment.

The evidence of record indicates that the first handler should be responsible for the collection of assessments on all domestic and imported honey and/or honey products. The first handler should collect the assessments and remit such monies to the Board together with a report of honey acquired through handling as may be requested by the Board. Each handler must inform the Board of the quantity of honey handled so that the appropriate total assessment to be paid by the handler can be determined. Since Board members and their alternates include handlers, importers, and producers, they should not have access to any data that would disclose the business operations of others and give Board members and alternates an unfair advantage over their competitors. All reports filed by handlers must be kept in strictest confidence and cannot be disclosed to any person, including Board members, except the Secretary.

The Board should prepare a budget at the beginning of each fiscal period showing estimates of the income and expenditures necessary for the administration of the order during such period. Each such budget should be submitted to the Secretary with an analysis of its components. After each year of operation the Board should, as part of this budget and report, recommend to the Secretary the rate of assessment believed necessary to secure the income required for that period. The Board, because of its knowledge of research and promotion needs, would be in a good position to ascertain the necessary assessment rate and make recommendations in this regard.

The evidence is that the Board should reimburse the Secretary for administrative costs incurred by the Department in administering the order and in the conduct of referenda.

The rate of assessment should be established by the Secretary on the basis of the Board's recommendation, or other available information. In order to assure the continuance of the Board, the payment of assessments should continue even if particular provisions of the order are suspended or become inoperative.

The order should require each producer and importer to pay to the Board, upon demand, his/her pro rata share of such expenses as may be approved by the Secretary. Assessments should be based upon the volume of honey, including the honey equivalent in honey products.

Because honey tends to lose its identity as it passes from producers through processors to consumers, the order should logically require, with certain exceptions, that the first handler of honey or honey products collect assessments from the producer and pay such assessments to the Board. Importers of honey should pay the assessments due the Board at the time of entry of honey and/or honey products into the United States and producer-packers who act as first handlers should also be responsible for the collection of assessments. Separate records should be kept by the first handler for each person assessed under the order to provide the Board with the assurance that the proper amount has been collected from each producer and importer and to enable the Board to verify the proper amount of refunds that may be made to a producer or importer requesting a refund.

Whenever honey is placed under loan with the Honey Loan Price-Support Program, the Secretary should deduct the assessment from the proceeds of the loan, and forward it to the Board. However, to avoid double assessments on producer members of a honey marketing cooperative, this should not apply if the cooperative deducted the assessment from its members' proceeds. These procedures would ensure that assessments are paid by the handler in the event the producer elects to forfeit the honey placed under loan. Should the loan be redeemed, the Secretary would provide the producer with proof of payment of assessment so that he/she could obtain a refund of such assessment if the producer requests it.

The Act provides that the rate of assessment shall be set a $0.01 per pound of honey for the first fiscal period after an order is approved to provide the income to finance a national honey promotion program during this period. Testimony indicates that based on two hundred million pounds at one cent per pound assessment, and assuming no refunds, two million dollars would be available to begin operations. Thereafter, the Board should be allowed to increase the assessment rate by up to one-half cent per pound per year, but in no event to increase the assessment rate above $.04 per pound. Such a restriction on the assessment rate is necessary so producers and importers would know the maximum assessment which can be levied upon them. This restriction should still provide a sufficient level of assessments to finance a coordinated national program of research, promotion, and consumer information.

Should it develop that assessment income during a fiscal period would not provide sufficient income to meet expenses, the order should authorize the Board to obtain the funds to cover such expenses by increasing the rate of assessment, subject to the limitations discussed in the preceding paragraph. The increased assessment rate should be applied to all honey and honey products sold in the States during the particular fiscal period so that the total payments by each person during each fiscal period will be proportional to the total volume of the honey and honey products sold during that period. A proponent also testified that the Board should be authorized to accept interest free advance payment of funds by handlers, importers, or producer-packers which shall be credited to any amount for which such persons may become liable, and to borrow money to cover administrative expenses until assessments can be collected. The principal purpose of borrowing monies is to cover the cost of initiating this program and any action taken should be subject to approval of the Secretary.

Marketing practices differ among different segments of the honey industry and among various producing areas of the United States. Honey is marketed in specialty shops, in supermarkets, and in other mass merchandising outlets. Testimony also indicates that an individual producer may even sell portions of his/her crop in different outlets or in a different manner. In order to best deal with these differences, the Board should issue regulations governing collection of assessments. Such regulations should describe the producer and/or importer responsible for remitting assessments to the Board and the proper determination of the assessments that are due. However, such regulations should not be a condition precedent to the levying and collection of assessments since the Board will not have the time or expertise to issue such regulations for the first fiscal period, and may not have sufficient experience to have such regulations in place for the following year.

The evidence of record is that a late payment charge should be imposed on any handler, importer, or producer-packer who fails to pay all assessments due to the Board before the due date to be established by the Board. In addition, the Board should also charge interest on the outstanding portion of any amount for which the handler, importer, or producer-packer is liable. The Secretary, in order to perform necessary oversight responsibilities, should approve any late payment provisions and interest provisions before they are put into effect. The rate of interest should be determined by the Board, but should not exceed the maximum legal limit, if any, as established by Congress.

(e) The Act requires that the order provide exemption from assessment payments for all producers or producer-packers who produce, or handle, or produce and handle, or any importer who imports less than 6,000 pounds of honey per year. Thus, a producer who is also a packer should be exempt only if the producer/packer produced and handled less than 6,000 pounds annually. The exemption is desirable to ease the paperwork burden on small businesses, hobbyists, and others not producing honey or honey products for profit. To be exempted from assessment, producers and importers should submit an application to the Board stating their yearly production or importation is less than 6,000 pounds. If the producer or importer is a corporation, total production or importation should include any volume attributable to any subsidiary firms controlled by such corporation.

The Board should be authorized to recommend that sales to persons or organizations in foreign countries be exempt from assessment because this would provide an incentive for developing the export honey business by making the exporter more competitive in the world market. The Board may prescribe, with the approval of the Secretary, such rules, regulations, and safeguards as are necessary to clarify exemption provisions granted to exporters to prevent honey and honey products from being improperly assessed or exempted from assessments.

To reduce the assessment burden on producers in those States operating programs with objectives comparable to those in the program established under the Act, the evidence indicates that the Board shall recommend exemption of the producers in those States from a portion of the assessments under the Federal order, provided the State programs meet all of the criteria specified in the Act and the order. State programs must meet the following criteria:

(1) The program is comparable to the program established under this Act; and

(2) The program was in existence and in operation on January 1, 1985.

The amount of the assessment subject to exemption should not exceed the amount authorized by the State plan on January 1, 1985, or a State can provide evidence that it was in the process of promulgating a different assessment level on January 1, 1985. These criteria are intended to provide for the continuation of any State programs in effect before January 1, 1985, and to prevent abuse of this exemption. The new assessment level will be exempt upon approval of the honey producers in that State. Producers having an exemption from a portion of the assessment under this plan due to payment of an assessment to a State plan should be required to furnish evidence to the Board that the assessment to the State plan has been paid.

(f) Provision for making refunds of assessments to producers and importers who request them should be included in the order. The Act provides that any person promptly remitting assessments to the Board who is not in favor of supporting the order should have the right to demand and receive from the Board a refund of such assessment. The demand should be made to the Board by the individual producer or importer in accordance with regulations and on a form prescribed by the Board. To conform with the Act, up to 7 months may be allowed from the date payment was due to submit a request, and upon proof satisfactory to the Board that the producer paid the assessment, a refund must be made within the time prescribed in the order.

To safeguard the refunding process, for example, the person requesting the refund must provide the necessary information to show that he/she paid the asssessment. Associations, cooperatives, or others should only be entitled to request refunds on behalf of producers or importers if specifically authorized by such producers or importers. In any event, a person should not be eligible for a refund unless the person actually paid the assessment or the assessment was deducted from proceeds from the sale of the person's honey and honey products.

Furthermore, the Act and the order provide that during any year, the amount of refunds made to importers, as a percentage of total assessments collected from importers, shall not exceed the amount of refunds made to domestic producers, as a percentage of total assessments collected from such producers. In order to minimize the impact on the Board of computing and administering the refund provisions, the order should provide the refunds to producers and importers be made by the Board in June and December of each year.

The Board should recommend, and the Secretary approve, regulations governing the disbursal of refunds. The regulations should describe the producer and importer eligible to receive refunds and the proper determination of the refunds that are due.

States that are operating programs similar to this order, and were in existence and in operation on January 1, 1985, should be allowed to obtain a refund of the monies collected in that State by the Board pursuant to this order. However, refunds requested by producers and importers under the Federal order should be deducted from total assessments collected in that State before the requesting State's assessment is refunded. This would insure that producers and importers could not receive refunds in an amount greater than contributions. Such refunds should not be included in the formula pertaining to importer refunds.

(g) The Board should have authority to establish an operating monetary reserve and set aside funds in the reserve to defray any authorized expenses. The purpose of this fund would be to enable the Board to carry on an effective and continuous coordinated program of research, promotion, and consumer information in years when the production and assessment income may be reduced. Furthermore, it is conceivable that research and promotion efforts in a given year may have to be financed, in part, by funds collected in the previous year. The operating reserve would provide the funds necessary for such financing.

The Board should include an item in its budget to obtain funds for the operating reserve. In addition, any unexpended assessments at the end of a fiscal period should be included in the operating reserve. Those funds would arise if assessment income for a fiscal year is larger than originally estimated by the Board because (1) honey production during the year is larger than originally estimated, or (2) expenses are less than those estimated and budgeted by the Board. The order does not provide for a refund of such excess assessments to the persons from whom collected or credited to their account and thus, placing such funds in the operating reserve would be appropriate. The record evidence is that a reserve not exceeding one year's expenses would be needed to ensure that projects already begun may be completed, or that assessments could be reduced or waived for one year without disrupting Board programs if the industry is experiencing financial difficulties.

(h) The Board should have authority, with the approval of the Secretary, to require each handler, importer, and producer-packer of honey and/or honey products to submit to the Board such reports and information as may be needed for the performance of its duties under the order. Most handlers have such necessary information in their possession, and the requirements that they furnish such information to the

Board in the form of reports should not constitute an undue or onerous burden. At a minimum, the board will require information on the utilization, receipt, and disposition of honey, on the amount of assessments paid and payable, and on persons claiming exemption from assessments. However, it is difficult to anticipate every type of report or kind of information which the Board may require to carry out its duties. Therefore, as a minimum, the order should require each handler, importer, and producer-packer of honey and/or honey products to furnish upon request of the Board such reports and information as are necessary to enable the Board to perform its duties.

In order for the Board to effectively investigate and verify compliance to this order, each first handler (i.e., handler, importer, and producer-packer) of assessable honey and/or honey products should be required to maintain for each fiscal period complete records on the utilization and disposition of honey and honey products. Such records should be retained for not less than two years after the end of the fiscal period in which the transaction occurred, so that if needed in connection with enforcement, the requisite records will be available for that purpose.

Any reports and records submitted for Board use by the first handler should remain confidential and be disclosed to no person other than the Secretary and persons authorized by the Secretary. Under certain circumstances, the release of information compiled from reports may be helpful to the Board and the industry generally in planning for operations under the order. Section 1240.52(c) of the proposal included in the notice of hearing stated that the names and addresses of those persons receiving refunds should not be considered confidential information. Moreover, testimony given at the hearing supported the release of the names of those persons. However, the Act specifically states that all information obtained from handlers should be kept confidential and released only on a composite basis, and such release of information should disclose neither the identity of the person furnishing the information nor the individual operations. This is necessary to prevent the disclosure of information that may affect the trade or financial position or the business operations of individual producers, producer-packers, and importers. Therefore, § 1240.52(c) should not be included in the order.

(i) Consistent with the Act, the order should prohibit the use of assessment funds to influence government policy or action. The only exception should be that funds collected under the order may be used in recommending amendments to such order. Furthermore, the Board should exercise care to avoid entering into contracts with organizations which engage in efforts to influence government action or policy.

The order should require the submission of all fiscal matters, programs or projects, rules or regulations, reports or other related actions proposed by the Board to the Secretary for approval. The Secretary should not determine how the Board might best conduct a program of research, promotion, and consumer information, but only ensure that program options are in accordance with the Act, order, and applicable rules and regulations. These provisions are necessary and appropriate because the Secretary is charged by law with the responsibility for the administration of the program in accordance with the policy and provisions of the Act, order, and rules issued under the order.

The provisions of §§ 1240.62 through 1240.67 which involve suspension, termination, liability, separability, patents, and copyrights are generally included in research and promotion programs. Several, such as § 1240.62, are required by the Act; others are necessary for administration of the order. All such provisions are incidental to and not inconsistent with the terms and conditions of the Act, and necessary to effectuate the other provisions of the order. Testimony at the hearing supports the inclusion of each such provision, and they should be included in the order.

Rulings on Briefs of Interested Parties

At the conclusion of the hearing the Administrative Law Judge fixed August 30, 1985, as the final date for interested parties to file proposed findings, conclusions, and written arguments or briefs based upon the evidence received at the hearing.

No briefs were filed.

General Findings

Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) The order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The said order regulates the marketing of honey and honey products in the "States" in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed order upon which a hearing has been held;

(3) The said order is limited in its application to the only marketing area which is practicable consistent with carrying out the declared purposes of the Act; and

(4) The marketing of honey and honey products in the "States," as defined in said order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 1240

Honey, Agricultural research, Reporting and recordkeeping requirements, Market development, and Consumer information.

Recommended Order

The following order is recommended as the detailed means by which the foregoing conclusions may be carried out:

It is proposed that Chapter XI of Title 7 be amended by adding Part 1240 to read as follows:

PART 1240—HONEY RESEARCH, PROMOTION AND CONSUMER INFORMATION ORDER

Definitions

Sec.

1240.1 Secretary.
1240.2 Act.
1240.3 Person.
1240.4 Honey.
1240.5 Honey products.
1240.6 Producer.
1240.7 Handle.
1240.8 Handler.
1240.9 Producer-packer.
1240.10 Importer.
1240.11 Promotion.
1240.12 Research.
1240.13 Consumer education.
1240.14 Marketing.
1240.15 Committee.
1240.16 State association.
1240.17 Honey Board.
1240.18 State.
1240.19 Fiscal period and marketing year.
1240.20 Plans and projects.
1240.21 Part and subpart.

Honey Board

1240.30 Establishment and membership.
1240.31 Term of office.
1240.32 Nominations.
1240.34 Vacancies.
1240.35 Procedure.
1240.36 Attendance.
1240.37 Powers.
1240.38 Duties.

Research, Promotion, and Consumer Education

1240.39 Research, promotion, and consumer education.

Expenses and Assessments

1240.40 Budget and expenses.
1240.41 Assessments.

Sec.

1240.42 Exemption from assessment.
1240.43 Producer, importer and State assessment plan refund.
1240.44 Operating reserve.

Reports, Books and Records

1240.50 Reports.
1240.51 Books and records.
1240.52 Confidential treatment.

Miscellaneous

1240.60 Influencing governmental action.
1240.61 Right of the Secretary.
1240.62 Suspension or termination.
1240.63 Proceedings after termination.
1240.64 Effect of termination or amendment.
1240.65 Personal liability.
1240.66 Separability.
1240.67 Patents, copyrights, inventions, and publications.

Authority: Honey Research, Promotion, and Consumer Information Act 7 U.S.C. 4601–4612.

Definitions

§ 1240.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his/her stead.

§ 1240.2 Act.

"Act" means the Honey Research, Promotion, and Consumer Information Act (Pub. L. 98–590) and any amendments thereto.

§ 1240.3 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1240.4 Honey.

"Honey" means the nectar and saccharine exudations of plants which are gathered, modified, and stored in the comb of honey bees.

§ 1240.5 Honey products.

"Honey products" means products wherein honey is a principal ingredient.

§ 1240.6 Producer.

"Producer" means any person who produces honey in any State for sale in commerce.

§ 1240.7 Handle.

"Handle" means to process, package, sell, transport, purchase or in any other way place honey or honey products, or cause them to be placed, in the current of commerce. Such term shall include selling unprocessed honey that will be consumed without further processing or packaging. Such term shall not include the transportation of unprocessed honey by the producer to a handler or transportation by a commercial carrier of honey, whether processed or unprocessed for the account of the handler or producer.

§ 1240.8 Handler.

"Handler" means any person who handles honey or honey products.

§ 1240.9 Producer-packer.

"Producer-packer" means any person who is both a producer and handler of honey or honey products.

§ 1240.10 Importer.

"Importer" means any person who imports honey or honey products into the United States as principal or as an agent, broker, or consignee for any person who prodcues honey outside of the United States for sale in the United States.

§ 1240.11 Promotion.

"Promotion" means any action, including paid advertising and public relations, to present a favorable image for honey or honey products to the public with the express intent of improving the competitive position and stimulating sales of honey or honey products.

§ 1240.12 Research.

"Research" means any type of systematic study or investigation, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of honey or honey products.

§ 1240.13 Consumer education.

"Consumer education" means the act of providing information to the public on the usage and care of honey and honey products.

§ 1240.14 Marketing.

"Marketing" means the sale or other disposition in commerce of honey or honey products.

§ 1240.15 Committee.

"Committee" or the "National Honey Nominations Committee" means the Committee established pursuant to § 1240.32.

§ 1240.16 State association.

"State association" or "association" means that organization of beekeepers in a State which is generally recognized as representing the beekeepers of that State.

§ 1240.17 Honey Board.

"Honey Board" or the "Board" means the administrative body established pursuant to § 1240.30.

§ 1240.18 State.

"State" means any of the fifty States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1240.19 Fiscal period and marketing year.

"Fiscal period" and "marketing year" means the 12-month period ending on December 31 or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

§ 1240.20 Plans and projects.

"Plans" and "projects" mean those research, promotion, and consumer education plans, studies, or projects established pursuant to §§ 1240.38 and 1240.39.

§ 1240.21 Part and Subpart.

"Part" means the Honey Research, Promotion, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder, and the order shall be a "subpart" of such part.

Honey Board

§ 1240.30 Establishment and membership.

A Honey Board (hereinafter called the "Board") is hereby established to administer the terms and provisions of this part. The Board shall consist of thirteen (13) members, each of whom shall have an alternate. Seven members and seven alternates shall be honey producers, two members and two alternates shall be honey handlers, two members and two alternates shall be honey importers, one member and one alternate shall be an officer or employee of a honey marketing cooperative, and one member and one alternate shall be selected to represent the general public. The Board shall be appointed by the Secretary from nominations submitted by the National Honey Nominations Committee pursuant to § 1240.32.

§ 1240.31 Term of office.

The members of the Board and their alternates shall serve for terms of three years, except the members of the initial Board shall be designated for, and shall serve terms as follows: Four members and alternates shall serve for one-year terms; four shall serve for two-year terms; and five shall serve for three-year terms. No member or alternate shall serve more than two consecutive terms: *Provided,* That those members and alternates serving the initial term of one year may serve two additional consecutive three-year terms. The term of office for the initial Board shall begin

immediately on appointment by the Secretary. In subsequent years, the term of office shall begin on April 1. Each member and alternate member shall continue to serve until his/her successor is selected and has accepted.

§ 1240.32 Nominations.

All nominations to the Board authorized under § 1240.30 herein shall be made in the following manner.

(a) Establishment of National Honey Nominations Committee.

(1) There is hereby established a National Honey Nominations Committee, hereinafter called the "Committee", which shall consist of not more than one member from each State, appointed by the Secretary from nominations submitted by each State Association. Wherever there is more than one eligible association within a State, the Secretary shall designate the association most representative of the honey producers, handlers, and importers not exempt under § 1240.42(a) to make nominations for that State.

(2) If a State Association does not submit a nomination for the Committee, the Secretary may select a member of the honey industry from that State to represent that State on the Committee. However, if a State which is not one of the top twenty honey producing States (as determined by the Secretary) does not submit a nomination, such State shall not be represented on the Committee.

(3) Members of the Committee shall serve for three-year terms, except members of the initial Committee shall serve for terms as follows: One-third of such members shall serve one-year terms; one-third shall serve two-year terms; and one-third shall serve three-year terms. No member shall serve more than two consecutive three-year terms: *Provided*, That those members serving the initial term of one year may serve two additional consecutive three-year terms. The term of office for the initial Committee shall begin immediately on appointment by the Secretary. In subsequent years, the term of office shall begin on January 1.

(4) The Committee shall select its Chairperson by a majority vote.

(5) The members of the Committee shall serve without compensation, but shall be reimbursed for necessary and reasonable expenses incurred in performing their duties as members of the Committee and approved by the Board. Such expenses shall be paid from funds collected by the Board pursuant to § 1240.41.

(b) Nominations to the Board.

(1) Except for the member and alternate who represent the general public, the Committee shall nominate the members and alternate members of the Honey Board and submit such nominations promptly to the Secretary for approval. The Committee shall also submit a list of candidates to the Secretary for the public member and alternate public member position. The Secretary may choose from that list of names or, at his/her discretion, choose other candidates to fill the public member and alternate position.

(2) After the first meeting, the Committee shall meet annually to make such nominations, or at the determination of the Chairperson, the Committee may conduct its business by mail ballot in lieu of an annual meeting.

(3) A majority of the Committee shall constitute a quorum for voting at an annual meeting. In the event of a mail ballot, votes must be received from a majority of the Committee to constitute a quorum.

(4) At least 50 percent of the members from the twenty leading honey-producing states must vote in any nomination of members to the Board.

(5) For the purpose of nominating producer members to the Board, the Secretary shall establish seven regions on the basis of the production of honey. For the purpose of facilitating initial nominations to the Honey Board, the following regions shall be the initial regions: Region 1: Washington, Oregon, Idaho, California, Nevada, Utah, Alaska, and Hawaii. Region 2: Montana, Wyoming, Nebraska, Kansas, Colorado, Arizona, and New Mexico. Region 3: North Dakota and South Dakota. Region 4: Minnesota, Iowa, Wisconsin, and Michigan. Region 5: Texas, Oklahoma, Missouri, Arkansas, Tennessee, Louisiana, Mississippi, and Alabama. Region 6: Florida, Georgia, and Puerto Rico. Region 7: Illinois, Indiana, Ohio, Kentucky, Virginia, North Carolina, South Carolina, West Virginia, Maryland, District of Columbia, Delaware, New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, and Maine.

(6) Every five years, the Board shall review the regions to determine whether new regions should be established. In making such review, it shall give consideration to: (i) The average quantity of honey produced during the most recent three years; (ii) shifts and trends in quantities of honey produced; (iii) the equitable relationship of Board membership and districts; and (iv) other relevant factors. As a result of this review, the Board may recommend for the Secretary's approval the reestablishment of such regions. Any such reestablishment of regions shall be made at least six months prior to the date on which terms of office of the Board begin each year and shall become effective at least 30 days prior to such date.

(7) The initial Committee shall within 90 days of the announcement of issuance of this order, or such other period as prescribed by the Secretary, submit in a manner prescribed by the Secretary the following nominations:

(i) One producer member and one alternate producer member from each of the seven regions established by the Secretary;

(ii) Two handler members and two alternate handler members from recommendations made by industry organizations representing handler interests;

(iii) Two importer members and two alternate importer members from recommendations made by industry organizations representing importer interests; and

(iv) One member and one alternate who are officers or employees of honey marketing cooperatives.

(v) For subsequent years, the Committee shall submit its nominations to the Secretary one month before the new Board term begins.

§ 1240.34 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that he/she be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, he/she shall remove such member from office.

(c) Should any member position become vacant, the alternate of that member shall automatically assume the position of said member. At its next meeting, the Honey Nominations Committee shall nominate a replacement for said alternate. Should the positions of both a member and such member's alternate become vacant, successors for the unexpired term of such member and alternate shall be nominated and appointed in the manner specified in §§ 1240.30 and 1240.32, except that said nomination and replacement shall not be required if said

unexpired terms are less than six months.

§ 1240.35 Procedure.

(a) A majority of the members, including alternates acting in place of members of the Board, shall constitute a quorum: *Provided,* That such alternates shall serve only whenever the member is absent from a meeting or is disqualified. Any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may act upon the concurring votes of a majority of its members by mail, telephone, telegraph, or by other means of communication: *Provided,* That each proposition is explained accurately, fully, and substantially identically to each member. All telephone votes shall be promptly confirmed in writing and recorded in the Board minutes.

§ 1240.36 Attendance.

Members of the Board and the members of any special panels shall be reimbursed for reasonable out-of-pocket expenses incurred when performing Board business. The Board shall have the authority to request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 1240.37 Powers.

The Board shall have the following powers subject to § 1240.61:

(a) To administer this subpart in accordance with the terms and provisions of the Act;

(b) To make rules and regulations to effectuate the terms and conditions of this subpart;

(c) To require its employees to receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 1240.38 Duties.

The Board shall have, among other things, the following duties:

(a) To meet and organize and to select from among its members a chairperson and such other officers as may be necessary; to select committees and subcommittees from its membership and consultants; to adopt such rules, regulations, and by-laws for the conduct of its business as it may deem advisable.

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) To prepare and submit to the Secretary for his/her approval, a budget on a fiscal period basis of its anticipated expenses in the administration of this part including the probable costs of all programs or projects and to recommend a rate of assessment with respect thereto;

(d) To investigate violations of the order and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of the order.

(e) To develop programs and projects and to enter into contracts or agreements with the approval of the Secretary for the development and carrying out of programs or projects of research, development, advertising, promotion, or education, and the payment of the costs thereof with funds collected pursuant to this part;

(f) To maintain minutes, books, and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it;

(g) To periodically prepare and make public and to make available to producers and importers, reports of its activities carried out, and at least once each fiscal period to make public an accounting of funds received and expended;

(h) To cause its books to be audited by a certified public accountant at the end of each fiscal period and to submit a copy of each audit to the Secretary;

(i) To give to the Secretary the same notice of meetings of the Board and subcommittees as is given to members in order that representatives of the Secretary may attend such meetings;

(j) To submit to the Secretary such information pertaining to this subpart as he/she may request;

(k) To notify honey producers, producer-packers, handlers, and importers of all Board meetings through press releases or other means;

(l) To appoint and convene, from time to time, working committees drawn from producers, honey handlers, importers, exporters, members of the wholesale or retail outlets for honey, or other members of the public to assist in the development of research, promotion, and consumer education programs for honey; and

(m) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of projects or activities to effectuate the declared purpose of the Act.

Research, Promotion, and Consumer Education

§ 1240.39 Research, promotion, and consumer education.

The Board shall develop and submit to the Secretary for approval any plans or projects authorized in this section. Such plans or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate plans or projects for consumer education, advertising, and promotion of honey and honey products designed to strengthen the position of the honey industry in the marketplace and to maintain, develop, and expand markets for honey and honey products;

(b) The establishment and conduct of marketing research and development projects to the end that the acquisition of knowledge pertaining to honey and honey products or their consumption and use may be encouraged or expanded, or to the end that the marketing and utilization of honey and honey products may be encouraged, expanded, improved or made more efficient: *Provided,* That quality control, grade standards, supply management, or other programs that would otherwise limit the right of the individual honey producer to produce honey shall not be conducted under, or as a part of this subpart;

(c) The development and expansion of honey and honey product sales in foreign markets;

(d) A prohibition on advertising or other promotion programs that make any false or unwarranted claims on behalf of honey or its products or false or unwarranted statements with respect to the attributes or use of any competing product;

(e) Periodic evaluation by the Board of each plan or project authorized under this part to insure that each plan or project contributes to an effective and coordinated program of research, education, and promotion and submit such evaluation to the Secretary. If the Board or the Secretary finds that a plan or project does not further the purposes of the Act, then the Board shall terminate such plan or project; and

(f) The Board to enter into contracts or make agreements for the development and carrying out of research, promotion, and consumer education, and pay for the costs of such contracts or agreements with funds collected pursuant to § 1240.41.

Expenses and Assessments

§ 1240.40 Budget and expenses.

(a) At the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of the Order, including expenses of the Committee and probable costs of research, promotion, and consumer education.

(b) The Board is authorized to icur expenses for research, promotion, and consumer education, such other expenses for the administration, maintenance, and functioning of the Board and the Committee as may be authorized by the Secretary, any opeating reserve established pursuant to § 1240.44, and those administrative costs incurred by the Department specified in paragraph (c) of this section. The funds to cover such expenses shall be paid from assessments collected pursuant to §1240.1, donations from any person not subject to assessment under this order and other funds available to the Board including those collected pursuant to § 1240.67 and subject to the limitations contained therein.

(c) The Board shall reimburse the Department from assessments for administrative costs incurred by the Department with respect to this order after its promulgation. The Department shall also be reimbursed for administrative expenses incurred by it for the conduct of referenda.

§ 1240.41 Assessments.

(a) Each producer and importer shall pay to the Board, upon demand, his/her pro rata share of such expenses as may be approved by the Secretary pursuant to § 1240.40. Such pro rata share shall be the amount established by the Secretary purusant to paragraph (c) of this section.

(b) Except as provided in §1240.42 and in paragraphs (e), (f), and (g) of this section, the first handler shall be responsible for the collection of such assessment from the producer and payment thereof to the Board. The first handler shall maintain separate records for each producer's honey handled, including honey produced by said handler.

(c) The assessment on honey shall be levied at a rate fixed by the Secretary which shall be $0.01 per pound of honey or honey used in honey products during the first fiscal period (or portion thereof) after this order is approved in referendum. After that first year, the Board may request the Secretary to increase the assessment rate not more than $0.005 per pound of honey per year: *Provided*, That the assessment never exceeds $0.04 per pound of honey per year. After the first year, the Board may request the Secretary to decrease the assessment rate by any amount it sees fit.

(d) Should a deficit occur during any fiscal period, funds to cover the deficit may be otained by increasing the rate of assessment subject to the limitations in paragraph (c) of this section. The increased rate of assessment shall be applied to all honey and the honey used in products wherein honey is the primary ingredient sold in the States during that particular fiscal period so that the total payments by each person during each fiscal period will be proportional to the total value of the honey and honey products sold during that period.

(e) The importer of imported honey and honey products shall pay the assessment to the Board at the time of entry of such honey and honey products into any State.

(f) Producer-packers shall pay to the Board the assessment on the honey for which they act as first handler.

(g) Whenever a loan is made on honey under the Honey Loan-Price Support Program, the Secretary shall provide that the assessment be deducted from the proceeds of the loan, and that the amount of such assessment shall be forwarded to the Board, except that the assessment shall be not be deducted by the Secretary in the case of a honey marketing cooperative that has alrady deducted the assessment. When such loan is redeemed, the Secretary shall provide the producer with proof of payment of the assessment.

(h) Assessments shall be paid to the Board at such time and in such manner as the Board, with the Secretary's approval, directs pursuant to regulations issued hereunder. Such regulations may provide for different handler, importer, or producer-packer payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

(i) There shall be a late payment charge imposed on any handler, importer, or producer-packer who fails to remit to the Board the total amount for which any such handler, importer, or producer-packer is liable on or before the payment due date established by the Board under paragraph (h) of this section. The amount of the late payment charge shall be set by the Board subject to approval by the Secretary.

(j) There shall also be imposed on any handler, importer, or producer-packer subject to a later payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the handler, importer, or producer-packer is liable. The rate of such interest shall be prescribed by the Board subject to approval by the Secretary, but shall not exceed the maximum legal rate of interest, if any, as established by Congress.

(k) The Board is hereby authorized to accept advance payment of assessments by handlers, importers, or producer-packers that shall be credited toward any amount for which the handlers, importers or producer-packers may become liable. The Board is not obligated to pay interest on any advance payment.

(l) The Board is hereby authorized to borrow money for the payment of expenses subject to the same fiscal, budget, and audit controls as other funds of the Board.

§ 1240.42 Exemption from assessment.

(a) A producer who produces less than 6,000 pounds of honey per year, or a producer-packer who produces and handles less than 6,000 pounds of honey per year or an importer who imports less than 6,000 pounds of honey per year shall be exempt from the assessment.

(b) To claim such exemption, a producer, producer-packer, or importer shall submit an application to the Board stating that his/her production, handling or importation of honey shall not exceed 6,000 pounds for the year for which the exemption is claimed.

(c) The Board may recommend to the Secretary that honey exported from the States be exempted from the provisions of this order, and include procedures for the refund of assessments on such honey and such safeguards as may be necessary to prevent improper use of this exemption.

(d) The Board shall determine those States that are operating a program with objectives comparable to the objectives of the Act and recommend to the Secretary that they be exempted from a portion of the assessments collected by the Federal program. The amount of such assessments subject to exemption shall not exceed the amount authorized by the State plan on January 1, 1985, unless a State provides evidence that it was in the process of promulgating a different assessment level on January 1, 1985, then the new assessment level promulgated will be exempt upon approval of the honey producers in that State. Producers having an exemption from a portion of the assessments under this order, due to payment of assessments to a State plan, shall be required to furnish evidence to the Board that the assessments to the State plan have been paid.

§ 1240.43 Producer, importer, and State assessment plan refund.

(a) Any producer or importer who pays an assessment under the authority of this part shall have the right to demand and receive from the Board a refund of such assessment upon submission of proof to the staff of the Board that the producer or importer paid the assessment for which refund is sought, except that producers who have honey pledged as collateral for a loan under the Honey Loan-Price Support Program and therefore have paid the assessment, shall not be eligible for a refund until the loan has been repaid, or the honey has been turned over to the Commodity Credit Corporation. The amount of refunds during any year made to importers, as a percentage of total assessments collected from all importers, shall not exceed the amount of refunds made to domestic producers, as a percentage of total assessments collected from such producers. Any demand for refund shall be made by the producer or importer within the time and in the manner prescribed by the Board and approved by the Secretary. Refunds made in accordance with this section shall be paid by the Board in June and December of each year.

(b) Any State authority operating pursuant to a State assessment plan satisfying the conditions of subparagraph (1) of this paragraph may obtain a refund of assessments collected by the Board on honey and/or honey products produced in that State except as provided in subparagraph (2) of this paragraph.

(1) Refunds shall be paid only if the Secretary certifies that the State assessment plan: (i) Is comparable to the program established under the Act and this part; and (ii) was in existence and in operation on January 1, 1985.

(2) Refunds shall be made directly to States, except that any refunds due directly to producers under this part shall take precedence over State programs and in no event exceed the amount collected by the Board on honey produced in the requesting State, and the amount of any refund shall be limited in accordance with the provisions of this subpart.

(3) Refunds made to a State authority pursuant to this paragraph shall not be included in the formula pertaining to importer refunds as set forth in paragraph (a) of this section.

§ 1240.44 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided*, That the funds in the reserve shall not exceed one fiscal period's budget. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

Reports, Books, and Records

§ 1240.50 Reports.

Each handler, importer, and producer-packer who is subject to this part shall be required to report to the employees of the Board, at such times and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to the following:

(a) For handlers and producer-packers; total quantity of honey acquired during the reporting period; total quantity handled during period; amount of honey acquired from each producer, giving name and address of each producer, including those producers who claim exemption from assessment; copy of statement claiming exemption from assessment from those who claim such exemption; assessments collected or collectable during the reporting period; quantity of honey processed for sale from producer-packer's own production; and record of each transaction for honey on which assessment had already been paid, including statement from seller that assessment had been paid.

(b) For importers; total quantity of honey imported during the reporting period and a record of each importation of honey during such period, giving quantity, date, and port of entry.

§ 1240.51 Books and records.

Each handler, importer, and producer-packer shall maintain and during normal business hours make available for inspection by employees of the Board or the Secretary, such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any required reports. Such records shall be maintained for two years beyond the fiscal period of their applicability.

§ 1240.52 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained under §§ 1240.50 and 1240.51 shall be kept confidential and shall not be disclosed to the public by any person. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart: Except that nothing in this subpart shall be deemed to prohibit (a) the issuance of general statements based upon the reports of a number of handlers or importers subject to any order, if such statements do not identify the information furnished by any person; or

(b) The publication by direction of the Secretary, of the name of any person convicted of violating this subpart, together with a statement of the particular provisions of the Order violated by such person.

(c) Any disclosure of any confidential information by any employee of the Board shall be considered willful misconduct.

Miscellaneous

§ 1240.60 Influencing governmental actions.

No funds collected by the Board under this order shall in any manner be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided for in this subpart.

§ 1240.61 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for his/her approval.

§ 1240.62 Suspension or termination.

(a) The Secretary shall, whenever he/she finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, terminate or suspend the operation of this subpart or such provisions thereof.

(b) Five years from the date the Secretary issues an order authorizing the collection of assessments on honey under provisions of this subpart, and every five years thereafter, the Secretary shall conduct a referendum to determine if honey producers and importers favor the continuation, termination, or suspension of this subpart.

(c) The Secretary shall hold a referendum on the request of the Board, or when petitioned by 10 percent or more of the honey producers and importers to determine if the honey producers and importers favor termination or suspension of this subpart.

§ 1240.63 Proceedings after termination.

(a) Upon the termination of this subpart,the Board shall recommend to

the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall: (1) Continue in such capacity until discharged by the Secretary; (2) carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1240.38; (3) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and (4) upon the direction of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations as imposed upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or if not practicable, shall be turned over to the Department to be utilized, to the extent practicable, in the interest of continuing one or more of the honey research or education programs hitherto authorized.

§ 1240.64 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or any regulation issued thereunder, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or of any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of any person, with respect to any such violation.

§ 1240.65 Personal liability.

No member, alternate member, or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, or employee, except for acts of dishonesty or willful misconduct.

§ 1240.66 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1240.67 Patents, copyrights, inventions, and publications.

Except for a reasonable royalty paid to the inventor of a patented invention, any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the United States government as represented by the Board. Funds generated by such patents, copyrights, inventions, product formulations, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board.

Signed this day at Washington, DC, January 23, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-1882 Filed 1-28-86; 8:45 am]

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Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 85-036P]

Facility and Equipment Requirements for the Streamlined Inspection System for Broilers and Cornish Game Hens

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal poultry products inspection regulations by establishing facility and equipment requirements for establishments operating under the Streamlined Inspection System (SIS) for broilers and cornish game hens. The proposed regulation would specify certain critical dimensions for facilities at the inspection and reinspection stations for SIS that the Agency deems to be appropriate and essential to assure optimum inspection performance under the new system. It would require the installation of an appropriately designed, adjustable platform at each inspector's station. In addition, the proposed regulation would provide for carcass selection devices known as selectors or "kickouts" to be installed at inspection stations. The proposal would also require equipment appropriate to ensure adequate lighting, handwashing, and the handling of carcasses and parts, including the proper disposal of condemned carcasses and parts.

DATE: Comments must be received on or before February 28, 1986.

ADDRESS: Written comments to Policy Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 3803, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided under the Poultry Products Inspection Act should be directed to: Dr. Douglas L. Berndt, (202) 447-3219. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Dr. Douglas L. Berndt, Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; telephone (202) 447-3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule is issued in conformance with Executive Order 12291, and has been determined not to be a "major rule." The proposed rule will 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 geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises or export markets.

Effect on Small Entities

The Administrator has determined that this action will not have a significant economic impact upon a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This proposal would impose certain facility and equipment

requirements upon establishments operating under SIS. However, the costs related to complying with these requirements are expected to be minor and would be counterbalanced by positive economic benefits such as reduced overtime inspection because of fewer inspectors, reduced workspace, and increased productivity by maintaining optimal line speeds.

The Agency is interested, however, in receiving comments by the affected industry on likely economic impacts of this proposal. Such comments may produce more substantive data as a basis for the Administrator's determination.

Comments

Interested persons are invited to submit comments concerning this action. Written comments must be sent in duplicate to the Policy Office and should bear reference to the docket number located in the heading of this document. Any person desiring an opportunity for an oral presentation of views should make such request to Dr. Berndt so that arrangements can be made for such views to be presented. A transcript will be made of all views orally presented. All comments submitted pursuant to this action will be available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

The Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) (PPIA) requires, among other provisions, that the Secretary of Agriculture, through appointed inspectors, conduct a post-mortem inspection of the carcass of each bird processed in every official establishment that processes poultry for commerce or that is otherwise subject to the Act, and condemn adulterated product. The PPIA also requires FSIS inspect establishments and equipment to assure that both are clean and sanitary and will not result in the processing of adulterated product. To assure that premises, facilities, and equipment are so maintained, the Agency requires the approval of all blueprints before construction or alterations and publishes a list of approved equipment. In addition, rules of sanitary practice have been established to assure that poultry products are produced in a sanitary manner and environment. Further, as part of its responsibility, FSIS determines the facility and equipment requirements for operations to be conducted under the various post-mortem inspection systems.

Elsewhere in this issue of the **Federal Register**, FSIS is promulgating an interim rule amending the Federal poultry products inspection regulations immediately to establish a new Streamlined Inspection System (SIS) for broilers and cornish game hens. The new system is to be implemented in establishments now operating under modified traditional inspection procedures. In addition, the new system requires a Finished Product Standards (FPS) program for evaluating the wholesomeness and acceptability of finished product. Establishments are responsible for performing the necessary trim of certain defects on passed carcasses and for operating the FPS program. The new system will allow increased efficiency in the use of Agency resources and those of the poultry industry, while providing consumers with wholesome and unadulterated products. The new system is being implemented on an emergency basis, in response to suddenly increased demands on Agency resources and as an outcome of recent work by FSIS veterinarians and technical experts. At the same time, the Agency is soliciting comments on the interim rule to determine what changes, if any, to the new system are necessary before the rule is made final.

SIS is being implemented in official establishments now slaughtering broilers and cornish game hens under the MTI procedure. The chief difference between SIS and MTI is that under the new system there is no mirror inspection station. Rather, there are one or two inspection stations at which each inspector examines the outside, inside, and viscera of the birds presented for inspection. The one-inspector form of SIS is known as SIS–1, the two-inspector configuration is known as SIS–2. Inspection under both SIS–1 and SIS–2 is conducted in two phases—a post mortem inspection phase and a reinspection phase. Under SIS–1, every bird on each production line is presented to a single inspector for examination. Under SIS–2, there are two inspection stations at which each inspector examines the outside, inside, and viscera of every other bird processed. Every other bird on the moving production line is presented to each inspector with the backside of the carcass toward the inspector and the viscera uniformly trailing or leading. In both SIS–1 and SIS–2, an establishment employee (a helper) is positioned next to each inspector. The maximum inspection rate for SIS–1 is 35 birds per minute; the maximum for SIS–2 is 70 birds per minute per inspector team—the same maximum rate as that permitted under MTI.

In the post mortem inspection phase of SIS, the inspectors determine which birds must be salvaged, reprocessed, condemned, retained for disposition by the veterinarian, or allowed to be moved down the line as a passed bird subject to trim and reinspection. If an inspector finds that some poultry carcasses have certain defects not requiring condemnation of the whole carcass, the inspector may pass the carcass, which is then subject to trim and reinspection to assure that the defects are physically removed. The helper, at the inspector's direction, marks these carcasses for trim unless the defects are obvious. Trimming of birds passed but subject to reinspection is performed by establishment employees after all the giblets are harvested and, if time permits, by the inspector's helper.

The reinspection station or stations are located at the end of the processing lines and after each chiller. At the prechill station, inspectors examine the carcasses for processing and trimming nonconformances that have been passed subject to reinspection by visually monitoring, checking data, or gathering samples at the station.

SIS–1 requires that the establishment provide one inspection station for each line and reinspection facilities adequate for the removal of carcasses from each line for evaluation. SIS–2 requires the establishment to provide two inspection station for each line and similarly adequate reinspection facilities. The implementation of SIS will thus entail certain facility modifications in affected establishments.

As noted in the document announcing the interim rule establishing SIS, the new inspection system is made possible by the analysis of data gathered in the development and implementation of the New Line Speed (NELS) inspection system for broilers and cornish game hens and the New Turkey Inspection (NTI) system. The tests conducted on these systems were the most exhaustive ever performed on new inspection procedures. The experience gained from working with these systems enabled top Agency veterinarians and technical experts to design new one- and two-inspector systems, including SIS.

The analysis of technical information from the NELS and NTI tests, including work measurement findings, as well as previous experience with MTI, has convinced FSIS that appropriate facilities and equipment are essential to assuring optimum inspection performance under the new systems. Consequently, in developing the SIS

approach to inspection, FSIS experts determined that facility and equipment standards prescribed for NELS should be adapted to SIS. A number of specific provisions in the proposed regulation, including the requirements for adjustable inspection platforms, carcass selection devices, and lighting, have been implemented with considerable success in the NELS and NTI systems.

The proposed rule would establish facility and equipment requirements for inspection and reinspection stations in SIS. Each inspection station would be at least 8 feet in length along the poultry conveyor line; the inspector would be allotted 4 feet, and the inspector's helper another 4 feet. At least 16 feet of lengthwise floor space would be required along the conveyor line for two inspection stations in establishments operating under SIS–2. At each inspection station, a platform which is easily and rapidly adjusted from the platform would have to be installed. The platform, provided for use by the inspector, would be 4 feet long and 2 feet wide, and would be placed so that its lengthwise dimension is parallel to the conveyor line. The platform would be required to have a vertical adjustment of at least 14 inches.

The platform would be equipped with a 42-inch high rail in back and with half-inch foot bumpers on both sides and the front to permit safe working conditions. Stop/start switches for the conveyor line would be located within easy reach of the inspector. The conveyor line itself would be required to be level for the entire length of the inspection station. The vertical distance from the bottom of the shackles to the top of the adjustable platform at its lowest position would have to be at least 60 inches.

Beneath the conveyor, a trough or other facilities would have to be installed. The construction of such facilities must comply with § 381.53(9)(4) of the regulations. The trough required for SIS would be similar to that in use under other inspection systems. It would be provided to maintain proper sanitation during the evisceration and further handling of carcasses. The trough would extend beneath the conveyor at all places where processing operations are conducted from the point where the carcass is opened to the point where trimming is performed. The trough would be wide enough to prevent trimmings, drippage, and debris from accumulating on the inspection platforms or the floor. Also, there would have to be sufficient clearance between the suspended carcasses and the trough to prevent contamination of carcasses by splashing.

In establishments operating under SIS–2, carcass selection devices, known as selectors or "kickouts," would be required. The selectors would be mounted so that the inspection stations would receive birds on 12-inch centers with no intevening birds to impede inspection. The selectors would be capable of keeping birds parallel to one another and of moving them to the edge of the trough for examination or handling by the inspector and the helper. The selectors must be smooth, steady, and consistent in operation, and capable of selecting birds for inspection and releasing them smoothly without swinging.

In addition to the provisions for conveyors, platforms, and troughs, the inspection stations would be equipped with on-line hand-rinsing facilities. The facilities would provide a continuous flow of water and would be within easy reach of the inspectors and helpers. Handback racks for questionable carcasses would be set up within easy reach of the helpers. Each inspection station would also be provided with receptacles for condemned carcasses and parts.

Reinspection stations would be required at both the prechill and postchill locations. The FSIS would determine the number of stations needed in those plants having more than one processing line or more than one chiller. One or more prechill reinspection stations should be conveniently located at the end of the line or lines prior to chilling. One or more postchill stations should be conveniently located at the end of the chiller or chillers.

For the reinspection stations, 3 feet of lengthwise floor space would be provided along each conveyor like and after each chiller. The floor space would have to be level and protected from traffic and overhead obstructions. The vertical distance from the bottom of the shackles to the floor would be at least 48 inches. For the reinspection of sampled birds, a table at least 2 feet wide, 2 feet deep, and 3 feet high would be provided. Hangback racks designed to hold 10 carcasses would be placed within easy reach of persons operating at the reinspection station. A separate clipboard holder, at which recording sheets would be kept, would be placed at the stations. Handwashing facilities and table rinsing capability also would be required.

For both the inspection and reinspection stations, the proposed rule would establish requirements for adequate lighting. A minimum of 200 foot-candles of shadow-free lighting with a minimum color rendering index of 85 would be required to facilitate carcass inspection at the inspection station. The same kind and intensity of lighting would be required at the reinspection station to illuminate the table surface. These provisions are essentially the same as those for the NELS and NTI Systems but differ from the lighting requirements for the traditional inspection systems. Nevertheless, studies by the FSIS have shown that these lighting requirements are necessary for optimal inspection efficiency and effectiveness, particularly at the inspection rates permitted under NELS, NTI, and SIS.

Proposed Rule

List of Subjects in 9 CFR Part 381

Carcasses and parts, Facilities, Poultry products inspection.

Accordingly, it is proposed to amend the poultry products inspection regulations as follows:

PART 318—[AMENDED]

1. The authority citation for Part 381 continues to read:

Authority. 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*, 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

2. Section 381.36(c) would re revised to read as follows:

§ 381.36 Facilities required.

* * * * *

(c) Facilities for the Streamlined Inspection System (SIS). The following requirements for lines operating under SIS are in addition to the normal requirements to obtain a grant of inspection. The requirements for the SIS in § 381.76(b) also apply.

(1) The following provisions shall apply to every inspection station:

(i) The conveyor line shall be level for the entire length of the inspection station. The vertical distance from the bottom of the shackles to the top of the adjustable platform (subparagraph (iv)) in its lowest position shall not be less than 60 inches.

(ii) Floor space shall consist of 4 feet along the conveyor line for the inspector, and 4 feet for the establishment helper. A total of at least 8 feet along the conveyor line shall be supplied for one inspection stations and 16 feet for two-inspection stations.

(iii) Selectors or "kickouts" shall be installed in establishments with two inspection stations on a line so each inspector will receive birds on 12-inch centers with no intervening birds to impede inspection. The selector must move the bird to the edge of the trough

for the inspector and establishment helper. The selectors must be smooth, steady, and consistent in moving the birds parallel and through the inspection station. Birds shall be selected and released smoothly to avoid swinging when entering the inspection station.

(iv) Each inspector's station shall have a platform which is easily and rapidly adjusted from the platform, with a minimum of 14 inches of vertical adjustment, which covers the entire length of the station (4 feet) and has a minimum width of 2 feet. The platform shall be designed with a 42-inch high rail on the back side and with ½-inch foot bumpers on both sides and front to allow safe working conditions.

(v) Conveyor line stop/start switches shall be located within easy reach of each inspector.

(vi) A trough or other facilities complying with § 381.53(g)(4) of this Part shall extend beneath the conveyor at all places where processing operations are conducted from the point where the carcass is opened to the point where the trimming has been performed. The trough must be of sufficient width to preclude trimmings, drippage, and debris from accumulating on the floor or platforms. The clearance between the suspended carcasses and the trough must be sufficient to preclude contamination of carcasses by splash.

(vii) A minimum of 200-footcandles of shadow-free lighting with minimum color rendering index value of 85 [1] where the birds are inspected to facilitate inspection, notwithstanding the requirement of § 381.52(b).

(viii) "Online" handrinsing facilities with a continuous flow of water shall be provided for and within easy reach of each inspector and each establishment helper.

(ix) Hangback racks shall be provided for and positioned within easy reach of the establishment helpers.

(x) Each inspection station shall be provided with receptacles for condemned carcasses and parts. Such receptacles shall conform to the requirements of § 381.53(m).

(2) The following provisions shall apply only to prechill and postchill reinspection stations:

(i) Floor space shall consist of 3 feet along each conveyor line and after each chiller. The space shall be level and protected from all traffic and overhead obstructions.

(ii) The vertical distance from the bottom of the shackles to the floor shall not be less than 48 inches.

(iii) A table, at least 2 feet wide, 2 feet deep, and 3 feet high designed to be readily cleanable and drainable shall be provided for reinspecting the sampled birds.

(iv) A minimum of 200-footcandles of shadow-free lighting with a minimum color rendering index of 85 on the table surface.

(v) A separate clip board holder shall be provided for holding the recording sheets.

(vi) Handwashing facilities shall be provided for and shall be within easy reach of persons working at the station.

(vii) Hangback racks designed to hold 10 carcasses shall be provided for and positioned within easy reach of the person at the station.

* * * * *

Done at Washington, DC, on January 13, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86-1884 Filed 1-28-86; 8:45 am]

BILLING CODE 3410-DM-M

[1] This requirement may be met by deluxe cool white type of flourescent lighting.

DEPARTMENT OF ENERGY

10 CFR Part 762

Proposed Uranium Enrichment Services Criteria

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing to modify the criteria under which it provides uranium enrichment services. Under the proposed criteria, DOE would negotiate individual enrichment services contracts in accordance with an overall approach intended to maintain the long-term competitive position of the United States in the world market, while obtaining the recovery of the Government's costs for providing enrichment services. The proposed criteria would provide flexibility concerning price, as well as other terms and conditions, in enrichment services contracts. The proposed criteria would continue the existing policy against restrictions on the enrichment of uranium from foreign countries for domestic use, as well as the existing prohibition against discriminatory pricing.

The proposed criteria are responsive to the realities of today's marketplace and will enable DOE to carry out more effectively its statutory mandate under the Atomic Energy Act of 1954 (AEA) to encourage the development and utilization of atomic energy for peaceful purposes. They are consistent with and supportive of the Department's view that civilian nuclear energy has a key role to play in assuring the Nation's energy security and strength, and that continued prominence in providing enrichment services will further non-proliferation of nuclear weapons capabilities. They reinforce continuing efforts to conduct the Department's enrichment activities in a more businesslike, competitive manner and thus will allow the United States to employ its strengths and assets in the context of the highly competitive marketplace that exists today.

DATE: Written comments must be received by February 28, 1986.

DOE will hold a public hearing on the proposed criteria on March 18–19, 1986. Requests for an apportunity to speak at this hearing must be received by DOE on or before March 4, 1986.

ADDRESSES: All comments should be identified as "Comments On Proposed Uranium Enrichment Services Criteria" and submitted to NE–34, Room A–172, GTN, U.S. Department of Energy, Germantown, Maryland 20545

Hearing Location: U.S. Department of Energy, Forrestal Building, DOE Auditorium, Room GE–086, 100 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Ben McRae, Office of General Counsel, U.S. Department of Energy, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–6667

Lawrence Leiken, Office of General Counsel, U.S. Department of Energy, Room 6B–256, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6975

John Thereault, Division of Technology Deployment and Strategic Planning, Office of Uranium Enrichment, Room A–172, Germantown, Maryland 20545, (301) 353–4610

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the AEA, DOE is responsible for producing enriched uranium for civilian and defense uses. In this Notice, DOE is proposing to modify the criteria which set forth the terms and conditions under which DOE provides enrichment services for civilian customers.

In developing the proposed criteria, DOE has been mindful of the many objectives set forth in the AEA and the significant role uranium enrichment activities can play in achieving them. These objectives include the peaceful use of atomic energy throughout the world, the encouragement of scientific and industrial progress, and the

development of a healthy atomic energy industry, including the mining and milling of uranium. By offering enrichment services to other countries, DOE can help to control the development and flow of nuclear material and guard against the proliferation of nuclear weapons. By offering reliable and reasonably priced enrichment services, DOE can enhance the utilization of atomic energy. And by engaging in the provision of enrichment services, DOE can support scientific and industrial progress. Of course, enrichment services first must serve the paramount objective of ensuring the common defense and security. The attainment of the other goals must be consistent with, and not detrimental to, our national security.

The proposed criteria represent a well-reasoned response to the profound changes that have occurred in the marketplace for enrichment services in the last decade. Originally, the U.S. held a near monopoly on providing enriched uranium. However, during the 1970's, the U.S. lost that position due to a number of factors. Beginning in the mid-1970's competition developed as two Europen consortia and the Soviet Union began supplying foreign nuclear facilities with enriched uranium. By the 1980's, DOE has become the highest priced primary supplier of enrichment services, charging $138 per separative work unit (SWU) [1] in 1984.[2] As a result, DOE's foreign competitors have captured about 60 percent of the total foreign market and have made significant inroads into the domestic markets.

Prospects for the nuclear power industry in this country also have changed dramatically since the early 1970's because of reduced growth in consumer demand for electricity, combined with higher costs for capital expenditures, construction delays, NRC licensing deferrals and controversy over nuclear power in general. As a result, many nuclear plants were delayed and/or cancelled. Likewise, the nuclear programs of other nations generally have not expanded at the rate formerly anticipated.

By the late 1970's utilities, both foreign and domestic, found themselves committed to long-term contracts for enrichment services they no longer needed. According to DOE estimates, a worldwide surplus of about 39 million SWU's existed by 1984. This in turn, led to the emergence of a secondary market in which utilities have been willing to sell their surplus SWU's to other utilities at discounts of $30 per SWU and more.

As a result of these market changes, DOE found itself in a relatively non-competitive position. DOE's response has been to conduct its enrichment activities in a more businesslike, competitive manner and to develop strategies to employ its strengths and assets. The proposed criteria are intended to reinforce DOE's continuing efforts to provide enrichment services in the context of the highly competitive marketplace that exists today.

II. Background

In order to understand better the proposed criteria, it is necessary to discuss briefly (1) the enrichment process, (2) the statutory framework under which DOE provides enrichment services, and (3) the history of enrichment service criteria.

A. Enrichment Process

Uranium as it occurs in nature contains two principal isotopes: U-235 and U-238. Naturally occurring uranium contains 0.7 percent of the U-235 isotope and 99.3 percent of the U-238 isotope. Only the U-235 isotope can fission, or split apart easily, when bombarded by neutrons. When an isotope fissions, it releases a tremendous amount of heat. As a result, uranium fuel can be used in a nuclear power plant to produce heat, generate steam and drive a turbine to produce electrical power.

Naturally occurring uranium does not contain sufficient U-235 to be used as fuel in nuclear power plants of the type built in the United States. Rather, the U-235 must be concentrated so that it comprises about three percent of the total uranium. The resultant uranium is usually called "enriched uranium." To produce enriched uranium, a very specialized facility called uranium enrichment plant must be used. In such a plant, specially prepared natural uranium (known as "feed material") is processed in a way to increase its content of U-235 and decrease its content of U-238.

The effort that a uranium enrichment plant uses to enrich a quantity of uranium feed material is measured in SWU's. In this process, the feed material is separated into two fractions. The enriched uranium fraction (product) contains a higher concentration of U-235 than the uranium feed material, and the depleted uranium fraction (tails) contains a lower concentration of U-235.

The relative amounts of SWU and natural uranium used to produce a unit of enriched uranium are determined by the amount of U-235 remaining in the depleted tails from the enrichment plant. The fraction of U-235 in the tails is called the "tails assay." A low tails assay requires more SWU and less natural uranium to produce a unit of enriched product. On the other hand, if the tails assay is high, fewer SWU's and more natural uranium is required to produce the same unit of enriched product.

B. Statutory Framework

The Atomic Energy Act of 1946 established a government monopoly over the ownership of all production and utilization facilites and all "special nuclear material" (fissionable material). This monoploy was promulgated in an environment when atomic energy was a relatively new and little understood force, when fissionable materials were scarce, and when the use of atomic energy for the economic generation of electric power was a goal in the distant future.

By 1954, the nuclear environment had changed. American industry had attained substantial experience in the design, construction and operation of nuclear reactors, and the first commercial atomic powered electric generating plant was under construction. With the intention of encouraging the peaceful use of nuclear energy, Congress amended the 1946 Act through the enactment of the Atomic Energy Act of 1954 (AEA). Under the AEA, private industry would, for the first time, own reactors and possess and use fissionable materials in these reactors under license for DOE's predecessor agency, the Atomic Energy Commission (AEC).[3]

In 1964, Congress enacted the Private Ownership of Special Nuclear Materials Act, Pub. L. 88-489, ("1964 Act"), which permitted, for the first time, private

[1] The capacity of plants used for producing enriched uranium is defined in terms of separative work units. Such units measure the amount of effort expended to separate a given amount of natural uranium into two components—one having a higher concentration of fissionable uranium-235.

For a discussion of the enrichment process, see the Background section of this Notice.

[2] In 1984, DOE's competitors were charging $105-115 per SWU.

[3] The Energy Reorganization Act of 1974, Pub. L. No. 93-438, abolished the AEC and created the Energy Research and Development Administration (ERDA) which assumed all but the licensing and regulatory functions of the AEC. The licensing and regulatory functions were vested in the Nuclear Regulatory Commission which was also established by the 1974 Act, while ERDA undertook the military and production activities and the general research activities of the AEC. ERDA became effective on January 19, 1975. ERDA was in turn abolished by the Department of Energy Organization Act Pub. L. No. 95-91, 42 U.S.C. 7100 *et seq.*, which created the DOE. Section 301(a) of the DOE Act transferred all functions of ERDA to DOE. DOE began operations on October 1, 1977.

In this Notice, the term "DOE" shall be used unless the discussion deals specifically with one of DOE's predecessors.

ownership of fissionable materials in the United States. The 1964 Act also added Section 161(v) to the AEA, authorizing DOE to "enter into contracts to provide . . . for the producing or enriching of special nuclear material." 42 U.S.C. 2201(v).

Section 161(v) requires DOE to establish guidelines, or "criteria," describing how the government would provide private customers with enrichment services. Specifically, Section 161(v) of the 1964 Act provides that:

> [DOE] shall establish criteria in writing setting forth the terms and conditions under which [uranium enrichment] services . . . shall be made available.

These criteria must be submitted to the appropriate Congressional committees, originally the Joint Committee on Atomic Energy (JCAE)[4], for a period of 45 days prior to the time DOE actually establishes the critiera. Section 161(v) also provides that prices for enrichment services "shall be established on a nondiscriminatory basis" and that DOE restrict the enrichment of uranium from foreign countries for domestic use "to the extent necessary to assure [the] maintenance of a viable domestic uranium industry."

As originally adopted, section 161(v) provided that prices for enrichment services be established on a basis which would result in "reasonable compensation to the Government." The JCAF Report on the 1964 Act expressed the Committee's awareness that it might not always be practicable for enrichment services prices to recover costs fully. It concluded that, in establishing prices, "[DOE] will have to consider not only the Government's costs in providing enrichment services but also the national interest in the development and utilization of nuclear power."[5] S. Rep. No. 1325, 88th Cong., 2nd Sess., reprinted in 1964 U.S. Code Cong. & Ad. News, 3109, 3121–3122.

In response to an AEC proposal to establish prices on the basis of hypothetical prices in a non-existent domestic commercial enrichment industry, Congress adopted the current version of section 161(v) which provides that prices for enrichment services "shall be on a basis of recovery of the Government's costs over a reasonable period of time." Pub. L. 91–560, Sec. 8 ("1970 Amendment"). The 1970 Amendment expressed Congressional misgivings over the establishment of enrichment prices significantly higher than the Government's actual costs which, at best, gave minimal consideration to the other objectives of the AEA. The JCAE Report on the 1970 Amendment emphasizes the change was a clarification to implement the intent of Congress when it originally enacted section 161(v) and thus preserved DOE's considerable flexibility to determine the most effective means to recover the Government's costs and carry out its responsibilities under the AEA. (H. Rep. No. 91–1470, 91st Cong., 2nd Sess., reprinted in 1970 U.S. Code Cong. & Ad. News, 4981, 5002–5003, 5012.)

C. History of Uranium Enrichment Criteria

On December 23, 1966, pursuant to Section 161(v), following review by the JCAE, the AEC established the Uranium Enrichment Services Criteria ("criteria"). These criteria set forth the terms and conditions applicable to the sale of uranium enrichment services, including the use of two standard types of contracts: (1) Firm Quantities and (2) Customer's Requirements, or a combination of the two. (31 FR 16479, Dec. 23, 1966). The criteria also provided for delivery schedules, chemical form and specifications of material, charges for enrichment services, a ceiling price, termination provisions, delivery of materials, changes in charges and specifications, and a restriction on the enrichment of foreign uranium for use in domestic reactors.

In 1970, the AEC proposed a change in the basis for computing the price for enrichment services (35 FR 13546). The proposed change never became effective because, as discussed previously, Congress determined the change would permit a pricing increase which wholly disregarded the Government's actual costs and thus violate the intent of the 1964 Act. As a result of this proposed change, Congress enacted the 1970 Amendment. On March 9, 1971, the AEC adopted criteria consistent with the 1970 Amendment (36 FR 4562).

On August 23, 1973, the AEC published revised criteria (38 FR 12160). The modification prescribed the fixed commitment contract as the primary contracting vehicle in order to provide greater assurance that new enrichment capacity would be available in the 1980's on a timely basis. The revised criteria also deleted the requirement of a ceiling price.

On October 25, 1974, the criteria were revised to phase out restrictions on the amount of natural uranium of foreign origin which could be enriched for use in domestic reactors (39 FR 38016). The amount of foreign origin material allowed in 1977 was 10 percent and, under the schedule adopted in 1974, was allowed to grow to 80 percent in 1983. Thereafter, no restrictions were to be applied.

On June 27, 1978, the criteria were revised once again to permit DOE to use authorized plant capacity as a basis for offering to provide enrichment services (43 FR 27886). There was also a change to establish the variable tails assay option.

On May 17, 1979, the current version of the criteria was published in the **Federal Register** (44 FR 28875). The only substantive change was the inclusion of imputed interest on the cost of natural uranium contained in inventories at DOE enrichment plants as a cost to be recovered in the charge for enrichment services. In addition, "Department of Energy" was substituted for "Atomic Energy Commission" where appropriate.

III. Proposed Criteria

In early 1984, DOE announced a major initiative to restore the competitive position of the United States in the world enrichment market in order to maintain DOE's roie as a provider of enrichment serivces. The elements of the Department's initiative were: to stabilize DOE's market share through the offering of new more competitive enrichment contracts;[6] to reduce prices; to enhance DOE customer services and marketing activities; and to reduce program costs in all major areas, including diffusion

[4] The Joint Committee on Atomic Energy provided oversight of AEC activities until it was abolished, pursuant to Pub. L. 95–110, in 1977. It functions, including the review of uranium enrichment criteria, have been assigned to other committees of the House and Senate.

[5] DOE is aware that the General Accounting Office (GAO) believes this language applies only to the situation that existed during the period from 1964 through the early 1970's when the emphasis of U.S. enrichment activities was shifting from military to civilian objectives. DOE believes GAO has read the intent of Congress too narrowly. The JCAE Report made clear that the basis for establishing prices under section 161(v) "is flexible." S. Rep. No. 1325, 88th Cong., 2nd Sess., reprinted in 1964 U.S. Code Cong. & Ad. News, 3109, 3122. While the JCAE Report indicated this flexibility would permit the AEC to deal with the problems encountered in the shift from military to civilian operations, it did not indicate that the flexibility was intended for that problem alone. DOE believes that if Congress had intended to limit this flexibility as narrowly as GAO contends, it would have included specific language to that effect in section 161(v). By not limiting DOE's flexibility to specific situations, Congress granted DOE considerable discretion to determine, in the first instance, the best pricing approach and which costs are appropriate for recovery in an ever changing environment.

[6] Several groups have challenged these contracts as violating the existing criteria. DOE disagrees and is involved currently in litigation over the validity of these contracts. DOE believes the contracts resulted from a proper reading of the existing criteria in light of the circumstances existing when the contracts were entered into.

operations and advanced technology research and development activities.

The existing criteria may not comprise the best basis for the approaches which DOE may have to take to carry out its mission under the AEA. DOE believes it is appropriate to propose criteria which interpret and apply the requirements of the AEA in light of today's market.

In the following section, DOE discusses the provisions of the proposed criteria. Where appropriate, DOE discusses how the proposed criteria differ from the existing criteria and why this change is proper in light of current conditions and statutory requirements.

"*General.*" Paragraph a sets forth the statutory basis for the criteria. Paragraph b specifies those customers to which DOE can provide enrichment services. These customers are (1) licensees under section 53, 63, 103, or 104 of the AEA and (2) persons covered by cooperative agreements. The Paragraph restates the statutory requirement that persons covered by cooperative agreements can obtain enrichment services only while comparable services are available to licensees under Section 53, 63, 103, or 104 and can obtain such services at prices no less than the prices charged licensees. Paragraph c provides that DOE can not enter into contracts in excess of its available capacity. Paragraph d provides that the criteria, unless specificaly stated, do not affect DOE's ability to sell, lease, or barter special nuclear material. Paragraph e states that the criteria are subject to change and that any change shall be made pursuant to applicable administrative procedures and after submission to Congress.

"*Definitions.*" This section sets forth the definition of several technical terms used in the criteria, such as "enrichment services" and "separative work unit (SWU)."

"*Enrichment of Uranium of Foreign Origin.*" This section continues the current policy of not imposing restrictions on enriching feed material of foreign origin destined for domestic use. It adds a new requirement that a domestic customer must certify the country of origin of feed material delivered to DOE. DOE believes this identification requirement will enhance its ability to monitor the effects of foreign uranium on the domestic mining and milling industry.

Section 161(v) provides that DOE, "to the extent necessary to assure the maintenance of a viable domestic uranium industry, shall not offer . . . [enrichment] services for source or special nuclear material of foreign origin intended for use in a utilization facility within or under the jurisdiction of the U.S." On September 26, 1985, the Secretary of Energy issued a determination pursuant to Section 170B of the AEA that the domestic uranium mining and milling industry was not viable in calendar year 1984. DOE does not believe this determination, standing alone, either authorizes or requires imposing restrictions on the enrichment of feed material of foreign origin under section 161(v) of the AEA. Instead, it indicates that DOE should continue its analysis by considering, in the words of the statute, "the extent" to which restricting enrichment of foreign source material for domestic end use will, in fact, "assure the maintenance of a viable domestic uranium industry." DOE's preliminary view is that restrictions would not assist the domestic mining and milling industry in any meaningful way.

Import restrictions on foreign uranium would not assure the viability of the domestic mining and milling industry. The difficulties currently facing the domestic mining and milling industry appear to stem from various factors, including the disparity between the production cost of domestic and foreign uranium, shrinkage in the demand for nuclear power, excess uranium inventories, excess production capacity, and cancellation of powerplants due to cost overruns and licensing delays.

Import restrictions would have no long term positive effect on the consumption of domestic uranium. As long as DOE's enrichment services costs are competitive with foreign services, customers will procure either domestic or foreign uranium for feed material based solely on economic considerations.[7] They will seek enrichment services from the cheapest source and use the cheapest uranium, foreign or domestic. In the short-term, an import ban might increase consumption of domestic uranium temporarily since existing DOE customers would weigh the costs of terminating their contracts against the comparative prices of domestic and foreign uranium. The costs of terminating contracts would, in effect, subsidize some higher priced domestic uranium. This effect would be temporary and could not assure the long-term viability of the domestic industry.

[7] If DOE's enrichment services were priced less than those of its foreign competitors, then restrictions on imports could increase consumption of domestic uranium since customers would be willing to pay a premium for domestic uranium in order to obtain enrichment services from DOE. In today's competitive market, however, it is unlikely DOE will underprice its competitors sufficiently to make it economical to pay a premium for domestic uranium.

Import restrictions would have undesirable effects on both the U.S. uranium industry and the DOE enrichment business. A sweeping limitation likely would cause many of DOE's customers to reconsider their enrichment contracts with DOLE. Many of these customers currently may be paying a premium for the reliability they expect from dealing with the U.S. Government. The uncertainty about the future operation of the U.S. enrichment program engendered by an import embargo would diminish their willingness to pay such a premium and thus increase the likelihood they might seek enrichment services from abroad. Information available to DOE suggests that for a uranium price difference of as little as ten dollars per pound, a U.S. utility could cancel its DOE enrichment contract, pay the termination fee, buy enrichment services overseas, and save money. Lost sales resulting from such terminations could reach at least $300 million annually by 1988. Losses of this magnitude would force DOE to further curtail operations at its enrichment plants, increasing the unit cost of production.

These developments would be detrimental to the U.S. mining and milling industry. Most domestic DOE enrichment customers currently obtain a large percentage or all of their uranium requirements from domestic sources whereas the customers of DOE's competitors almost invariably use foreign ore. If DOE customers were to terminate their contracts in favor of overseas enrichers, they might obtain all of their natural uranium from foreign producers who offer attractively priced package deals. Thus, the loss of enrichment sales to domestic utilities by DOE could further damage the U.S. mining industry.

While DOE does not believe restrictions to be appropriate at this time, it has taken steps to help the domestic uranium mining and milling industry, including offering a limited free variable tails option and requesting an examination of the issues by the United States Trade Representative. Specifically, the Secretary formally requested the Trade Representative to undertake an examination of imports of uranium to ascertain the appropriate available courses of action under the U.S. trade laws with respect to importation of source material or special nuclear material. In his letter to the Trade Representative, the Secretary expressed his belief that examination of trade matters in the first instance by those familiar with the issues was preferable to an independent finding of

injury by DOE under Section 170B which automatically would trigger an investigation under Section 201 of the Trade Act of 1974.

In his December 26, 1985 response, the Trade Representative stated that

> action under the U.S. trade statutes does not appear to be appropriate in regard to both the short and long-term problems facing the domestic uranium mining and milling industry. Moreover, any remedy granted under existing law which might provide the extent of relief requested by the industry would only be short term, while at the same time having an adverse impact on our trade and other relations with important trading partners without resolving the long-term problems of the industry.

The Trade Representative found the principal cause of the problems in the domestic mining and milling industry to be the failure of anticipated demand to materialize and the resultant excess inventory. The response did not recommend import restrictions under section 161(v) of the AEA, and found the major consequence of any such restrictions "would be the shift of enrichment activity from U.S. government facilities to foreign facilities, thereby eroding the position of U.S. enrichment enterprises."

DOE believes its actions concerning the domestic mining and milling industry are entirely consistent with, and supportive of, Congressional intent. In 1982, Congress considered and specifically rejected legislation to require mandatory restrictions on importation of foreign origin uranium. A proposed amendment to the Nuclear Regulatory Commission Authorization Act would have required the Nuclear Regulatory Commission (NRC) to issue criteria restricting the importation of source material and special nuclear material.[8] 128 Cong. Rec. S. 2968–2970 (daily ed. Mar. 30, 1982). The conference committee rejected this amendment and reported a bill which contained a provision to require the Secretary, when foreign uranium imports reached a level of 37.5 percent, to revise DOE's enrichment criteria "so as to encourage the use of domestic origin uranium in domestic nuclear powerplants." 128 Cong. Rec. S. 13054 (daily ed. Oct. 1, 1982) (remarks of Senator Domenici); *see also*, 128 Cong. Rec. H. 8803 (daily ed. Dec. 2, 1982) (remarks of Rep. Udall and Rep. Lujan). This provision, however, was rejected by the House of Representatives, *Id.* at H. 8809, and a substitute provision was agreed to by both Houses. 128 Cong. Rec. S. 15316 (daily ed. Dec. 16, 1982). In the substitute measure, section 170B of the AEA (codified at 42 U.S.C. 2210(b)), Congress deleted all references to mandatory import restrictions and, instead, provided for, *inter alia*, (1) the annual viability determination by the Secretary, (2) the possibility of an investigation under section 201 of the Trade Act, and (3) the Secretary to request the Secretary of Commerce to initiate an investigation pursuant to 19 U.S.C. 1862 if uranium imports from executed contracts or options are projected at a level of 37.5 percent for a consecutive two-year period.

"Prices." This section describes the approach DOE will follow in establishing prices for providing enrichment services. As discussed previously, the AEA does not mandate any particular form of pricing. Rather, it grants DOE considerable flexibility to determine what prices best achieve the objectives of the AEA, including recovery of the Government's costs over a reasonable period of time.

DOE believes today's highly competitive marketplace calls for a pricing approach which can respond to the challenge from abroad. Therefore, the proposed criteria make clear DOE's flexibility to respond to changing market conditions by negotiating the price in each contract. DOE will negotiate prices in accordance with an overall approach intended to maintain its long-term competitive position. DOE believes pursuing such an approach is the best way to maximize revenues and thus to recover the Government's costs over a reasonable period of time, as well as to fulfill its other responsibilities under the AEA. Such an approach will permit DOE to pursue a vigorous program to regain market share, increase its revenue, and assure to a higher degree the recovery of the Government's costs.

Under the proposed criteria, there is no fixed price or pricing mechanism which must be used in each and every contract. Thus, as under the existing criteria, an individual contract could include a ceiling price above which the contract price could not rise. Or the price could be indexed to market conditions.

DOE does not believe the reference to "recovery of the Government's costs over a reasonable period of time" mandates a pricing mechanism which explicitly calculates the price in each contract solely on the basis of certain specified costs. The accounting concept of allocating specific costs to particular prices is not synonymous with the statutory concept of recovery of costs over a reasonable period of time. Compliance with the statutory mandate can be judged only by looking at the overall performance of DOE's enrichment activities over a period of time, taking into account the many objectives of the AEA.

In the past, DOE did determine the price per SWU by dividing projected demand over the next ten years into the sum of certain specified costs. Such utility-type pricing was appropriate when the U.S. held a monopoly over enrichment services. However, it is not mandated by either the AEA or the existing criteria and, in today's competitive market, is not well suited to the recovery of the Government's costs over a reasonable period of time. Use of a mechanical accounting formula in today's market would result in further erosion of DOE's market share of enrichment services and prolong the period over which the Government's costs are recovered, if ever.

"Costs." A primary objective of DOE's enrichment activities is the recovery of appropriate Government costs to the extent they reasonably relate to providing enrichment services to civilian customers. In order to permit DOE and Congress, as well as other interested parties, an opportunity to appraise the extent to which DOE is establishing charges for enrichment services which recover appropriate Government costs over a reasonable period of time, the proposed criteria list all costs arguably related to the provision of civilian enrichment services. These costs include expenses incurred in providing enrichment services to civilian customers, as follows:

(1) Electric power and all other costs, direct and indirect, or operating the enrichment plants; (2) depreciation of enrichment plants; (3) costs of process development; (4) costs of DOE administration and other Government support functions; and (5) imputed interest on investment in plant, working capital, the natural uranium contained in those inventories at the DOE enrichment plants needed to provide enrichment services, and the separative work costs of preproduced inventories.

The costs specified in the proposed criteria essentially repeat the costs which appear in the existing criteria. These costs reflect DOE's belief that civilian customers should pay a price which reflects only the actual costs of providing enrichment services. The costs of items which are not, and most likely will not, be used in providing enrichment services to current civilian customers are not appropriate for consideration in determining the exent to which Government's costs are

[8] The AEA permits denial of a license for the importation of natural uranium only when, in the opinion of the NRC, the import would be inimical to the common defense and security or the health and safety of the public. 42 U.S.C. 2099.

recovered over a reasonable period of time. In this regard, DOE has determined that none of the costs of the Gas Centrifuge Plants and only forty percent of the costs of the Gaseous Diffusion Plants are used to provide enrichment services to civilian customers. Accordingly, only these latter costs are appropriate for determining the extent to which the Government's costs are recovered over a reasonable period of time.

"Recovery of Prior Government Costs." DOE is committed to the recovery of appropriate Government costs over a reasonable period of time. To assist in the attainment of this objective, the proposed criteria set forth in section 762.6 a mechanism for the recovery of prior Government costs. This mechanism would establish reserves sufficient to return to the U.S. Treasury, over a reasonable period of time, previously unrecouped and unrecovered costs associated with the provision of enrichment services to civilian customers.

Under this mechanism, DOE proposes to repay the U.S. Treasury, over a reasonable period of time, $3,457 million of the $7,522 million in prior unrecovered Government costs remaining as of September 30, 1985. The reduction of $4,065 million in the amount to be recovered is the equivalent of writing off plant capacity that will not be used in current or future enrichment operations. Interest will be added to the amount to be recovered by applying to the average annual outstanding balance an interest rate of 6.319 percent, the weighted average of Treasury interest rates applicable in the years in which net increases in Government costs occurred.

Repayments to the Treasury will be made annually. From fiscal years 1987–1991, the amount of the annual repayment is expected to be a $150 million minimum plus a percentage of gross commercial revenues—eight percent in 1987 and eleven percent thereafter. Beyond fiscal year 1991, the annual repayment is expected to be the $150 million minimum plus half the savings from projected decreases in TVA demand charges for electricity.

"Non-discrimination." DOE believes section 161(v) requires all customers to be afforded an opportunity to strike a bargain equal in attractiveness to those available to other customers. Accordingly, the proposed criteria provide that DOE shall negotiate price, as well as other terms and conditions of a contract, on a non-discriminatory basis. The section defines non-discrimination to be the availability of the same prices, terms, and conditions to all similarly situated customers.

"Amendment of Contract." This section continues the policy of the existing criteria to permit contract amendment without penalty. This section also makes clear that contracts can provide for renegotiation at specified times or upon notice by either party. DOE believes the ability to amend and renegotiate contracts is a very important element of maintaining competitive viability.

"Termination by DOE." This section continues the policy of the existing criteria.

"Termination by Customer." This section makes clear the charge to a customer for terminating a contract shall be the subject of negotiation between DOE and the customer and, unlike the termination charges in existing contracts, need not be based exclusively on costs. DOE believes termination charges should assist it in retaining customers. Termination charges should give customers an incentive to continue or, at least, to renegotiate their existing contract, rather than seek a new contract with a new supplier.

"Quantities of Feed and Product Material." This section continues the policy of the existing criteria. Under this section, DOE can continue to offer customers the variable tails assay option which can reduce their costs. This section also makes clear that the criteria only relate to how DOE offers enrichment services and not to how it runs its plants. Specifically, it provides that the criteria do not affect DOE's ability to reduce its operating costs by pursuing a policy of split tails or of using preproduced inventory.

"Customers Option to Acquire Tails Material." This section continues the policy in the existing criteria.

"Responsibility for Materials Meeting Specifications." This section continues the policy in the existing criteria.

"Other Terms." This section makes clear that a contract can contain terms and conditions not specified in the criteria. No prohibition against a term or condition is intended by its non-inclusion in the proposed criteria. For example, the existing criteria provide for advanced payments, while the proposed criteria do not mention advanced payments. After the adoption of the proposed criteria, DOE and its customers will be free to negotiate advanced payments, even though the proposed criteria do not address advanced payments explicitly. The terms and conditions in a contract, however, cannot be inconsistent with the criteria.

"Prior Contracts." This section makes clear that the adoption of the new criteria does not invalidate any prior contract. All contracts under which DOE has been providing enrichment shall continue to be effective after the adoption of these criteria. However, prior contracts can be amended to conform to the new criteria without penalty, if both parties agree.

IV. Public Comment Procedures

A. Written Comments

You are invited to participate in this proceeding by submitting data, views or arguments with respect to the issues set forth in this notice. All comments should be submitted by 4:30 p.m., e.s.t., of the day specfied in the "DATES" section to the address indicated in the "ADDRESS" section of this preamble and should be identified on the outside envelope and on documents submitted with the designation "Comments on Proposed Uranium Enrichment Criteria." Ten copies should be submitted. All comments received by DOE will be available for public inspection in the DOE Freedom of Information Office, Room 1E–190, Forrestal Building, 1000 Independence Avenue S.W., Washington, D.C. between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Any information on data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

B. Public Hearing

1. *Procedure for requests to make oral presentations.* Requests to speak should be in writing and contain a telephone number where you may be contacted during the day prior to the hearing. Request must be submitted to the address indicated in the "ADDRESS" section of this preamble and received by DOE by 4:30 p.m., e.s.t., on March 4, 1986.

If you are selecteds to be heard at the hearing, we will notify you before the date of the hearing. You will be required to submit 50 copies of your statement to DOE prior to the date of the hearing.

2. *Conduct of the hearing.* We reserve the right to select the persons to be heard at the hearing (in the event there are more requests to be heard than time allows), to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation

may be limited, based upon the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

If you wish to ask a question at the hearing, you may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made. The entire record of the hearing, including the transcript, will be retained by the DOE and made available for inspection in the DOE Freedom of Information Office, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. You may purchase a copy of the transcript from the reporter.

V. Procedural Matters

A. Executive Order 12291

Executive Order 12291 (46 FR 13193, February 19, 1981), requires an agency to prepare a regulatory impact analysis for any proposed major rule. DOE has determined that this proposal does not constitute a "major rule," as defined in the Executive Order, because: (1) The proposed criteria will not directly result in the level of impact necessary to meet the definition of a "major rule"; and (2) in keeping with the purpose and intents of the Executive Order, the proposed criteria will not increase the regulatory burdens on American society.

B. Atomic Energy Act

Under Section 161(v) of the Atomic Energy Act, 42 U.S.C. 2201 (v), DOE must submit criteria to the appropriate Congressional committees for a period of forth-five days prior to the time DOE actually establishes the criteria. Pursuant to this requirement, DOE will submit the cirteria which it decides to adopt to the proper committees at least forty-five days prior to their actual effective date.

C. National Environmental Policy Act

In accordance with the regulations of the Council of Environmental Quality (40 CFR Parts 1500–1808) implementing the National Environmental Policy Act of 1969, as amended, 40 U.S.C. 4221 *et seq.*, DOE prepared an Environmental Assessment (EA) on the proposed revision to the criteria. Based upon this EA, DOE issued a Finding of No Significant Impact (FONSI) concluding that the proposed revision to the criteria is not a major federal action significantly affecting the quality of the human environment. This FONSI is being published as an appendix to this Notice.

D. Regulatory Flexibility Act

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, DOE certifies that the proposal will not have a significant economic impact on a substantial number of small entities because: (1) The proposed criteria will not directly result in the level of impact required to meet the standard set forth in the Regulatory Flexibility Act; (2) to the extent the proposed criteria may have any direct impact, such impact will not be adverse to small entities; and (3) the number of small entities that may be affected by the proposed criteria is not large enough to meet the standard set forth in the Regulatory Flexibility Act.

E. Paperwork Reduction Act

The proposed criteria do not directly provide for the collection of information. The contracts that will be based on the criteria will be used to collect certain information, and at the appropriate time DOE will submit the collection of information requests contained in the contracts to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501.1 *et seq.*, and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*

List of Subjects in 10 CFR Part 762

Uranium.

For the reasons set out in the preamble, Chapter III of Title 10 of the Code of Federal Regulations is proposed to be amended as follows.

Issued in Washington, DC, on January 24, 1986.

James W. Vaughan, Jr.,

Acting Assistant Secretary for Nuclear Energy.

1. Chapter III of Title 10 is amended by adding a new Part 762 to read as follows:

PART 762—URANIUM ENRICHMENT SERVICES CRITERIA

Sec.

762.1 General
762.2 Definitions
762.3 Enrichment of Uranium of Foreign Origin
762.4 Prices
762.5 Costs
762.6 Recovery of Prior Unrecouped Government Costs
762.7 Non-discrimination
762.8 Amendment of Contract
762.9 Termination by DOE
762.10 Termination by Customer
762.11 Quantities of Feed and Product Material
762.12 Customer's Option to Acquire Tails Material
762.13 Responsibility for Material Meeting Specifications
762.14 Other Terms
762.15 Prior Contracts

Authority: Sec. 161(u), Atomic Energy Act of 1954, 68 Stat. 921 (42 U.S.C. § 2201(u)).

§ 762.1 General.

(a) *Authority.* These criteria set forth the general terms and conditions applicable to the provision of uranium enrichment services in facilities owned by DOE, as authorized by the Atomic Energy Act of 1954, as amended (the Act). Specifically, these criteria are established pursuant to section 161(v) of the Act, which was added by Pub. L. 88–489, the "Private Ownership of Special Nuclear Materials Act."

(b) *Eligible customers.* DOE may enter into contracts for providing enrichment services with licensees and cooperative agreement customers. Enrichment services can be offered to cooperative agreement customers only while comparable services are available to licensees and cannot be offered for prices less than the prices for services to licensees.

(c) *Capacity limitations.* DOE will not enter into contracts in excess of the available capabilities of DOE. Available capability consists of inventories of material available or committed to DOE and the physical capability of existing and authorized enrichment plants, fully powered and operated without limitation as to mode of operation, but as reduced by potential commitments involving forecasts of Government needs.

(d) *Sale limitations.* Except as specifically provided, nothing in this notice shall be deemed to affect the sale or leasing of special nuclear material by DOE or the entering into "barter" arrangements whereby special nuclear material is distributed pursuant to Section 54 of the Act and source

material is accepted in part payment therefore.

(e) *Revision of criteria.* The criteria contained in this notice are subject to change by DOE from time to time; however, any such changes shall be developed in conformance with applicable administrative guidelines and shall be submitted to the Committees of the Senate and House of Representatives which under the rules of the Senate and House have jurisdiction for review in accordance with the Act.

§ 762.2 Definitions.

(a) "Enrichment services" means the separative work necessary to enrich or further enrich uranium in the isotope U-235.

(b) "Cooperative agreement customer" means a person receiving enrichment services pursuant to an agreement for cooperation arranged pursuant to section 123 of the AEA.

(c) "Licensee" means a person licensed under sections 53, 63, 103 or 104 of the AEA.

(d) "Separative work" means the measure of the effort required to separate a quantity of uranium feed material into (1) an enriched fraction containing a higher concentration of U-235 than the feed material and (2) a tails fraction containing a lower concentration of U-235.

§ 762.3 Enrichment of uranium of foreign origin.

A domestic customer shall certify the country of origin of feed material delivered to DOE.

§ 762.4 Prices.

DOE shall negotiate prices in individual enrichment services contracts in accordance with an overall approach intended to maintain the long-term competitive position of DOE while obtaining the recovery of the Government's costs over a reasonable period of time.

§ 762.5 Costs.

DOE will establish charges for enrichment services on a basis that recovers appropriate Government costs over a reasonable period of time. Such costs will be determined on a basis that includes the costs incurred in providing enrichment services to civilian customers, as follows:

(a) Electric power and all other costs, direct and indirect, of operating the enrichment plants;

(b) Depreciation of enrichment plants;

(c) Costs of process development;

(d) Cost of DOE administration and other Government functions in support of the Enrichment Program; and

(e) Imputed interest on investment in plant, working capital, the natural uranium contained in those inventories at the DOE enrichment plants needed to provide enrichment services, and the separative work costs of preproduced inventories.

§ 762.6 Recovery of prior unrecouped Government costs.

In establishing prices for providing enrichment services for civilian customers DOE will establish reserves sufficient to return to the Treasury of the United States, over a reasonable period of time, previously unrecouped and unrecovered costs associated with provision of enrichment services to civilian customers. The estimate of such costs will include costs attributable to plant capacity used to provide enrichment services for civilian customers, but will not necessarily include costs attributable to plant capacity or other investments not properly allocable to the Government's costs associated with providing enrichment services to civilian customers.

§ 762.7 Non-discrimination.

The same prices, as well as other terms and conditions, shall be available to all similarly-situated customers on a non-discriminatory basis, reflecting the cost of the enrichment services supplied to those customers.

§ 762.8 Amendment of contract.

At the request of either DOE or the customer, the parties will negotiate and, to the extent mutually agreed, amend the contract without additional consideration. A contract may provide for renegotiation of prices, as well as other terms and conditions, at specified times or upon request by either party.

§ 762.9 Termination by DOE.

(a) The contract may be terminated by DOE without cost to DOE upon reasonable notice at such time as commercial enrichment services are provided by another domestic source: Provided, however, that DOE will upon request by the customer rescind any notice of termination and will continue to furnish the services specified in the contract if the services of the domestic source are not available to the customer; (1) to the extent provided for in the DOE contract during the remainder of its terms; and (2) on terms and conditions, including charges, which are considered by the DOE to be reasonable and nondiscriminatory.

(b) DOE may terminate the contract without cost to DOE in the event the customer loses its right to possess enriched uranium, or defaults on its contractual obligations, or becomes involved in bankruptcy proceedings. In such instances, the customer will be required to pay a termination charge determined as if the customer had terminated the contract.

§ 762.10 Termination by customer.

The contract shall provide the circumstances under which the customer may terminate the contract in whole or in part. Reasonable and appropriate charges for termination as are negotiated shall be specified in the contract.

§ 762.11 Quantities of feed and product material.

The quantity of material to be furnished by the customer in relationship to the quantity of enriched uranium to be delivered by DOE and the related amount of separative work to be performed by DOE normally will be determined in accordance with the then current standard table of enriching services published by DOE. DOE may agree to perform such services in accordance with such other table as is within its capability. DOE will not necessarily use the specific feed material or quantity of material furnished by the customer in producing the enriched uranium delivered to the customer.

§ 762.12 Customer's option to acquire tails material.

The customer shall be granted an option to acquire tails material (depleted uranium) resulting from the performance of enrichment services. The option as to quantity (kg U) of tails material desired by the customer, within the maximum quantity subject to the option, must be exercised at the time of delivery of the related quantity of feed material. The U-235 assay of the tails material delivered to the customer will be within the sole discretion of DOE. The maximum quantity of depleted uranium subject to the option will be equal to the difference between the total uranium supplied by the customer as feed material and the total enriched uranium furnished to the customer, less processing losses as established from time to time by DOE. Delivery of tails material will normally be at the same time as delivery of enriched uranium.

§ 762.13 Responsibility for materials meeting specifications.

The customer warrants that all feed material meets specifications and, with stated exceptions, agrees to hold DOE and its representatives harmless from all damages, liabilities, or costs arising out of a breach of the warranty where such

damages, liabilities, or costs are incurred prior to final acceptance of the feed material by DOE. However, the customer is not deprived of any rights under indemnification agreements entered into pursuant to section 170 of the Act (Price-Anderson indemnification). DOE's obligation to furnish specification material to the customer terminates upon final acceptance of such material by the customer.

§ 762.14 Other terms.

A contract may contain terms and conditions not specified in these criteria, so long as the terms and conditions are not inconsistent with these criteria.

§ 762.15 Prior contracts.

All contracts under which DOE was providing enrichment services prior to the adoption of these criteria are valid. These prior contracts may be amended to conform to these criteria without penalty, if both parties agree.

Appendix—Finding of No Significant Impact Proposed Revision to the Uranium Enrichment Service Contract

Note.—This appendix will not be printed in the Code of Federal Regulations.

I. Declaration of Finding

The Department of Energy (DOE) has prepared an Environmental Assessment (EA) (DOE/EA–0279), which is available to the public on request, on the proposed revision to the Uranium Enrichment Services Criteria. Based on the findings of the EA, DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act of 1969. Therefore, no environmental impact statement is required.

II. Description of the Proposed Action

DOE proposes to revise the current Uranium Enrichment Services Criteria to explicitly address the realities of today's highly competitive market for enrichment uranium. In addition to minor conforming amendments, the proposed Criteria provide contracting flexibility to enable DOE to provide enrichment services under terms which are consistent with the Atomic Energy Act, responsive to the needs of enrichment customers, and which maximize the long term competitive position of the United States in the world market. The revised Criteria would also continue the existing policy against restrictions on the enrichment of foreign uranium for use in domestic reactors.

Additional details regarding the description of the proposed action can be found in the Environmental Assessment on Proposed Revision to the Uranium Enrichment Services Criteria.

III. Alternatives Considered

Two reasonable alternatives exist to revising the Uranium Enrichment Services Criteria. They are:

- Do not revise the Uranium Enrichment Services Criteria (No action).
- Revise the Uranium Enrichment Services Criteria, but in a different manner.

No action regarding revision of the Criteria is not a desirable option if the United States is to remain a viable supplier of uranium enrichment services. The impact of not revising the Criteria would probably result in DOE eventually losing some of their customers to foreign uranium enrichment suppliers.

The Criteria could be revised in other ways than those that are proposed. One apparent way that might be proposed during the rulemaking process is to include restrictions on the enrichment of foreign uranium for use in domestic reactors. The domestic uranium mining industry argues that import restrictions would benefit the industry. DOE strongly believes that import restrictions would be detrimental to both DOE and the domestic mining industry. Therefore, DOE believes that import restrictions are not a desirable option.

Additional details on alternatives can be found in the Environmental Assessment on Proposed Revision to the Uranium Enrichment Services Criteria.

IV. Description of Impacts and Justification for Conclusion of No Significance

Operation of the DOE gaseous diffusion plants for uranium enrichment have impacts on the environment, which include impacts on air quality, water quality, land use, and aquatic and terrestrial biota. Operation also requires large amounts of electrical energy. DOE monitors the diffusion plant effluents to assure compliance with environmental standards.

A summary of the environmental impacts of plant operations can be found in the Environmental Assessment on Proposed Revision to the Uranium Enrichment Services Criteria.

The proposed Criteria will reinforce DOE's continuing efforts to conduct enrichment activities in a more businesslike manner. There will be no environmental impacts directly attributable to the proposed revision to the Criteria. The revised Criteria will not affect the impacts previously assessed for operating enrichment plants. Although the flexibility permitted by the revised Criteria may prevent the U.S. from losing more of its current market share, and possibly may increase the anticipated share over the long term, the enrichment plants currently are operating so far below full capacity that no need for additional plants beyond that previously assessed is anticipated in the near future. Therefore, it is concluded that revising the Criteria as proposed is not a major Federal action with a significant effect on the quality of the human environment.

Single copies of the Environmental Assessment on Proposed Revision to the Uranium Enrichment Services Criteria are available from: John P. Thereault, Office of Technology Deployment and Strategic Planning, NE–34, Office of Uranium Enrichment, U.S. Department of Energy, Washington, DC 20545, (301) 353–4710.

FOR FURTHER INFORMATION CONTACT: Robert J. Stern, Director, Office of Environmental Guidance, EH–23, U.S. Department of Energy, Washington, DC 20585, (202) 252–4600.

Date issued: January 10, 1986.

Mary L. Walker,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 86–2030 Filed 1–27–86; 12:02 pm]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 5H5462/P383; FRL–2960–8]

Pesticide Tolerance for 3-(3,5-Dichlorophenyl)-5-Ethenyl-5-Methyl-2,4-Oxazolidinedione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the establishment of a food additive regulation for the combined residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione (referred to in the preamble of this document as vinclozolin) and its 3,5-dichloroaniline containing metabolites in or on the food commodity prunes. This regulation to establish the maximum permissible level for residues of the fungicide in or on prunes was requested by BASF Wyandotte Corp. A related document, proposing a tolerance

on stone fruits, appears elsewhere in this issue of the **Federal Register**.

DATE: Comments, identified by the document control number [FAP 5H5462/P383], must be received on or before February 28, 1986.

ADDRESS: Written comments by mail to: Information Services Section, Program Management and Support Division, 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 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or 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. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of May 8, 1985 (50 FR 19444), that announced that BASF Wyandotte Corp., submitted food additive petition 4H5462 to the Agency proposing to amend 21 CFR Part 193 by establishing a regulation permitting the combined residues of the fungicide vinclozolin and its 3,5-dichloroaniline containing metabolites in or on the commodity dried prunes at 75.0 ppm.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated and discussed in a related document (PP 2F2650/P383) appearing elsewhere in this issue of the **Federal Register**.

The metabolism of vinclozoline is adequately understood, and an adequate analytical method, gas chromatography with electron capture detector, is available for enforcement purposes.

Based on the information considered, the Agency concludes that the pesticide can be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 973, 7 U.S.C. 136a *et seq.*) Therefore, it is proposed that the food additive regulation be established as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [FAP 5H5462/P383]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations proposing the establishment of new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

List of Subjects in 21 CFR Part 193

Food additives, Pesticides and pests.

Dated: January 16, 1986.

Douglas D. Compt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 21 CFR Part 193 be amended as follows:

PART 193—[AMENDED]

1. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

2. Section 193.137 is added to read as follows:

§ 193.137 3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione.

Tolerances are established for combined residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione and its metabolites containing the 3,5-dichloroaniline moiety in or on the following food commodities:

	Parts per million
Foods:	
Prunes	75.0

[FR Doc. 86–1811 Filed 1–28–86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF STATE

Assistance Secretary for Consular Affairs

22 CFR Part 71

[No. SD–195]

Emergency Medical/Dietary Assistance for U.S. Citizens Incarcerated Abroad

AGENCY: Department of State.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of State proposes to modify an existing limitation on emergency medical loans to U.S. citizens incarcerated abroad. Under certain conditions, loans are now available to transport U.S. citizen prisoners incarcerated abroad to medical facilities within a consular district if necessary to prevent death or permanent disablement. This modification would ensure that eligible American prisoners abroad receive without delay needed life- or limb-saving care by permitting loans for transportation to medical facilities both within and outside the consular district.

This rule would also provide that Department of State funds may be used to treat both physical and mental conditions that are life-threatening. Although it has been the Department of State's view that any illness that is life- or limb-threatening qualifies an indigent U.S. citizen incarcerated abroad for assistance, the current regulation can arguably be interpreted to refer only to physical distress. The proposed change would eliminate that ambiguity by making clear, for example, that an indigent incarcerated American whom competent authorities believe to be in need of emergency psychiatric treatment or care is eligible for assistance on the same basis as the prisoner who needs an emergency appendectomy.

Finally, the Department proposes to delete certain ambiguous language regarding the short-term full diet program which implies that promissory notes may not be required in certain

cases if the amount to be expended does not exceed an amount established by the Department. The change would make clear that promissory notes are required for all loans regardless of the amount involved.

DATE: Comments must be received on or before March 31, 1986.

ADDRESS: Written comments should be addressed to John H. Adams, Director, Citizens Emergency Center, Overseas Citizens Services, Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Thomas L. Randall, Jr., Chief, Latin America and the Caribbean, Citizens Emergency Center, Department of State, Washington, DC 20520, (202) 632–5225.

SUPPLEMENTARY INFORMATION: Loans for emergency medical assistance to eligible incarcerated U.S. citizens abroad are made possible by Pub. L. 95–45, as amended (22 U.S.C. 2670(j)). The statute authorized the Department of State to provide emergency assistance to incarcerated Americans for purposes such as transportation to a medical facility. The law does not require that the medical facility be located within the consular district.

In administering the program, the Department has found that the current language in § 71.10(b)(7) limiting loans for transport to a medical facility within the consular district where the U.S. prisoner is located is unduly restrictive and does not accurately reflect the intent of the Congress. In January 1985 there were more than 1,400 Americans incarcerated abroad, many in areas remote from medical facilities or from hospitals that could provide life-saving equipment or techniques such as renal dialysis or open heart surgery. Under the current rule, if an appropriate medical facility is not available within the consular district, we would be unable to provide emergency medical assistance.

The Department has determined that the proposed change will ensure that eligible American prisoners abroad in need of emergency assistance will more expeditiously be transported to appropriate medical facilities.

Two minor changes are also proposed to ensure that the emergency medical and dietary assistance programs are implemented uniformly worldwide. Since the programs' inception in 1977, regulations governing implementation have not been modified or clarified based on the Department's experiences in more than 170 countries. The proposed changes formalize practices that have already been implemented in light of that experience and thus reflect current practice.

To comply with federal statutes, 22 CFR 71.11(a)(3) would be modified to require that where possible, and prior to the expenditure of any funds, indigent prisioners must execute promissory notes agreeing to repay the U.S. Government for all fund expended for the emergency dietary assistance provided to them.

Finally, 22 CFR 71.10(a)(1) would be clarified to specify that funds may be used to treat both physical and mental illnesses that are potentially life- or limb-threatening.

The Department believes that these proposed changes fulfill the intent of Congress and will not adversely affect any of the potential applicants for the emergency medical and dietary assistance programs for incarcerated U.S. citizens abroad.

List of Subjects in 22 CFR Part 71

Protection and welfare of U.S. citizens abroad, Emergency medical and dietary assistance.

For the reasons set out in the summary, Part 71 of Subchapter H, Chapter I, Title 22 of the Code of Federal Regulations would be amended as follows:

PART 71—[AMENDED]

1. The authority citation for 22 CFR Part 71 would be revised to read as follows:

Authority: Sec. 4 of the Act of May 26, 1949, as amended, 63 Stat 111, 22 U.S.C. 2658; Sec. 2, Pub. L. 95–45, 91 Stat 221, 22 U.S.C. 2670(j).

2. By revising § 71.10 (a)(1), (b)(7), and § 71.11(a)(3) to read as follows:

§ 71.10 Emergency medical assistance.

(a) * * *

(1) Adequate treatment for a physical or psychiatric condition cannot or will not be provided by prison authorities or the host government.

* * * * *

(b) * * *

(7) Transportation for the U.S. Citizen and attendant(s) designated by incarcerating officials between the place of incarceration or site where the injury/illness occurred and the place(s) of treatment;

* * * * *

§ 71.11 Short-term full diet program.

(a) * * *

(3) Whenever competent to do so, the prisoner executes a promissory note for funds expended, since the assistance is on a reimbursable basis.

* * * * *

Dated: July 29, 1985.

Joan M. Clark,

Assistant Secretary, Bureau of Consular Affairs.

[FR Doc. 86–1868 Filed 1–28–86; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–191–82]

Income Taxes; section 338(b), Basis of Target Corporation Assets

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations that add new §§ 1,338 (b)–1T through 1.338 (b)–3T, relating to the determination of the basis of assets of a target corporation, and that amend existing temporary regulations § 1.338–4T, relating to miscellaneous matters under section 338. The text of the new and revised sections also serves as the comment document for this notice of proposed rulemaking.

DATES: Proposed Effective Date: The final regulations under section 338 (b) are effective January 29, 1986, and to apply generally to stock acquisitions made after August 31, 1982.

Dates for Comments and Requests for a Public Hearing: Written comments and requests for a public hearing must be delivered or mailed by March 31, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR–191–82], Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Bennett C. Steinhauer or Patricia Wendlandt of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) or telephone 202–566–3458 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new

temporary regulations §§ 1.338 (b)–1T through 1.338 (b)–3T to Part 1 of Title 26 of the Code of the Federal Regulations ("CFR") and amend temporary regulations §§ 1.338–1T through 1.338–4T. The final regulations that are proposed to be based on the new and amended temporary regulations would be added to Part 1 of Title 26 of the CFR. Those final regulations would provide guidance on the determination of the basis of the assets of a target corporation for which an election is made under section 338 of the Internal Revenue Code. Section 338 (b) was added by section 224 of the Tax Reform and Fiscal Responsibility Act of 1982 ("TEFRA") (Pub. L. No. 97–248; 96 Stat. 485) and was amended by section 712 (k) of the Tax Reform Act of 1984 (Pub. L. No. 98–369; 98 Stat. 948). For the text of the new and amended temporary regulations, see T.D. 8072, published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the additions to the regulations.

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Bennett C. Steinhauer and Patricia Wendlandt of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85–1849 Filed 1–23–85; 4:49 pm]

BILLING CODE 4830–01–M

SELECTIVE SERVICE SYSTEM

32 CFR Parts 1602, 1605, 1609, 1618, 1621, 1624, 1630, 1633, 1636, 1639, 1642, 1648, 1651, 1653, 1656, and 1657

Selective Service Regulations; Processing of Registrants; Extension of Comment Period

AGENCY: Selective Service System.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In the **Federal Register** of December 27, 1985 (50 FR 52955) the Selective Service System proposed amendments to the above listed parts of 32 CFR. The Selective Service System provided that comments received on or before January 27, 1986 would be considered. It appears that additional time should be allowed for public comment.

DATE: The period for submitting written public comments is hereby extended to February 27, 1986. Written comments received on or before February 27, 1986 will be considered.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, DC 20435, Phone (202) 724–1167.

Dated: January 23, 1986.

Thomas K. Turnage,

Director.

[FR Doc. 86–1891 Filed 1–28–86; 8:45 am]

BILLING CODE 8015–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 2F2650/P382; FRL–2960–9]

Pesticide Tolerance for 3-(3,5-Dichlorophenyl)-5-Ethenyl-5-Methyl-2,4-Oxazolidinedione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a tolerance for the combined residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione (referred to in the preamble of this document as vinclozolin) and its metabolites containing the 3,5-dichloroaniline moiety in or on stonefruits. This regulation, to establish the maximum permissible level for residues of vinclozolin on stonefruits, was requested by BASF Wyandotte Corp. A related document, proposing a tolerance on prunes, appears elsewhere in this issue of the **Federal Register**.

DATE: Comments, identified by the document control number [PP 2F2650/P382), must be received on or before February 28, 1986.

ADDRESS: Written comments by mail to:

Information Services Section, Program Management and Support Division (TS–767C) Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW.

In person bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or 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. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM #2 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of June 23, 1982 (47 FR 27126), that announced that BASF Wyandotte Corp., Agriculture Chemical Division, 110 Cherry Hill Road, Parsippany, New Jersey 07054 submitted pesticide petition 2F2650 proposing to amend 40 CFR

180.380 by establishing a tolerance for the combined residues of the fungicide vinclozolin and its 3,5-dichloroaniline containing metabolites in or on the raw agricultural commodities peaches and cherries at 4.0 parts per million (ppm) and plums at 1.0 ppm. The petition was subsequently amended (47 FR 57129; December 22, 1982) by deleting cherries, peaches, and plums and substituting the raw agricultural group stonefruit at 25 ppm.

A related document, [FAP 5H5462/P383], proposing a tolerance for the food commodity prunes at 75.0 ppm, appears elsewhere in this issue of the **Federal Register.**

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A 90-day rat feeding study with a NOEL of 450 ppm (22.5 mg/kg/day) the highest dose tested.
2. A 90-day dog feeding study with a NOEL of 300 ppm (7.5 mg/kg/day).
3. A 6-month dog feeding study with a NOEL of 100 ppm (2.5 mg/kg/day).
4. A mouse teratology study with a NOEL for teratogenicity of 6,000 ppm (900 mg/kg/day) highest dose tested, and a NOEL for fetotoxicity of 600 ppm (90 mg/kg/day).
5. A rabbit teratology study with a NOEL for teratogenicity of 300 ppm (80 mg/kg/day), the highest dose tested and a NOEL for fetotoxicity of 80 mg/kg/day.
6. A chronic feeding/oncogenicity study in rats for 103 weeks, with a NOEL of 486 ppm (24 mg/kg), and no compound-related oncogenic effects under the conditions of the study at doses up to 1,458 ppm (73 mg/kg bw/day), the highest dose tested.
7. A chronic feeding/oncogenicity study in mice for 26 months, with a NOEL greater than 486 ppm (73 mg/kg) and no compound-related oncogenic effects under the conditions of the study at doses up to 1,458 ppm (219 kg/mg bw/day), the highest dose tested. A discussion of this study follows.
8. A dominant lethal assay in mice negative at 2,000 mg/kg for 5 days.
9. Sister chromatid exchange study in the bone marrow of the Chinese hamster was negative.
10. Reverse mutation test with and without a metabolic activation system which was negative for mutagenic effects.

A primary rat hepatocyte unscheduled DNA synthesis assay and a mouse lymphoma forward mutation assay on vinclozolin have been received and are currently undergoing review and evaluation.

The mouse oncogenicity study was carried out for 26 months (item 7 of preceeding toxicology data) using the NMRI strain of mice at doses of 0, 162, 486, 1458, and 4,347 ppm. In its evaluation of this study, the Agency raised some questions about the significance of increases in liver tumors and leukemia/lymphomas in male mice and lung adenomas in female mice treated with vinclozolin. To further evaluate the concerns raised in this review, the Agency requested, and received, historical control data from eight studies run in the same laboratory during the same timeframe for incidence of leukemia/lymphoma, liver tumors, and lung adenomas/carcinomas.

The Agency has now concluded that the small increased incidences of both leukemia/lymphomas and liver tumors in the vinclozolin-treated male mice did not appear to be treatment-related, based on the following. First, the historical control data for leukemia/lymphoma indicated vinclozolin-treated male mice were within the spontaneous tumor rate range for that laboratory, whereas, the concurrent control rate was low for leukemia/lymphoma. Second, the vinclozolin-treated high dose male mice showed a 6 percent (3/50) incidence of liver tumors (adenomas), which was at the high end of, but nevertheless within, the historical control rates for that laboratory (0 to 6 percent). Third, no progression of these benign liver tumors to malignancy was evident (of the three mice with liver tumors, one each died in week 96, 103, and 105 of the experiment).

The only other issue in the initial Agency evaluation which remained unresolved was the biological significance of the statistically significant, dose-related increase in incidences of lung adenomas in female mice. An increase in the incidence of this tumor was seen in female mice treated with vinclozolin (0 percent in the control, 2 percent at 162 ppm, 2 percent at 486 ppm, 8 percent at 1,458 ppm, and 10 percent at 4,347 ppm). A re-evaluation of the lung adenoma slides by pathologists at the Experimental Pathology Laboratory (EPL) showed three less adenomas in treated mice as indicated below.

MOUSE LUNG ADENOMAS

	Controls	Dose groups			
		162	486	1,458	4,347
BASF	0(0%)	1(2%)	1(2%)	4(8%)	5(10%)
EPL	0(0%)	0(0%)	1(2%)	3(6%)	4(8.6%)

In addition, the pathologist at EPL did not observe any differences in the hyperplasia of the lung in the treated versus control groups. An oncogenic effect associated with a treatment-related increase in tumors is generally corrolated with an increase of hyperplastic changes in the same tissues.

Therefore, based on (1) the absence of any differences in lung hyperplasia in vinclozolin-treated animals and the controls; (2) the fact that the incidence of lung adenomas in treated females was within the spontaneous control rate, which shows a fairly wide variation, for this (0 to 9 percent) and other testing laboratories (as high as 25.5 percent); (3) the fact that the lung tumors were benign (adenomas) and had not progressed to malignancy (carcinomas); and (4) the absence of any significant increased incidence of lung tumors in treated male mice as compared to controls, the Agency has concluded that vinclozolin does not show an oncogenic potential in the mouse under the conditions of the study, and that the apparent dose-related increase in tumors is attributable to chance. Furthermore, the conclusion that vinclozolin is not a potential human oncogen is further supported by the lack of oncogenic activity in a chronic feeding/oncogenicity study in the rat and the absence of mutagenic activity in mammalian systems. The Agency has decided to seek public comment on these conclusions.

Based on the NOEL of 100 ppm in the 6-month dog feeding study, and using a 100-fold safety factor, the acceptable daily intake (ADI) for vinclozolin is calculated to be 0.25 mg/kg/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 1.5 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg diet is calculated to be 0.2507 mg/day. The proposed lactation would increase the TMRC to 0.2967 mg/day, which utilize 19.8 percent of the ADI or an additional 3.1 percent of the ADI.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography using an electron capture detector, is

available for enforcement purposes. There is no reasonable expectation of residues in eggs, milk, or poultry from this use in stonefruit.

Based on the data and information considered, the Agency concludes that the proposed tolerance would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this proposed rule be referred to an advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 2F2650/P382]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: January 16, 1986

Douglas D. Campt,

Director, Registration Division Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

Part 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.380 is amended by adding, and alphabetically inserting, the commodity stonefruits to read as follows:

§ 180.380 3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione: tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Stonefruits	25.0
* * * * *	

[FR Doc. 86–1813 Filed 1–28–86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6690]

Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 50 FR 49958 on December 6, 1985. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the City of Kirbyville, Jasper County, Texas.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Kirbyville, previously published at 50 FR 49958 on December 6, 1985, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. In FR Doc. 85–28938, in the **Federal Register** of Friday, December 6, 1985, on page 49958, column 1, correct the entry for Pin Oak Creek to read as follows:

Source of flooding and location	Elevation in feet—national geodetic vertical datum
Pin Oak Creek:	
Approximately .4 mile downstream of Gulf Colorado and Santa Fe Railroad	*99
Approximately .6 mile upstream of most upstream corporate limits	*1111

Issued: January 17, 1986.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 86–1769 Filed 1–28–86; 8:45 am]

BILLING CODE 6718-03-M

Notices

Federal Register
Vol. 51, No. 19
Wednesday, January 29, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Forms Under Review by Office of Management and Budget

January 24, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; ATTN: Desk Officer for USDA.

If you participate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

• Food and Nutrition Service, Child Care Food Program Study/Mail Survey of Day Care Providers, One time only.

Non-profit institutions; Small businesses or organizations; 3,675 responses; 919 hours; not applicable under 3504(h), Jerry Burns (703) 756–3128.

Revision

• Food Safety Inspection Service, Regulations Governing Poultry Inspection, FSIS 6800–2, 6800–3, 6800–4, 6800–5, 6800–8, MP–112, –230, –231, –232, –505, –514–2, –526, and –528.

Daily

State or local governments; Small businesses or organizations; 401,760 responses; 33,480 hours; not applicable under 3504(h), Roy Purdie, Jr. (202) 447–5372.

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 86–1944 Filed 1–28–86; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 3–86]

Proposed Foreign-Trade Zone, Brevard County, FL; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Canaveral Port Authority, a Florida public corporation, requesting authority to establish a general-purpose foreign-trade zone in Brevard County, Florida, within the Canaveral Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 21, 1986. The applicant is authorized to make this proposal under Chapter 28922, Laws of Florida, Special Acts of 1953.

The proposed foreign-trade zone will cover 50 acres in the southwest portion of the 800-acre Canaveral Port Authority complex on George King Blvd., in Brevard County. The Port Authority will select a private operator for the zone.

The application contains evidence of the need for zone services in the Cape Canaveral area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of products such as computer, telecommunication, and other electronic equipment. No approvals for manufacturing are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 99 S.E. 5th ST., Miami, FL 33131; and Colonel Charles T. Meyers, III, District Engineer, U.S. Army Engineer District Jacksonville, P.O. Box 4970, Jacksonville, Fl 32232.

As part of its investigation, the examiners committee will hold a public hearing on February 25, 1986, beginning at 1:00 p.m., in Commissioners Hearing Room of the Canaveral Port Authority Administrative Building, 200 George King Blvd., Cape Canaveral, Florida.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by February 17. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through March 31, 1986.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 120 George King Blvd., Port Canaveral, FL 32970.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 1529, 14th and Pennsylvania, NW., Washington, DC 20230.

Dated: January 24, 1986.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-1928 Filed 1-28-86; 8:45 am]

BILLING CODE 3510-25-M

[Docket No. 2-86]

Proposed Foreign-Trade Zone, Palm Beach County, FL; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Palm Beach District, a Florida public corporation, requesting authority to establish a general-purpose foreign-trade zone in Palm Beach County, Florida, within the West Palm Beach Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 21, 1986. The applicant is authorized to make this proposal under § 228.36 of the Florida Statutes.

The proposed foreign-trade zone involves 2 sites totalling 180 acres. Site 1 covers 112 acres within the Port of Palm Beach terminal area, located about 1 mile from the Lake Worth Inlet to the Atlantic Ocean. Site 2 covers 68 acres on in industrial area about 2 miles due west of the terminal at Interstate–95 and Highway 710. An existing 10,000 square foot warehouse is available at the latter site for initial zone activity. The Port plans to designate CHO Properties, Inc. as zone operator.

The application contains evidence of the need for zone services in the Palm Beach area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of products such as elevator systems, telephone and telecommunication equipment, building materials, metal shutters, and boat components. No approvals for manufacturing are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreigh-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 99 S.E. 5th St., Miami, FL 33131; and Colonel Charles T. Meyers III, District Engineer, U.S. Army Engineer District Jacksonville, P.O. Box 4970, Jacksonville, FL 32232.

As part of its investigation, the examiners committee will hold a public hearing on February 26, 1986, beginning at 9:00 a.m., in the Port of Palm Beach Commission Meeting Room (5th Floor), Port Executive Building, Four East Port Road, Riviera Beach.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by February 19. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through March 31, 1986.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, P.O. Box 9906, Riviera Beach, FL 33424.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, DC 20230.

Dated: January 24, 1986.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-1929 Filed 1-28-86; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 324]

Resolution and Order Approving the Application of the Chicago Regional Port District for a Special-Purpose Subzone at the Ford Motor Company Plant in Chicago, IL

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81U), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders: After consideration of the application of the Chicago Regional Port District, grantee of Foreign-Trade Zone 22, filed with the Foreign-Trade Zones Board (the Board) on May 28, 1985, requesting special-purpose subzone status for Ford Motor Company's auto assembly plant in Chicago, Illinois, within the Chicago Customs port of entry area, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority to Establish a Foreign-Trade Subzone at a Ford Motor Company Plant in Chicago, IL

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Chicago Regional Port District, grantee of Foreign-Trade Zone No. 22, has made application (filed May 28, 1985, Docket 12–85, 50 FR 23752) in due and proper form to the Board for authority to establish a special-purpose subzone at the auto manufacturing plant of Ford Motor Company in Chicago, Illinois;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed May 28, 1985, the Board hereby authorizes the establishment of a subzone at the Ford auto plant in Chicago, designated on the records of the Board as Foreign-Trade Subzone No. 22B, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to

the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC this 15th day of January 1986, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-1926 Filed 1-28-86; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 325]

Resolution and Order Approving the Application of the Indianapolis Airport Authority for Special-Purpose Subzones at Three Chrysler Corp. Plants in the Indianapolis, IN, Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders: After consideration of the application of the Indianapolis Airport Authority, grantee of Foreign-Trade Zone 72, filed with the Foreign-Trade Zones Board (the Board) on May 28, 1985, requesting special-purpose subzone status for three automobile components manufacturing plants in the Indianapolis Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority to Establish Foreign-Trade Subzones at Chrysler Corporation Plants in the Indianapolis, IN Area

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Indianapolis Airport Authority, grantee of Foreign-Trade Zone No. 72, has made application (filed May 28, 1985, Docket 13–85, 50 FR 23752) in due and proper form to the Board for authority to establish special-purpose subzones at auto component manufacturing plants of Chrysler Corporation in Indianapolis, Kokomo, and New Castle, Indiana, adjacent to the Indianapolis Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, in accordance with the application filed May 28, 1985, the Board hereby authorizes the establishment of subzones at Chrysler plants in Indianapolis, Kokomo, and New Castle, Indiana, designated on the records of the Board as Foreign-Trade Subzones Nos. 72E, 72F and 72G, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzones shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzones in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzones, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineers with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC this 15th day of January 1986, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-1927 Filed 1-28-86; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-791-502]

Antidumping Duty Order; Low-Fuming Brazing Copper Rod and Wire From South Africa

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning low-fuming brazing copper rod and wire from South Africa, the United States Department of Commerce

(the Department) and the United States International Trade Commission (the ITC) have determined that this product is being sold at less than fair value and that sales of this product from South Africa are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of low-fuming brazing copper rod and wire from South Africa made on or after September 23, 1985, the date on which the Department published its "Preliminary Determination" notice in the Federal Register, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register.**

EFFECTIVE DATE: January 29, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Mary S. Clapp, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–2613 or 377–1769.

SUPPLEMENTARY INFORMATION: The merchandise covered by this order is low-fuming brazing copper rod and wire from South Africa, principally of copper and zinc alloy ("brass"), of varied dimension in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated, currently classified under item numbers 612.6205, 612.7220, and 653.1500 of the Tariff Schedules of the United States Annotated (TSUSA). The chemical composition of the products under investigation is defined by Cooper Development Association (CDA) standards 680 and 681.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on September 23, 1985, the Department published its preliminary determination that there was reason to believe or suspect that low-fuming brazing copper rod and wire from South Africa was being sold at less than fair value (50 FR 38567). On December 6, 1985, the Department published its final determination that these imports were being sold at less than fair value (50 FR 49973).

On January 17, 1986, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such importations materially injure a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of low-fuming brazing copper rod and wire from South Africa. These antidumping duties will be assessed on all unliquidated entries of the product entered, or withdrawn from warehouse, for consumption on or after September 23, 1985, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (50 FR 38567).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-averaged antidumping duty margin as noted below.

Manufacturers Producers/Exporters	*Weighted-Average Margin (%)*
McKechnie Brothers S.A. (Pty.) Ltd.,	3.30
All other Manufacturers/Producers/ Exporters,	3.30

This determination constitutes an antidumping duty order with respect to low-fuming brazing copper rod and wire from South Africa, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies for the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

January 22, 1986.

[FR Doc. 86–1937 Filed 1–28–86; 8:45 am]

BILLING CODE 3510-DS-M

Brookhaven National Laboratory; for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 84–163. Applicant: Brookhaven National Laboratory, Upton, NY 11973. Instrument: Vivitron Portico Intershield Assembly. Manufacturer: Vivirad, France. Intended Use: See notice at 49 FR 19563.

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 application relates to accessories specifically designed to enhance the accelerating potential of Van de Graaff accelerators. The accessories are pertinent to the applicant's intended uses, and we know of no comparable domestic accessories.

(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. 86–1932 Filed 1–28–86; 8:45 am]

BILLING CODE 3510-DS-M

University of California at Berkeley; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 86–012. Applicant: University of California at Berkeley, Berkeley, CA 94720. Instrument: X-Ray Streak Camera, Model LMSC. Manufacturer: Kentech Instruments, United Kingdom. Intended Use: See notice at 50 FR 46807.

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 is capable of measuring the pulse duration of short pulse (10^{-12}) second x-rays. This capability is pertinent to the applicant's intended purpose. We known of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(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. 86-1933 Filed 1-28-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Chicago, Operator of Argonne Nat'l Laboratory; Decision of Application for Duty-Free Entry of Scientific Instrument

Correction

In FR Doc. 86-1411, beginning on page 3091 in the issue of Thursday, January 23, 1986, make the following correction: On page 3092, in the first column, the last word in the ninth line should read "Superconducting".

BILLING CODE 1505-01

University of Hawaii; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-017. Applicant: University of Hawaii, Honolulu, HI 96822. Instrument: Electro-Ultrafiltration Unit, Model 724. Manufacturer: Vogel Medizinische Technik & Electronik, West Germany. Intended Use: See notice at 50 FR 46149.

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 article enables the measurement of desorption and solubility rates of soils and the separation of several nutrient fractions in a single extraction run. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(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. 86-1934 Filed 1-28-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Maryland; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-294. Applicant: University of Maryland, College Park, MD 20742. Instrument: Fast-Scanning Michelson Interferometer, Model #405011 Manufacturer: Analytical Accessories, Limited, United Kingdom. Intended Use: See notice at 50 FR 41381.

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 fast-scanning (35 hertz) of electron cyclotron emission spectra over the range of 2.0 to 60.0 cm^{-1} with a resolution of 0.1 cm^{-1}. The National Bureau of Standards advises in its memorandum dated December 23, 1985 that (1) this capability 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 manfactured 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. 86-1935 Filed 1-28-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Utah; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86-004. Applicant: University of Utah, Salt Lake City, UT 84112. Instrument: Shielded Demagnetizer, Model MSA2. Manufacturer: Molspin Limited, United Kingdom. Intended use: See notice at 50 FR 45647.

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 very high magnetic moment sensitivity for in situ measurements of sample specimens. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value fo the foreign instrument for the applicant's intended use.

(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. 86-1936 Filed 1-28-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Ms. Susan Kruse and Dr. William R. Doyle (P374)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name Ms. Susan Kruse and Dr. William R. Doyle, Institute of Marine Sciences.

b. Address Long Marine Laboratory, Santa Cruz, California 95064

2. Type of Permit: Scientific Research.

3. Name and number of Marine Mammals: Risso's Dolphin (Grampus griseus), 9900.

4. Type of Take: Incidental harassment in the course of behavioral observations from boats.

5. Location of Activity: Southern California Bight and Monterey Bay, California.

6. Period of Activity: 3 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Wahington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Services.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC; and

Director, Soughwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: January 23, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–1903 Filed 1–28–86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permit Modification; Dr. Warren M. Zapol, Dr. Robert C. Schneider, and Dr. Donald B. Siniff; Modification No. 1 to Permit No. 526

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 526 issued to Drs. Warren M. Zapol and Robert C. Schneider, Department of Anesthesia, Massachusetts General Hospital, Boston, Massachusetts 02114, and Dr. Donald B. Siniff, Department of Ecology and Behavioral Biology, 108 Zoology Building, University of Minnesota, Minneapolis, Minnesota 55455, on October 11, 1985 (50 FR 42747), is modified as follows:

Section B is modified by adding:

"5. In addition to the drugs described in the application, animals may be immobilized using the Taser device described in the modification request.

6. Of the animals authorized in Section A and B.5, up to six (6) of each species may be taken initially for evaluation as to the effectiveness of the technique.

If considered successful use of the Taser may continue. The use of this device shall be under the supervision of Dr. Robert Schneider.

7. No attempts to use the Taser immobilization device shall be made on animals that have been actively pursued and are in a stressed or severely excited condition. Attempts shall be made to remove the barbed electrodes to avoid infection, and to disentangle animals that have become entangled in the wires.

8. The report required by section B.2 shall include a detailed description of the use of the Taser immobilization device.

9. Animals killed as a result of the use of the Taser device shall be counted against the number of animals authorized in section A.1.b, A.2b and A.3.b."

This modification is effective as of January 23, 1986.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street N.W., Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930–3799.

Dated: January 23, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–1904 Filed 1–28–86; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Air Force Reserve Officer Training Corps Advisory Committee

Under the provisions of Pub. L. 92–463, "Federal Advisory Committee Act, notice is hereby given that the Air Force Reserve Officer Training Corps Advisory Committee has been found to be in the public interest in connection with the performance of duties imposed on the Department by law.

This committee will review the programs, policies, and objectives of the Air Force Reserve Officer Training Corps (AFROTC), and make recommendations to the Commander, Air Training Command.

This committee will serve the public interest by seeking to improve the AFROTC program and the quality of its product—commissioned officers in the United States Air Force.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 23, 1986.

[FR Doc. 86–1890 Filed 1–28–86; 8:45 am]

BILLING CODE 3810-01-M

Ada Board; Meeting

AGENCY: Ada Joint Program Office (AJPO).

ACTION: Notice of Meeting.

SUMMARY: A meeting of the Ada Board will be held Monday, 3 March 1986 from 9:00 A.M. to 5:00 P.M. at the IDA Skyline Facility in Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine McDonald, Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, Virginia, 22311, (703) 845–2213.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 23, 1986.

[FR Doc. 86–1894 Filed 1–28–86; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, 5 March 1986.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers.

The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: January 24, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–1914 Filed 1–28–86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

National Petroleum Council; U.S. Refinery Capability Task Group; Meeting

Notice is hereby given that the U.S. Refinery Capability Task Group will meet in February 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The U.S. Refinery Capability Task Group will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The U.S. Refinery Capability Task Group will hold its eleventh meeting on Thursday, February 6, 1986, starting at 8:30 a.m., in the Matagora Room of the Houston Airport Marriott Hotel, 18700 Kennedy Boulevard, Houston, Texas.

The tentative agenda for the U.S. Refinery Capability Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review of the work of the Task Group.
3. Discussion of any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the U.S. Refinery Capability Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the U.S. Refinery Capability Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353–2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 22, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86–1938 Filed 1–28–86; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

[Docket No. CAS–RM–79–112–B]

Modifications to Affordable Housing Through Energy Conservation; Notice of Extension

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of availability of additional research materials and reopening of public comment period.

SUMMARY: The Department of Energy announced on October 31, 1985, in the **Federal Register** (50 FR 45469), the availability of a draft revision of portions of the draft guide for homebuilders entitled "Affordable Housing Through Energy Conservation: A Guide to Designing and Constructing Energy Efficient Homes." The Notice of Inquiry solicited public comment on the draft revision to the draft guide concerning heavy mass construction. The purpose of this Notice is to provide additional documentation for public comment and to provide an additional public comment period. The draft guidelines provide a simiplified calculation technique for analyzing whether the design of a house meets an energy consumption goal which might be desired by a homebuilder, financial institution, or a home buyer. The draft revision to the guide incorporates the results of research analyzing the design of high mass houses, those built with double layers of bricks, concrete blocks, logs, or other forms of massive construction.

The comment period closed on November 30, 1985. Two commenters requested DOE to provide additional documentation, and several others requested an extension of the comment period. Accordingly, DOE has agreed to furnish this documentation to all persons who attended the public briefing conducted on October 31, 1985, and place a copy at the DOE Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6020—9:00 a.m.–4:00 p.m. Copies may also be obtained by writing to the Hearings and Docket Branch at the address indicated in this Notice. To enable interested persons to comment, DOE is reopening the comment period until March 28, 1986. Because supplies of the document are limited, interested persons are asked to request the document only if they plan to submit comments. Date: Written comments must now be received no later than March 28, 1986, in order to receive consideration by the Department.

ADDRESS: Send written comments (seven copies) to: Conservation and Renewable Energy, Hearings and Dockets Branch, U.S. Department of Energy, Docket Number CAS–RM–79–112–B, 1000 Independence Avenue, S.W., Room 6B–025, Washington, D.C. 20585 (202) 252–9319.

FOR FURTHER INFORMATION CONTACT:

Marvin Gorelick, Architectural and Engineering Systems, Department of Energy—Room GF–253, 1000 Independence Ave., S.W., Washington, D.C. 20585 (202) 252–9837.

Richard Kessler, Esq., Office of General Counsel, GC–33, Department of Energy, 1000 Independence Ave., S.W., Washington, D.C. 20585 (202) 252–9519.

SUPPLEMENTARY INFORMATION:

I. Comment Procedures

All interested persons are invited to submit written comments to DOE. The correspondence should be mailed to: Office of Conservation and Renewable Energy, Hearings and Dockets Branch, Department of Energy, 1000 Independence Avenue, SW., Room 6B–025, Washington, DC 20585. Comments should be indentified on the document and envelopes submitted to DOE with the designation "Updated Portions of Affordable Housing through Energy Conservation." Seven (7) copies should be submitted. All written comments and related information should be received by DOE no later than March 28, 1986, in order to receive consideration.

Submit in writing one copy of any information or data considered by the person furnishing it to be confidential and identify it as such. DOE reserves the right to determine the confidential status

of the information or data and to treat it according to its determination, pursuant to DOE's regulations on confidentiality (10 CFR Part 1004).

Issued at Washington, DC., January 23, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 86-1949 Filed 1-28-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 86-04-NG]

Gas Ventures, Inc.; Receipt of Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada for short-term and spot sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on January 14, 1986, of the application of Gas Ventures, Inc. (Gas Ventures), for blanket authorization to import Canadian natural gas for individual short-term and spot sales. Authorization is requested to import up to 250 MMcf of gas a day and a maximum of 182.5 Bcf during a two-year term beginning on the date of first delivery of the import. Gas Ventures intends to sell the gas obtained from its Canadian affiliate corporation, Precambrian Shield Resources Limited, and various other Canadian suppliers to a wide range of markets in the United States, including local distribution companies and end-users. Gas Ventures would also act as as agent for its U.S. purchaser clients and the Canadian suppliers. The specific terms of each import and sale would be negotiated on an individual basis including the price and volumes. According to Gas Ventures, the transactions it contemplates will utilize existing pipeline facilities and will not require the construction of new facilities. Gas Ventures proposes to submit quarterly reports to the ERA giving the specific details of each transaction. Gas Ventures has requested expeditious treatment of its application.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to filed no later than 4:30 p.m., on February, 28, 1986.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9482

Diane J. Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The appplicant asserts that this import arrangement is competitive. Parties opposing the arrangement hear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must be meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., February 28, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why and oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for trial-type hearing must show that there are factual issues genuinely in dispute that are relevent and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Gas Venture's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, January 22, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Adminstration.

[FR Doc. 86-1897 Filed 1-28-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86.03-NG]

Midwestern Gas Transmission Co.; Receipt of Application To Import Natural Gas From Canada for Short-Term and Spot Sales; Natural Gas Imports

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on January 14, 1986, of an application from Midwestern Gas Transmission Company (Midwestern), a wholly-owned subsidiary of Tenneco Inc., for blanket authorization to import Canadian natural gas for supplemental system supply or on behalf of other domestic purchasers. Authorization is requested to import up to 200 Bcf of Canadian natural gas during a two-year term beginning on the date of first delivery of the import. Midwestern proposes to purchase individual volumes of natural gas from various reliable producers and/or pipeline sources in the Canadian spot market and arrange for delivery of the gas to U.S. border points of entry. Midwestern proposes to submit quarterly reports giving details of individual transactions within 30 days following each calendar quarter.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than February 28, 1986.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–8162

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures.

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protest, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. e.s.t., February 28, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Midwestern's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, January 21, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–1898 Filed 1–28–86; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86–05–NG]

Northwest Pipeline Corp.; Receipt of Application To Amend Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Economic Regulatory Administration, Energy.

ACTION: Notice of application to amend authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of receipt on January 15, 1986, of the application of Northwest Pipeline Corporation (Northwest) for an amendment to ERA Opinion and Order No. 87 (Order No. 87) issued September 10, 1985 (1 ERA ¶70,604). The application requests the ERA to extend Northwest's authority granted in Order No. 87 to import Canadian gas from its Canadian supplier, Westcoast Transmission Company Limited (Westcoast) for nine months from January 31, 1986, to October 31, 1986. This would extend the demand-commodity pricing structure and take provisions approved in Order No. 87 for nine additional months while Northwest and Westcoast complete their negotiations for a competitive long-term arrangement.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene or notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are due to be filed no later than 4:30 p.m. on February 28, 1986.

FOR FURTHER INFORMATION CONTACT:

Clifford Tomaszewski, Natural Gas Division, Office of Fuels Programs,

Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–9760
Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION:

Northwest is currently authorized to import gas from Westcoast under Order No. 87, which was extended for three months to January 31, 1986, by DOE Opinion and Order No. 92 (Order No. 92) on December 10, 1985. The authorization allows Northwest to import gas from Westcoast under the terms of an October 1, 1984, letter of agreement which amends Northwest's previous import arrangements. Under these previous arrangements Northwest is authorized to import gas through October 31, 1987. The letter of agreement establishes a two-part, demand-commodity pricing structure. The demand charge is $6 million per month. The commodity charge was initially $2.78 per MMBtu, subject to quarterly adjustment based upon the price of No. 6 fuel oil in the Seattle-Portland area, and currently is $2.37 per MMBtu. The agreement may be renegotiated if either party determines that a price change is necessary to respond to changing market circumstances. The agreement requires that Northwest purchase a minimum daily volume of 130 MMcf and a minimum annual volume of (1) 42.5 percent of Northwest's actual sales up to 262 Bcf, plus (2) 75 percent of Northwest's actual sales over 262 Bcf.

Northwest and Westcoast found that they were unable to conclude a new long-term sales agreement due to market and regulatory uncertainties and on September 24, 1985, Northwest applied to the ERA for an extension of Order No. 87 until January 31, 1986. On December 10, 1985, in Order No. 92 the ERA approved that extension. Northwest and Westcoast have still not been able to conclude a long-term sales agreement and therefore they entered into an agreement on December 20, 1985, that extends their September 17, 1985, agreement which extended their October 1, 1984 agreement. In the current application Northwest asks that the term of Order No. 87 be extended until October 31, 1986, or until such time as Northwest and Westcoast conclude a new long-term sales agreement whichever occurs first.

The decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines, under which the competitiveness of the import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that the import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to this proceeding and to have written comments considered as a basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076–A, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., February 28, 1986.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Northwest's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A, at the above address. The Docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on January 22, 1986.

Robert L. Davies,

Director, Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 86–1899 Filed 1–28–86; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA–FC–85–011; OFP Case No. 55118–9270–01–12]

General Electric Co.; Granting of Exemption

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Order granting to General Electric Company and exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted to General Electric Company (GE) a permanent site limitation exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), for a major fuel burning installation (MFBI) to be located in Fitchburg, Massachusetts. The exemption granted permits the use of natural gas as the primary energy source for its proposed primary boiler.

The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The order and its provisions shall take effect on March 30, 1986.

The public file containing a copy of this order and other documents and

supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E–190, Washington, DC 20585, Monday through Friday, 8:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA–045, Washington, DC 20585, Telephone (202) 252–8233.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 252–6947.

SUPPLEMENTARY INFORMATION: The GE plant at Fitchburg is an engineering and manufacturing facility for the production of mechanical drive turbines and compressors.

GE has certified that due to the specific physical limitations enumerated below, the criteria for a permanent exemption provided for in 10 CFR 503.33(a) are satisfied. Included in the petition is a description of the physical limitations of the plant that are relevant to the location and operation of the new facility. Evidence of the limited space at and around the site for the planned new boiler was furnished.

The facility is located in the town of Fitchburg, Worcester County, Massachusetts. The plant is bounded on the north by the city of Fitchburg, on the ease, south, and west by the Nashua River. The southern boundary of the plant is adjacent to railroad lines of Conrail.

The proposed plant upgrade would install a boiler with a rated output of 100,000 lb/hr steam at 850 psig/950 ° F. This would become the primary boiler with an existing Erie City boiler as backup.

The physical limitations addressed by the petitioner are that a coal fired boiler along with handling equipment, ash removal equipment and a coal pile must be located in the vicinity of the powerhouse. Coal fired boilers are larger than oil/gas fired boilers of comparable rating. Space in the boiler house is very limited, and the oil/gas fired boiler fits between all existing piping and building supports with only limited clearance. A coal fired boiler of the same capacity would be much taller and could not be fully enclosed by the building. Additional area would also be required to stockpile coal.

GE certified that: 1. The site limitation criteria contained in 10 CFR 503.33(a) are satisfied by the boiler for which exemption is sought and the plant where it will be installed;

2. The mixtures use criteria set forth in 10 CFR 503.9(a) are satisfied by the boiler for which the exemption is sought and the plant at which it will be installed.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to the proposed unit in the **Federal Register** on June 7, 1985 (50 FR 24022), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) and (g) of the Act, ERA provided copies of the petition to the Environmental Protection Agency and the Federal Trade Commission, respectively, for comments. During this period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed on July 22, 1985. No comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined that General Electric has satisfied the eligibility requirements for the requested exemption as set forth in 10 CFR 503.33. Therefore, pursuant to section 212(a) of FUA, ERA hereby grants a permanent site limitation exemption to General Electric to permit the use of natural gas as the primary energy source for its new primary boiler to be located at Fitchburg, Massachusetts.

Pursuant to section 702(c) of the Act and 10 CFR 501.68, any person aggrieved by this section may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC on January 22, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–1900 Filed 1–28–86; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER86–247–000 et al.]

Electric Rate and Corporate Regulation Filings; Consumers Power Co. et al.

Take notice that the following filings have been made with the Commission:

1. Consumers Power Company

[Docket No. ER86–247–000]

January 24, 1986.

Take notice that Consumers Power Company ("Consumers") on January 13, 1986 tendered for filing Consumers' Coordinated Operating Agreement ("Operating Agreement") with the Members of the Municipal and Cooperative Pool ("MCP") dated as of September 1, 1981.

Supplemental Agreement No. 6 increases transmission service rates contained in Service Schedules A, B and D of the Operating Agreement.

The extent of transactions among the parties under Service Schedules A, B and D for the next twelve months is not known at the present time as such transactions will only be scheduled from time to time as load and capacity conditions on either system dictate. Accordingly, it is not possible to estimate the transactions for such period.

Comment date: January 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Columbus and Southern Ohio Electric Company

[Docket No. EC86–13–000]

January 24, 1986.

Take notice that on January 15, 1986, The Cincinnati Gas & Electric Company (CG&E), The Dayton Power and Light Company (DP&L) and Columbus and Southern Ohio Electric Company (CSOE) filed a Joint Application pursuant to Section 203 of the Federal Power Act seeking authority for CG&E to sell and DP&L and CSOE to purchase an interest in certain transmission facilities and rights of way and other property rights for facilities associated

with Unit No. 1 at the William H. Zimmer Generating Station, which facilities, rights of way and property rights shall be used in the transmission of electrical energy in interstate commerce.

The transmission facilities consist of a portion of the Zimmer-Port Union Line, and rights of way and other property rights with respect to the Zimmer-Red Bank Line and the Red Bank-Terminal Line. The transmission lines and rights of way and other property rights involved in the Application were constructed and purchased, respectively, to serve the W. H. Zimmer Generating Plant located on the Ohio River near Moscow, Ohio. This Application reflects the ownership in such lines, rights of way and property rights agreed to by CG&E, DP&L and CSOE relative to such facilities and properties.

Comment date: January 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

Consolidated Edison Company of New York, Inc.

[Docket No. EL86-18-000]

January 24, 1986.

Take notice that Consolidated Edison Company of New York, Inc. (Con Edison), on January 16, 1986, filed a petition for an exemption from the Form 580 filing requirement. The Commission requires submission of Form 580 as part of its implementation of Section 208 of the Public Utility Regulatory Policies Act. That statute requires the Commission to review the fuel-purchasing and operating practices of public utilities under automatic adjustment clauses.

In its petition, Con Edison states that it should not be required to file the Form 580 information because the Form-580 review process duplicates a review conducted by the New York Public Service Commission (NY PSC). Con Edison states that the NY PSC conducts a detailed review of the same fuel-purchasing and operating practices that are covered by the Form 580 filing, and that the NY PSC review is conducted pursuant to the same statute, and applies the same standards, as the Commission's review. Con Edison further states that submission of the Form 580 is unnecessary because of the assurances of efficiencies that are inherent in the transactions affected by the fuel-purchasing and operating practices in question.

Comment date: February 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Gulf States Utilities Company

[Docket No. EL86-17-000]

January 24, 1986.

Take notice that on January 15, 1986, Gulf States Utilities Company (Gulf States) tendered for filing a petition seeking a declaratory order to remove uncertainty. Gulf States herein seeks a declaration by the Commission that its retention of an investment banking firm to perform for a fee certain financial consultation services for it will not have the adverse consequence of such investment banking firm being prohibited under 18 CFR 34.2(c) from bidding or negotiating for the placement of securities issued by Gulf States.

Comment date: February 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of Oklahoma

[Docket No. ER86-250-000]

January 24, 1986.

Take notice that on January 16, 1986, Public Service Company of Oklahoma ("PSO") tendered for filing a Notice of Cancellation of PSO's Power Sales and Service Agreement with the Anadarko Public Works Authority ("APWA"). As of December 31, 1985, APWA began taking service from Western Farmers Electric Cooperative ("WFEC") and ceased taking service from PSO. PSO requests an effective date of December 31, 1985, and, accordingly, requests waiver of the Commission's notice requirements.

Copies of the filing have been served on APWA, on WFEC and on the Oklahoma Corporation Commission.

Comment date: February 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Power & Light Company

[Docket No. ER86-249-000]

January 24, 1986

Take notice that on January 15, 1986 Puget Sound Power and Light Company (Puget) tendered for filing documents demonstrating the calculation of Average System Cost (ASC) for Puget for the Exchange Period effective June 1, 1985 through September 30, 1985. This filing is made pursuant to the Revised ASC methodology which was approved by the Federal Energy Regulatory Commission effective October 1, 1984.

Comment date: February 3, 1986, in accordance with Standard Paragraph E at the end of this document.

7. PacifiCorp Doing Business as Pacific Power & Light Company

[Docket No. ES86-24-000]

January 22, 1986.

Take notice that on January 10, 1986, PacifiCorp doing business as Pacific Power & Light Company (Pacific) filed its application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking an order authorizing it to negotiate privately the terms for the offering and sale in one or more public offerings or private placements prior to December 31, 1987, $210,000,000 aggregate principal amount of fixed rate long-term debt (or its equivalent amount in, or based upon, foreign currencies determined at the time of issue) and to negotiate privately the terms of one or more currency exchanges pursuant to 18 CFR 34.2(b)(2).

Comment date: February 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1911 Filed 1-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-259-000 et al.]

Natural Gas Certificate Filings; K N Energy, Inc. et al.

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP86-259-000]

January 22, 1986.

Take notice that on January 3, 1986, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP86-259-000 a request

pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales taps for 7 agricultural customers and one small commercial customer, under the certificate issued in Docket Nos. CP83–140–000 and CP83–140–001, as amended in Docket No. CP83–140–002, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N proposes to construct and operate sales taps in order to sell and deliver various estimated amounts of natural gas to each of the following agricultural customers: (1) 520 Mcf per year to Alfred Winderlin of Scott County, Kansas; (2) 880 Mcf per year to Karl Ludwig of Nuckolls County, Nebraska; (3) 800 Mcf per year to Harry Ratzlaff of York County, Nebraska; (4) 880 Mcf per year to Orville Pohlman of Thayer County, Nebraska; (5) 880 Mcf per year to Galen and Rodney Achterberg of Thayer County, Nebraska; (6) 640 Mcf per year to Nesmith, Inc. in Thayer County, Nebraska; and (7) 800 Mcf per year to Kenneth Gillan of Fillmore County, Nebraska. K N also proposes to install a sales tap in order to sell approximately 36,000 Mcf per year to Diamond Shamrock, a small commercial customer in Natrona County, Wyoming.

K N states that it would charge the customers prices in accordance with the currently filed rate schedules authorized by the applicable state or local regulatory body having jurisdiction. It is further stated that the proposed sales taps are not prohibited by any of K N's existing tariffs and that the sales taps would have no significant impact on K N's peak day and annual deliveries.

Comment date: March 10, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gas Transmission Corporation.

[Docket No. CP86–258–000]

January 23, 1986.

Take notice that on December 31, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP86–258–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas under revised service agreements with Acme Natural Gas Company (Acme), Baltimore Gas and Electric Company (BG&E), The Cincinnati Gas and Electric Company (CG&E), Columbia Gas of Kentucky, Inc. (CKY), Columbia Gas of Maryland, Inc. (CMD), Columbia Gas of New York, Inc. (CNY), Columbia Gas of Ohio, Inc. (COH), Columbia Gas of Pennsylvania, Inc. (CPA), Columbia Gas of Virginia, Inc. (CVA), Dayton Power and Light Company (DP&L), Mountaineer Gas Company (Mountaineer), UGI Corporation (UGI), The Union Light, Heat & Power Company (Union Light), and West Ohio Gas Company (West Ohio), all existing wholesale customers of Columbia, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia requests authorization to sell natural gas under

1. A revised service agreement with Acme effectuating a decrease in its contract demand under Rate Schedule CDS of 1,355 dt equivalent of gas per day, from 21,215 to 19,860 dt equivalent per day, in Zone 6.

2. A revised service agreement with BG&E effectuating a decrease in its contract demand under Rate Schedule CDS of 24,175 dt equivalent of gas per day, from 335,000 to 310,825 dt equivalent per day in Zone 2.

3. A revised service agreement with CG&E effectuating a decrease in its contract demand under Rate Schedule CDS of 30,150 dt equivalent of gas per day, from 80,500 to 50,350 dt equivalent per day in Zone 4.

4. A revised service agreement with CKY effectuating a decrease in its contract demand under Rate Schedule CDS of 1,840 dt equivalent of gas per day, from 27,140 to 25,300 dt equivalent per day, in Zone 1; and a decrease of 11,340 dt equivalent per day, from 95,500 to 84,160 dt equivalent per day in Zone 3.

5. A revised service agreement with CMD effectuating a decrease in its contract demand under Rate Schedule CDS of 2,850 dt equivalent of gas per day, from 36,900 to 34,050 dt equivalent per day, in Zone 6.

6. A revised service agreement with CNY effectuating a decrease in its contract demand under Rate Schedule CDS of 5,720 dt equivalent of gas per day, from 79,210 to 73,490 dt equivalent per day; an increase in its maximum daily quantity under Rate Schedule WS of 5,720 dt equivalent of gas per day, from 23,300 to 29,020 dt equivalent per day; and an increase in its winter contract quantity under Rate Schedule WS of 386,000 dt equivalent of gas from 1,165,000 dt equivalent to 1,451,000 dt equivalent, all in Zone 7.

7. A revised service agreement with COH effectuating a decrease in its contract demand under Rate Schedule CDS of 3,200 dt equivalent of gas per day, from 39,800 to 36,600 dt equivalent per day, in Zone 1; and a decrease of 120,235 dt equivalent of gas per day, from 1,221,430 to 1,101,195 dt equivalent per day in Zone 4.

8. A revised service agreement with CPA effectuating a decrease in its contract demand under Rate Schedule CDS of 38,780 dt equivalent of gas per day, from 494,240 to 455,460 dt equivalent per day; an increase in its maximum daily quantity under Rate Schedule WS of 14,540 dt equivalent of gas per day, from 203,800 to 218,340 dt equivalent per day; and an increase in winter contract quantity under Rate Schedule WS of 727,000 dt equivalent of gas from 10,190,000 dt to 10,917,000 dt equivalent, all in Zone 6.

9. A revised service agreement with CVA effectuating a decrease in its contract demand under Rate Schedule CDS of 4,690 dt equivalent of gas per day, from 62,020 to 57,330 dt equivalent per day, in Zone 2.

10. A revised service agreement with DP&L effectuating a decrease in its contract demand under Rate Schedule CDS of 10,000 dt equivalent of gas per day, from 281,500 to 271,500 dt equivalent per day, in Zone 4.

11. A revised service agreement with Mountaineer effectuating a decrease in its contract demand under Rate Schedule CDS of 24,590 dt equivalent of gas per day, from 157,300 to 132,710 dt equivalent per day, in Zone 1.

12. A revised service agreement with UGI effectuating a decrease in its contract demand under Rate Schedule CDS of 110 dt equivalent per day, from 237,280 to 237,170 dt equivalent per day; a decrease in its maximum daily quantity under Rate Schedule WS of 15,900 dt equivalent of gas per day, from 50,900 to 35,000 dt equivalent per day; and a decrease in winter contract quantity under Rate Schedule WS of 795,000 dt equivalent of gas, from 2,545,000 to 1,750,000 dt equivalent, all in Zone 6.

13. A revised service agreement with Union Light effectuating a decrease in its contract demand under Rate Schedule CDS of 11,610 dt equivalent of gas per day, from 74,700 to 63,090 dt equivalent per day, in Zone 3.

14. A revised service agreement with West Ohio effectuating a decrease in its contract demand under Rate Schedule CDS of 5,105 dt equivalent of gas per day, from 55,000 to 49,895 dt equivalent per day, in Zone 4.

The service revisions requested by Columbia's customers are said to have been made pursuant to Article VIII of a stipulation and agreement in Columbia's Docket No. TA82–1–21–001, *et al.*, as

approved by the Commission on June 14, 1985 (31 FERC ¶ 61,307), and certain other changes in service levels under Columbia's Rate Schedule WS. Columbia requests authorization for the revised service agreements to be effective on April 1, 1986.

Comment date: February 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. K N Energy, Inc.

[Docket No. CP86–238–000]

January 23, 1986.

Take notice that on December 13, 1985, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP86–238–000 an application pursuant to section 7(c) of the Natural Gas Act for certificate of public convenience and necessity authorizing the acquisition, construction and operation of certain facilities related to the Huntsman storage facility (Huntsman) near Sidney, Nebraska, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

K N states that Huntsman and the West Engelland Field (West Engelland) behave as a single field and that the integration of West Engelland into Huntsman is needed to restore the integrity of the storage field. As a result of the settlement of litigation over the migration of storage gas into West Engelland, K N states that it has been assigned the leases covering the productive limits of West Engelland and other acreage. K N proposes to incorporate this acreage into Huntsman and to construct certain facilities to permit the operation of West Engelland as part of Huntsman.

K N states that it seeks authority to acquire, develop and operate as a part of Huntsman certain additional acreage including the acquisition of storage rights therein, the reworking of existing wells, the recompletion of previously plugged and abandoned wells and the drilling of a new well. K N further states that it seeks authority to install 2.0 miles of 8-inch pipeline and 1.5 miles of 4-inch pipeline and appurtenant facilities to connect the West Engelland wells to the Huntsman compressor station and tank battery in the West Engelland field for storage operation. The estimated cost of the project would be approximately $2,245,000. K N states that it would finance the cost out of internally generated funds or from interim bank loans which at a later date may be funded through a security issue.

Comment date: February 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Panhandle Eastern Pipe Line Co.

[Docket No. CP86–256–000]

January 23, 1986.

Take notice that on December 26, 1985, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP86–256–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of General Motors (GM) and for permission and approval to abandon such services on June 30, 1986, all as more fully set forth in the application which is on file with the Commission and open for inspection.

Applicant requests Commission authorization to implement a transportation agreement among Applicant, Michigan Gas Storage Company (Michigan Gas) and GM dated December 13, 1985. It is explained that this agreement represents the same terms as the previous transportation authority granted in Docket No. CP85–273–000 pursuant to § 157.209 of the Regulations. Pursuant to the agreement, Applicant proposes to transport on behalf of GM a daily volume of natural gas not to exceed 17,500 Mcf of natural gas from various existing points of receipt located in Hansford County, Texas, and Kingfisher, Major, Beaver, Woodward, Alfalfa and Texas Counties, Oklahoma, to the existing point of interconnection of the facilities of Michigan Gas and Applicant in Oakland County, Michigan. Applicant states the Michigan Gas is an existing sales customer of Applicant and would make ultimate delivery of the gas to GM for its ultimate end-use.

Applicant indicates that the transportation rate for this service is pursuant to Applicant's currently effective Rate Schedule OST. Applicant also requests authority to terminate these services on June 30, 1986, authority to add points of receipt and delivery subject to certain reporting requirements, and authority to construct new points of receipt subject to the annual reporting requirements for construction activity pursuant to its blanket certificate in Docket No. CP83–83–000.

Comment date: February 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedlure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–1912 Filed 1–28–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TAB6-8-20-000 & 001]

Algonquin Gas Transmission Co., Proposed Changes in FERC Gas Tariff

January 24, 1986.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on January 17, 1986 tendered for filing Sixth Revised Sheet No. 204 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that Sixth Revised Sheet No. 204 is being filed to reflect in Algonquin Gas' Rate Schedule F-3, revised rates in National Fuel Gas Supply Corporation's ("National Fuel") underlying Rate Schedule RQ.

Algonquin Gas requests that the Commission accept such tariff sheet, to be effective February 1, 1986 to coincide with the proposed effective date of National Fuel's rate change.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state 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, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 31, 1986. 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. 85-1920 Filed 1-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-169-002]

Consolidated Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 24, 1986.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on January 17, 1986, filed a revised tariff sheet pursuant to section 4 of the Natural Gas Act. The revisions, shown on Substitute Seventh Revised Sheet No. 31 to Original Volume No. 1 of Consolidated's tariff, provide for a 3 cent per dekatherm voluntary reduction in the non-gas commodity component of Consolidated's sales rate schedules from the rates placed into effect on January 1, 1986, in compliance with the suspension order in this proceeding.

Copies of the filing were served upon Consolidated's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before January 31, 1986. 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. 86-1921 Filed 1-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-39-000]

East Tennessee Natural Gas Co.; Petition for Authority to Institute Direct Billing Procedures for Retroactive Order No. 94 Costs

January 24, 1986.

Take notice that on January 21, 1986, East Tennessee Natural Gas Company (East Tennessee) filed a petition for authority to institute direct billing procedures for the recovery of retroactive Order No. 94 costs that have been billed to East Tennessee by its pipeline supplier, Tennessee Gas Pipeline Company (Tennessee), pursuant to Tennessee's Commission-approved direct billing procedure. Under the proposed procedure, East Tennessee will: (1) Flow-through the retroactive Order No. 94 billings received from Tennessee on a direct basis; (2) allocate such billings to East Tennessee customers based on the ratio of each customer's purchases for the retroactive period August 1980 through January 1984 to total purchases by all customers for that same period; (3) recover these costs as an Order No. 94 Surcharge which will in no way affect East Tennessee's PGA; (4) not charge its customers any additional interest since they will be providing a current funding of East Tennessee's obligation to Tennessee; and (5) report these Order No. 94 Surcharges concurrent with East Tennessee's semi-annual PGA filings.

East Tennessee in its petition in support of this direct billing mechansim states that its proposal: (1) Is in accordance with current Commission precedent and policy; (2) is necessary to prevent to distortion in current gas prices; (3) charges customers for their share of the costs actually incurred on their behalf; and (4) merely tracks Tennessee's Commission-approved direct billing procedure.

Any person desiring to be heard or to protest this 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 18 CFR 385.211 and 385.214. All such motions or protests may be filed on or before February 3, 1986. 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. 86-1925 Filed 1-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-3-51-000, 001]

Great Lakes Gas Transmission Co.; Proposed Changes in F.E.R.C. Gas Tariff Under Purchased Gas Adjustment Clause Provisions

January 24, 1986.

Take notice that Great Lake Gas Transmission Company ("Great Lakes"), on January 21, 1986, tendered for filing Fifty-Fifth-A Revised Sheet No. 57 and Substitute Fifty Sixth Revised Sheet No. 57 to its FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that the filing provides for a new pricing arrangement related to gas purchased from Great Lakes by Natural Gas Pipeline of America ("Natural"). Under the new proposed arrangement, the monthly demand component of the gas cost component of the gas price will initially be reduced from the current $15.21 per Mcf (of contract quantity) per month to $12.35 per Mcf per month. The commodity component will be reduced from a rate that varied between $2.50 and $4.25 per MMBtu to a rate that varies between $2.05 and $2.35 per

MMBtu. On an annual basis, for anticipated volumes of 46.8 Bcf, the estimated savings to Natural would be $30,400,000. Prices are subject to monthly adjustment by application of an index designed to create prices competitive in the markets that Natural serves.

Great Lakes is requesting an effective date of December 19, 1985, for Fifty-Fifth-A Revised Sheet No. 57 and of January 1, 1986 for Substitute Fifty-Sixth Revised Sheet No. 57. In aid thereof, Great Lakes requests waiver of the 30-day notice requirement of the provisions of § 154.38(d)(4)(iv)(a) of the Commission's Regulations so as to permit this out-of-period PGA filing to implement the foregoing substantial reduction in purchased gas cost as soon as possible.

On December 13, 1985, Great Lakes filed, to be effective January 1, 1986, Fifty-Sixth Revised Sheet No. 57 to its FERC Gas Tariff, First Revised Volume No. 1, to reflect the GRI adjustment related to the Gas Research Institute's 1986 Research and Development Program. On December 27, 1985, the Commission acccepted that tariff sheet. The filing of Fifty-Fifth-A Revised Sheet No. 57 filed to implement the new pricing arrangements for Natural effective December 19, 1985 required a change to the GRI tariff filing of December 13, 1985. Accordingly, Great Lakes also filed Substitute Fifty-Sixth Revised Sheet No. 57 to be effective January 1, 1986 and which reflected the current PGA rates for Natural.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 3, 1986. 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. 86-1924 Filed 1-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-26-002]

Natural Gas Pipeline Co. of America; Change in Rates

January 22, 1986.

Take notice that on January 17, 1986, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheets to be effective January 1, 1986.

Substitute Sixtieth Revised Sheet No. 5.

Substitute Twenty-seventh Revised Sheet No. 5A.

Natural states that the purpose of the revised tariff sheets is to amend Natural's out-of-cycle PGA filing of December 3, 1985 in the above-referenced docket (Original Filing). The amendment is necessitated by a court decision rendered in *U.S.A., et al. vs. Great Plains Gasification Associates, et al. (Great Plains* Decision) on January 14, 1986. In the *Great Plains* Decision, the Court rejected Natural's position that it pay the market value price reflected in the Original Filing for Great Plains gas. The Court determined that Natural is required to pay the higher contract price and such higher price is applicable during the pendency of the rates at issue in the Original Filing. The instant amendment is intended to reflect the rate impact in the subject docket of the higher price for Great Plains gas required to be paid by the court decision.

A copy of the filing is being mailed to Natural's jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before January 29, 1986. 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. 86-1916 Filed 1-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1997-002]

Frederick W. Mielke, Jr.; Filing of Application

January 24, 1986.

Take notice that on October 3, 1985, Frederick W. Mielke tendered for filing an application to hold interlocking positions. Mr. Mielke, who is currently Chairman of the Board of Directors and Chief Executive Officer of Pacific Gas and Electric Company, seeks the approval of the Commission for the authority to serve on the Board of Directors of Amfac, Inc.

Any person desiring to be heard or to protest the application 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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 3, 1986. Protests will be considered 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1931 Filed 1-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-206-000]

Northern Natural Gas Co.; Informal Settlement Conference

January 24, 1986.

On January 30, 1986, at 2:00 p.m. and January 31, 1986, at 9:00 a.m. an informal settlement conference will be convened in the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

All interested parties and the Staff are invited to attend; however, attendance will not confer party status. Any person wishing to become a party must file a Motion to Intervene in accordance with 18 CFR 385.214 (1985). For further information contact Daniel Watkiss

(202) 357–8549, Sandra Delude (202) 357–5737 or Peter G. Hirst (202) 357–8419.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–1930 Filed 1–28–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA86–3–29–000, 001 and CP84–146–004]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

January 22, 1986.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on January 14, 1986, tendered for filing Second Substitute Thirty-Eighth Revised Sheet No. 12 to its FERC Gas Tariff, Second Revised Volume No. 1. The proposed effective date of this tariff sheet is January 1, 1986. The revised tariff sheet reflects a net rate decrease, in accordance with Section 4.1(c) of Transco's Rate Schedule LSS, which is attributable to the following:

(1) To reflect the actual cost of facilities constructed on Transco's Leidy Line and market area facilities which were authorized in Docket Nos. CP84–146–000, *et al.*, and CP84–223–000;

(2) To reflect the elimination of the 12% reduction of contract demand, which was in effect for the 1984–1985 contract year, now that all the necessary facilities have been completed;

(3) To reflect a rate reduction in the monthly capacity charge for storage service purchases from Penn-York Energy Corporation (Penn-York) as a result of a settlement in Docket No. RP85–69–002; and

(4) To reflect a rate increase in the monthly capacity charge for storage service purchases from Consolidated Gas Transmission Corporation (Con Gas) as a result of the motion rate filed in Docket No. RP85–169–000.

Transco further states that copies of the instant filing have been mailed to each of its customers and State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 29, 1986. 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. 86–1918 Filed 1–28–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85–175–003]

Transwestern Pipeline Co.; Motion To Make Effective Settlement Rates and Tariff Sheets on an Interim Basis

January 22, 1986

Take notice that Transwestern Pipeline Company (Transwestern) on January 16, 1986 tendered for filing as part of its FERC Gas Tariff, the tariff sheets set forth hereunder:

Second Revised Volume No. 1

Cover Sheet
Substitute 4th Revised Sheet No. 1
Substitute Original Sheet No. 1A
Substitute 3rd Revised Sheet No. 2
Substitute 4th Revised Sheet No. 4
Substitute 30th Revised Sheet No. 5
Substitute 1st Revised Sheet No. 5A
Substitute 1st Revised Sheet No. 5B
Substitute 28th Revised Sheet No. 6
Substitute 1st Revised Sheet No. 7
Substitute 1st Revised Sheet No. 8
Substitute 1st Revised Sheet No. 10
Substitute 1st Revised Sheet No. 13
Substitute 1st Revised Sheet No. 14
Substitute 2nd Revised Sheet No. 24
Substitute 3rd Revised Sheet No. 25
Substitute 1st Revised Sheet No. 28
1st Revised Sheet No. 29
1st Revised Sheet No. 30
1st Revised Sheet No. 30A
Original Sheet No. 30B
Substitute 1st Revised Sheet No. 31
1st Revised Sheet No. 32
1st Revised Sheet No. 33
1st Revised Sheet No. 34
Original Sheet No. 34A
Substitute 1st Revised Sheet No. 35
1st Revised Sheet No. 36
1st Revised Sheet No. 37
4th Revised Sheet No. 38
Substitute Original Sheet Nos. 39–47
Substitute 1st Revised Sheet No. 48
Substitute 8th Revised Sheet No. 74
Substitute 2nd Revised Sheet No. 76A
4th Revised Sheet No. 80
2nd Revised Sheet No. 81
1st Revised Sheet No. 116
1st Revised Sheet No. 126
1st Revised Sheet No. 127
1st Revised Sheet No. 128
3rd Revised Sheet No. 147

Original Volume No. 2

Substitute 14th Revised Sheet No. 1

Transwestern states that the tariff sheets are being filed in order to effectuate on an interim basis the provisions of the Stipulation and Agreement including the settlement rates which were filed concurrently with the instant Motion. According to Transwestern the settlement rates being filed represent a significant reduction compared to the filed rates adjusted to reflect the conditions of the Commission's August 29, 1985 Order in the above-captioned docket.

Transwestern further states that it agrees that the settlement rates will be collected subject to refund during the interim period and that it will not collect or charge any surcharge for the difference between the settlement rates and the adjusted filed rates during the period of time that the settlement rates are in effect on an interim basis.

The proposed effective date of the tariff sheets being filed is February 1, 1986.

Copies of this filing were served on Transwestern's jurisdictional customers and interested parties and state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedures. All such motions or protests should be filed on or before January 29, 1986. 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. 86–1917 Filed 1–28–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86–3–42–000,001]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

January 22, 1986.

Take notice that Transwestern Pipeline Company (Transwestern) on January 16, 1986 tendered for filing as part of its FERC GAS TARIFF, SECOND REVISED VOLUME No. 1, 31st Revised Sheet No. 5.

The above mentioned tariff sheet was filed to reflect the reduction in Transwestern's cost of gas from $2.7223/dth to $2.6384/dth or a $0.0839/dth decrease to the commodity sales rate. This reduction is a result of market out actions taken by Transwestern in

certain of its gas purchase contracts. The resulting reduction in gas cost is being applied to the proposed settlement rates in Docket No. RP85–175 which were proposed to be effective on an interim basis by Motion of Transwestern filed concurrently with the instant out-of-cycle PGA filing. Transwestern has requested the Federal Energy Regulatory Commission (Commission) to waive its Regulations as may be necessary to approve the instant filing to become effective February 1, 1986.

Copies of this filing were served on Transwestern's jurisdictional customers and interested parties and state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 29, 1986. 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. 86–1919 Filed 1–28–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA 86–2–30–000,001]

Trunkline Gas Co.; Change in Tariff

January 24, 1986.

Take notice that on January 14, 1986 Trunkline Gas Company (Trunkline) tendered for filing Forty-Ninth Revised Street No. 3–A and Twelth Revised Sheet No. 3–B to its FERC Gas Tariff, Original Volume No. 1.

The proposed effective date on these revised tariff sheets is March 1, 1986.

Trunkline states that these revised tariff sheets reflect no change in Trunkline's currently effective Demand and Commodity rates.

Although the revised tariff sheets contained in the instant filing reflect no change in the presently effective Commodity rates, the components of the Commodity rates include the following adjustments:

(1) A (29.52¢) per Dt. decrease in the projected purchased gas cost component;

(2) A (37.06¢) per Dt. increase in the surcharge for the recovery of the deferred account balance; and

(3) A (7.54¢) per Dt. decrease in the surcharge to flow-through the carrying cost surcharge account balance.

Additionally, the revised tariff sheets filed herewith refect Projected Incremental Pricing Surcharges in acordance with Section 21 of the General Terms and Conditions of Trunkline's Tariff.

Pursuant on the Commissioner's Order Approving Settlement, As Modified, dated: October 25, 1985 in Docket Nos. RP83–93–93 (Phase I) and RP83–51, *et al.*, Trunkline is filing in this PGA revised tariff sheets to be effective on March 1, 1986 in accordance with article V, section 6 and article VIII of the Stipulation and Agreement dated March 22, 1985 (Stipulation an Agreement). This instant six (6) month PGA period will end on August 31, 1986 at which time Trunkline will return to an annual PGA cycle effective September 1, 1986.

In accordance with Article V, section 3 of the Stipulation and Agreement, Trunkline has suspended new deferrals of its current purchased gas costs to Account No. 191 for the period March 1, 1985, until March 1, 1986. Pursuant to Articles V and IX of the Stipulation and Agreement, Trunkline will not flow through to its customers during this period ending March 1, 1986 any actual gas costs in excess of $2.57 per Mcf. Trunkline will, upon receipt of the data for the month of February 1986, file the report as contemplated by Article IX of the Stipulation and Agreement.

Pursuant to article V, section 4 of the Stipulation and Agreement, Trunkline will contiue to credit each applicable sub-account with the deferred account surcharges and carrying cost surcharges contained in its curent rates until Trunkline's instant PGA filing herein becomes effective on March 1, 1986. As provided for in Article V. section 5 of the Stipulation and Agreement, Trunkline is applying the negative balance in the current deferred sub-accounts and carrying cost balances to the remaining positive balance in Account No. 191. The balance of the current sub-accounts are negative (i.e., overrecovered) on November 30, 1985 as a result of the extended recovery period beyon September 1, 1985. Trunkline has also included the additional recoveries of these sub-accounts for the months of December 1985 and January and February 1986 in order to expedite the flowthrough of these additional recoveries to its customers.Trunkline's filing reflects the final portion of the three-year amortization of the deferred account balance on May 31, 1983 as approved by Commission Order dated August 31, 1983 in Docket No. TA83–2–30–000. Associated carrying charges for the twenty-four month period, beyond the initial twelve-month period; which were approved in Docket No. TA83–2–30–000 by Commission order dated October 28, 1985, are currently pending the Commission's order on rehearing dated December 27, 1985 and are not included in the instant filing.Trunkline's filing herein is without prejudice to its recovery of these carrying charges as approved by the Commisssion's order dated October 28, 1985 upon conclusion of the pending rehearing procedure.

These revised tariff sheets reflect the termination of the (7¢) negative surcharge related to the absorption by Trunkline of approximately one-half of the balance of the current Deferred Account Balance May 31, 1984. Trunkline completed recording the recovery of the $39.2 million balance on May 31, 1984 (Sub-Account 191.1006) in December 1985. In accordance with Article V, section 4 of the Stipulation and Agreement the recovery rate utilized for recovery of this sub-account balance for the remainiing months (December, 1985—February, 1986) was adjusted accordingly.

Trunkline has included in this filing projected gas purchase volumes from its producer-suppliers for the six (6) month period commencing March 1, 1986, as detailed in section 18, Schedule A. Additionally, Trunkline has included in its projected cost of gas a line-item adjustment which reflects a potential purchased gas cost reduction of approximately $68.1 million. This produces a negative (29.52¢) per Dt in the otherwise applicable commodity rates for this six (6) month PGA period.

On May 30, 1985 the Commission issued Order No. 423 in Docket No. RM83–53–000 which requires interstate pipelines to include with their future PGA filings a report which shows producer-suplier refunds recovered through billing adjustments. Trunkline has not recovered producer-supplier refunds through billing adjustments during the deferred period herein and accordingly no such schedules are being submitted herewith.

Trunkline's Schedule A included herein, reflects costs under the Commission's Order No. 94–A for gas to be purchased by Trunkline during the six-month period commencing March 1, 1986. Trunkline will supply to the Commission within thirty days hereof, under separate cover, additional workpapers containing the information required under § 271.1104(f) of the Commission's Regulations for

production-related costs reflected in this filing to the extent such information has not already been provided.

In view of the Commission's order of October 25, 1985, approving the Stipulation and Agreement in Docket Nos. RP83–93, *et al.*, Trunkline is submitting these revised tariff sheets that reflects the results of that approval in anticipation that any rehearing applications objecting to the Stipulation and Agreement will be resolved prior to March 1, 1986. Trunkline respectfully requests waiver of the Commission's Regulations as may be necessary to permit such action, together with any other such waivers as may be necessary for the acceptance of these tariff sheets to become effective March 1, 1986.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rule of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 3, 1986. 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. 86–1922 Filed 1–28–86; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–756–DR]

Florida; 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 State of Florida (FEMA–756–DR), dated December 3, 1985, and related determinations.

DATED: January 22, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3616.

Notice.—The notice of a major disaster for the State of Florida, dated December 3, 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 December 3, 1985: Calhoun County for Public 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. 86–1889 Filed 1–28–86; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Notice of Application for Certificate [Performance]; Windstar Cruises I, Ltd. and Windstar Sail Cruises Ltd.

Notice is hereby given that the following persons have applied to the Federal Maritime Commission for a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Windstar Cruises I, Limited, and Windstar Sail Cruises Limited, 7415 Northwest 19th Street, Ste. B, Miami, FL 33126.

Dated: January 21, 1986.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 86–1946 Filed 1–28–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Fidelcor, Inc.; 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 225.25(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 suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 10, 1986.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fidelcor, Inc.*, Philadelphia, Pennsylvania, to acquire Florida Commercial Mortgage Corporation, Orlando, Florida, and thereby engage in making and servicing loans, providing investment or financial advice, arranging commercial real estate equity financing, and performing real estate appraisals.

Board of Governors of the Federal Reserve System, January 24, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–1940 Filed 1–28–86; 8:45 am]

BILLING CODE 6210–01–M

Financial Services Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are

considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 20, 1986.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Financial Services Bancorp, Inc.*, Scranton, Pennsylvania; to acquire 100 percent of the voting shares of Third National Bank and Trust Company of Scranton, Scranton, Pennsylvania.

2. *Yardville National Bancorp*, Yardville, New Jersey; to acquire 100 percent of the voting shares of The Yardville National Bank, Yardville, New Jersey. Comment period on this application ends February 12, 1986.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation*, Columbus, Ohio; to acquire 100 percent of the voting shares of Purdue National Corporation, Lafayette, Indiana, and thereby indirectly acquire Purdue National Bank of Lafayette, Lafayette, Indiana.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois, 60690:

1. *Fort Wayne National Corporation*, Fort Wayne, Indiana; to acquire Auburn Financial Corp., Auburn, Indiana, thereby indirectly acquiring The Auburn State Bank, Auburn, Indiana.

2. *Fort Wayne National Corporation*, Fort Wayne, Indiana; to acquire 100 percent of the voting shares of Churubusco Bancorp, Churubusco, Indiana; thereby indirectly acquiring Churubusco State Bank Churubusco, Indiana.

3. *Fort Wayne National Corporation*, Fort Wayne, Indiana; to acquire 100 percent of the voting shares of Dekalb Financial Corp, Waterloo, Indiana, thereby indirectly acquiring Citizens State Bank, Waterloo, Indiana.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *R & C Bancorp, Inc.*, Oklahoma City, Oklahoma; to acquire 100 percent of the voting shares of Rockwell, Bank, N.A., Oklahoma City, Oklahoma, and Choctaw Bancorp, Inc., Oklahoma, thereby indirectly acquire Choctaw State Bank, Chocktaw Oklahoma.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *General Bancshares, Inc.*, Caldwell, Texas; to acquire 100 percent of the voting shares of Peoples National Bank, Caldwell, Texas.

2. *Interfirst Corporation*, Dallas, Texas; to acquire *de novo* 100 percent of the voting shares of Interfirst Bank Delaware, New Castle, Delaware.

3. *New Braunfels Bancshares, Inc.*, New Braunfels, Texas; to acquire *de novo* 100 percent of the voting shares of Citizens National Bank, New Braunfels, Texas.

4. *Promenade Bancshares, Inc.*, Richardson, Texas; to acquire *de novo* 100 percent of the voting shares of Plano National Bank, Plano, Texas.

5. *Texas Community Bancshares, Inc.*, Dallas, Texas; to acquire 100 percent of the voting shares of BancTexas Sulphur Springs, N.A., Sulphur Springs, Texas.

Board of Governors of the Federal Reserve System, January 24, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1941 Filed 1-28-86; 8:45 am]

BILLING CODE 6210-01-M

Key Bancshares of New York Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an applicaiton 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 seciton 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 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 consummaiton 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 February 20, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Key Bancshares of New York Inc.*, Albany, New York; to engage *de novo* through its subsidiary Key Bank Life Insurance, Ltd. Phoenix, Arizona, in underwriting, as reinsurer, of the credit life and credit accident and health insurance directly related to extensions of credit by its subsidiaries.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NBSC Corporation*, Sumter, South Carolina; to engage *de novo* through its subsidiary Sumbank Life Insurance Company, Phoenix, Arizona, in acting as an underwriter and reinsurer for certain credit life insurance, credit accident and health insurance and other life insurance related services pertaining to the extension of credit to the full extent permitted by the provisions of § 225.25(b) of Regulation Y, as amended, of the Board of Governors of the Federal Reserve System.

Board of Governors of the Federal Reserve System, January 24, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1942 Filed 1-28-86; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Transaction and Waiting Period Terminated Effective

(1) 86-0133—USLICO Corporation's proposed acquisition of voting securities of International Bank, November 15, 1985

(2) 86-0183—RREEF USA Fund—III's proposed acquisition of assets of Homart Development Co., (Sears, Roebuck & Co., UPE), November 15, 1985

(3) 86-0184—RREEF USA Fund—III's proposed acquisition of assets of Homart Development Co., (Sears, Roebuck & Co., UPE), November 15, 1985

(4) 86-0190—Dominion Resources, Inc.'s proposed acquisition of voting securities of Rincon Securities, Inc., (Tucson Electric Power Company, UPE), November 18, 1985

(5) 86-0154—Societe National Elf Aquitaine's proposed acquisition of voting securities of The Williams Companies, November 15, 1985

(6) 86-0155—The Williams Companies proposed acquisition of voting securities of Texasgulf, Inc., (Societe Nationale Elf Aquitaine, UPE), November 19, 1985

(7) 86-0201—Freeport—McMoRan Inc.'s proposed acquisition of voting securities and assets of Geysers Geothermal Company, (Phillips Petroleum Company, UPE), November 19, 1985

(8) 86-0209—Western Gas Processors, Ltd.'s proposed acquisition of assets of MGPC, Inc. and voting securities of MIGC, Inc. and MGTC, Inc; (Federated Development Co., UPE), November 15, 1985

(9) 86-0213—Bell & Howell Company's proposed acquisition of voting securities of Bekins Record Management Company, (Minstar, Inc., UPE), November 19, 1985

(10) 86-0230—West-Point-Pepperell, Inc.,'s proposed acquisition of voting securities of Cluett, Peabody & Co., In., November 19, 1985

(11) 86-0231—TeleScripps Cable Company's proposed acquisition of assets of ACC of Virginia, ACC of Greater Bluefield, and ACC of Tennessee, (American Cablesystems Corporation, UPE), November 19, 1985

(12) 86-0248—UNC Resources' proposed acquisition of voting securities of Airwork Corporation and Pacific Airwork Corp. (Purex Industries, Inc., UPE), November 19, 1985

(13) 86-0253—Supermarkets General Corporation's proposed acquisition of voting securities of Angelo's Supermarkets, Inc. (Ralph Tedeschi, UPE), November 19, 1985

(14) 86-0164—First National Trust Company's (Gary D. Pentecost, UPE) proposed acquisition of assets of AGRI Export Cooperative, (American Grain and Related Industries, UPE), November 20, 1985

(15) 86-0165—First National Trust Company's, (J.B. Westmoreland, UPE, proposed acquisition of assets of AGRI Export Cooperative, (American Grain and Related Industries, UPE), November 20, 1985

(16) 86-0187—Amoco Production Co.'s proposed acquisition of assets of Sun Company, Inc., November 20, 1985

(17) 86-0221—Amoco Corporation's proposed acquisition of assets of Carolyn Hunt Trust Estate, November 20, 1985

(18) 86-0170—Colgate—Palmolive Company's proposed acquisition of assets of American Hospital Supply Co., November 21, 1985

(19) 86-0174—American Hospital Supply Co.'s proposed acquisition of assets of Colgate—Palmolive Company, November 21, 1985

(20) 86-0216 —The Sanwa Bank, Limited's proposed acquisition of assets of Commercial Credit Equipment Corporation and CCEC, Inc. (Control Data Corporation, UPE), November 21, 1985

(21) 86-0257—Ply-Gem Industries, Inc.'s proposed acquisition of voting securities of Allied Plywood Corporation, November 21, 1985

(22) 86-0265—Morton Thiokol, Inc.'s proposed acquisition of voting securities of Supelco, Inc., November 21, 1985

(23) 86-0113—Blue Circle Industries plc's proposed acquisition of voting securities of Williams Bros., Inc., November 22, 1985

(24) 86-0143—Proven Properties, Inc.'s proposed acquisition of assets of Chevron Corporation, November 22, 1985

(25) 86-0197—Penske Corporation's proposed acquisition of voting securities and assets of D. Longo, Inc., (Lena Longo, UPE), November 22, 1985

(26) 86-0198—Penske Corporation's proposed acquisition of voting securities and assets of D. Longo, Inc., (Lena Longo, a natural person and trustee of Longo Family Trust, UPE), November 22, 1985

(27) 86-0219—British Telecommunications plc's proposed acquisition of voting securities of Mitel Corp., November 22, 1985

(28) 86-0249—Louis J. Roussel's proposed acquisition of voting securities of United Fidelity Life Insurance Company, (Western Preferred Corporation, UPE), November 22, 1985

(29) 86-0266—Voest-Alpine A.G.'s proposed acquisition of voting securities of Bayou Steel Corporation, (of La Place), November 22, 1985

(30) 86-0269—Amerada Hess Corp.'s proposed acquisition of voting securities of Monsanto Oil Co. (Monsanto Oil Company of the U.K., Inc., UPE), November 22, 1985

(31) 86-0236—Nationwide Mutual Insurance Company's proposed acquisition of voting securities of Employers Insurance of Wausau, A Mutual Company, November 25, 1985

(32) 86-0273—Inspiration Resources Corporation's proposed acquisition of voting securities of The Prospect Group, Inc., November 25, 1985

(33) 86-0175—Ford Motor Company's proposed acquisition of assets of Sperry New Holland Division, (Sperry Corporation, UPE), November 26, 1985

(34) 86-0176—Bristol-Meyers Co.'s proposed acquisition of voting securities of Genetic Systems Corp., November 26, 1985

(35) 86-0202—Purdue National Corp.'s proposed acquisition of assets of Home Federal Savings and Loan Association, November 26, 1985

(36) 86-0275—Doskocil Companies, Incorporated's proposed acquisition of voting securities of Stoppenbach, Inc., November 26, 1985

(37) 86-0171—Mobil Corp.'s proposed acquisition of assets of Texaco Inc., November 27, 1985

(38) 86-0172—Texaco Inc.'s proposed acquisition of assets of Mobil Corp., November 27, 1985

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580 (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-1886 Filed 1-28-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86P-0023]

Feldene (Piroxicam), a Drug for Human Use; Public Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice of public hearing.

SUMMARY: The Food and Drug Administration (FDA) announces a public hearing to solicit information and views of interested persons on the

nonsteroidal anti-inflammatory drug piroxicam. The drug is marketed by Pfizer, Inc., 235 East 42nd St., New York, NY 10017, under the brand name Feldene. On January 8, 1986, Public Citizen Health Research Group (HRG), 2000 "P" St., NW., Washington, DC 20036, submitted a petition to the Secretary of Health and Human Services asking the Secretary "to immediately ban, as an imminent hazard to the public health, the use of . . . Feldene (piroxicam) in people ages 60 and older." FDA will use information presented at the public hearing, together with other data and information, to develop recommendations to the Secretary on whether the drug as currently labeled presents an imminent hazard to the public health.

DATES: Written notices of participation should be filed by February 21, 1986. The hearing will begin at 9 a.m. on February 28, 1986. The record of the hearing will remain open until March 17, 1986, by which date any additional written material must be submitted.

ADDRESSES: The public hearing will be held at the Food and Drug Administration, Conference Room D, 5600 Fishers Lane, Rockville, MD 20857. Written notices of participation and comments should be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Douglas Ellsworth or Judy O'Neal, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: Piroxicam is a nonsteroidal anti-inflammatory drug product indicated for acute or long term use in the relief of signs and symptoms of osteoarthritis and rheumatoid arthritis. Its current labeling includes a warning that "[p]eptic ulceration, perforation, and [gastrointestinal] bleeding—sometimes severe, and, in some instances fatal—have been reported with patients receiving Feldene." The labeling also cautions that "[p]atients with impaired renal function and on diuretics as well as elderly patients who have decreased renal function are more at risk [and] . . . lower doses of piroxicam should be anticipated in patients with impaired renal function and they should be carefully monitored." FDA approved the drug for marketing on April 6, 1982.

On January 8, 1986, the Secretary of Health and Human Services received a petition from HRG asking the Secretary "to immediately ban, as an imminent hazard to the public health, the use of Feldene (piroxicam) in people ages 60 and older" under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) (the act).

Relying on documents obtained from Pfizer, Inc., adverse reaction data obtained from FDA, results of surveys conducted by drug regulatory agencies in Great Britain and Sweden, and a review of the published medical literature, HRG contends (1) that gastrointestinal toxicity is more common and servere with piroxicam than with similar arthritis drugs, particularly in elderly patients; (2) that elderly people were found to have markedly higher blood levels of piroxicam than younger people, suggesting delayed clearance of the drug from the body; (3) that gastrointestinal side effects and ulceration from piroxicam are dose related, so a normal dose to someone with a decreased ability to eliminate the drug, such as an elderly person, may be equivalent to administering a higher dose; and (4) that piroxicam's long half-life is the reason older arthritis patients are more vulnerable to toxic effects from piroxicam than from other nonsteroidal anti-inflammatory drugs.

HRG refers to actions taken by the governments of Ireland, Belgium, West Germany and Canada in response to reports of severe adverse reactions and deaths associated with the use of piroxicam.

HRG asks that FDA warn health professionals in the United States (1) to avoid using piroxicam in people over 60 and in patients of any age with active peptic ulcers, a history of peptic ulcers, or compromised kidney function and (2) to monitor all other patients closely, particularly those with small body size. HRG also asks that Pfizer be required to provide a patient package insert with every prescription. In addition, HRG requests that FDA investigate reports that piroxicam causes unusually high rates of phototoxic skin reactions and congestive heart failure, and appropriately revise the drug's labeling.

HRB concludes that the large number of deaths and other severe reactions reported to FDA, in addition to information from foreign drug regulatory agencies and from clinical studies, demonstrate that piroxicam's use should be contraindicated in older people. Thus, HRG asks that Secretary declare the use of piroxicam in people aged 60 and older an imminent hazard to the public health.

The act requires FDA to withdraw approval of the application for product if, among other things, information shows that the product is unsafe or ineffective. The usual administrative procedure for withdrawing approval of a product includes notice to the applicant of an opportunity for hearing, an administrative determination of whether a hearing is justified, the conduct of a full evidentiary public hearing before a presiding officer or the preparation of an order denying a hearing, and a decision by the Commissioner of Food and Drugs based on the administrative record. This procedure usually requires at least 6 months, and sometimes much longer. A drug may remain on the market for years while withdrawal proceedings are underway.

The act also provides in section 505(e) that approval of a new drug may be suspended, and the product immediately removed from the market, if it presents an "imminent hazard to the public health." The authority to suspend approval is placed by law in the Secretary (or in the absence of the Secretary, in the officer acting as Secretary) and may not be delegated. If new evidence or further analysis of existing evidence indicates that a life-threatening or other serious risk is present, the summary suspension procedure allows the Secretary to put a prompt end to that risk. If approval is suspended, the Secretary must provide the holder of the new drug application with an opportunity for an expedited hearing on whether the application should be withdrawn and the product permanently removed from the market. The Secretary has invoked the imminent hazard provision only once, on July 25, 1977, by suspending approval of the new drug applications for phenformin, a drug indicated for use in diabetes. The HRG petition asks that the Secretary now invoke the imminent hazard provision of the act to ban the use of piroxicam in persons aged 60 and older.

The Secretary has asked FDA to advise him promptly of the action the agency believes should be taken in response to the HRG petition. A decision to invoke the imminent hazard provision as requested by HRG would result in immediate withdrawal of approval of the new drug application for piroxicam and removal of the product from the market until labeling changes could be made to contraindicate the use of the drug by persons 60 and older. Such an action would have an impact on patients now taking the drugs, their physicians, and the involved manufacturer. Before preparing its recommendations to the Secretary, FDA believes that these and other interested persons should have an opportunity to comment to the agency on the petition. Accordingly, a public hearing will be held, on an expedited basis, before the Director of the Center for Drugs and

Biologics to provide an opportunity for such comment. A copy of the HRG petition is available from the Dockets Management Branch (address above).

Previous imminent hazard petitions have asked the Secretary to immediately and permanently remove a drug from the marketplace by suspending approval of its new drug application. This petition is different because it asks the Secretary to invoke the imminent hazard proceeding to require labeling changes.

In order to focus participation at the public hearing, participants should be aware of the following criteria. The validity of using these five criteria in immiment hazard proceedings under the act was reviewed and upheld in the phenformin proceeding (*Forsham* v. *Califano*, 442 F. Supp. 203 (D.D.C. 1977)). These criteria will be used by the agency in framing its recommendation on the HRG petition:

(1) The likelihood that, after the customary administrative process is completed, the product will be withdrawn from the market.

(2) The severity of the harm that could be caused by the drug during the completion of customary administrative proceedings to withdraw the product from the market.

(3) The likelihood that the product will cause such harm while the administrative process is being completed.

(4) The risk to the health of patients currently taking the product that might be occasioned by the immediate removal of the product from the market, taking into account the availability of other alternatives to the product and the steps necessary for affected persons to adjust to these other alternatives.

(5) The availability of other approaches to protect the public health.

The hearing will be held on February 28, 1986. The hearing will begin at 9 a.m. The presiding officer will be Harry M. Meyer, Jr., M.D., Director of the Center for Drugs and Biologics.

The procedures governing the hearing are found at 21 CFR Part 15.

Persons who wish to participate are requested to file a notice of participation with the Dockets Management Branch (address above) on or before February 21, 1986. To assure timely handling, any outer envelope should be clearly marked with Docket No. 86P-0023 and the statement "Piroxicam Hearing". The notice of participation should contain the interested person's name, address, telephone number, any business affiliation of the person desiring to make a presentation, a brief summary of the presentation, and the approximate time requested for the presentation. FDA asks that groups having similar interests consolidate their comments and present them through a single representative. FDA will allocate the time available for the hearing among the persons who properly file notices of participation. If time permits, FDA may allow interested persons attending the hearing who did not submit a written notice of participation to make an oral presentation at the conclusion of the hearing.

After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by telephone of the time allotted to the person and the approximate time the person's oral presentation is scheduled to begin. The hearing schedule will be available at the hearing, and after the hearing it will be placed on file in the Dockets Management Branch under Docket No. 86P-0023.

To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of the hearing will remain open for 15 days following the hearing. Persons who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (address above) by March 17, 1986. To assure timely handling, any outer envelope should be clearly marked with Docket No. 86P-0023 and the statement "Piroxicam Hearing".

Dated: January 23, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-1865 Filed 1-28-86; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Eligibility for Scholarship Consideration Under the Health Professions Preparatory and Pregraduate Scholarship Programs for Indians, and the Indian Health Scholarship Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of eligibility requirements for consideration of support under Indian Health Service (IHS) Scholarship Programs.

SUMMARY: So that individuals interested in applying for support under health education scholarship programs of the IHS may be informed, the Service is publishing this notice of disciplines which will be considered for academic support beginning in the school year 1986-1987 only.

DATE: This IHS policy is effective on January 29, 1986.

FOR FURTHER INFORMATION CONTACT: Please address inquiries to Mr. Larry Thomas, Indian Health Service, Parklawn Building, Room 7-16, 5600 Fishers Lane, Rockville, Maryland 20857; telephone 301-443-4367.

SUPPLEMENTARY INFORMATION: The Health Professions Preparatory and Pregraduate Scholarship Programs for Indians are authorized by section 103 of the Indian Health Care Improvement Act, Pub. L. 94-437 as amended by Pub. L. 96-537, Indian Health Care Amendments of 1980. The Indian Health Scholarship Program was initially authorized by section 104 of Pub. L. 94-437, but is now authorized by section 338G [formerly section 757] of the Public Health Service Act. Both programs are intended to encourage Indians to enter the health professions and to assure the availability of Indian health professionals to serve Indians. The list below is based upon the needs of the IHS as well as upon the needs of the Indians for additional service by specific health professions.

Regulations at 42 CFR 36.304 provide that the IHS shall, from time to time, publish a list of health professions eligible for consideration for the award of Health Professions Preparatory Scholarships for Indians and Indian Health Scholarships. Also, Section 338G(b) of the Public Health Service Act [42 U.S.C. 194y-1] authorizes the determination of specific health professions for which Indian Health Scholarships will be awarded.

Pending the availability of funds, consideration will be given to qualified applicants for scholarship support under the above-named scholarship programs in the following health profession categories:

Priority Categories

Section 103—Health Professions Preparatory Scholarship Program for Indians

A. Pre-Nursing.

B. Pre-Accounting.

Section 103—Pre-Graduate Program

A. Pre-Medicine: Junior/Senior level only.

B. Pre-Dentistry: Junior/Senior level only.

Section 104—Health Professional Scholarship Program

A. Medicine: Allopathic and Osteopathic.

B. Nursing: ADN, BSN, and MS Degrees—National League for Nursing Accredited Schools.

C. Public Health (MPH): To be eligible for consideration applicants must have:

1. Terminal Degree in a health discipline; and

2. Minimum of two (2) years of health delivery experience.

D. Health Records: Registered Records Administrator level only.

E. Pharmacy: Junior/Senior level.

F. Engineering: Civil, Environmental and Mechanical—Junior/Senior level.

G. Dietician/Nutrition: Junior/Senior level.

H. Sanitarian: Environmental Health, Environmental Science, and Occupational Safety and Health—Junior/Senior level.

I. Medical Technologist: BS Degree—Junior/Senior level.

J. Denistry.

K. Accounting: Junior/Senior level.

L. Health Administration: MS/MA Degree.

M. Statistician: BS/MA Degree—Junior/Senior level.

N. Dental Hygiene: Junior/Senior level.

Interested individuals are reminded that the list of eligible allied health and health professions is effective for the applicants in the 1986–1987 academic year only.

The Health Professions Preparatory and Pregraduate Scholarship Program for Indians is listed as No. 13.971 in the OMB Catalog of Federal Domestic Assistance. The Indian Health Scholarship Program is listed as No. 13.972 in the Catalog.

Dated: January 24, 1986.

John H. Kelso,

Acting Administrator.

[FR Doc. 86–1905 Filed 1–28–86; 8:45 am]

BILLING CODE 4160–16–M

Public Health Service

National Advisory Council on Health Care Technology Assessment; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory Council scheduled to meet during the month of February 1986:

Name: National Advisory Council on Health Care Technology Assessment.

Date and Time: February 4, 1986, 8:30 a.m.

Place: Park Terrace Hotel, Terrace Ball Room, 1515 Rhode Island Avenue, Northwest, Washington, D.C.

Closed February 4, 11:30 AM to 12:00 Noon.

Open for remainder of meeting.

Purpose: The Council is charged to provide advice to the Secretary and to the Director of the National Center for Health Services Research and Health Care Technology Assessment (NCHSR) with respect to the performance of the health care technology assessment functions prescribed by section 305 of the Public Health Service Act, as amended.

Agenda: The open session will focus on Council discussion of medical coverage issues related to health care technology assessment functions. During the closed session, the Council will be reviewing research grant applications relating to health care technology. These applications contain research protocols, design, raw research data, technical information, and preliminary research reports. The meeting involves discussion of salaries and the professional competence of applicants, information of a personal nature, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C. 552b(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Mr. William M. Whorton, Jr., National Center for Health Services Research and Health Care Technology Assessment, Stop 318 #2, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2345.

Agenda items are subject to change as priorities dictate.

Note.—Due to difficulty in locating meeting room space, we missed the 15 days' notification period.

Dated: January 17, 1986.

John E. Marshall,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 86–1895 Filed 1–28–86; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–85–1583]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OBM) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) The office of the agency to collect the information; (3) The agency form number, if applicable; (4) How frequently information submissions will be required; (5) What members of the public will be affected by the proposal; (6) An estimate of the total number of hours needed to prepare the information submission; (7) Whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Submission of Proposed Information Collection to OMB

Proposal: Contract and Subcontract Activity Report for Public and Indian Housing Programs.
Office: Public and Indian Housing.
Form Number: HUD–2516.
Frequency of Submission: Quarterly.
Affected Public: State or Local Governments, Businesses or Other For-Profit, and Small Businesses or Organizations.
Estimated Burden Hours: 6,800.
Status: New.
Contact: Patricia G. Hampton, HUD, (202) 755–5383; Robert Fishman, OMB, (202)-395–6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).
Dated: January 22, 1986.

Submission of Proposed Information Collection to OMB

Proposal: Premium Reconcilement.
Office: Administration.
Form Number: HUD–239A.
Frequency of Submission: Monthly.
Affected Public: Businesses or Other For-Profit.
Estimated Burden Hours: 1,500.
Status: Reinstatement.
Contact: Frances Jones, HUD, (202) 755–7022; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).
Dated: January 22, 1986.

Submission of Proposed Information Collection to OMB

Proposal: Contract and Subcontract Reporting for Housing's Multifamily and Single Family Programs.
Office: Housing.
Form Number: HUD–2516.
Frequency of Submission: Quarterly.
Affected Public: State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations.
Estimated Burden Hours: 65,258.
Status: New.
Contact: David Nimmer, HUD, (202) 755–6142; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).
Dated: January 22, 1986.

Submission of Proposed Information Collection to OMB

Proposal: Survey of Pension Funds.
Office: Housing.
Form Number: None.
Frequency of Submission: Quarterly.
Affected Public: Businesses or Other For-Profit, and Small Businesses or Organizations.
Estimated Burden Hours: 167.
Status: Extension.
Contact: John N. Dickie, HUD, (202) 755–7270; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).
Dated: January 22, 1986.

Submission of Proposed Information Collection to OMB

Proposal: Manufactured Housing Complaint Index—State Administrative Agencies (SAA) Reports.
Office: Housing.
Form Number: HUD–54889.
Frequency of Submission: Quarterly.
Affected Public: State or Local Governments.
Estimated burden hours: 2,975.
Status: Extension.
Contact: Stuart Margulies, HUD (202) 755–6584; Robert Fishman, OMB (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).
Dated: December 24, 1985.

Submission of Proposed Information Collection to OMB

Proposal: HUD Application for Property Appraisal and Commitment; Master Conditional Procedure.
Office: Housing.
Form Number: HUD–91322, 91322.1, 91322.2, 91322.3, 92800, 92800–5a, 92800–5n, and 92800–OT.
Frequency of submission: On Occasion.
Affected Public: Businesses or Other For-Profit.
Estimated burden hours: 500,000.
Status: Revision.
Contact: Daniel T. Berry, HUD, (202) 755–6702; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).
Dated: December 19, 1985.

Submission of Proposed Information Collection to OMB

Proposal: Application for Indian Housing Authorities (IHAs) for Indian Low-income Housing Program.
Office: Public and Indian Housing.
Form Number: HUD–52730.
Frequency of submission: Annually.
Affected Public: Non-Profit Institutions.
Estimated burden hours: 960.
Status: Extension.
Contact: John V. Meyers, HUD (202) 755–1015; Robert Fishman, OMB (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).
Dated: December 15, 1985.

Dennis F. Geer,
Director, Office of Information Policies and Systems.

[FR Doc. 86–1862 Filed 1–28–86; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Environmental Assessment; Finding of No Significant Impact for the Chopaka Mountain Wilderness Study, Upper Columbia

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of finding of no significant impact availability for review.

SUMMARY: Pursuant to section 102 of the National Environmental Policy Act of 1969 and the Council on Environmental Quality Guidelines (40 CFR Part 1500), the Bureau of Land Management, U.S. Department of the Interior, gives notice that an environmental impact statement is not being prepared to analyze the impacts of designating or not designating the Chopaka Mountain Wilderness Study Area as wilderness. This WSA is located in Okanogan County, Washington.

The environmental assessment of this Wilderness Study and Management Framework Plan Amendment indicates that none of the entire alternatives would cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Joseph K. Buesing, District Manager, Spokane District, has determined that the preparation of an environmental impact statement to evaluate the potential impacts of these alternatives would not be necessary.

The environmental assessment and the notice of a Finding of No Significant Impact (FONSI) has been sent to various federal, state, and local agencies and interested parties who participated in the wilderness study process. A limited number of copies of the FONSI are

available to fill the single copy requests at the address indicated below.

This FONSI is being made available for public review for 30 days after the date of this publication in the **Federal Register** before BLM will make recommendation to Congress.

DATE: Comments on the FONSI must be received in the Spokane district office no later than March 21, 1986.

ADDRESS: Comments should be sent to Joseph K. Buesing, District Manager, Bureau of Land Management, Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202.

For further information, contact Gary Yeager, Planning and Environmental Coordinator, at the above address (telephone: (509) 456–2570).

Joseph K. Buesing,

District Manager.

[FR Doc. 86–1975 Filed 1–28–86; 8:45 am]

BILLING CODE 4310-33-M

[CA 17921]

Notice of Exchange of Public and Private Lands in Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—CA 17921

SUMMARY: 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 October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

T. 8S., R. 8E.
Sec. 14: Lots 1–4, inclusive.
Containing 80.54 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from The Nature Conservancy:

San Bernardino Meridian, California

T. 4S., R. 7E.
Section 6: S½ of Lot 2 of the SW¼, W½NE¼NW¼SE¼, SE¼NW¼SE¼, SW¼SE¼.
Containing 97.99 acres of private land.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire a portion of the non-federal lands within the proposed 13,000 acre preserve for the Coachella Valley fringe-toed lizard. The lizard is federally listed as threatened and State listed as endangered. The ultimate goal of the Bureau of Land Management is to acquire approximately 6,700 acres within the preserve. Other Federal and State agencies will acquire the remaining portion of the preserve. The public interest will be well served by completing the exchange.

Publication of this notice in the Federal Register segregates the public lands from the operation of the public land laws and the mining laws, except for mineral leasing. The segregative effect will end upon issuance of patent or 2 years from the date of publication, whichever occurs first.

The exchange will be on an equal value basis. Full equalization of value will be achieved by a cash payment to the United States by The Nature Conservancy in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership. Lands 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 (43 U.S.C. 945).

2. An existing drainage right-of-way granted to Coachella Valley Water District, its successors and assigns, by right-of-way grant CA 17773, under the Act of October 21, 1976 (43 U.S.C. 1761).

FOR FURTHER INFORMATION CONTACT: Information relating to this exchange, including the environmental assessment and land report, is available for review at the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District Office, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: December 9, 1985.

Gerald E. Hillier,

District Manager.

[FR Doc. 86–1870 Filed 1–28–86; 8:45 am]

BILLING CODE 4310-40-M

Intent to Prepare the Arcata Resource Management Plan; Ukiah District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: Pursuant to 40 CFR 1501.7 and 43 CFR 1601.3, notice is hereby given that the Arcata Resource Area, Ukiah District, California, will prepare a Resource Management Plan (RMP), which will include portions of the Clear Lake Resource Area.

DATES: The resource management planning process is scheduled to be completed by October 1, 1987.

FOR FURTHER INFORMATION CONTACT: John Lloyd, Arcata Resource Area Manager, 1585 J Street, Arcata, CA 95521. Telephone: (707) 822–7648.

SUPPLEMENTARY INFORMATION: The major thrust of this Resource Management Plan (RMP) is to address the viability of intensively managing timber resources within Sustained Yield Unit 13 as specified in the 1981 Record of Decision. Since 1981, the complexion of Sustained Yield 13 has been significantly affected by Bureau-initiated exchanges, wilderness designation, State of California in-lieu selections, and the increased occurrence of sensitive animal species found on or near forest lands.

The combination of these factors has resulted in a reduction in the availability of timber from public lands, has reduced flexibility in managing old-growth related animal species vis-a-vis timber production, and increased the total of nonstocked acres.

In addition to the intertwined issues of timber management, land tenure, and sensitive species, the RMP will address the wilderness suitability of that portion of the Big Butte wilderness study area (CA–050–211) that was not designated wilderness in the California Wilderness Act of 1984. Other wilderness suitability studies in progress, (Red Mountain, CA–050–132; Eden Valley, CA–050–214; Thatcher Ridge, CA–050–212) will be incorporated into the RMP but no suitability analysis will be done as part of the RMP.

Management Framework Plans superseded by this RMP are East Mendocino, Red Mountain and Scattered Blocks. The Red Mountain Planning Amendment currently in progress (see 50 FR 4601) is cancelled and the decisions will become part of the Arcata RMP.

Opportunities for public input and comment will be announced through the media, mailings, and personal contacts. Some public meetings are planned: times and locations to be announced.

Dated: January 16, 1986.

Van W. Manning,

District Manager.

[FR Doc. 86–1866 Filed 1–28–86; 8:45 am]

BILLING CODE 4310-40-M

[I-19668A, I-19668C, I-19668D, I-19668E, I-20341, I-19670, I-19675 and I-20813]

Sale of Public Lands in Oneida and Power Counties, ID

Correction

In FR Doc. 86-920 appearing on page 2442 in the issue of Thursday, January 16, 1986, make the following correction: In the second column, in the fifth complete paragraph, in the fifth line, "I-19668D" should read "I-19668C".

BILLING CODE 1505-01-M

National Park Service

Appalachian National Scenic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Appalachian National Scenic Trail Advisory Council will be held in Washington, DC, on February 13, from 10:00 a.m. to 3:30 p.m. The agenda of the meeting will include a discussion of long-range planning for protection of the Appalachian Trail.

The meeting will be open to the public, although space will be limited. Persons will be accommodated on a first-come, first-served basis. Any person may file with the Council a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting or who wish to submit written statements, may contact David A. Richie, Project Manager, Appalachian Trail Project Office, Harpers Ferry Center, Harpers Ferry, West Virginia 25425, at Area Code (304) 535-2346.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the above address. Copies of the minutes will also be available from Room 3120, Interior Building, 18th and C Streets NW., Washington, DC 20240, and at the headquarters of the Appalachian Trail Conference, Washington Street, Harpers Ferry, West Virginia 25425.

Dated: January 23, 1986.

David A. Richie,

Project Manager.

[FR Doc. 86-1956 Filed 1-28-86; 8:45 am]

BILLING CODE 4310-70-M

Intention To Negotiate Concession Authorization; Dudley Food and Beverage, Inc.

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession authorization with Dudley Food and Beverage, Inc., authorizing it to continue to provide the sale of refreshments, sundries and beach equipment rental, as authorized by a concession permit, for the public in the Rosamond Johnson area of Gulf Islands National Seashore for a period of approximately six (6) years from date of execution through February 28, 1992.

This authorization has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on June 30, 1985, and, therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the authorization.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contract the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed authorization.

Dated: July 5, 1985.

Frank Catroppo,

Acting Regional Director, Southeast Region.

[FR Doc. 86-1957 Filed 1-28-86; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act, Resource Conservation and Recovery Act, Clean Water Act, Safe Drinking Water Act; Aerojet-General Corp.

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that on January 15, 1986, a proposed Consent Decree in *United States v. Aerojet-General Corp. and Cordova Chemical Co.*, and *People of the State of California, et al v. Aerojet and Cordova*, Civil Action Nos. Civ. S-86-0063, Civ. S-86-0064, was lodged with the United States District Court for the Eastern District of California. The proposed Consent Decree concerns the facility owned by Aerojet in Sacramento County, California at which hazardous substances were disposed. The proposed Consent Decree requires the defendants to investigate environmental and public health hazards presented by the Aerojet facility and to implement any remedial actions necessary to clean up the facility. The Decree requires payment of up to $7.15 million in settlement funds to the Environmental Protection Agency and the State of California.

The Department of Justice will receive for a period of one hundred and twenty (120) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Aerojet*, D.J. Ref. 90-7-1-74.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 3305 Federal Building, 650 Capitol Mall, Sacramento, California 95814 and at Region IX, Office of the Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1644, Tenth Street and Pennsylania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, at the above address. In requesting a copy, please enclose a check of $13.70 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-1872 Filed 1-28-86; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 35-85]

Privacy Act of 1974; Modified Systems of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) the Department of Justice is republishing a number of its Privacy Act systems of records to make changes which clarify and more accurately describe the character of the systems. The most significant changes are briefly described as follows. The Department is adding a new routine use to certain

systems which will permit it to release records to an appropriate court during litigation; the Federal Bureau of Investigation is adding a routine use to provide that certain records may be disseminated to persons injured by violation of the trademark statutes. The systems have been reprinted below, and all changes have been italicized. The systems affected are:

Antitrust Division Expert Witness File, JUSTICE/ATR-001 (last published February 4, 1983, 48 FR 5330)
Congressional and White House Referral Correspondence Log File, JUSTICE/ATR-002 (last published August 28, 1984, 49 FR 34107)
Index of Defendants in Pending and Terminated Antitrust Cases, JUSTICE/ATR-003 (last published September 30, 1977, 42 FR 53393)
Statements by Antitrust Division Officials (ATD Speech File), JUSTICE/ATR-004 (last published September 30, 1977, 42 FR 53374)
Antitrust Information Management System (AMIS)—Time Reporter, JUSTICE/ATR-005 (last published November 17, 1980, 45 FR 75899)
Antitrust Information Management System (AMIS)—Monthly Report, JUSTICE/ATR-006 (last published February 4, 1983, 48 FR 5331)
Antitrust Division Case Cards, JUSTICE/ATR-007 (last published September 30, 1977, 42 53395)
Freedom of Information/Privacy Requests/Subject Index File, JUSTICE/ATR-008 (last published August 7, 1985, 50 FR 31935)
Accounting System for the Offices, Boards and Divisions and the United States Marshals Service, JUSTICE/JMD-007 (last published December 12, 1983, 48 FR 5666)
Expert Consultant/Witness File, JUSTICE/JMD-006 (last published December 9, 1984, 49 49393)
Department of Justice Controlled Parking Records, JUSTICE/JMD-017 (last published December 9, 1981, 46 FR 60328)
Freedom of Information Act/Privacy Act (FOIA/PA) Request letters, JUSTICE/JMD-020 (last published February 4, 1983, 48 FR 5362)
Executive Clemency Files, JUSTICE/OPA-001 (last published December 9, 1981, 46 FR 60334)
Bankruptcy Case Files and Associated Records, JUSTICE/UST-001 (last published February 4, 1983, 48 FR 5390)
The FBI Central Records System, JUSTICE/FBI-002 (last published April 20, 1984, 49 FR 16883)
National Center for the Analysis of Violent Crime (NCAVC), JUSTICE/FBI-015 (last published February 26, 1985, 50 FR 7842)
United States Marshals Service Badge and Credentials File, JUSTICE/USM-001 (last published on December 9, 1981, 46 FR 60343)
Internal Inspections System, JUSTICE/USM-002 (last published as the Internal Investigations System of January 26, 1983, 48 FR 3684)
United States Marshals Service Prisoner Transportation System, JUSTICE/USM-003 (last published on December 9, 1981, 46 FR 60344)
Special Deputy File JUSTICE/USM-005 (last published on December 9, 1981, 46 FR 60345)
Special Detail System, JUSTICE/USM-005 (last published on December 9, 1981, 46 FR 60346)
United States Marshals Service Training Files, JUSTICE/USM-006 (last published on December 9, 1981, 46 FR 60346)
Witness Security File Information System, JUSTICE/USM-008 (last published on December 9, 1981, 46 FR 60347)
Equipment Inventory, JUSTICE/OJP-001 (last published on December 9, 1981, 46 60329)
Grants Management Information System (PROFILE), JUSTICE/OJP-004 (last published on December 9, 1981, 46 FR 60329)
Financial Management System, JUSTICE/OJP-005 (last published on December 9, 1981, 46 60330.)
Congressional and Public Affairs System, JUSTICE/OJP-006 (last published on November 17, 1980, 48 FR 75936)
Civil Rights Investigative System, JUSTICE/OJP-008 (last published on February 4, 1983, 48 FR 5364)
Federal Advisory Committee Membership Files, JUSTICE/OJP-009 (last published on February 4, 1983, 48 FR 5364)
Technical Assistance Resource Files, JUSTICE/OJP-010 (last published on February 4, 1983, 48 FR 5365)
Registered Users File—National Criminal Justice Reference Service (NCJRS), JUSTICE/OJP-011 (last published on December 9, 1981, 46 FR 60332)
Public Safety Officers Benefits System, JUSTICE/OJP-012 (last published on February 4, 1983, 48 FR 5366)
The INTERPOL—United States National Central Bureau (INTERPOL-USNCB) (Department of Justice) Records System, JUSTICE/INTERPOL-001 (last published September 13, 1984, 49 FR 36028)

5 U.S.C. 552a(e) (4) and (11) provide that the public be provided a 30-day period in which to comment on the new routine uses. Please submit any comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, Department of Justice, 601 D Street, NW., Room 9002, Washington, DC 20530 by February 28, 1986.

Dated: December 11, 1985.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

JUSTICE/ATR-001

SYSTEM NAME:

Antitrust Division Expert Witness File.

SYSTEM LOCATION:

U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have served in the capacity of an "expert" for the Department of Justice in connection with civil or criminal antitrust litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the names of persons used by the Antitrust Division in an expert capacity and also indicates the area of their specialty, the type of service rendered, the fees paid, and the dates on or during which such services were performed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the establishment and maintenance of this system exists under 44 U.S.C. 3101 and 28 U.S.C. 522.

ROUTINE USES OF RECORDS MAINTENANED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system is routinely used by trial attorneys of the Antitrust Division when considering the selection of experts as consultants or expert witnesses for the development or presentation of specific antitrust cases. The system also serves as a reference resource for Division personnel in compiling statistical information or reports regarding the actual or anticipated costs of litigation.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news medias and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an

unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in this system is contained in documents orgainzed in individual file folders.

RETRIEVABILITY:

Information is retrieved primarily by using the name of the individual retained as a consultant or called as an expert witness for the Government in antitrust cases brought by the Department.

SAFEGUARDS:

Information contained in the system is unclassified. During working hours access to the system is controlled and monitored by Antitrust Division personnel in the area where the system is maintained; during non-duty hours all doors to that area are locked.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer; Antitrust Division; U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General; Antitrust Division; U.S. Department of Justice; 10th & Constitution Avenue MW., Washington, DC 20530.

RECORD ACCESS PROCEDURE:

Requests for access to a record from this system shall be in writing and be clearly identified as a "Privacy Access Request". Including in the requests should be the name of the person retained as a consultant or presented as an expert witness for the Government and the name of the case in which such services were rendered. The requester should indicate a return address. Requests will be directed to the System Manager shown above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their requests to the System Manager and state clearly and concisely when information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information maintained in this system are those records reflecting the commitment between the individual and the Department of Justice (including matters of compensation etc.) and staff attorneys or other employees directly involved with the individual in the preparation or conduct of the litigation.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/ATR-002

SYSTEM NAME:

Congressional and White House Referral Correspondence Log File.

SYSTEM LOCATIONS:

U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former members of Congress and citizens whose correspondence is referred by Congressional or White House staff members.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index record to inquiries or referrals of citizen correspondence from members of the Congress and White House staff.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the establishment and maintenance of this system exist under 44 U.S.C. 3101 and 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system is maintained as a record of inquiries or referrals by members or committees of the Congress and by White House staff. Routine use is made of this file by Antitrust Division personnel incident to monitoring the response status of or identifying other material related to such inquiries or referrals.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to the news media: Information permited to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined the release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records Administration; A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents are stored in file folders; abbreviated or summarized information is stored on manual index cards and on magnetic disks and tapes.

RETRIEVABILITY:

Inquiry and response documents are retrieved by date or through manual and automated indexes which are accessed by name, suject matter, control number, etc. Summary data on inquiries received prior to March 7, 1983, is retrieved from the manual index cards; as of March 7, 1983, summary data is retrieved from magnetic disks and tapes. Summary data consists of such data elements as Congressional Member or constituent name, subject matter, date of inquiry, date assigned, date of response, etc.

SAFEGUARDS:

Information contained in the system is unclassified. During working hours access to the system is controlled and monitored by Antitrust Division personnel in the area where the system is maintained; during non-duty hours all doors to such area are locked. In addition, only Antitrust Division personnel who have a need for the information contained in the system have the appropriate password for access to the system.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Legislative Unit; Antitrust Division; U.S. Department of Justice; 10th & Constitution Avenue, NW.; Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General; Antitrust Division; Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

RECORD ACCESS PROCEDURES:

Requests for access for a record from this system shall be written and clearly identified as "Privacy Access Request". The request should include the name of the member of Congress or White House staff originating a request or referral and the date thereof. Requester should indicate a return address.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should state clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Source of information maintained in the system are those records (e.g., that Congressional or White House correspondence), reflecting inquiries or referrals of citizen correspondence by members of Congress or White House staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/ATR-003

SYSTEM NAME:

Index of Defendants in Pending and Terminated Antitrust Cases.

SYSTEM LOCATION:

U.S. Department of Justice; 10th and Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual defendants in pending and terminated criminal and civil cases brought by the United States under the antitrust laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index reference to the case in which an individual (or corporation) is or was a defendant; included in information is proper case name, the judicial district and number of the case, and the date filed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the establishment and maintenance of this index system exists under 28 U.S.C. 522 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine use of this cross index system is generally made by Department personnel for reference to proper case name. In addition a compilation of antitrust cases filed is prepared semi-annually showing the names of all defendants in pending civil and criminal Government antitrust cases. This compilation is utilized within the Department and distributed to some 30 other Government agencies for reference and statistical purposes.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the system is maintained on index cards.

RETRIEVABILITY:

Information in the system is retrieved by reference to the name of individual or corporate defendants in antitrust cases.

SAFEGUARDS:

Information contained in the system is unclassified and of a public nature. During working hours access to the index is monitored by Antitrust Division personnel; during non-duty hours the area in which the system is maintained is locked.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Legal Procedure Unit; Antitrust Division; U.S. Department of Justice; 10th and Constitution Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General; Antitrust Division; U.S. Department of Justice; Washington, DC 20530.

RECORD ACCESS PROCEDURES:

Requests for access to a record from this system shall be in writing and be clearly identified as a "Privacy Access Request". Included in the request should be the name of the defendant in pending or terminated Government antitrust litigation. Requesters should indicate a return address. Requests will be directed to the System Manager shown above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the index should direct their request to the System Manager and state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this index are complaints filed under the antitrust laws by the United States and from Department records relating to such cases.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/ATR-004

SYSTEM NAME:

Statements by Antitrust Division Officials (ATD Speech File).

SYSTEM LOCATION:

U.S. Department of Justice, 10th and Constitution Avenue NW., Washington DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present employees of the Antitrust Division.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index record for each public statement or speech issued or made by employees of the Antitrust Division.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintaining this system exists under 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This index is maintained for ready reference by Department personnel for the identification of the subject matter of and persons originating public statements by Antitrust Division employees; such reference is utilized in aid of compliance with requests from the public and within the agency for access to texts of such statements.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in the index system is maintained on index cards.

RETRIEVABILITY:

This reference index utilizes name of present and former employees making or issuing statements as well as the subject matter or title of the statement.

SAFEGUARDS:

Information contained in the system is unclassified. During duty hours personnel monitor access to this index; the area is locked during non-duty hours.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Legal Procedure Unit, Antitrust Division, U.S. Department of Justice, 10th and Constitution Avenue NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General, Antitrust Division, U.S. Department of Justice, 10th and Constitution Avenue NW., Washington, D.C. 20530.

RECORD ACCESS PROCEDURES:

Request for access to a record from this system should be made in writing and be clearly identified as a "Privacy Access Request". Included in the request should be the name of the Antitrust Division employee making or issuing a public statement. Requesting should indicate a return address. Requests will be directed to the System Manager shown above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the index should direct their request to the System Manager and state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information maintained in the index are those recos reflecting public statements issued or made by Antitrust Division employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Justice/ATR-005

SYSTEM NAME:

Antitrust Information Management System (AMIS)—Time Reporter.

SYSTEM LOCATION:

U.S. Department of Justice, 10th and Constitution Ave., N.W., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Antitrust Division of the U.S. Department of Justice.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains the employees' name and allocations of his/her work time.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The file will be established and maintained pursuant to the following authorities: 28 CFR 0.40(f), 28 U.S.C. section 522, 31 U.S.C. section 11, 31 U.S.C. section 66a, 5 U.S.C. section 301, and 2 U.S.C. section 601.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The file is used by Antitrust Division personnel to keep track of resources and as a basis for determining Antitrust Division allocations of resources (professional time) to particular products and industries (e.g., oil, auto, chemicals) and to broad categories of resource use such as conspiratorial conduct, oligopoly and monopoly, civil cases, criminal cases, and proceedings before regulatory agencies. In addition, the file will be employed in the preparation of reports for the Division's budget requests and to the Attorney General and Congress.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration: A record from the system of records may be disclosed the National Archives and Records Administration (NARA) for records management inspections conducted under the authority of 44 U.S.C. Secs. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically in the ACES computerized information system.

RETRIEVABILITY:

Information is retrieved by a variety of key words, including names of individuals.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with Department rules and procedures governing the handling of computerized information. Access to the file is limited to those employees whose official duties require such access.

RETENTION AND DISPOSAL:

Information contained in the file is retained for 24 months or the life of the matter to which the employee is assigned, whichever is longer.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Systems Support Group, Antitrust Division, U.S. Department of Justice, Room 1018, Safeway Building, 521 12th Street, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Same as System Manager.

RECORD ACCESS PROCEDURE:

Same as Notification.

CONTESTING RECORD PROCEDURES:

Same as Notification.

RECORD SOURCE CATEGORIES:

Information on time allocation is provided by Antitrust Division section and field office chiefs.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/ATR-006

SYSTEM NAME:

Antitrust Information Management System (AMIS)—Monthly Report.

SYSTEM LOCATION:

U.S. Department of Justice, 10th and Constitution Avenue, N.W., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Professional employees (lawyers and economists) of the Antitrust Division of the U.S. Department of Justice and individual defendants and investigation targets involved in past and present Antitrust investigations and cases.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the names of Division employees and their case/investigation assignments and the names of individual defendants/investigation targets as they relate to a specific case/investigation. In addition, information reflecting the current status and handling of Antitrust cases/investigations is included within this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The file is established and maintained pursuant to 28 CFR 40(f), 28 U.S.C. 522, and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The file is used by Antitrust Division personnel as a basis for determining Antitrust Division allocation of resources to particular products and industries (e.g., oil, autos, chemicals), to broad categories of resource use such as civil cases, criminal cases, regulatory agency cases, and Freedom of Information Act requests. It is employed by the section chiefs, the Director and Deputy Director of Operations, and other Division personnel to ascertain the progress and current status of cases and investigations within the Division. In addition, the files will be employed in the preparation of reports for the Division's budget requests and to the Attorney General and Congress.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public

pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released purusant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically in the *Information systems support group's* ACES Computerized information system.

RETRIEVABILITY:

Information is retrieved by a variety of key words.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with Department rules and procedures governing the handling of computerized information. Access to the file is limited to those persons whose official duties require such access and employees of the Antitrust Division.

RETENTION AND DISPOSAL:

Information contained in the file is retained for 14 months or the life of the specific case/investigation, whichever is longer.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Systems Support Group; Antitrust Division; U.S. Department of Justice; Safeway Building, 521 12th Street, N.W., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General, Antitrust Division, U.S. Department of Justice, 10th and Constitution Avenue, Washington, D.C. 20530.

RECORD SOURCE CATEGORIES:

Information for the monthly reports is provided by the Antitrust Division section and field office chiefs.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3), (d), (e)(4)(G)–(H), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the **Federal Register.**

JUSTICE/ATR-007

SYSTEM NAME:

Antitrust Division Case Cards.

SYSTEM LOCATION:

U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual defendants in pending and terminated criminal and civil cases brought by the United States under the antitrust laws where the defendant's name appears in the case title.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index reference to the case in which an individual (or corporation) is or was a defendant; included information is proper case name, the judicial district, number of the case, the commodity involved, each alleged violation, the section of the Antitrust Division responsible for the matter, and the disposition of the case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintaining this system exists under 44 U.S.C. 3101 and 28 U.S.C. 522.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This index is maintained for ready reference by Department personnel. It is utilized for referrals to case names, the preparation of speeches and to aid in determinations of the antitrust histories of companies.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is maintained on index cards.

RETRIEVABILITY:

Information is retrieved by case name.

SAFEGUARDS:

Information contained in the system is unclassified. During duty hours access to this system is monitored and controlled by Antitrust Division personnel in the area where the system is maintained. This area is locked during non-duty hours.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Legal Procedure Unit, Antitrust Division, U.S. Department of Justice,

10th and Constitution Avenue, NW., Washington DC 20530/

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General, Antitrust Division, U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, DC 20530.

RECORD ACCESS PROCEDURES:

Request for access to a record from this system should be made in writing and be clearly identified as a "Privacy Access Request." Included in the request should be the name of the defendant appearing in the title of the pending or terminated Government antitrust litigation. Requester should indicate a return address. Requests will be directed to the System Manager above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the index should direct their request to the System Manager and state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information maintained in the index are those records reflecting litigation conducted by the Antitrust Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE-ATR-008

SYSTEM NAME:

Freedom of Information/Privacy Requester/Subject Index File

SYSTEM LOCATION:

U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested information under the Freedom of Information and Privacy Acts from files maintained by the Antitrust Division and individuals about whom material has been requested under the above acts.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains a record of every FOIA/PA request made, along with the response, copies of documents which have been requested, and internal memoranda or other records related to the initial processing of such request, subsequent appeals and/or litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S. 3101 to implement the provisions of 5 U.S.C. 552 and 5 U.S.C. 552a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This index is maintained for ready reference by Division personnel for the identification of the subject matter of and persons orginating Freedom of Information and Privacy Act requests. Such reference is utlized in aid of access to files, maintained by the Freedom of Information and Privacy Unit, for purposes of reference to requests on appeal, questions concerning pending or terminated requests, and compliance with requests similar or identical to past requests.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from the systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwaranted invasion of personal privacy.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof: or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE

Paper documents are stored in file folders; abbreviated or summarized information is stored on manual index cards and on magnetic disks and tapes.

RETRIEVABILITY:

Request files are retrieved by case number or through a cross reference to the manual and automated indexes which are accessed by name. Summary data on requests received through July 31, 1983, is retrieved from the index cards; summary data as of August 1, 1983, is retrieved from magnetic disks and tapes. Summary data consists of such data elements as name of requester, date and subject of request, date assigned, response date (and a brief description of the response), case number, and date appealed, if applicable.

SAFEGUARDS

Information contained in the system is unclassified. During duty hours access to this system is monitored and controlled by Antitrust Division personnel in the area where the system is maintained. The area is locked during non-duty hours. In addition, only Antitrust Division personnel who have a need for the information contained in the system have the appropriate password for access to the system.

RETENTION AND DISPOSAL

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS

Freedom of Information and Privacy Acts Control Officer, Antitrust Division, U.S. Department of Justice, 10th and Constitition Avenue, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURE

Address inquiries to the Assitant Attorney General, Antitrust Division, U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

RECORD ACCESS PROCEDURES

Request for access to a record from this system should be made in writing

and be clearly identified as a "Privacy Access Request." Included in the request should be the name of the individuals having made the Freedom of Information request and/or the individual about whom the records were requested. Requesters should indicate a return address. Requesters will be directed to the System Manager shown above.

CONTESTING RECORD PROCEDURE

Individuals desiring to contest or amend information maintained in the index should direct their request to the System Manager and state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES

Source of the information maintained in the system are those records derived from the receipt and processing of Freedom of Information and Privacy Act requests.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT

The Attorney General has examined this system of records from subsections (c)(3), (d), (e)(4)(G) and (H), and (f) of the Privacy Act. This system is exempted pursuant to 5 U.S.C. 552a(k)(2) to the extent that the records contained in the system reflect Antitrust Division law enforcement and investigative information. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and have been published in the **Federal Register.**

JUSTICE/JMD-007

SYSTEM NAME:

Accounting System for the Offices, Boards and Divisions and the United States Marshals Service.

SYSTEM LOCATION:

United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals on whom vouchers are submitted requesting payment for goods or services rendered (except payroll vouchers for Department of Justice employees,) including vendors, contractors, experts, witnesses, court reporters, travelers, and employees.

CATEGORIES OR RECORDS IN THE SYSTEM:

All vouchers processed, i.e., all documents required to reserve, obligate, process and effect collection or payment of funds. (Excluded from the system are payroll vouchers.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with 31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

After processing the vouchers, the records are used to maintain individual financial accountability; to furnish statistical data (not identified by personal identifiers) to meet both internal and external audit and reporting requirements; and to provide Administrative Officers from the Offices, Boards and Divisions and the United States Marshals Service with information on vouchers by name and social security number.

Release of information to the news media. Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from system of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice not otherwise required to be released pursuant to 5 U.S.C. 552 may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration a record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

Release of taxpayer mailing address information. Information contained in the system or records may be disclosed to the Internal Revenue Service (IRS) to obtain taxpayer mailing addresses for the purpose of locating such taxpayer to collect or compromise a Federal claim against the taxpayer.

Release of information to consumer reporting agencies. Information directly related to the identity of debtors and the history of claims contained in the system or records may be disclosed to consumer reporting agencies for the purpose of encouraging repayment of overdue debts. Such disclosures will be made only when a claim is overdue and only after due process steps have been taken to notify the debtor and give him or her a chance to meet the terms of the debt. Addresses of taxpayers obtained from the Department of the Treasury will be disclosed to consumer reporting agencies only for the purpose of allowing such agencies to prepare a commercial credit report on the taxpayer for use by the Department.

Release of information about debtors. Information contained in the system of records may be disclosed in order to effect salary or administrative offsets to satisfy a debt owed the United States by that person. Such disclosures will be made only when all procedural steps established by the Debt Collection act have been taken.

Release of information to debt collection agencies. Information contained in the system of records may be disclosed to a person or organization with whom the head of the agency has contracted for collection services to recover indebtedness owed to the United States. Addresses of taxpayers obtained from the Department of the Treasury will also be disclosed, but only where necessary to locate such taxpayer to collect or compromise a Federal claim.

Release of information to United States Attorneys. Information contained in the system of records may be disclosed to United States Attorneys' offices for litigation and enforced collection.

Release of information in a proceeding before a court or adjudicative body. Records within this system, or any facts derived therefrom, may be disseminated before a court or adjudicative body before which the Justice Management Division is authorized to appear when i. the Justice Managment Division, or any subdivision thereof, or ii. any employee of the Justice Management Division in his or her official capacity, or iii. any employee of the Justice Management Division in his or her individual capacity where the Department of Justice has agreed to represent the employee, or iv. the United States, where the Justice Management Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Justice Management Division to be arguably relevant to the litigation.

STORAGE:

Magnetic disks, magnetic tapes, microfilm, and file folders.

RETRIEVABILITY:

Records on magnetic tapes and disks are primarily retrieved by social security number or digital identifiers. Records covering all fiscal years prior to Fiscal Year 1983 are maintained in paper form; as of Fiscal Year 1983 paper records have been converted to microfilm. Records in paper form and on microfilm are retrieved by batch and controlled by schedule on which paid.

SAFEGUARDS:

Information contained in the system is unclassified. Operational access to information maintained on magnetic disks is controlled by the convention of the operating system utilized. This is normally by password key. These passwords are issued only to employees who have a need to know in order to perform job functions relating to financial management and accountability. Records are also safeguarded in accordance with organizational rules and procedures. Access is limited to personnel of the Department of Justice who have a need for the records in the performance of their official duties.

RETENTION AND DISPOSAL:

Magnetic disks, magnetic tapes, microfilm, and paper documents are retained for a period of six years and three months and subsequently destroyed in accordance with regulations prescribed by the General Accounting Office and promulgated by the General Services Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Finance Staff: Office of the Controller, Justice Management Division; U.S. Department of Justice; 10th & Constitution Avenue, NW.; Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Same as the System Manager.

RECORD ACCESS PROCEDURE:

Same as the System Manager.

CONTESTING RECORD PROCEDURES:

Same as the System Manager.

RECORD SOURCE CATEGORIES:

Submitted by operating accounting personnel or individual of record.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Justice/JMD–006

SYSTEM NAME:

Expert Consultant/Witness File.

SYSTEM LOCATION:

U.S. Department of Justice; 10th and Constitution Ave., NW., Washington, DC 20530

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have, *as of* FY84, been employed as expert consultants and/or witnesses in litigation pursued by the Department of Justice throughout the nation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Expert consultant/witness's name, address, phone number, fee, field(s) of expertise, date of most recent employment, names of cases for which employed, name of division and/or U.S. Attorney's Office served.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Department of Justice Attorneys will consult this file to identify potential experts who might be available for employment. Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy. Information, not otherwise required to be released pursuant to 5 U.S.C. 552, may be available to a member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record. A record may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are maintained on magnetic media.

RETRIEVABILITY:

Information is retrieved by a variety of keywords including, but not limited to, the name of the consultant and/or witness, location, field(s) of expertise and fee.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded in accordance with Department security regulations for systems of records.

RETENTION AND DISPOSAL:

Records are retained until such time as the Department or the expert consultant and/or witness determines he or she should no longer be used in government litigation.

SYSTEM MANAGER AND ADDRESS:

Director, Litigation Systems Staff, Office of Information Technology, Justice Management Division, U.S. Department of Justice, Room 129, Chester Arthur Building, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing to the system manager with the envelope and the letter clearly marked "Privacy Access Request." The request shall identify the system and sufficiently describe the record sought.

CONTESTING RECORD PROCEDURE:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are the individuals covered by the system.

SYSTEMS EXEMPT FROM CERTAIN PROVISIONS OF THE ACT:

None.

Justice/JMD–017

SYSTEM NAME:

Department of Justice Controlled Parking Records.

SYSTEM LOCATION:

U.S. Department of Justice: 10th Street and Constitution Avenue, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Justice employees who have applied for vehicle parking space

which is assigned and controlled by the Department of Justice, per Department of Justice Order 2540.2D, Dec. 20, 1977.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains copies of Form DOJ–362, Department of Justice Parking Space Application (DOJ Space), and *DOJ OT–90*, Department of Justice Parking Space Application (DOJ Carpool Space), which have been completed and submitted by Department of Justice employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained in accordance with 5 U.S.C. 301 and Federal Property Management Regulation 41 CFR 101–20.1. Operating procedures contained in Department of Justice Order 2540.2D, Dec. 20, 1977.

PURPOSE OF THE SYSTEM:

Justice Management Division personnel use these records to assign, identify and control the use of vehicle parking space for which the Department of Justice is responsible.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in a locked file cabinet.

RETRIEVABILITY:

These records are indexed alphabetically by the last name of the applicant, within the organizational element.

SAFEGUARDS:

Information contained in this system is unclassified and is disseminated on a need to know basis by the Office of the Director, *General Services Staff, Office of Personnel and Administration, Justice Management Division.*

RETENTION AND DISPOSAL:

Although these records are currently retained as long as applicants remain as employees of the Department of Justice, inactive records are disposed of in accordance with the General Records Schedule, 41 CFR Part 101–11.

SYSTEM MANAGER(S) AND ADDRESS:

General Services Staff, Office of Personnel and Administration, Justice Management Division; U.S. Department of Justice; 10th Street and Constitution Avenue, NW.; Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Same as System Manager.

RECORD ACCESS PROCEDURES:

Same as System Manager.

CONTESTING RECORD PROCEDURES:

Same as System Manager.

RECORD SOURCE CATEGORIES:

Applications from employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Justice/JMD–020

SYSTEM NAME:

Freedom of Information *Act*/Privacy Act (FOIA/PA) Request letters.

SYSTEM LOCATION:

FOIA/PA referral unit, *Mail, Fleet and Records Management Services, General Services Staff, Justice* Management Division, Department of Justice (DOJ). Washington, D.C. 20530

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons making *FOIA/PA* requests to the Department. (The names of persons making requests directly to the Board of Immigration Appeals (BIA), individual United States Attorneys' Offices, or a Department bureau, i.e. the Bureau of Prisons, the Drug Enforcement Administration, the Federal Bureau of Investigation, the Office of Justice Assistance, Research and Statistics, and the Immigration and Naturalization Service, will not usually be in this system, except in those rare instances where these organizations may forward a request to the Department for appropriate referral.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Paper documents consist of written *FOIA/PA* requests for Department records not addressed to a specific DOJ component and therefore forwarded to the unit for assignment and referral; forms indicating the DOJ components to which requests have been referred; acknowledgement/referral advisory letters to requesters; and other related correspondence, e.g., letters to requesters seeking additional information and the responses thereto. (This system contains no replies which grant or deny access to records, nor any other records relating to the individual other than as stated here.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 5 U.S.C. 552 and 552a; 28 CFR 16.1–.10; and 28 CFR 16.40–.57.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are not disseminated outside the Department *except as indicated below.* They are accessed only by Department personnel with a need to know, i.e., requests are referred by the *FOIA/PA* referral unit to the appropriate Department component(s) to respond, or to the Civil Division and/or United States Attorney to prepare the Department's defense in *FOIA/PA* litigation.

Release of information to the news media:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of Information to Members of Congress:

Information in this system may be disclosed as is necessary to appropriately respond to Congressional inquiries on behalf of constitutents.

Release of Information to the National Archives and Records Administration

A record may be disclosed as a routine use to the National Archieve and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ASSESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper folders in filing cabinets.

RETRIEVABILITY:

A record is retrieved by name of the individual making the request.

SAFEGUARDS:

Records are stored in file cabinets in an office which is occupied during the day and locked at night.

RETENTION AND DISPOSAL:

Records are retained in the FOIA/PA mail referral section for approximately one year. Records are then transferred to the Federal Records Center for storage in accordance with the General Services Administration's General Records Schedule 14, item 18(a) which provides for a disposal date of five years from the date of the most recent request being stored.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Mail, Fleet and Records Management Services, General Services Staff, Justice Management Division, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Inquiries as to whether the system contains a record of a request from an individual should be addressed to the Assistant Director, Mail, Fleet and Records Management Services, General Services Staff (GSS), Justice Management Division, Department of Justice, Room 7317, 10th and Constitution Avenue, NW., Washington, D.C. 20530. To enable the GSS to identify whether the system contains a request from the individual, the individual must provide the name of the person who made the request, the date of the request, and, if appropriate, the date of the Assistant Director's letter to the requester acknowledging receipt and referral of the request

RECORD ACCESS PROCEDURE:

Persons desiring to access a record shall submit a request in writing to the Assistant Director at the address indicated under "Notification Procedure" above.

CONTESTING RECORD PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

Request from individuals for DOJ records under the Freedom of Information and Privacy Acts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/OPA–001

SYSTEM NAME:

Executive Clemency Files.

SYSTEM LOCATION:

Office of the Pardon Attorney; U.S. Department of Justice; Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for or been granted Executive clemency.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the individual petitions for Executive clemency (OPA–6 or 13) submitted by the applicants and accompanying oath and character affidavits (OPA 11), investigatory material, evaluative reports, official and other correspondence, both solicited and unsolicited, interagency and intragency correspondence and memoranda relating to individual petitions for clemency. The system includes President Clemency Board files transferred to the Office of the Pardon Attorney upon termination of the Board's existence on September 15, 1975.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with the United States Constitution, Article II, section, 2 Executive Order of the President dated June 16, 1983, Order No. 288–62, 27 FR 11002, November 19, 1962, as codified in 28 CFR 1.1 et seq. and E.O. 11878 dated September 10, 1975.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Executive clemency files are used to (a) to enable the Attorney General to investigate each petition for Executive clemency, to review each petition and information developed by his investigation thereof and to advise the President whether, in his judgement, the request for clemency is of sufficient merit to warrant favorable action by the President; (b) to prepare notices to the public of the name of each grantee of clemency, date of Presidential action, nature of clemency granted, nature of grantee's offense, date and place of sentencing, description of sentence imposed, and names of character affiants and interested members of Congress; and disclose similar information to that specified above with respect to denials of general public interest if the disclosure does not constitute an unwarranted invation of privacy; (c) to prepare bound and indexed volumes containing photocopies of the official warrant of clemency granted each recipient of celemency as a public and official record of Presidential action; (d) upon request of the President and members of his staff, to make available to them individual clemency fiels: (e) upon specific request, to advise the requestor whether a named person has applied for, been granted or denied clemency, the date thereof and the nature of the clemency granted or denied; (f) upon specific request, to make closed files available for historical research purposes when the public interest and in conformity with Department of Justice policy; and (g) upon request or otherwise, to make any information which indictes a violation or apparent violation of law, whether civil, criminal or regulatory in nature, availabe to the appropriate agency, whether Fedreal state, local or foreign.

Release of information in adjudicative proceedings: Records in the system, or any information derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Office of the Pardon Attorney is authorized to appear when (1) one of the following is a party to or has an interest in the litigation: i. The Office of the Pardon Attorney; ii. any employee of the Office of the Pardon Attorney in his or her official capacity; iii. any employee of the Office of the Pardon Attorney in his or her individual capacity, where the Department of Justice has agreed to represent the employee; or, iv. the United States, where the Office of the Pardon Attorney determines that it is likely to be affected by the litigation; and (2) the records, or information derived therefrom, are determined by the Office of the Pardon Attorney to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon

the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 20904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored in the Office of the Pardon Attorney and in Archives.

RETRIEVABILITY:

Information is retrieved by reference to the file number assigned to the name of each applicant for clemency.

SAFEGUARDS:

Information contained in the system is safeguarded and protected in accordance with Department of Justice Rules Governing Petitions for Executive Clemency, specifically, 28 CFR 1.5. Executive clemency files are maintained in the Office of the Pardon Attorney and are not commingled with Department of Justice records.

RETENTION AND DISPOSAL:

Records are stored in the Office of the Pardon Attorney and closed cases are transferred to the Federal Archives Records Center when five years old. Except for the "letter of advice" furnished to the President in connection with clemency *applications, Presidential responses, warrants or other documents signifying the President's action in a clemency case* and cases designated by the Pardon Attorney as having significant public interest, records are destroyed after 25 years.

SYSTEM MANAGER(S) AND ADDRESS:

Pardon Attorney; Office of the Pardon Attorney; Department of Justice; Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Pardon Attorney; Department of Justice; Washington, D.C. 20530.

RECORD ACCESS PROCEDURES:

While the Attorney General has exempted Executive Clemency files from the access provisions of the Privacy Act, requests for discretionary releases of records contained in the system shall be made in writing with the envelope and letter clearly marked "Privacy Access Request." Include in the request the general subject matter of the document and the name of the clemency applicant in whose file it is contained. The requestor will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

While the Attorney General has exempted Executive Clemency files from the correction (contest and amendment) provisions of the Privacy Act, requests for the discretionary correction (contest and amendment) of records contained in this system should be directed to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are the individual applicants for clemency, Federal Bureau of Investigation or other official investigatory reports, Bureau of Prisons records, armed forces reports, probation or parole reports and reports from *individuals* or non-Federal organizations, both solicited and unsolicited.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register.**

Justice/UST-001

SYSTEM NAME:

Bankruptcy Case Files and Associated Records.

SYSTEM LOCATION:

Ten offices of the United States Trustees, the three offices of Assistant United States Trustees. In addition, the Executive Office for United States Trustees maintains duplicate copies of certain pleadings and materials relating to specific cases or entities. (See appendix identified as JUSTICE/UST-999.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in bankruptcy proceedings (under Chapters 7, 11 and 13 of 11 U.S.C.) subsequent to September 30, 1979, including but not limited to debtors, creditors, bankruptcy trustees, agents representing debtors, creditors, and trustees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Petitions/orders for relief, (b) schedules of assets and liabilities of bankrupts, (c) lists of creditors, (d) statements of debtors' financial affairs, (e) docket cards (UST–001, 002, 003, and any alterations thereof), (f) alphabetical cross-reference index cards, (g) general correspondence regarding cases, (h) miscellaneous investigative records, (i) copies of certain petitions, pleadings or other papers filed with the court, including UST recommendations to court for appointment of trustee or examiner in Chapter 11, recommendations for dismissal or conversion, recommendations as to dischargeability, (j) appraisal reports, (k) names of approved depositories and amounts of funds deposited therein, (l) names of sureties and amounts of trustees' bonds, (m) tape or other recordings of creditors' meetings called pursuant to Section 341 of Title 11, U.S.C., for the purpose of examination of debtors by creditors, trustee and others, (n) plans filed under Chapters 11 or 13, (o) lists of persons serving as counsel, trustee, or other functionaries in bankruptcy cases, including compensation earned or sought by each, (p) lists of attorneys representing creditors in bankruptcy cases.

AUTHORITY FOR MAINTENENACE OF THE SYSTEM

These systems are established and maintained pursuant to 26 U.S.C. 586 and 11 U.S.C., especially Chapter 15 thereof.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

The records are used by personnel of the Executive Office and the United States Trustee field offices to determine the existence of a case, to ascertain the status of actions with respect to a case, and to ensure that timely action is taken as appropriate; and to determine the involvement by agents or other representatives of parties in such cases.

As provided in 11 U.S.C. 107, a paper filed in a case and the dockets of the bankruptcy court are public records and open to examination except when the court acts to protect an entity with respect to a trade secret or confidential research, development, or commercial information; or to protect a person with respect to scandalous or defamatory

matter contained in a paper filed in a case under title 11. If the court enters such a protective order, that portion of the record is only available upon the consent of the entity, so protected.

In addition, except when the court has moved to protect an entity, the records will be disseminated as a routine use of such records as follows: (1) A record, or any facts derived therefrom, may be disseminated in a proceeding before a court, an adjudicative body or any proceeding relevant to the administration of a case or any proceeding relevant to the administration of a case filed under title 11 of the United States Code in which the United States Trustees are authorized to appear, when (i) the United States Trustees, or (ii) any employee of the United States Trustees in his or her official capacity, or (iii) any employee of the United States Trustees in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (iv) the United States, where the United States Trustees determine that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the United States Trustees to be arguably relevant to the litigation; (2) a record, or any facts derived therefrom, may be disseminated in a proceeding before a court, an adjudicative body or any proceeding relevant to the administration of a case filed under title 11 of the United States Code in which the United States Trustee is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by the United States Trustees to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552 et seq., may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of Information to the National Archives and Records Administration: A record from the system of records may be disclosed to the National Archives and Records Administration (NARA) for records management inspections conducted under the authority of 44 U.S.C. Secs. 2904 and 2906.

Release of information to law enforcement or regulatory agencies: Information obtained by the U.S. Trustees will be transmitted to appropriate state, local, Federal or other law enforcement or regulatory agencies whenever a U.S. Trustee or the Director, Executive Office for U.S. Trustees or his designee believes that such transmittal in public interest except to the extent that such transmittal would conflict with any immunity granted by a court of competent jurisdiction in accordance with the provisions of Title 11, U.S.C.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All information, except that specified below in this paragraph is recorded on basic paper/cardboard material and maintained within metal file boxes, file cabinets, electric file/card retrievers or safes. Certain information from the documents, forms, lists and reports described under "categories of records in the system" will be entered into an automated information system and stored on magnetic disks for reproduction in report form at various times. This includes the case number, debtor's name, case status, type of case, assets of estate, dates of reports filed, trustee bonds, debtor's attorney's name and fees, calendar of meetings and hearings, creditor's committee status, plan and schedule due dates, and trustee/examiner names and dates appointed.

RETRIEVABILITY:

Banks, is maintained alphabetically. (Case files maintained in the Executive Office are assigned sequential file numbers and are cross referenced alphabetically by name of the debtor.) Automated information is retrieved by case number or report number.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with Departmental rules and procedures governing the handling of office records and computerized information. During duty hours access to this system is monitored and controlled by U.S. Trustee office personnel. During nonduty hours offices are locked.

RETENTION AND DISPOSAL:

Maintenance and disposition schedules are being developed within the Executive Office for U.S. Trustees. There is presently no authority to destroy any information within this system except those documents which are duplicates of records for which the bankruptcy courts maintain the official record copies.

SYSTEM MANAGER(S) AND ADDRESS:

System manager for the sytem in each office is the U.S. Trustee and in the Executive Office, the Chief, Management and Budget Section. (See appendix of addresses indentified as JUSTICE/UST-999.)

NOTIFICATION PROCEDURE:

Address inquires to the System Manager for the judicial district in which the case is pending, or was administered. (See appendix of addresses identified as JUSTICE/UST-999.)

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall ordinarily be made in person at the U.S. Trustee office in which the case is filed.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager (see appendix of addresses identified as JUSTICE/UST-999), stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Sources of information contained in this record are generally limited to debtors, creditors, trustees, examiners, attorneys, and other agents participating in the administration of a case, judges of the bankruptcy courts and employees of the U.S. Trustee offices.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/FBI-002

SYSTEM NAME:

The FBI Central Records System.

SYSTEM LOCATION:

a. Federal Bureau of Investigation, J. Edgar Hoover FBI Building, 10th and Pennsylvania Avenue, NW.,

Washington, DC 20535; b. 59 field divisions (see Appendix); c. *13* Legal Attaches (see Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals who relate in any manner to official FBI investigations including, but not limited to suspects, victims, witnesses, and close relatives and associates who are relevant to an investigation.

b. Applicants for and current and former personnel of the FBI and persons related thereto who are considered relevant to an applicant investigation, personnel inquiry, or persons related to personnel matters.

c. Applicants for and appointees to sensitive positions in the United States Government and persons related thereto who are considered relevant to the investigation.

d. Individuals who are the subject of unsolicited information, who offer unsolicited information, request assistance, and make inquiries concerning record material, including general correspondence, contacts with other agencies, businesses, institutions, clubs, the public and the news media.

e. Individuals, associated with administrative operations or services including pertinent functions, contractors and pertinent persons related thereto.

(All manner of information concerning individuals may be acquired in connection with and relating to the varied investigative responsibilities of the FBI which are further described in "Categories of Records in the System." Depending on the nature and scope of the investigation this information may include, among other things, personal habits and conduct, financial information, travel and organizational affiliation of individuals. The information collected is made a matter of record and placed in FBI files.)

CATEGORIES OF RECORDS IN THE SYSTEM:

The FBI Central Records Systems—The FBI utilizes a central records system of maintaining its investigative, personnel, applicant, administrative, and general files. This system consists of one numerical sequence of subject matter files, an alphabetical index to the files, and a supporting abstract system to facilitate processing and accountability of all important mail placed in files. This abstract system is both a textual and an automated capability for locating mail. Files kept in FBI field offices are also structured in the same manner, except they do not utilize an abstract system.

The FBI has 255 classifications used in its basic filing system which pertain primarily to Federal violations over which the FBI has investigative jurisdiction. However, included in the 255 classifications are personnel, applicant, and administrative matters to facilitate the overall filing scheme. These classifications are as follows (the word "obsolete" following the name of the classification indicates the FBI is no longer initiating investigative cases in these matters, although the material is retained for reference purposes):

1. Training Schools; National Academy Matters; FBI National Academy Applicants. Covers general information concerning the FBI National Academy, including background investigations of individual candidates.

2. Neutrality Matters. Title 18, United States Code, Sections 956 and 958–962; Title 22, United States Code, Sections 1934 and 401.

3. Overthrow or Destruction of the Government, Title 18, United States Code, Section 2385.

4. National Firearms Act; Federal Firearms Act; State Firearms Control Assistance Act; Unlawful Possession or Receipt of Firearms. Title 26, United States Code, Sections 5801–5812; Title 18, United States Code, Sections 921–928; Title 18, United States Code, Sections 1201–1203.

5. Income Tax. Covers violations of Federal income tax laws reported to the FBI. Complaints are forwarded to the Commissioner of the Internal Revenue Service.

6. Interstate Transportation of Strikebreakers. Title 18, United States Code, Section 1231.

7. Kidnaping. Title 18, United States Code, Sections 1201 and 1202.

8. Migratory Bird Act. Title 18, United States Code, Section 43; Title 16, United States Code, Section 703 through 718.

9. Extortion, Title 18, United States Code, Sections 876, 877, 875, and 873.

10. Red Cross Act. Title 18, United States Code, Sections 706 and 917.

11. Tax (Other than Income). This classification covers complaints concerning violations of Internal Revnue law as they apply to other than alcohol, social security and income and profits taxes, which are forwarded to the Internal Revenue Services.

12. Narcotics. This classifications covers complaints received by the FBI concerning alleged violations of Federal drug laws. Complaints are forwarded to the Administration (DEA), or the nearest district office of DEA.

13. Miscellaneous. Section 125, National Defense Act, Prostitution; Selling Whiskey Within Five Miles Of An Army Camp. 1920 only. Subjects were alleged violators of abuse of U.S. flag, fraudulent enlistment, seling liquor and operating houses of prostitution within restricted bounds of military reservations. Violations of Section 13 of the Selective Service Act (Conscription Act) were enforced by the Department of Justice as a war emergency measure with the Bureau exercising jusrisdiction in the detection and prosection of cases within the purview of that Section.

14. Sedition. Title 18, United States Code, Sections 2387, 2388, and 2391.

15. Theft from Interstate shipment Title 18, United States Code, Section 659; Title 18 United States Code, Section 660; Title 18, United States Code, Section 2117.

16. Violation of Federal injunction (obsolete). Consolidated into Classification 69, "Contempt of Court".

17. Fraud Against the Government—Veterans Administration, Veterans Administration Matters. Title 18, United States Code, Section 287, 289, 290, 371, or 1001; and Title 38, United States Code, Sections 787(a), 787(b), 3405, 3501, and 3502.

18. May Act Title 18, United States Code, Section 1384.

19. Censorship Matter (obsolete). Pub. L. 354, 77th Congress.

20. Federal Grain Standards Act (obsolete) 1920 only. Subjects were alleged violators of contracts for sale, shipment of interstate commerce, Section 5, U.S. Grain Standards Act.

21. Food and Drugs. This classification cover complaints received concerning alleged violations of the Food, Drug and Cosmetic Act; Tea Act; Import Milk Act Caustic Poison Act; and Filled Milk Act. These complaints are referred to the Commissioner of the Food and Drug Administration or the field component of that Agency.

22. National Motor Vehicle Traffic Act, 1922–27 (obsolete). Subjects possible violators of the National Motor Vehicle Theft Act; Automobiles seized by Prohibition Agents.

23. Prohibition. this classification covers complaints received concerning bootlegging activities and other violations of the alcohol tax laws. Such complaints are referred to the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, or field representatives of the Agency.

24. Profiteering 1920.42 (obsolete) Subjects are possible violators of the Lever Act—Profiteering in food and clothing or accused company was subject of file. Bureau conducted investigations to ascertain profits.

25. Selective Service Act; Selective Training and Service Act Title Selective Training and Service Act Title 50,

United States Code, Section 462; Title 50, United States Code, Section 459.

26. Interstate Transportation of Stolen Motor Vehicle; Interstate Transportation of Stolen Aircaft Title 18, United States Code, Sections 2311 (in part), 2312, and 2313.

27. Patent Matter. Title 35, United States Code, Sections 104 and 105.

28. Copyright Matter, Title 17, United States Code, Sections 104 and 105.

29. Bank Fraud and Embezzlement, Title 18, United States Code, Sections 212, 213, 215, 334, 655–657, 1004–1006, 1008, 1009, 1014, and 1306; Title 12, United States Code, Section 1725(g).

30. Interstate Quarantine Law, 1922–25 (obsolete). Subjects alleged violators of Act of February 15, 1893, as amended, regarding interstate travel of persons afflicted with infectious diseases. Cases also involved unlawful transportation of animals. Act of Feburary 2, 1903. Referral were made to Public Health Service and the Depatment of Agriculture.

31. White Slave Traffic Act. Title 18, United States Code, Sections 2421–2424.

32. Identification (Fingerprint Matters). This classification covers general information concerning Identification (fingerprint) matters.

33. Uniform Crime Reporting. This classification covers general information concerning the Uniform Crime Reports, a periodic compilation of statistics of criminal violations throughout the United States.

34. Volation of Lacy Act. 1922–43. (obsolete) Unlawful trasportation and shipment of black bass and fur seal skins.

35. Civil Service. This classification covers complaints received by the FBI concerning Civil Service matters which are referred to the Office of Personnel Management in Washington or regional offices of that Agency.

36. Mail Fraud. Title 18, United States Code, Section 1341.

37. False Claims Against the Government. 1921–22. (obsolete) Subjects submitted claims for allotment, vocational training, compensation as veterans under the Sweet Bill. Letters were generally referred elsewhere (Veterans Bureau). Violators apprehended for violation of Article No. 1, War Risk Insurance Act.

38. Application for Pardon to Restore Civil Rights. 1921–35. (obsolete) Subjects allegedly obtained their naturalization papers by fraudulent means. Cases later referred to Immigration and Naturalization Service.

39. Falsely Claiming Citizenship. (obsolete) Title 18, United States Code, Sections 911 and 1015(a)(b).

40. Passport and Visa Matter. Title 18, United States Code, Sections 1451–1546.

41. Explosives (obsolete). Title 50, United States Code, Sections 121 through 144.

42. Deserter; Deserter, Harboring. Title 10, United States Code, Sections 808 and 885.

43. Illegal Wearing of Uniforms; False Advertising or Misuse of Names, Words, Emblems or Insignia; Illegal Manufacture, Use, Possession, or Sale of Emblems and Insignia; Illegal Manufacture Possession, or Wearing of Civil Defense Insignia; Miscellaneous, Forging or Using Forged Certificate of Discharge from Military or Naval Service; Miscellaneous, Falsely Making or Forging Naval, Military, or Official Pass; Miscellaneous, Forging or Counterfeiting Seal of Department or Agency of the United States; Misuse of the Great Seal of the United States or of the Seals of the President or the Vice President of the United States; Unauthorized Use of "Johnny Horizon" Symbol; Unauthorized Use of Smokey Bear Symbol. Title 18, United States Code, Sections 702, 703, and 704; Title 18, United States Code, Sections 701, 705, 707, and 710; Title 36, United States Code, Section 182; Title 50, Appendix, United States Code, Section 2284; Title 46, United States Code, Section 249; Title 18, United States Code, Sections 498, 499, 506, 709, 711, 711a, 712, 713, and 714; Title 12, United States Code, Sections 1457 and 1723a; Title 22, United States Code, Section 2518.

44. Civil Rights; Civil Rights, Election Laws, Voting Rights Act, 1965, Title 18, United States Code, Sections 241, 242, and 245; Title 42, United States Code, Section 1973; Title 18, United States Code, Section 243; Title 18, United States Code, Section 244, Civil Rights Act—Federally Protected Activities; Civil Rights Act—Overseas Citizens Voting Rights Act of 1975.

45. Crime on the High Seas (Includes stowaways on boats and aircraft). Title 18, United States Code, Sections 7, 13, 1243, and 2199.

46. Fraud Against the Government; (Includes Department of Health, Education and Welfare; Department of Labor (CETA), and Miscellaneous Government Agencies) Anti-Kickback Statute; Dependent Assistance Act of 1950; False Claims, Civil; Federal-Aid Road Act; Lead and Zinc Act; Public Works and Economic Development Act of 1965; Renegotiation Act, Criminal; Renegotiation Act, Civil; Trade Expansion Act of 1962; Unemployment Compensation Statutes; Economic Opportunity Act. Title 50, United States Code, Section 1211 et seq.; Title 31, United States Code, Section 231; Title 41, United States Code, Section 119; Title 40, United States Code, Section 489.

47. Impersonation. Title 18, United States Code, Sections 912, 913, 915, and 916.

48. Postal. Violation (Except Mail Fraud). This classification covers inquiries concerning the Postal Service and complaints pertaining to the theft of mail. Such complaints are either forwarded to the Postmaster General or the nearst Postal Inspector.

49. National Bankruptcy Act. Title 18, United States Code, Sections 151–155.

50. Involuntary Servitude and Slavery. U.S. Constitution, 13th Amendment; Title 18, United States Code, Sections 1581–1588, 241, and 242.

51. Jury Panel Investigations. This classification covers jury panel investigations which are requested by the appropriate Assistant Attorney General as authorized by 28 U.S.C. 533 and AG memorandum #781, dated 11/9/72. These investigations can be conducted only upon such a request and consist of an indices and arrest check, and only in limited important trials where defendant could have influence over a juror.

52. Theft, Robbery, Embezzlement, Illegal Possession or Destruction of Government Property. Title 18, United States Code, Sections 641, 1024, 1660, 2112, and 2114. Interference With Government Communications, Title 18, U.S.C., Section 1632.

53. Excess Profits On Wool. 1918 (obsolete). Subjects possible violator of Government Control of Wool Clip of 1918.

54. Customs Laws and Smuggling. This classification covers complaints received concerning smuggling and other matters involving importation and entry of merchandise into and the exportation of merchandise from the United States. Complaints are referred to the nearest district office of the U.S. Customs Service or the Commissioner of Customs, Washington, DC.

55. Counterfeiting. This classification covers complaints received concerning alleged violations of counterfeiting of U.S. coins, notes, and other obligations and securities of the Government. These complaints are referred to either the Director, U.S. Secret Service, or the nearest office of that Agency.

56. Election Laws. Title 18, United States Code, Sections 241, 242, 245, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, and 607; Title 42, United States Code, Section 1973; Title 26, United States Code, Sections 9012 and 9042; Title 2, United States

Code, Sections 431, 432, 433, 434, 435, 436, 437, 439, and 441.

57. War Labor Dispute Act (obsolete). Pub. L. 89—77th Congress.

58. Bribery; Conflict of Interest. Title 18, United States Code, Sections 201–203, 205–211; Pub. L. 89–4 and 89–136.

59. World War Adjusted Compensation Act 1924–44. (obsolete) Bureau of Investigation was charged with the duty of investigating alleged violations of all sections of the World War Adjusted Compensation Act (Pub. L. 472, 69th Congress (H.R. 10277)) with the exception of Section 704.

60. Anti-Trust. Title 15, United States Code, Sections 1–7, 12–27, and 13.

61. Treason or *Misprision* of Treason. Title 18, United States Code, Sections 2381, 2382, 2389, 2390, 756, and 757.

62. Administrative Inquiries. Misconduct Investigations of Officers and Employees of the Department of Justice and Federal Judiciary; Census Matters (Title 13, United States Code, Sections 211–214, 221–224, 304, and 305) Domestic Police Cooperation; Eight-Hour-Day Law (Title 40, United States Code, Sections 321, 322, 325a, 326); Fair Credit Reporting Act (Title 15, United States Code, Sections 1681q and 1681r); Federal Cigarette Labeling and Advertising Act (Title 15, United States Code, Section 1333); Federal Judiciary Investigations; Kickback Racket Act (Title 18, United States Code, Section 874); Lands Division Matter, other Violations and/or Matters; Civil Suits—Miscellaneous; Soldiers' and Sailors' Civil Relief Act of 1940 (Title 50, Appendix, United States Code, Sections 510–590); Tariff Act of 1930 (Title 19, United States Code, Section 1304); Unreported Interstate Shipment of Cigarettes (Title 15, United States Code, Sections 375 and 376); Fair Labor Standards Act of 1938 (Wages and Hours Law) (Title 29, United States Code, Sections 201–219); Conspiracy (Title 18, United States Code, Section 371 (formerly Section 88, Title 18, United States Code); effective September 1, 1948).

63. Miscellaneous—Nonsubversive. This classification concerns correspondence from the public which does not relate to matters within FBI jurisdiction.

64. Foreign Miscellaneous. This classification is a control file utilized as a repository for intelligence information of value identified by country. More specific categories are placed in classification 108–113.

65. Espionage. Attorney General Guidelines on Foreign Counterintelligence; Internal Security Act of 1950; Executive Order 11905.

66. Administrative Matters. This classification covers such items as supplies, automobiles, salary matters and vouchers.

67. Personnel Matters. This classification concerns background investigations of applicants for employment with the FBI.

68. Alaskan matters (obsolete). This classification concerns FBI investigations in the Territory of Alaska prior to its becoming a State.

69. Contempt of Court. Title 18, United States Code, Sections 401, 402, 3285, 3691, 3692; Title 10, United States Code, Section 847; and Rule 42, Federal Rules of Criminal Procedure.

70. Crime on Government Reservation. Title 18, United States Code, Sections 7 and 13.

71. Bills of Lading Act, Title 49, United States Code, Section 121.

72. Obstruction of Criminal Investigations; Obstruction of Justice, Obstruction of Court Orders. Title 18, United States Code, Sections 1503 through 1510.

73. Application for Pardon After Completion of Sentence and Application for Executive Clemency. This classification concerns the FBI's background investigation in connection with pardon applications and requests for executive clemency.

74. Perjury. Title 18, United States Code, Sections 1621, 1622, and 1623.

75. Bondsmen and Sureties. Title 18, United States Code, Section 1506.

76. Escaped Federal Prisoner, Escape and Rescue; Probation Violator, Parole Violator; Parole Violator; Mandatory Release Violator. Title 18, United States Code, Sections 751–757, 1072; Title 18, United States Code, Sections 3651–3656; and Title 18, United States Code, Sections 4202–4207, 5037, and 4161–4166.

77. Applicants (Special Inquiry, Departmental and Other Government Agencies, except those having special classifications). This classification covers the background investigations conducted by the FBI in connection with the aforementioned positions.

78. Illegal Use of Government Transportation Requests. Title 18, United States Code, Section 287, 495, 508, 641, 1001 and 1002.

79. Missing Persons. This classification covers the FBI's Identification Division's assistance in the locating of missing persons.

80. Laboratory Research Matters. At FBI Headquarters this classification is used for Laboratory research matters. In field office files this classification covers the FBI's public affairs matters and involves contact by the FBI with the general public, Federal and State agencies, the Armed Forces, corporations, the news media and other outside organizations.

81. Gold Hoarding, 1933–45. (obsolete) Gold Hoarding investigations conducted in accordance with an Act of March 9, 1933 and Executive Order issued August 28, 1933. Bureau instructed by Department to conduct no further investigations in 1935 under the Gold Reserve Act of 1934. Thereafter, all correspondence referred to Secret Service.

82. War Risk Insurance (National Life Insurance (obsolete)). This classification covers investigations conducted by the FBI in connection with civil suits filed under this statute.

83. Court of Claims. This classification covers requests for investigation of cases pending in the Court of Claims from the Assistant Attorney General in charge of the Civil Division of the Department of Justice.

84. Reconstruction Finance Corporation Act (obsolete). Title 15, United States Code, Chapter 14.

85. Home Owner Loan Corporation (obsolete). This classification concerned complaints received by the FBI about alleged violations of the Home Owners Loan Act, which were referred to the Home Owners Loan Corporation. Title 12, United States Code, Section 1464.

86. Fraud Against the Government—Small Business Administration. Title 15, United States Code, Section 645; Title 18, United States Code, Sections 212, 213, 215, 216, 217, 657, 658, 1006, 1011, 1013, 1014, 1907, 1906 and 1909.

87. Interstate Transportation of Stolen Property (Heavy Equipment—Commercialized Theft). Title 18, United States Code, Sections 2311, 2314, 2315 and 2318.

88. Unlawful Flight to Avoid Prosecution, Custody, or Confinement; Unlawful Flight to Avoid Giving Testimony. Title 18, United States Code, Sections 1073 and 1074.

89. Assaulting or Killing a Federal Officer, Congressional Assassination Statute. Title 18, United States Code, Sections 1111, 1114, 2232.

90. Irregularities in Federal Penal Institutions. Title 18, United States Code, Sections 1791 and 1792.

91. Bank Burglary; Bank Larceny; Bank Robbery. Title 18, United States Code, Section 2113.

92. Racketeering Enterprise Investigations. Title 18, United States Code, Section 3237.

93. Ascertaining Financial Ability. This classification concerns requests by the Department of Justice for the FBI to ascertain a person's ability to pay a claim, fine or judgment obtained against him by the United States Government.

94. Research matters. This classification concerns all general correspondence of the FBI with private individuals which does not involve any substantive violation of Federal law.

95. Laboratory Cases (Examination of Evidence in Other Than Bureau's Cases). The classification concerns non-FBI cases where a duly constituted State, county or a municipal law enforcement agency in a criminal matter has requested an examination of evidence by the FBI Laboratory.

96. Alien Applicant (obsolete). Title 10, United States Code, Section 310.

97. Foreign Agents Registration Act. Title 18, United States Code, Section 951; Title 22, United States Code, Sections 611–621; Title 50, United States Code, Sections 851–857.

98. Sabotage. Title 18, United States Code, Sections 2151–2156; Title 50, United States Code, Section 797.

99. Plant Survey (obsolete). This classification covers a program where in the FBI inspected industrial plants for the purpose of making suggestions to the operations of those plants to prevent espionage and sabotage.

100. Domestic Security. This classification covers investigations by the FBI in the domestic security field, e.g., Smith Act violations.

101. Hatch Act (obsolete). Pub. L. 252, 76th Congress.

102. Voorhis Act, Title 18, United States Code, Section 1386.

103. Interstate Transportation of Stolen Livestock. Title 18, United States Code, Sections 667, 2311, 2316 and 2317.

104. Servicemen's Dependents Allowance Act of 1942 (obsolete). Pub. L. 625, 77th Congress, Sections 116–119.

105. Foreign Counterintelligence Matters. Attrorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

106. Alien Enemy Control; Escaped Prisoners of War and Internees. 1944–55 *(obsolete)*. Suspects were generally suspected escaped prisoners of war, members of foreign organizations, failed to register under the Alien Registration Act. Cases ordered closed by Attorney General after alien enemies returned to their respective countries upon termination of hostilities.

107. Denaturalization Proceedings (obsolete). This classification covers investigations concerning allegations that an individual fraudulently swore allegiance to the United States or in some other manner illegally obtained citizenship to the U.S., Title 8, United States Code, Section 738.

108. Foreign Travel Control (obsolete). This classification concerns security-type investigations wherein the subject is involved in foreign travel.

109. Foreign Political Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign political matters broken down by country.

110. Foreign Economic Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign economic matters broken down by country.

111. Foreign Social Conditions. This classification is a control file utilized as a repository for intelligence information concerning foreign social conditions broken down by country.

112. Foreign Funds. This classification is a control file utilized as a repository for intelligence information concerning foreign funds broken down by country.

113. Foreign Military and Naval Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign military and naval matters broken down by country.

114. Alien Property Custodian Matter (obsolete). Title 50, United States Code, Sections 1 through 38. This classification covers investigations concerning ownership and control of property subject to claims and litigation under this statute.

115. Bond Default; Bail Jumper. Title 18, United States Code, Sections 3146–3152.

116. Department of Energy Applicant; Department of Energy, Employee. This classification concerns background investigations conducted in connection with employment with the Department of Energy.

117. Department of Energy, Criminal. Title 42, United States Code, Sections 2011–2281; Pub. L. 93–438.

118. Applicant, Intelligence Agency (obsolete). This classification covers applicant background investigations conducted of persons under consideration for employment by the Centeral Intelligence Group.

119. Federal Regulations of Lobbying Act, Title 2, United States Code, Sections 261–270.

120. Federal Tort Claims Act. Title 28, United States Code, Sections 2671 to 2680. Investigations are conducted pursuant to specific request from the Department of Justice in connection with cases in which the Department of Justice represents agencies sued under the Act.

121. Loyalty of Government Employees (obsolete). Executive Oder 9835.

122. Labor Management Relations Act, 1947. Title 29, United States Code, Sections 161, 162, 176–178 and 186.

123. Special Inquiry, State Department, Voice of America (U.S. Information Center) (Pub. L. 402, 80th Congress) (obsolete). This classification covers loyalty and security investigations on personnel employed by or under consideration for employment for Voice of America.

124. European Recovery Program (International Cooperation Administration), formerly Foreign Operations Administration, Economic Cooperation Administration or E.R.P., European Recovery Programs; A.I.D., Agency for International Development (obsolete). This classification covers security and loyalty investigations of personnel employed by or under consideration for employment with the European Recovery Program, Pub. L. 472, 80th Congress.

125. Railway Labor Act; Railway Labor Act—Employer's Liability Act Title 45, United States Code, Sections 151–163 and 181–188.

126. National Security Resources Board, Special Inquiry (obsolete). This classification covers loyalty investigations on employees and applicants of the National Security Resources Board.

127. Sensitive Positions in the United States Government, Pub. L. 266 (obsolete). Pub. L. 266, 81st Congress.

128. International Development Program (Foreign Operations Administration) (obsolete). This classification covers background investigations conducted on individuals who are to be assigned to duties under the International Development Program.

129. Evacuation Claims (obsolete). Pub. L. 886, 80th Congress.

130. Special Inquiry, Armed Forces Security Act (obsolete). This classification covers applicant-type investigations conducted for the Armed Forces security agencies.

131. Admiralty Matter. Title 46, United States Code, Sections 741 to 752 and 781 to 799.

132. Special Inquiry, Office of Defense Mobilization (obsolete). This classification covers applicant-type investigations of individuals associated with the Office of Defense Mobilization.

133. National Science Foundation Act. Applicant (obsolete). Pub. L. 507, 81st Congress.

134. Foreign Counterintelligence Assets. This classification concerns individuals who provide information to the FBI concerning Foreign Counterintelligence matters.

135. PROSAB (Protection of Strategic Air Command Bases of the U.S. Air Force) (obsolete). This classification covered contacts with individuals with the aim to develop information useful to

protect bases of the Strategic Air Command.

136. American Legion Contact (obsolete). This classification covered liaison contacts with American Legion officers.

137. Informants, Other Than Foreign Counterintelligence Assets. This classification concerns individuals who furnish information to the FBI concerning criminal violations on a countinuing and confidential basis.

138. Loyalty of Employees of the United Nations and Other Public International Organizations. This classification concerns FBI investigations based on referrals from the Civil Service Commission wherein a question or allegation has been received regarding the applicant's loyalty to the U.S. Government as described in Executive Order 10422.

139. Interception of Communications (Formerly, Unauthorized Publication or Use of Communications). Title 47, United States Code, Section 605; Title 47, United States Code, section 501; Title 18, United States Code, Sections 2510–2513.

140. Security of Government Employees; S.G.E.; Fraud Against the Government, Executive Order 10450.

141. False Entries in Records of Interstate Carriers. Title 47, United States Code, Section 220; Title 49, United State Code, Section 20.

142. Illegal Use of Railroad Pass. Title 49, United State Code, Section 1.

143. Interstate Transportation of Gambling Devices. Title 15, United State Code, Sections 1171 throgh 1180.

144. Interstate Transportation of Lottery Tickets. Title 18, United State Code, Section 1301.

145. Interstate Transportation of Obscene Language. Title 18, United State Code, Sections 1462, 1464 and 1465.

146. Interstate Transportation of Prison-Made Goods. Title 18, United State Code, Sections 1761 and 1762.

147. Fraud Against the Government—Department of Housing and Urban Development, Matters. Title 18, United State Code, Sections 1010, 709, 657 and 1006; Title 12, United State Code, Sections 1715 and 1709.

148. Interstate Transportation of Fireworks. Title 18, United State Code, Section 836.

149. Destruction of Aircraft or Motor Vehicles. Title 18, United State Code, Sections 31 through 35.

150. Harboring of Federal Fugitives, Statistics (obsolete).

151. (Referral cases received from the Office of Personnel Management under Pub. L. 298). Agency for International Development; Department of Energy; National Aeronautics and Space Administration; National Science Foundation; Peace Corps; Action; U.S. Arms Control and Disarmament Agency; World Health Organization; International Labor Organization; International Communications Agency. This classification covers referrals from the Civil Service Commission where as allegation has been received regarding an applicant's loyalty to the U.S. Government. These referrals refer to applicants from Peace Corps.; Department of Energy, National Aeronautics and Space Administration, Nuclear Regulatory Commission, United States Arms Control and Disarmament Agency and the International Communications Agency.

152. Switchblade Knife Act. Title 15, United State Code, Sections 1241 through 1244.

153. Automobile Information Disclosure Act. Title 15, United States Code, Section 1231, 1232 and 1233.

154. Interstate Transportation of Unsafe Refrigerators. Title 15, United States Code. Section 1211 through 1214.

155. National Aeronautics and Space Act of 1958. Title 18, United States Code, Section 799.

156. Employee Retirement Income Security Act. Title 29, United States Code, Sections 1021–1029, 1111, 1131, and 1141; Title 18, United States Code. Sections 644, 1027, and 1954.

157. Civil Unrest. This classification concerns FBI responsibility for reporting information on civil disturbances or demonstrations. The FBI's investigative responsibility is based on the Attorney General's Guidelines for Reporting on Civil Disorders and Demonstrations Involving a Federal Interest which became effective April 5, 1976.

158. Labor-Management Reporting and Disclosure Act of 1959 (Security Matter (obsolete). Pub. L. 86–257, Section 504.

159. Labor-Management reporting and Disclosure Act of 1959 (Investigative Matter). Title 29, United States Code. Sections 501, 503, 504, 522, and 530.

160. Federal Train Wreck Statute. Title 18, United States Code, Section 1992.

161. Special Inquiries for White House, Congressional Committee and Other Government Agencies. This classification covers investigations requested by the White House, Congressional committees or other Government agencies.

162. Interstate Gambling Activities. This classification covers information acquired concerning the nature and scope of illegal gambling activities in each field office.

163. Foreign Police Cooperation. This classification covers requests by foreign police for the FBI to render investigative assistance to such agencies.

164. Crime Aboard Aircraft. Title 49, United States Code, Sections 1472 and 1473.

165. Interstate Transmission of Wagering Information. Title 18, United States Code, Section 1064.

166. Interstate Transportation in Aid of Racketeering. Title 18, United States Code, Section 1952.

167. Destruction of Interstate Property. Title 15, United States Code, Sections 1281 and 1282.

168. Interstate Transportation of Wagering Paraphernaila. Title 18, United States Code, Section 1953.

169. Hydraulic Brake Fluid Act (obsolete); 76 Stat. 437, Pub. L. 87–637.

170. Extremist Informants (obsolete). This classification concerns individuals who provided information on a continuing basis on various extremist elements.

171. Motor Vehicle Seat Belt Act (obsolete). Pub. L. 88–201, 80th Congress.

172. Sports Bribery. Title 18, U.S. Code, Section 224.

173. Public Accommodations, Civil Rights Act of 1964 Public Facilities, Civil Rights Act of 1964 Public Education, Civil Rights Act of 1964 Employment, Civil Rights Act of 1964. Title 42, United States Code, Section 2000; Title 18, United States Code, Section 245.

174. Explosives and Incendiary Devices; Bomb Threats (Formerly, Bombing Matters; Bombing Matters, Threats). Title 18, United States Code, Section 844.

175. Assaulting, Kidnapping or Killing the President (or Vice President) of the United States. Title 18, United States Code, Section 1751.

176. Anti-riot Laws. Title 18, United States Code, Section 245.

177. Discrimination in Housing. Title 42, United States Code, Sections 3601–3619 and 3631.

178. Interstate Obscene or Harrassing Telephone Calls. Title 47, United States Code, Section 223.

179. Extortionate Credit Transactions. Title 18, United States Code, Sections 891–896.

180. Desecration of the Flag. Title 18, United States Code, Section 700.

181. Consumer Credit Protection Act. Title 15, United States Code, Section 1611.

182. Illegal Gambling Business; Illegal Gambling Business, Obstruction; Illegal Gambling Business, Forfeiture. Title 18, United States Code, Section 1955; Title 18, United States Code, Section 1511.

183. Racketeer, Influence and Corrupt Organizations, Title 18, United States Code, Sections 1961–1968.

184. Police Killings. This classification concerns investigations conducted by the FBI upon written request from local Chief of Police or duly constituted head of the local agency to actively participate in the investigation of the killing of a police officer. These investigations are based on a Presidential Directive dated June 3, 1971.

185. Protection of Foreign Officials and Officials Guests of the United States. Title 18, United States Code, Sections 112, 970, 1116, 1117 and 1201.

186. Real Estate Settlement Procedures Act of 1974. Title 12, United States Code, Section 2602; Title 12, Unites States Code, Section 2606, and Title 12, United States Code, Section 2607.

187. Privacy Act of 1974, Criminal. Title 5, United States Code, Section 552a.

188. Crime Resistance. This classification covers FBI efforts to develop new or improved approaches, techniques, systems, equipment and devices to improve and strengthen law enforcement as mandated by the Omnibus Crime Control and Safe Streets Act of 1968.

189. Equal Credit Opportunity Act. Title 15, United States Code, Section 1691.

190. Freedom of Information/Privacy Acts. This classification covers the creation of a correspondence file to preserve and maintain accurate records concerning the handling of requests for records submitted pursuant to the Freedom of Information—Privacy Acts.

191. False Identity Matters. (obsolete) This classification covers the FBI's study and examination of criminal elements efforts to create false identities.

192. Hobbs Act—Financial Institutions; Commercial Institutions. Title 18, United States Code, Section 1951.

193. Hobbs Act—Commercial Institutions (obsolete). Title 18, United States Code, Section 1951; and Title 47, United States Code, Section 506.

194. Hobbs Act—Corruption of Public Officials, Title 18, United States Code, Section 1951.

195. Hobbs Act—Labor Related. Title 18, United States Code, Section 1951.

196. Fraud by Wire. Title 18, United States Code, Section 1343.

197. Civil Actions or Claims Against the Government. This classification covers all civil suits involving FBI matters and most administrative claims filed under the Federal Tort Claims Act arising from FBI activities.

198. Crime on Indian Reservations. Title 18, United States Code, Sections 1151, 1152, and 1153.

199. Foreign Counterintelligence—Terrorism. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

200. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

201. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

202. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

203. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

204. Federal Revenue Sharing. This classification covers FBI investigations conducted where the Attorney General has been authorized to bring civil action whenever he has reason to believe that a pattern or practice of discrimination in disbursement of funds under the Federal Revenue Sharing status exists.

205. Foreign Corrupt Practices Act of 1977. Title 15, United States Code, Section 78.

206. Fraud Against the Government—Department of Defense, Department of Agriculture, Department of Commerce, Community Services Organization, Department of Transportation. (See classification 46 (supra) for statutory authority for this and the four following classifications.

207. Fraud Against the Government—Environmental Protection Agency, National Aeronautics and Space Administration, Department of Energy, Department of Transportation.

208. Fraud Against the Government—General Services Administration.

209. Fraud Against the Government—Department of Health, and Human Services (Formerly, Department of Health, Education, and Welfare).

210. Fraud Against the Government—Department of Labor.

211. Ethics in Government Act of 1978, Title VI (Title 28, Sections 591–596).

212. Foreign Counterintelligency—Intelligence Community Support. This is an administrative classification for the FBI's operational and technical support to other Intelligence Community agencies.

213. Fraud Against the Government—Department of Education.

214. Civil Rights of Institutionalized Persons Act (Title 42, United States Code, section 1997).

215. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

216. Foreign Counterintelligence Matters. (Same authority as 215)

217. Foreign Counterintelligence Matters. (Same authority as 215)

218. Foreign Counterintelligence Matters. (Same authority as 215)

219. Foreign Counterintelligence Matters. (Same authority as 215)

220. Foreign Counterintelligence Matters. (Same authority as 215)

221. Foreign Counterintelligence Matters. (Same authority as 215)

222. Foreign Counterintelligence Matters. (Same authority as 215)

223. Foreign Counterintelligence Matters. (Same authority as 215)

224. Foreign Counterintelligence Matters. (Same authority as 215)

225. Foreign Counterintelligence Matters. (Same authority as 215)

226. Foreign Counterintelligence Matters. (Same authority as 215)

227. Foreign Counterintelligence Matters. (Same authority as 215)

228. Foreign Counterintelligence Matters. (Same authority as 215)

229. Foreign Counterintelligence Matters. (Same authority as 215)

*230. thru 240. FBI Training Matters

241. DEA Applicant Investigations

242. Automation Matters

243. Intelligence Identities Protection Act of 1982

244. Hostage Rescue Team

245. Drug Investigative Task Force

246. thru 248. Foreign Counterintelligence Matters (Same authority as 215)

249. Toxic Waste Matters—Investigations involving toxic or hazardous waste violations.

250. Tampering With Consumer Products (Title 18, U.S. Code, Section 1365)

251. Controlled Substance—Robbery;—Burglary (Title 18, U.S. Code, Section 2118)

252. Violent Crime Apprehension Program (VICAP). Case folders containing records relevant to the VICAP Program, in conjunction with the National Center for the Analysis of Violent Crime Record System at the FBI Academy, Qantico, Virginia.

253. False Identification Crime Control Act of 1982 (Title 18, U.S. Code, Section 1028—Fraud and Related Activity in Connection With Identification Documents, and Section 1738–Mailing Private Identification Documents Without a Disclaimer)

254. Destruction of Energy Facilities (Title 18, U.S. Code, Section 1365)

relates to the destruction of property of nonnuclear energy facilities.

255. Counterfeiting of State and Corporate Securities (Title 18, U.S. Code, Section 511) covers counterfeiting and forgery of all forms of what is loosely interpreted as securities.

256. Hostage Taking—Terrorism (Title 18, U.S. Code, Section 1203) prohibits taking of hostage(s) to compel third party to do or refrain from doing any act.

Records Maintained in FBI Field Divisions—FBI field divisions maintain for limited periods of time investigative, administrative and correspondence records, including files, index cards and related material, some of which are duplicated copies of reports and similar documents forwarded to FBI Headquarters. Most investigative activities conducted by FBI field divisions are reported to FBI Headquarters at one or more stages of the investigation. There are, however, investigative activities wherein no reporting was made to FBI Headquarters, e.g., pending cases not as yet reported and cases which were closed in the field division for any of a number of reasons without reporting to FBI Headquarters.

Duplicate records and records which extract information reported in the main files are also kept in the various divisions of the FBI to assist them in their day-to-day operation. These records are lists of individuals which contain certain biographic data, including physical description and photograph. They may also contain information concerning activities of the individual as reported to FBIHQ by the various field offices. The establishment of these lists is necessiated by the needs of the Division to have immediate access of Pertinent information duplicative of data found in the central Records without the delay caused by a time-consuming manual search of central indices. The manner of segregating these individuals varies depending on the particular needs of the FBI Divison. The information pertaining to individuals who are a part of the list is derivative of information contained in the Central Records System. These duplicative records fall into the following categories:

(2) Listings of individuals used to assist in the location and apprehension of individuals for whom legal process is outstanding (fugitives):

(2) Listings of individuals used in the identification of particular offenders in cases where the FBI has jurisdiction. These listings include various photograph albums and background data concerning persons who have been formerly charged with a particular crime and who may be suspect in similar criminal activities; and photographs of individuals who are unknown but suspected of involvement in a particular criminal activity, for example, bank surveillance photographs:

(3) Listings of individuals as part of an overall criminal intelligence effort by the FBI. This would include photograph albums, lists of individuals known to be involved in criminal activity, including theft from interstate shipment, interstate transportation of stolen property, and individuals in the upper echelon of organized crime.

(4) Listings of individuals in connection with the FBI's mandate to carry out Presidential directives on January 8, 1943, July 24, 1953. December 15, 1953, and February 18, 1976, which designated the FBI to carry out investigative work in matters relating to espionage, sabotage, and foreign counterintelligence. These listings may include photograph albums and other listings containing biographic data regarding individuals. This would include lists of identified and suspected foreign intelligence agents and informants:

(5) Special notices duplicative of the central indices used to access the Central Records System have been created from time to time in conjunction with the administration and investigation of major cases. This duplication and segregation facilities access to documents prepared in connection with major cases.

In recent years, as the emphasis on the investigation of white collar crime, organized crime, and hostile foreign intelligence operations has increased, the FBI has been confronted with increasingly complicated cases, which require more intricate information processing capabilities. Since these complicated investigations frequently involve massive volumes of evidence and other investigative information, the FBI uses its computers, when neccessary to collate, analyze, and retrieve investigative information in the most accurate and expeditious manner possible. It should be noted that all investigative information, which is placed in computerized form, is actually extracted from the main files and that the duplicative computerized information is only maintained as necessary to support the FBI's investigative activities. Information from these internal computerized subsystems of the "Central Records System" is not accessed by any other agency. All disclosures of computerized information are made in printed form in accordance with the routine uses which are set forth below.

Records also are maintained on a temporary basis relevant to the FBI's domestic police cooperation program, where assistance in obtaining information is provided to state and local police agencies.

Also, personnel type information dealing with such matters as attendance and producton and accuracy requirements is maintained by some divisions.

(The following chart identifies various listings or indexes maintained by the FBI which have been or are being used by various divisions of the FBI in their day-to-day operations. The chart identifies the list by name, description and use, and where maintained, i.e. FBI Headquarters and/or Field Office. The number in parenthesis in the field office column indicates the number of field offices which maintain these. The chart indicates, under "status of index," those indexes which are in current use (designated by the word "active") and those which are no longer being used, although maintained (designated by the word "inactive"). There are 27 separate indices which are classified in accordance with existing regulations and are not included in this chart. The following indices are no longer being used by the FBI and are being maintained at FBIHQ pending receipt of authority to destroy: Black Panther Party Photo Index; Black United Front Index; Security Index; and Wounded Knee Album.

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Administrative Index (ADEX)	Consists of cards with descriptive data on individuals who were subject to investigation in a national emergency because they were believed to constitute a potential or active threat to the internal security of the United States. When ADEX was started in 1971, it was made up of people who were formerly on the Security Index, Reserve Index, and Agitator Index. The index is maintained in two separate locations in FBI Headquarters. ADEX was discontinued in January 1978.	Inactive	Yes	Yes (29).

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Anonymous Letter File	Consists of photographs of anonymous communications and extortionate credit transactions; kidnapping, extortion and threatening letters.	Active	Yes	No.
Associates of DEA Class 1 Narcotics Violators Listing.	Consists of a computer listing of individuals whom DEA has identified as associates of Class 1 Narcotics Violators.	Active	Yes	Yes (59).
Background Investigation Index—Department of Justice.	Consists of cards on persons who have been the subject of a full field investigation in connection with their consideration for employment in sensitive positions with Department of Justice, such as U.S. Attorney, Federal judge, or a high level Department position.	Active	Yes	No.
Background Investigation Index—White House, Other Executive Agencies, and Congress.	Consists of cards on persons who have been the subject of a full field investigation in connection with their consideration for employment in sensitive positions with the White House, Executive agencies (other than the Department of Justice) and the Congress.	Active	Yes	No.
Bank Fraud and Embezzlement Index.	Consists of individuals who have been the subject of "Bank Fraud and Embezzlement" investigation. This file is used as an investigative aid.	Active	No	Yes (1).
Bank Robbery Album	Consists of photos of bank robbers, burglars, and larceny subjects. In some field offices it will also contain pictures obtained from local police departments of known armed robbers and thus potential bank robbers. The index is used to develop investigative leads in bank robbery cases and may also be used to show to witnesses of bank robberies. It is usually filed by race, height, and age. This index is also maintained in one resident agency (a suboffice of a field office).	Active	No	Yes (47).
Bank Robbery Nickname Index	Consists of nicknames used by known bank robbers. The index card on each would contain the real name and method of operation and are filed in alphabetical order.	Active	No	Yes (1).
Bank Robbery Note File	Consists of photographs of notes used in bank robberies in which the suspect has been identified. This index is used to help solve robberies in which the subject has not been identified but a note was left. The note is compared with the index to try to match the sentence structure and handwriting for the purpose of identifying possible suspects.	Active	Yes	No.
Bank Robbery Suspect Index	Consists of a control file or index cards with photos, if available, of bank robbers or burglars. In some field offices these people may be part of the bank robbery album. This index is generally maintained and used in the same manner as the bank robbery album.	Active	No	Yes (33).
Car Ring Case Photo Album	Consists of photos of subjects and suspects involved in a large car theft ring investigation. It is used as an investigative aid.	Active	No	Yes (3).
Car Ring Case Photo Album and Index.	Consists of photos of subjects and suspects involved in a large car theft ring investigation. The card index maintained in addition to the photo album contains the names and addresses appearing on fraudulent title histories for stolen vehicles. Most of these names appearing on these titles are fictitious. But the photo album and card indexes are used as an investigative aid.	Active	No	Yes (1).
Car Ring Case Toll Call Index	Consists of cards with information on persons who subscribe to telephone numbers to which toll calls have been placed by the major subjects of a large car theft ring investigation. It is maintained numerically by telephone number. It is used to facilitate the development of probable cause for a court-approved wiretap.	Active	No	Yes (2).
Car Ring Theft Working Index	Contains cards on individuals involved in car ring theft cases on which the FBI laboratory is doing examination work.	Active	Yes	No.
Cartage Album	Consists of photos with descriptive data of individuals who have been convicted of theft from interstate shipment or interstate transportation of stolen property where there is a reason to believe they may repeat the offense. It is used in investigating the above violations.	Active	No	Yes (3).
Channelizing Index	Consists of cards with the names and case file numbers of people who are frequently mentioned in information reports. The index is used to facilitate the distributing or channeling of informant reports to appropriate files.	Active	No	Yes (9).
Check Circular File	Consists of fliers filed numerically in a control file on fugitives who are notorious fraudulent check passers and who are engaged in a continuing operation of passing checks. The fliers which include the subject's name, photo, a summary of the subject's method of operation and other identifying data is used to alert other FBI field offices and business establishments which may be the victims of bad checks.	Active	Yes	Yes (43).
Computerized Telephone Number File (CTNF) Intelligence.	Consists of a computer listing of telephone numbers (and subscribers' names and addresses) utilized by subjects and/or certain individuals which come to the FBI's attention during major investigations. During subsequent investigations, telephone numbers, obtained through subpoenas, are matched with the telephone numbers on file to determine connections or associations.	Active	Yes	No.
Con Man Index	Consists of computerized names of individuals, along with company affiliation, who travel nationally and internationally while participating in large-dollar-value financial swindles.	Active	Yes	No.
Confidence Game (Flim Flam) Album.	Consists of photos with descriptive information on individuals who have been arrested for confidence games and related activities. It is used as an investigative aid.	Active	No	Yes (4).
Copyright Matters Index	Consists of cards of individuals who are film collectors and film titles. It is used as a reference in the investigation of copyright matters.	Active	No	Yes (1).
Criminal Intelligence Index	Consists of cards with name and file number of individuals who have become the subject of an antiracketeering investigation. The index is used as a quick way to ascertain file numbers and the correct spelling of names. This index is also maintained in one resident agency.	Active	No	Yes (2).
Criminal Informant Index	Consists of cards containing identity and brief background information on all active and inactive informants furnishing information in the criminal area.	Active	Yes	No.
DEA Class 1 Narcotics Violators Listing.	Consists of a computer listing of narcotic violators—persons known to manufacture, supply, or distribute large quantities of illicit drugs—with background data. It is used by the FBI in their role of assisting DEA in disseminating intelligence data concerning illicit drug trafficking. This index is also maintained in two resident agencies.	Active	Yes	Yes (59).
Deserter Index	Contains cards with the names of individuals who are known military deserters. It is used as an investigative aid.	Active	No	Yes (4).
False Identities Index	Contains cards with the names of deceased individuals whose birth certificates have been obtained by other persons for possible false identification uses and in connection with which the FBI laboratory has been requested to perform examinations.	Inactive	Yes	No

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
False Identities List	Consists of a listing of names of deceased individuals whose birth certificates have been obtained after the person's death, and thus whose names are possibly being used for false identification purposes. The listing is maintained as part of the FBI's program to find persons using false identities for illegal purposes.	Inactive	No	Yes (31).
False Identity Photo Album	Consists of names and photos of people who have been positively identified as using a false identification. This is used as an investigative aid in the FBI's investigation of false identities.	Inactive	No	Yes (2).
FBI/Inspector General (IG) Case Pointer System (FICPS).	Consists of computerized listing of individual names of organizations which are the subject of active and inactive fraud investigations, along with the name of the agency conducting the investigation. Data is available to IG offices throughout the federal government to prevent duplication of investigative activity.	Active	Yes	No.
FBI Wanted Persons Index	Consists of cards on persons being sought on the basis of Federal warrants covering violations which fall under the jurisdiction of the FBI. It is used as a ready reference to identify those fugitives.	Active	Yes	No.
Foreign Counterintelligence (FCI)	Consists of cards with identity background data on all active and inactive operational and informational assets in the foreign counterintelligence field. It is used as a reference aid of the FCI Asset program.	Active	Yes	No.
Fraud Against the Government Index.	Consists of individuals who have been the subject of a "fraud against the Government" investigation. It is used as investigative aid.	Active	No	Yes (1).
Fugitive Bank Robbers File	Consists of fliers on bank robbery fugitives filed sequentially in a control file. FBI Headquarters distributes to the field offices fliers on bank robbers in a fugitive status for 15 or more days to facilitate their location.	Active	Yes	Yes (43).
General Security Index	Contains cards on all persons that have been the subject of a security classification investigation by the FBI field office. These cards are used for general reference purposes.	Active	No	Yes (1).
Hoodlum License Plate Index	Consists of cards with the license plates numbers and descriptive data on known hoodlums and cars observed in the vicinity of hoodlum homes. It is used for quick identification of such person in the course of investigation. The one index which is not fully retrievable in maintained by a resident agency.	Active	No	Yes (3)
Identification Order Fugitive Flier File.	Consists of fliers numerically in a control file. When immediate leads have been exhausted in fugitive investigations and a crime of considerable public interest has been committed, the fliers are given wide circulation among law enforcement agencies throughout the United States and are posted in post offices. The fliers contain the fugitive's photograph, fingerprints, and description.	Active	Yes	Yes (49).
Informant Index	Consists of cards with the name, symbol numbers, and brief background information on the following categories of active and inactive informants, top echelon criminal informants, security informants, criminal information, operational and informational assets, extremist informants (discontinued), plant informant—informants on and about certain military bases (discontinued), and potential criminal informants.	Active	No	Yes (59).
Informants in Other Field Offices, Index of.	Consists of cards with names and/or symbol numbers of informants in other FBI field offices that are in a position to furnish information that may be of value to other field offices. Basic background information would also be included on the index card.	Active	No	Yes (15).
Interstate Transportation of Stolen Aircraft Photo Album.	Consists of photos and descriptive data on individuals who are suspects known to have been involved in interstate transportation of stolen aircraft. It is used as an investigate aid.	Active	No	Yes (1).
IRS Wanted List	Consists of one-page fliers from IRS on individuals with background information who are wanted by IRS for tax purposes. It is used in the identification of persons wanted by IRS.	Active	No	Yes (11)
Kidnapping Book	Consists of data, filed chronologically, on kidnappings that have occurred since the early fifties. The victims' names and the suspects, if known, would be listed with a brief description of the circumstances surrounding the kidnapping. The file is used as a reference aid in matching up prior methods of operation in unsolved kidnapping cases.	Active	Yes	No.
Known Check Passers Album	Consists of photos with descriptive data of persons known to pass stolen, forged, or counterfeit checks. It is used as an investigative aid.	Active	No	Yes (4).
Known Gambler Index	Consists of cards with names, descriptive data, and sometimes photos of individuals who are known bookmakers and gamblers. The index is used in organized crime and gambling investigations. Subsequent to GAO's review, and at the recommendation of the inspection team at one of the two field offices where the index was not fully retrievable, the index was destroyed and thus is not included in the total.	Active	No	Yes (5).
La Cosa Nostra (LCN) Membership Index.	Contains cards on individuals having been identified as members of the LCN index. The cards contain personal data and pictures. The index is used solely by FBI agents for assistance in investigating oranized crime matters.	Active	Yes	Yes (55)
Leased Line Letter Request Index	Contains cards on individuals and organizations who are or have been the subject of a national security electronic surveillance where a leased line letter was necessary. It is used as an administrative and statistical aid.	Active	Yes	No.
Mail Cover Index	Consists of cards containing a record of all mail covers conducted on individuals and groups since about January 1973. It is used for reference in preparing mail cover requests.	Active	Yes	No.
Military Deserter Index	Consists of cards containing the names of all military deserters where the various military branches have requested FBI assistance in locating. It is used as an administrative aid.	Active	Yes	No.
National Bank Robbery Album	Consists of fliers on bank robbery suspects held sequentially in a control file. When an identifiable bank camera photograph is available and the case has been under investigation for 30 days without identifying the subject. FBIHQ sends a flier to the field offices to help identify the subject.	Active	Yes	Yes (42).
National Fraudulent Check File	Contains photographs of the signatures on stolen and counterfeit checks. It is filed alphabetically but there is not way of knowing if the names are real or fictitious. The index is used to help solve stolen check cases by matching checks obtained in such cases against the index to identify a possible suspect.	Active	Yes	No.

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
National Security Electronic Surveillance Card File.	Contains cards recording electronic surveillances previously authorized by the Attorney General and previously and currently authorized by the FISC; current and previous assets in the foreign counterintelligence field; and a historical, inactive section which contains cards believed to record nonconsented physical entries in national security cases, previous toll billings, mail covers and leased lines. The inactive section also contains cards reflecting previous Attorney General approvals and denials for warrantless electronic surveillance in the national security cases.	Active	Yes	No.
Night Depository Trap Index	Contains cards with the names of persons who have been involved in the theft of deposits made in bank night depository boxes. Since these thefts have involved various methods, the FBI uses the index to solve such cases by matching up similar methods to identify possible suspects.	Active	Yes	No.
Nonjack Index	Contains cards with information regarding possible suspects and individuals who furnish information relative to the investigation of the 1972 hijacking of a Northwest Orient Airlines flight by an unknown subject with alias of "D. B. Cooper".	Active	No	Yes (1).
Organized Crime Photo Album	Consists of photos and background information on individuals involved in organized crime activities. The index is used as a ready reference in identifying organized crime figures within the field offices' jurisdiction.	Active	No	Yes (13).
Photospread Identification Elimination File.	Consists of photos of individuals who have been subjects and suspects in FBI investigations. It also includes photos received from other law enforcement agencies. These pictures can be used to show witnesses of certain crimes.	Active	No	Yes (14).
Prostitute Photo Album	Consists of photos with background data on prostitutes who have prior local or Federal arrests for prostitution. It is used to identify prostitutes in connection with investigations under the White Slave Traffic Act.	Active	No	Yes (4).
Royal Canadian Mounted Police (RCMP) Wanted Circular File.	Consists of a control file of individuals with background information of persons wanted by the RCMP. It is used to notify the RCMP if an individual is located.	Active	No	Yes (17)
Security informant index	Consists of cards containing identity and brief background information on all active and inactive informants furnishing information in the criminal area.	Active	Yes	No.
Security Subjects Control Index	Consists of cards containing the names and case file numbers of individuals who have been subject to security investigations check. It is used as a reference source.	Active	No	Yes (1)
Security Telephone Number Index	Contains cards with telephone subscriber information subpenaed from the telephone company in any security investigation. It is maintained numerically by the last three digits in the telephone number. It is used for general reference purposes in security investigations.	Active	No	Yes (1)
Selective Service Violators Index	Contains cards on individuals being sought on the basis of Federal warrants for violation of the Selective Service Act.	Active	Yes	No.
Sources of information Index	Consists of cards on individuals and organizations such as banks, motels, local governments that are willing to furnish information to the FBI with sufficient frequency to justify listing for the benefit of all agents. It is maintained to facilitate the use of such sources.	Active	No	Yes (10).
Special Services Index	Contains cards of prominent individuals who are in a position to furnish assistance in connection with FBI investigative responsibility.	Active	No	Yes (28).
Stolen Checks and Fraud by Wire Index.	Consists of cards on individuals involved in check and fraud by wire violations. It is used as an investigative aid.	Active	No	Yes (1).
Stop Notices Index	Consists of cards on names of subjects or property where the field office has placed a stop at another law enforcement agency or private business such as pawn shops in the event information comes to the attention of that agency concerning the subject or property. This is filed numerically by investigative classification. It is used to insure that the agency where the stop is placed is notified when the subject is apprehended or the property is located or recovered.	Active	No	Yes (43).
Surveillance Locator Index	Consists of cards with basic data on individuals and businesses which have come under physical surveillance in the city in which the field office is located. It is used for general reference purposes in antiracketeering investigations.	Active	No	Yes (2).
Telephone Number Index—Gamblers.	Contains information on persons identified usually as a result of a subpena for the names of subscribers to particular telephone numbers or toll records for a particular phone number of area gamblers and bookmakers. The index cards are filed by the last three digits of the telephone number. The index is used in gambling investigations.	Active	No	Yes (2).
Telephone Subscriber and Toll Records Check Index	Contains cards with information on person identified as the result of a formal request or subpena to the phone company for the identity of subscribers to particular telephone numbers. The index cards are filed by telephone number and would also include identity of the subscriber, biling parties identity, subscribers address, date of request from the telephone company, and file number.	Active	No	Yes (1).
Thieves Couriers and Fences Photo index.	Consists of photos and background information on individuals who are or are suspected of being thieves, couriers, or fences based on their past activity in the area of interstate transportation of stolen property. It is used as an investigative aid.	Active	No	Yes (4).
Toll Record Request Index	Contains cards on individuals and organizations on whom toll records have been obtained in national security related cases and with respect to which FBIHQ had to prepare a request letter. It is used primarily to facilitate the handling of repeat requests on individuals listed.	Active	Yes	No.
Top Burglar Album	Consists of photos and background data of known and suspect top burglars involved in the area of interstate transportation of stolen property. It is used as an investigative aid.	Active	No	Yes (4).
Top Echelon Criminal Informer Program (TECIP) Index	Consists of cards containing identity and brief background information on individuals who are either furnishing high level information in the organized crime area or are under development to furnish such information. The index is used primarily to evaluate, corroborate, and coordinate informant information and to develop prosecutive data against racket figures under Federal, State, and local statutes.	Active	Yes	No.
Top Ten Program File	Consists of fliers, filed numerically in a control file, on fugitives considered by the FBI to be 1 of the 10 most wanted. Including a fugitive on the top 10 usually assures a greater national news coverage as well as nationwide circulation of the flier.	Active	Yes	Yes (44).

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Top Thief Program Index	Consists of cards of individuals who are professional burglars, robbers, or fences dealing in items likely to be passed in interstate commerce or who travel interstate to commit the crime. Usually photographs and background information would also be obtained on the index card. The index is used as an investigative aid.	Active	No	Yes (27).
Truck Hijack Photo Album	Contains photos and descriptive data of individuals who are suspected truck hijackers. It is used as an investigative aid and for displaying photos to witnesses and/or victims to identify unknown subjects in hijacking cases.	Active	No	Yes (4).
Truck Thief Suspect Photo Album	Consists of photos and background data on individuals previously arrested or are currently suspects regarding vehicle theft. The index is used as an investigative aid.	Active	No	Yes (1).
Traveling Criminal Photo Album	Consists of photos with identifying data of individuals convicted of various criminal offenses and may be suspects in other offenses. It is used as an investigative aid.	Active	No	Yes (1).
Veterans Administration (VA)/Federal Housing Administration Matters (FHA) Index.	Consists of cards of individuals who have been subject of an investigation relative to VA and FHA matters. It is used an an investigative aid.	Active	No	Yes (1).
Wanted Fliers File	Consists of fliers, filed numerically in a control file, on badly wanted fugitives whose apprehension may be facilitated by a flier. The flier contains the names, photographs, aliases, previous convictions, and a caution notice.	Active	Yes	Yes (46).
Wheeldex	Contains the nicknames and the case file numbers of organized crime members. It is used in organized crime investigations.	Active	No	Yes (1).
White House Special Index	Contains cards on all potential White House appointees, staff members, guests, and visitors that have been referred to the FBI by the White House security office for a records check to identify any adverse or derogatory information. This index is used to expedite such check in view of the tight time frame usually required.	Active	Yes	No.
Witness Protection Program Index	Contains cards on individuals who have been furnished a new identity by the U.S. Justice Department because of their testimony in organized crime trials. It is used primarily to notify the U.S. Marshalls Service when information related to the safety of a protected witness comes to the FBI's attention.	Active	Yes	No.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Records Act of 1950 Title 44, United States Code, Chapter 31, Section 3101; and Title 41, Code of Federal Regulations Subpart 101–11.202, requires Federal agencies to insure that adequate and proper records are made and preserved records are made and preserved to document the organization, functions, policies, decisions, procedures and transactions and to protect the legal and financial rights of the Federal Government. Title 28, United States Code, Section 534, delegates authority to the Attorney General to acquire, collect, classify, and preserve identification, criminal identification, crime and other records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records, both investigative and administrative, are maintained in this system in order to permit the FBI to function efficiently as an authorized, responsive component of the Department of Justice. Therefore, information in this system is disclosed to officials and employees of the Department of Justice, and/or all components thereof, who have need of the information in the performance of their official duties.

Personal information from this system may be disclosed as a routine use to any Federal agency where the purpose in making the disclosure is compatible with the law enforcement purpose for which it was collected, e.g., to assist the recipient agency in conducting a lawful criminal or intelligence investigation, to assist the recipient agency in making a determination concerning an individual's suitability for employment and/or trustworthiness for employment and/or trustworthiness for access clearance purposes, or to assist the recipient agency in the performance of any authorized function where access to records in this system is declared by the recipient agency to be relevant to that function.

In addition, personal information may be disclosed from this system to members of the Judicial Branch of the Federal Government in response to a specific request, or at the initiation of the FBI, where disclosure appears relevant to the authorized function of the recipient judicial office or court system. An example would be where an individual is being considered for employment by a Federal judge.

Information in this system may be disclosed as a routine use to any state or local government agency directly engaged in the criminal justice process, e.g., police, prosecution, penal, probation and parole, and the judiciary, where access is directly related to a law enforcement function of the recipient agency, e.g., in connection with a lawful criminal or intelligence investigation, or making a determination concerning an individual's suitability for employment as a state or local law enforcement officer. Disclosure to a state or local government agency, (a) not directly engaged in the criminal justice process or, (b) for a licensing or regulatory function, is considered on an individual basis only under exceptional circumstances, as determined by the FBI.

Information in this system pertaining to the use, abuse or traffic of controlled substances may be disclosed as a routine use to federal, state or local law enforcement agencies and to licensing or regulatory agencies empowered to engage in the institution and prosecution of cases before courts and licensing boards in matters relating to controlled substances, including courts and licensing boards responsible for the licensing or certification of individuals in the fields of pharmacy and medicine.

Information in this system may be disclosed as a routine use in a proceeding before a court or adjudicative body, e.g., the Equal Employment Opportunity Commission and the Merit Systems Protection Board, before which the FBI is authorized to appear, when (a) the FBI or any employee thereof in his or her official capacity, or (b) any employee in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (c) the United States, where the FBI determines it is likely to be affected by the litigation, is a party to litigation or has an interest in litigation and such records are determined by the FBI to be relevant to the litigation.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector pursuant to an

appropriate legal proceeding, or if deemed necessary to elicit information or cooperation from the recipient for use by the FBI in the performance of an authorized activity. An example would be where the activities of an individual are disclosed to a member of the public in order to elicit his/her assistance in our apprehension or detection efforts.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy, to the extent the information is relevant to the protection of life or property.

Information in this system may be disclosed to legitimate agency of a foreign government where the FBI determines that the information is relevant to that agency's responsibilities, and dissemination serves the best interests of the U.S. Government, and where the purpose in making the disclosure is compatible with the purpose for which the information was collected.

Relevant information may be disclosed from this system to the news media and general public where there exists a legitimate public interest, e.g., to assist in the location of Federal fugitives, to provide notification of arrests, and where necessary for protection from imminent threat of life or property.

A record relating to an actual or potential civil or criminal violation of the copyright statute, Title 17, United States Code, *or the trademark statutes, Titles 15 and 17, U.S. Code,* may be disseminated to a person injured by such violation to assist him/her in the institution or maintenance of a suit brought under such titles.

The FBI has received inquiries from private citizens and Congressional offices on behalf of constitutents seeking assistance in locating individuals such as missing children and heirs to estates. Where the need is acute, and where it appears FBI files may be the only lead in locating the individual, consideration will be given to furnishing relevant information to the requester. Information will be provided only in those instances where there are reasonable grounds to conclude from available information the individual being sought would want the information to be furnished, e.g., an heir to a large estate. Information with regard to missing children will not be provided where they have reached their majority.

Release of Information to Members of Congress:

Information contained in this system, the release of which is required by the Freedom of Information-Privacy Acts, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information in behalf of and at the request of the individual who is the subject of the record.

Release of Information to the National Archives and Records Administration:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906, to the extent that legislation governing the records permits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The active main files are maintained in hard copy form and some inactive records are maintained on microfilm. Investigative information which is maintained in computerized form may be stored in memory, on disk storage, on computer tape, or on a computer printed listing.

RETRIEVABILITY:

The FBI General Index must be searched to determine what information, if any, the FBI may have in its files. The index cards are on all manner of subject matters, but primarily a name index of individuals. It should be noted the FBI does not index all individuals *who* furnish information or names developed in an investigation. Only that information that is considered pertinent and relevant and essential for future retrieval, is indexed. In certain major cases most persons contacted are indexed in order to facilitate the proper administrative handling of a large volume of material. The FBI is in the process of automating the General Index and, therefore, the retrieval of certain information from the main files will be accomplished through the use of peripheral computer equipment, that is, Cathode Ray Tubes (CRTs) and printers. Automation will not change the "Central Records System"; it will only facilitate more economic and expeditious access to the main files. The automated general Index will not cause the "Central Records System" to be interfaced with any other system of records, nor will it allow any outside agency to access FBI information. Since the General Index of all of the field offices will not be automated for quite some time, certain complicated investigative matters are presently supported with special computerized indices which allow retrieval of information from the main files. These special indices are either maintained on printed listings or on disk storage and then accessed through the use of CRTs.

The FBI will transfer historical records to the National Archives consistent with 44 U.S.C. 2103. No record of individuals or subject matter will be retained for transferred files; however, a record of the file numbers will be retained to preserve the integrity of the filing system.

SAFEGUARDS:

Records are maintained in a restricted area and are accessed only by FBI employees. All FBI employees receive a complete background investigation prior to being hired. All employees are cautioned about divulging confidential information or any information contained in FBI files. Failure to abide by this provision violates Department of Justice regulations and may violate certain statues providing maximum severe penalties of a ten thousand-dollar fine or 10 years' imprisonment or both. Employees who resign or retire are also cautioned about divulging information acquired in the job. Registered mail is used to transmit routine hard copy records between field offices. Highly classified records are hand carried by Special Agents or personnel of the Armed Forces Courier Service. Highly classified or sensitive privacy information, which is electronically transmitted between field offices, is transmitted in encrypted form to prevent interception and interpretation. Information transmitted in teletype form is placed in the main files of both the receiving and transmitting field offices. Field officer involved in certain complicated investigative matters may be provided with on-line access to the duplicative computerized information which is maintained for them on disk storage in the FBI Computer Center in Washington, D.C., and this computerized data is also transmitted in encrypted form.

RETENTION AND DISPOSAL:

All FBI records destruction programs relevant to this system were suspended as a result of a court order, issued January 10, 1980, in the U.S. District Court for the District of Columbia, enjoining the FBI from destroying or otherwise disposing of any FBI records

until such times as detailed records retention plans and schedules are developed by NARS and the FBI, and are submitted to and approved by the Court. With the exception of certain limited record categories, this court order prohibits records destruction at both FBI Headquarters and FBI field offices.

As the result of an extensive review of FBI records conducted by NARA, records evaluated as historical and permanent will be transferred to the National Archives after established retention periods and administrative needs of the FBI have elapsed. As deemed necessary, certain records may be subject to restricted examination and usage, as provided by 44 U.S.C. Section 2104.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation; Washington, D.C. 20535.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURES:

A request for access to a record from the system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request". Include in the request your full name, complete address, date of birth, place of birth, notarized signature, and other identifying data you may wish to furnish to assist in making a proper search of our records. Also include the general subject matter of the document or its file number. The requester will also provide a return address for transmitting the information. Access requests can be addressed to the Director, Federal Bureau of Investigation, Washington, D.C., 20535, *and* individually to one or more of the FBI field divisions or Legal Attachés listed in the appendix to this system notice.

PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the Director, Federal Bureau of Investigation, Washington, D.C., 20535, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

CATEGORIES:

The FBI, by the very nature and requirement to investigate violations of law within its investigative jurisdiction and its responsibility for the internal security of the United States, collects information from a wide variety of sources. Basically, it is the result of investigative efforts and information furnished by other Government agencies, law enforcement agencies, and the general public, informants, witnesses, and public source material.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3)(d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(8), (f), (g), of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e).

Appendix of Field Divisions for the Federal Bureau of Investigation Field Office—

502 U.S. Post Office and Court House, Albany, N.Y. 12207.
301 Grant Ave., N.E., Albuquerque, N. Mex. 87102.
Room 500, 300 North Lee Street, Alexandria, Va. 22314.
Federal Building, Room E–222, 701 C Street, Anchorage, Alaska 99513.
275 Peachtree Street, N.E., Atlanta, Ga. 30303.
7142 Ambassador Road, Baltimore, Md. 21207.
Room 1400–2121 Building, Birmingham, Ala. 35203.
John F. Kennedy Federal Office Building, Boston, Mass. 02203
Room 1400–111 West Huron Street, Buffalo, N.Y. 14202.
115 U.S. Court House and Federal Building, Butte, Mont. 59702
6010 Kenley Lane, 28210, Charlotte, N.C.
Room 905, Everett McKinley Dirksen Building, Chicago, Ill. 60604.
Room 9023, Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202.
3005 Federal Office Building, Cleveland, Ohio 44199.
1529 Hampton Street, Columbia, S.C. 29201.
1801 North Lamar, Suite, 300, Dallas, Tex. 75202.
Room 1823, Federal Office Building, Denver, Colo. 80202.
Patrick V. McNamara Building, 477 Michigan Avenue, Detroit, Mich. 48226.
202 U.S. Court House Building, El Paso, Tex. 79901.
Kalanianaole Federal Building, Room 4307, 300 Ala. Moana Boulevard, Honolulu, Hawaii 96850.
6015 Federal Building and U.S. Court House, Houston, Tex. 77002.
575 No. Pennsylvania St., Room 679, Indianapolis, Ind. 46204.
Federal Building, Room 1553, 100 W. Capitol St., Jackson, Miss. 39269.
Oaks V, Fourth Floor, 7820 Arlington Expressway, Jacksonville, Fla. 32211.
Room 300—U.S. Courthouse, Kansas City, Mo. 64106.
Room 800, 111 Northshore Drive, Knoxville, Tenn. 37919.
Room 219, Federal Office Building, Las Vegas, Nev. 89101.
215 U.S. Post Office Building, Little Rock, Ark. 72201.
11000 Wilshire Boulevard, Los Angeles, Calif. 90024.
Room 502, Federal Building, Louisville, Ky. 40202.
841 Clifford Davis Federal Building, Memphis, Tenn. 38103.
3801 Biscayne Boulevard, Miami, Fla. 33137.
Room 700, Federal Building and U.S. Court House, Milwaukee, Wis. 53202.
392 Federal Building, Minneapolis, Minn. 55401.
U.S. Court House, 113 St. Joseph St., Mobile, Ala. 36602.
Gateway I. Market Street, Newark, N.J. 07102.
Federal Building, 150 Court Street, New Haven, Conn. 06510.
701 Loyola Avenue, New Orleans, La. 70113.
26 Federal Plaza, New York, N.Y. 10278.
Room 839, Granby Mall, Norfolk, Va. 23510.
50 Penn Place, N.W., 50th at Pennsylvania, Oklahoma City, Okla. 73118
Room 7401, Federal Building, 215 North 17th Street, Omaha, Nebr. 66102.
8th Floor, Federal Office Building, 800 Arch Street, Philadelphia, Pa. 19106.
2721 North Central Avenue, Phoenix, Ariz. 85004.
1300 Federal Office Building, Pittsburgh, Pa. 15222.
Crown Plaza Building, Portland, Oreg. 97201.
200 West Grace Street, Richmond, Va. 23220
Federal Building, 2800 Cottage Way, Sacramento, Calif. 95825.
2704 Federal Building, St Louis, Mo. 63103.
3203 Federal Building, Salt Lake City, Utah 84138.
433 Federal Building, Box 1630, San Antonio, Tex. 78296.
Federal Office Building, Room 0531, 880 Front Street, San Diego, Calif. 92188.
450 Golden Gate Avenue, San Francisco, Calif. 94102.
U.S. Courthouse and Federal Building, Room 526, Hato Rey, P.R. 00918.
5401 Paulsen Street, Savannah, Ga. 31405.
915 Second Avenue, Seattle, Wash. 96174.
535 West Jefferson Street, Springfield, Ill. 62702.
Room 610, Federal Office Building, Tampa, Fla. 33602.

Washington Field Office, Washington D.C. 20535.
Federal Bureau of Investigation Academy, Quantico, Va. 22135.
Legal Attaché (AH c/o the American Embassy for the Cities Indicated):
Bern, Switzerland.
Bogota, Colombia.
Bonn, Germany (Box 310, APO, New York 09080).
Canberra, Australia (APO, San Francisco 96404).
Hong Kong, B.C.C. (FPO, San Francisco 96659).
London, England (Box 40, FPO, New York 09510).
Mexico City, Mexico.
Montevideo, Uruguay (APO, Miami 34035).
Ottawa Canada.
Panama City, Panama.
Paris, France (APO, New York 09777).
Rome, Italy (APO, New York 09794).
Tokyo, Japan (APO, San Francisco 96503).

JUSTICE/FBI-015

SYSTEM NAME:

National Center for the Analysis of Violent Crime (NCAVA).

SYSTEM LOCATION:

Federal Bureau of Investigation, Training Division, FBI Academy, Behavioral Science Unit, Quantico, Virginia 22135.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals who relate in any manner to official FBI investigations into violent crimes including, but not limited to, suspects, victims, witnesses, close relatives, medical personnel, and associates who are relevant to an investigation.

B. Individuals who are the subject of unsolicited information or who offer unsolicited information, and law enforcement personnel who request assistance and/or make inquiries concerning records.

C. Individuals who are the subject of violent crime research studies including, but not limited to, criminal personality profiles, scholarly journals, and news media references.

CATEGORIES OF RECORDS IN THE SYSTEM:

The National Center for the Analysis of Violent Crime will maintain in both manual and automated formats case investigation reports on all forms of solved and unsolved violent crimes. These violent crimes include, but are not limited to, acts or attempted acts of murder, kidnapping, incendiary arson or bombing, rape, physical torture, sexual trauma, or evidence of violent forms of death.

A. Violent Criminal Apprehension Program (VICAP) case reports submitted to the FBI by a duly constituted Federal, State, county, or municipal law enforcement agency in any violent criminal matter. VICAP reports include, but are not limited to, crime scene descriptions, victim and offender descriptive data, laboratory reports, criminal history records, court records, news media references, crime scene photographs, and statements.

B. Violent crime case reports submitted by FBI headquarters or field offices.

C. Violent crime research studies, scholarly journal articles, textbooks, training materials, and news media references of interest to NCAVC personnel.

D. An index of all detected trends, patterns, profiles and methods of operation of known and unknown violent criminals whose records are maintained in the system.

E. An index of the names, addresses, and contact telephone numbers of professional individuals and organizations who are in a position to furnish assistance to the FBI's NCAVC operation.

F. An index of public record sources for historical, statistical and demographic data collected by the U.S. Bureau of the Census.

G. An alphabetical name index pertaining to all individuals whose records are maintained in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C., Section 3101; 41 CFR Subpart 101–11.2 and 28 U.S.C., Section 534.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

As currently envisioned, the NCAVC will be administered by the FBI through its Training Division's Behavioral Science Unit located at the FBI Academy, Quantico, Virginia. Its primary mission is to consolidate research, training, and operational support activities for the express purposes of providing expertise to any legitimate law enforcement agency confronted with unusual, bizarre, and/or particularly vicious or repetitive violent crimes.

Records described above are maintained in this system to permit the FBI to function efficiently as an authorized, responsive component of the Department of Justice. Therefore, the information in this system is disclosed to officials and employees of the Department of Justice, and/or all components thereof, who need the information to perform their official duties.

Information in this system may be disclosed as a routine use to any Federal, State, local, or foreign government agency directly engaged in the criminal justice process where access is directly related to a law enforcement function of the recipient agency in connection with the tracking identification, and apprehensive of persons believed to be engaged in repeated or exceptionally violent acts of criminal behavior.

Information in this system may be disclosed as a routine use in a proceeding before a court or adjudicative body, e.g., the Equal Employment Opportunity Commission and the Merit System Protection Board, before which the FBI is authorized to appear, when (a) the FBI or any employee thereof in his or her official capacity, or (b) any employee in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (c) the United States, where the FBI determines it is likely to be affected by the litigation, is a party to litigation or has an interest in litigation and such records are determined by the FBI to be relevant to the litigation.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector pursuant to an appropriate legal proceeding or, if deemed necessary, to elicit information or cooperation from the recipient for use by the FBI in the performance of an authorized activity. An example could be where the activities of an individual are disclosed to a member of the public to elicit his/her assistance in FBI apprehension or detection efforts.

Information in this system may be disclosed as a routine use to an organization or individual in the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy and to the extent the information is relevant to the protection of life or property.

Relevant information may be disclosed from this system to the news media and general public where there exists a legitimate public interest. Examples would include: to obtain public or media assistance in the tracking, identifying, and apprehending of persons believed to be engaged in repeated acts of violent criminal behavior; to notify the public and/or media of arrests; to protect the public from imminent threat to life or property

where necessary; and to disseminate information to the public and/or media to obtain cooperation with violent crime research, evaluation, and statistical programs.

Information in this system may be disclosed as is necessary to appropriately respond to congressional inquiries on behalf of constituents.

A record from a system of records may be disclosed as a routine use to the National Archives and Records *Administration* (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906 to the extent that legislation governing the record permits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the system is stored manually in locked file cabinets, either in its natural state or on microfilm, at the NCAVC in Quantico, Virginia. The active main files are maintained in hard copy form and some inactive records are maintained on microfilm.

In addition, some of the information is stored in computerized data storage devices at the NCAVC and FBI Computer Center in Washington, D.C. Investigative information which is maintained in computerized form may be stored in memory on disk storage on computer tape, or on computer printed listings.

RETRIEVABILITY:

On-line computer access to NCAVC files is achieving by using the following search descriptors:

A. A data base which contains the names of individuals, their birth dates, physical descriptions, and other identification numbers such as FBI numbers, if such have been assigned.

B. Summary variables contained on VICAP reports submitted to the NCAVC as previously described.

C. Key words citations to violent crime research studies, scholarly journal articles, textbooks, training materials, and media references.

SAFEGUARDS:

Records are maintained in restricted areas are accessd only by FBI employees. All FBI employees receive a complete pre-employment background investigation. All employees are cautioned about divulging confidential information or any information contained in FBI files. Failure to abide by this provision violates Dapartment of Justice regulations and may violate certain statutes providing maximum severe penalties of a ten thousand dollar fine or 10 years' imprisonment or both. Employees who resign or retire are also cautioned about divulging information acquired in the job.

Registered mail is used to transmit routine hard copy records between field offices. Highly classified records are hand carried by Special Agents or personnel of the Armed Forces Courier Service. Highly classified or sensitive privacy information, which is electronically transmitted between field offices and to and from FBI Headquarters, is transmitted in encrypted form to prevent interception and interpretation.

Information transmitted in teletype form between the NCAVC in Quantico, Virginia and the FBI Computer Center in Washington, D.C., is encrypted prior to transmission at both places to ensure confidentiality and security of the data.

FBI field offices involved in certain complicated, investigative matters may be provided with on-line access to the computerized information which is maintained for them on disc storage in the FBI Computer Center in Washington, D.C. This computerized data is also transmitted in encrypted form.

RETENTION AND DISPOSAL:

All FBI records destruction programs relevant to this system were suspended as a result of a court order issued January 10, 1980, in the U.S. District Court for the District of Columbia, enjoining the FBI from destroying or otherwise disposing of any FBI records until such time as detailed records retention plans and schedules are developed by NARA and the FBI, and are submitted to and approved by the Court. With the exception of certain limited record categories, this court order prohibits records destruction at both FBI Headquarters and FBI field offices.

As the result of an extensive review of FBI records conducted by NARA, records evaluated as historical and permanent will be transferred to the National Archives after established retention periods and administrative needs of the FBI have elapsed. As deemed necessary, certain records may be subject to restricted examination and usage, as provided by 44 U.S.C. Section 2104.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, 10th and Pennsylvania Avenue, NW., Washington, D.C. 20535.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORDS ACCESS PROCEDURES:

Requests for access to records in this system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request." The request must provide the full name, complete address, date of birth, place of birth, and notarized signature of the individual who is the subject of the record requested. The request should also include the general subject matter of the document or its file number—along with any other known information which may assist in making a search of the records. The request must also provide a return address for transmitting the information. Access requests should be addressed to the Director, Federal Bureau of Investigation, Washington, D.C. 20535.

CONTESTING RECORD PROCEDURE:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the Director, Federal Bureau of Investigation, Washington, D.C. 20535. The request should state clearly and concisely (1) the reasons for contesting the information, and (2) the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

The FBI, by the very nature of its responsibilities to investigate violations of law within its investigative jurisdiction and ensure the internal security of the United States, collects information from a wide variety of sources. Basically, information is obtained, as a result of investigative efforts, from other Government agencies, law enforcement agencies, the general public, informants, witnesses, and public source material.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3), (d), (e)(1), (e)(4) (G) and (H), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e).

JUSTICE/USM—001

SYSTEM NAME:

United States Marshals Service Badge & Credentials File.

SYSTEM LOCATION:

United States Marshals Service; *One Tyson Corner Center, McLean, Virginia 22102.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Marshals Service *(USMS) Personnel.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel data system established to control issuance of badges and credentials to U.S. Marshals Service personnel *which contains photographs of all employees and hand receipts showing the employee's name, title, duty location, badge and credential numbers, and date of issuance.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This file serves as a record of issuance this is requested by various law enforcement agencies, e.g. FBI Secret Service, states, county & Municipal police.

Records or information may be disclosed as a routine use in a proceeding before a Court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 C.F.R. 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

ROUNTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records *Administration:* A record from a system of records may be disclosed as a routine use to the National Archives and Records *Administration* (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in standard file folders.

RETRIEVABILITY:

Indexed by name of *individual and numerical order of badges and credentials.*

SAFEGUARDS:

Access restricted to personnel of *the Procurement and Property Management Division. Records are maintained in metal filing cabinets which are locked during non-duty hours.*

RETENTION AND DISPOSAL:

Records are kept for duration of employee's tenure in the Service.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, *Procurement and Property Management* Division; United States Marshals Service, U.S. Department of Justice; *One Tyson Corner Center, McLean, Virginia 22102.*

NOTIFICATION PROCEDURE:

Same as System Manager.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request." It should clearly indicate name of requestor, the nature of the record sought and approximately dates covered by the record. The requestor shall also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Record of Notification of Employment by U.S. Marshals Service Personnel Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USM-002

SYSTEM NAME:

Internal *Inspections* System.

SYSTEM LOCATION:

United States Marshals Service: Department of Justice: One Tysons Corner Center, McLean Virginia 22102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Marshals Service *(USMS)* employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Internal *Inspections* System contains reports prepared by the Office of Internal *Inspections,* United States Marshals Service on findings of alleged misconduct of U.S. Marshals, Service employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510 and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(n)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information gathered is used by U.S. Marshals Service in disciplinary proceedings against employees. *To the extent that investigations reveal actual or potential violations of criminal or civil laws, the information is used by other Federal law enforcement agencies for further investigations.*

Records or information may be disclosed as a routine use in a proceeding before a Court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

Release of Information to the News Media:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of Information to Members of Congress:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records *Administration:* A record from a system of records may be disclosed as a routine use to the National Archives and Records *Administration* (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Originals stored in *standard file folders.*

RETRIEVABILITY:

Information is retrieved by name of employee.

SAFEGUARDS:

Records are stored in locked safe.

RETENTION AND DISPOSAL:

Records are retained for *24* months and then referred to Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Internal *Inspections* U.S. Marshals Service; U.S. Department of Justice, One Tysons Corner Center, McLean, Virginia 22102.

NOTIFICATION PROCEDURE:

Same as System Manager.

RECORD ACCESS PROCEDURES:

To the extent that this system is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." It should clearly indicate name of the requestor, the nature of the record sought and approximate dates covered by the record. The requestor shall also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information derived from investigation of alleged malfeasance, by U.S. Marshals Service Office of Internal *Inspections*

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e) (2) and (3), (e)(4) (G) and (H), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). To the extent that investigations reveal actual or potential criminal or civil violations, this system is additionally exempt from subsection (e)(8) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register.**

JUSTICE/USM–003

SYSTEM NAME:

United States Marshals Service Prisoner Transportation System.

SYSTEM LOCATION:

United States Marshals Service *(USMS),* Department of Justice; 324 East 11th Street, Kansas City, Missouri 64106

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prisoners taken into U.S. Marshal custody.

CATEGORIES OF RECORDS IN THE SYSTEM:

D.J. 100's; Compilation of identifying information for each prisoner taken into U.S. Marshal custody, when and where the prisoner is taken into custody, what he is charged with and where he is moved to. These files provide a ready reference source on the prisoner for purposes of arranging prisoner transportation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 *U.S.C. 509, 510 and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(k).*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used as working files in the transporting of prisoners, by U.S. Marshals Service, Bureau of Prisons and other federal, state and local law enforcement officials.

Records or information may be disclosed as a routine use in a proceeding before a Court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records *Administration*: A record from a system of records may

be disclosed as a routine use to the National Archives and Records *Administration* (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in standard file cabinets.

RETRIEVABILITY:

Information is retrieved by name of prisoner and number.

SAFEGUARDS:

Access restricted to Operations Personnel. *File cabinets are locked during non-duty hours.*

RETENTION AND DISPOSAL:

Records are disposed of after *6 months.*

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Prisoner Transportation *and Air Operations* Division, United States Marshals Service; U.S. Department of Justice; 324 East 11th Street, Kansas City, Missouri 64106.

NOTIFICATION PROCEDURE:

Same as System Manager.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked 'Privacy Access Request.' It should clearly indicate name of requester, the nature of the record sought and approximate dates covered by the record. The requestor shall also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Identifying material of each prisoner taken into custody by the U.S. Marshal.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USM-004

SYSTEM NAME:

Special Deputy File.

SYSTEM LOCATION:

United States Marshals Service (USMS), Department of Justice; One Tysons Corner Center, McLean, Virginia 22102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Special Deputies, who are selected law enforcement officers or employees of the U.S. Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Special Deputization file contains oath of office of persons utilized as deputy marshals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 CFR Subpart T. Section 0.112, 28 U.S.C. 562.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Federal agencies for whom the Marshals Service has deputized employees would have access to this system.

Records or information may be disclosed as a routine use in a proceeding before a Court or adjudicated body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552 may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member of staff requests the information on behalf of and at the request of the individual who is the subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS.

Release of information to the National Archives and Records *Administration:* A record from a system of records may be disclosed as a routine use to the National Archives and Records *Administration* (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are filed in standard file cabinets.

RETRIEVABILITY:

Files are indexed by name and by government department.

SAFEGUARDS:

Records are kept in a locked file.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, U.S. Marshals Service; U.S. Department of Justice: One Tysons Corner Center, McLean, Virginia 22102.

NOTIFICATION PROCEDURES:

Address inquiries to: System Manager.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing with the envelope and letter clearly marked 'Privacy Access Request.' The requestor shall also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager lised above, stating cearly and concisely what information is being contested, the reason for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Federal agencies requesting special deputations provide all necessary information required by the Marshals Service in making the special deputations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USM-005

SYSTEM NAME:

Special Detail System.

SYSTEM LOCATION:

United States Marshals Service (USMS); Department of Justice; One Tysons Corner Center, McLean, Virginia 22102. Each of the 94 district offices maintain their own files.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by the system: Deputy United States Marshals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include a compilation of deputies' special assignments; e.g., civil disturbances, special trials, witness security, process serving, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510, and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and, 28 CFR 0.111 (a) through (g).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Special Detail System provides background data on what details were made; who went where, etc. This information may be used in Civil Service Commission hearings and court cases involving the Marshals Service or its personnel.

Records or information may be disclosed as a routine use in a proceeding before a Court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that released of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records Administration. A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in standard file folders.

RETRIEVABILITY:

Records are retrieved by name of deputy.

SAFEGUARDS:

Records are kept in a locked file cabinet.

RETENTION AND DISPOSAL:

Dispose after 10 years; transfer to Federal Records Center after 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Special Assignments. U.S. Marshals, Service; U.S. Department of Justice, One Tysons Corner Center, McLean, Virginia 22102.

NOTIFICATION PROCEDURES:

Address inquiries to: System Manager.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request." It should clearly indicate name of the requestor, the nature of the record sought and approximate dates covered by the record. The requestor shall also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information provided by designated U.S. Marshals Service Personnel in each district who work on special details.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USM—006

SYSTEM NAME:

United States Marshals Service Training Files.

SYSTEM LOCATION:

United States Marshals Service (USMS) Training Academy, Department of Justice Building 70 Glynco, Georgia 31524.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Trainees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Individual United States Marshals Service training files contain information on the individual's educational background and training history, and an individual development plan; (2) Skills files identify special skills possessed by the individual United States Marshals Service employee.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

28 U.S.C. 509, 510 and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(h).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Records are used as training histories; (2) records are used to determine training eligibility; and (3)

records or information may be disclosed as a routine use in a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration. (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Standard file folders containing original documents.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are kept in locked files.

RETENTION AND DISPOSAL:

Training files are maintained until the employee leaves the Service.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, U.S. Marshals Service Training Academy, U.S. Department of Justice; Building 79, Glynco, Georgia 31524.

NOTIFICATION PROCEDURE:

Address inquiries to: System Manager.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." It should clearly indicate name of requester, the nature of the record sought and approximate dates covered by the record. The requestor shall also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

(1) The forms, documentation of skills, etc. which are completed by a new trainee; (2) documentation of skills by Training Personnel; (3) evaluation reports prepared by the Combined Federal Law Enforcement Training Academy.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USMS—008

SYSTEM NAME:

Witness Security Files Information System.

SYSTEM LOCATION:

United States Marshals Service (USMS), Department of Justice; One Tysons Corner Center, McLean, Virginia 22102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Government witnesses, who are participants in the Federal Witness Security Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Request to enter program; (2) background information (education, experience, medical history, names, relatives, etc.); (3) funding information; (4) moving information; (5) documentation of all the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the Witness Security Program is 28 U.S.C. 509, 510 and 569; 5 U.S.C. 301; 44 U.S.C. 3101; 28 CFR 0.111(c); 28 U.S.C. 524; 18 U.S.C. prec 3481.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Background for planning working files; (2) Used to accomplish major functions of witness security e.g. protection of government witnesses and their families; and (3) records or information may be disclosed as a routine use in a proceeding before a Court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in file folders.

RETRIEVABILITY:

Filed according to ID special number.

SAFEGUARDS:

Locked files limited access—(Witness Security Personnel).

RETENTION AND DISPOSAL:

All records at this time are being indefinitely maintained.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Witness Security Division; U.S. Marshals Service; U.S. Department of Justice; One Tysons Corner Center, McLean, Virginia 22102.

RECORD SOURCE CATEGORIES:

All identifying background criteria of individual: (1) education; (2) job history; (3) medical history; (4) history of residence; (5) relatives, etc.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (2) and (3), (e)(4) (G) and (H), (e)(8), (f)(2) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/OJP-001

SYSTEM NAME:

Equipment Inventory.

SYSTEM LOCATION:

Office of Justice Programs; 633 Indiana Avenue, N.W.; Washington, D.C. 20531.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have filed the following forms in the Office of Operations Support: Government Parking Spaces, Form GSA 7415; Property Sign-out, LEAA Form 1820/4; Equipment Control Records, LEAA Form 1820/5;

CATEGORIES OF RECORDS IN THE SYSTEM:

Government Parking Spaces, Form GSA 7415; Property Sign-out, LEAA Form 1820/4; Equipment Control Records, LEAA Form 1820/5;

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with 5 U.S.C. 301, 1302.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The property data is used for inventory control, parking space control.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in system is stored in file, folders and index cards.

RETRIEVABILITY:

Information is retrieved by name of employee.

SAFEGUARDS:

Data is maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Documents relating to equipment control and are closed when employee leaves agency. Records are destroyed three years thereafter. Operating files are destroyed when an individual resigns, transfers or is separated from Federal service.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Administrator; Office of Operations Support; Office of Justice Programs; 633 Indiana Avenue, NW., Washington, D.C. 20531.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURE:

A request for access to a record from the system shall be in writing, with the envelope and letter clearly marked "Privacy Access Request." Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Individual to whom record pertains, employee's supervisors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/OJP-004

SYSTEM NAME:

Grants Management Information System (PROFILE).

SYSTEM LOCATION:

Office of Justice Programs; 633 Indiana Avenue, NW.; Washington, D.C. 20531

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Included are recipients (grantees) of OJP funds. These include grantees of the National Institute of Justice, the Bureau of Justice Statistics, the Bureau of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention, the Office of Victims of Crime, and the now defunct Office of Justice Assistance, Research, and Statistics, and the Law Enforcement Assistance Administration. Also included are project monitors and project directors of these grants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grantee and Project Audit File, Financial and Programmatic Compliance

Records of the Grantee, Grant Applications, and Grant/Contract Award Computer Data File.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with U.S.C. 301, 44 U.S.C. 3101, and 31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclose for the purpose of technical review and fiscal or program evaluation to experts in particular subject areas related to the substantive or fiscal components of the program.

RELEASE OF INFORMATION IN AN ADJUDICATIVE PROCEEDING:

It shall be a routine use of records within this system or any facts derived therefrom, to disseminate them in a proceeding before a court or adjudicative body before which the OJP is authorized to appear, when

i. The OJP, or any subdivision thereof, or

ii. Any employee of the OJP in his or her official capacity, or

iii. Any employee of the OJP in his or her individual capacity, where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the OJP determines that the litigation is likely to affect it or any its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the OJP to be arguably relevant to the litigation.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permited to be released to the new media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice not otherwise required to be released pursuant to 5 U.S.C. 522, may be disclosed as a routine use to a member of Congress or staff acting upon the member's behalf when the member or staff requests the information on behalf of and at the request of the individuals who is the subject of the record.

Release of information to the National Archives and Records *Administration.* A record from a system of records may be disclosed as a routine use to the National Archives and Records *Administration (NARA)* in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored on computer disc for use in a computer environment.

RETRIEVABILITY:

Data is retrievable by name *of individual covered by the system.*

SAFEGUARDS:

Information in the system is safeguarded and protected by computer password key. Direct access is limited to computer personnel.

RETENTION AND DISPOSAL:

Data is maintained for current fiscal year and previous fiscal years in master file. Data is not destroyed, but maintained for historical purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller: *Office of Justice Programs;* 633 Indiana Avenue, NW., Washington, D.C. 20531.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing with the envelope and letter clearly marked "Privacy Access Request." Include in the request the name and grant/contract number. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their requests to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in the system are *grantees, applicants for award, and OJP project monitors.*

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/OJP-005

SYSTEM NAME:

Financial Management System.

SYSTEM LOCATION:

Office of Justice Programs (OJP); 633 Indiana Avenue, NW., Washington, D.C. 20531.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Recipients of *OJARS, LEAA, NIJ, BJS and OJJDP* funds; Employees.

This system contains information concerning (a) current and past recipients of OJP funds, including those from the National Institute of Justice, the Bureau of Justice Assistance, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the now defunct Office of Justice Assistance, Research, and Statistics, and Law Enforcement Assistance Administration; (b) OJP employees; and (c) all individuals on whom vouchers are submitted requesting payment for goods or services rendered (except payroll vouchers for Department of Justice employees), including vendors, contractors, travelers, and employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee Travel files; time and attendance files; Government transportation Request; Paid Vendor Documents File, all vouchers processed, i.e., all documents required to reserve, obligate, process and effect collection or payment of funds. (Excluded from the system are payroll vouchers.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 31 U.S.C. 3512, and 44 U.S.C. 3101.

PURPOSE OF THE SYSTEM:

After processing the vouchers, OJP uses the records to maintain individual financial accountability; to furnish statistical data (not identified by personal identifiers); to meet both internal and external audit and reporting requirements; and to provide Administrative Officers from the Offices, Boards, and Divisions and the OJP with information on vouchers by name and social security number for agency financial management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

RELEASE OF INFORMATION IN AN ADJUDICATIVE PROCEEDING:

It shall be a routine use of records within this system or any facts derived therefrom, to disseminate them in a proceeding before a court or adjudicative body before which the OJP is authorized to appear, when

i. The OJP, or any subdivision thereof, or

ii. Any employee of the OJP in his or her official capacity, or

iii. Any employee of the OJP in his or her individual capacity, where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the OJP determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the OJP to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archieves and Records Administration. A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized discs, filed folders.

RETRIEVABILITY:

Name, social security numbers, digital identifiers assigned by accounting office.

SAFEGUARDS:

Information contained in the system is unclassified and maintained in accordance with OJP procedures. Manual information in the system is safeguarded in locked file cabinets. Operational access to information maintained on computer discs is controlled by password key. These keys are issued only to employees who have a need to know to perform job functions relating to financial management and accountability. Access to manual files is also limited to employees who have a need for the records in the performance of their official duties.

RETENTION AND DISPOSAL:

Employee travel files, time and attendance files and Government transportation files are closed at end of fiscal year, held three years thereafter.

Payment documents are retained for three fiscal years (current and two years). The payment documents and the aforementioned files are then shipped to a General Services Administration's Federal Records Center for storage and subsequent destruction in accordance with instructions of the General Accounting Office. Computerized discs are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller; *Officer of Justice Programs;* 633 Indiana Avenue, NW., Washington, D.C. 20531.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing with the envelope and letter clearly marked "Privacy Access Request." Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendments to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in the system are the individuals tdo whom the information pertains.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE-OJP-006

SYSTEM NAME:

Congressional and Public Affairs System

SYSTEM LOCATION:

Office of Justice Programs (OJP); 633 Indiana Avenue, NW., Washington, D.C. 20531.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of Congress, and other public figures.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence with Congressional Committees, members of Congress, and the general public. The file also contains biographical data, speeches, press releases, and photograph files relating to public figures.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system is used or may be used in response to inquiries from the general public or member of Congress.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration. A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is indexed on a correspondence control log and stored in file folders.

RETRIEVABILITY:

Information is retrieved by name of the member of Congress who is the correspondent, or by the name of the public figure.

SAFEGUARDS:

Records are maintained in file cabinets. Entrance to the building is controlled by required employee identification or security clearance procedures. Records are used by employees on a need to know basis only.

RETENTION AND DISPOSAL:

Records are retained for two years, then retired to Federal Records Center. Six years thereafter records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director: Office of Congressional Liaison: *Office of Justice* Programs, 633 Indiana Avenue NW., Washington, DC 20531.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURE:

A request for access to a record from the system shall be in writing, with the envelope and letter clearly marked "Privacy Access Request." Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information are congressional members.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/OJP-008

SYSTEM NAME:

Civil Rights Investigative System.

SYSTEM LOCATION:

Office of Justice Programs (OJP).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals affected by any OJP project for which the agency has compliance responsibility, including grantees, subgrantees, contractors, subcontractors, employees, and applicants, who have made complaints of discrimination. OJP includes the National Institute of Justice, the Bureau of Justice Statistics, the Bureau of Justice Assistance, the Office of Juvenile Justice and Deliquency Prevention, and the Office for Victims of Crime. Also included are individuals who are the subjects of civil rights compliance records of the now defunct Office of Justice Assistance, Research, and Statistics, and the Law Enforcement Assistance Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Civil Rights Complaint Control Files; Civil Rights Litigation Reference Files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 3789d *42, U.S.C. 10604(e), 29 U.S.C. 794, 42 U.S.C. 2000d, 20 U.S.C. 1681, 42 U.S.C. 5601, and 42 U.S.C. 1601.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

OJP uses information in this system to investigate complaints and to obtain compliance with civil rights laws. Other such users of the information are appropriate State agencies, Civil Rights Division of the Justice Department, State Governors and Attorneys General, Office of Federal Contract Compliance, Equal Employment Opportunity Commission, Office of Federal Revenue Sharing, and the United States Commission on Civil Rights, Department of Health and Human Services, Department of Education and OJP. OJP may also use this information for agency project evaluation, technical assistance, and training.

RELEASE OF INFORMATION IN AN ADJUDICATIVE PROCEEDING:

It shall be a routine use of records within this system or any facts derived therefrom, to disseminate them in a proceeding before a court or adjudicative body before which the OJP is authorized to appear, when

i. The OJP, or any subdivision thereof, or

ii. Any employee of the OJP in his or her official capacity, or

iii. Any employee of the OJP in his or her individual capacity, where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the OJP determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the OJP to be arguably relevant to the litigation.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant; to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION:

A record from a system of records may be disclosed as a routine use to the National Archives and Records *Administration (NARA)* in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the system is stored in file folders and on index cards.

RETRIEVABILITY:

Information is retrieved by name of *the individual or organization against whom the complaint is made.*

Complaint case files are not retrievable by information identifiable to the individual complainant.

SAFEGUARDS:

Information is kept in locked file cabinets and combination safe, Access is limited to investigative personnel.

RETENTION AND DISPOSAL:

All investigative information is destroyed ten years after the investigation is completed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Civil Rights Compliance: Office of Justice Programs; 633 Indiana Avenue NW; Washington, DC 20531.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURES:

A request for access to a record containing civil rights investigatory material shall be made in writing with the envelope and letter clearly marked "Privacy Access Request" to the Civil Rights System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

The information contained in this system was received from individual complainants, witnesses, grant files, respondents, official State and Federal records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a(K)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register.**

JUSTICE/OJP–009

SYSTEM NAME:

Federal Advisory Committee Membership Files.

SYSTEM LOCATION:

Office of Justice *Programs (OJP);* 633 Indiana Avenue, NW., Washington, D.C. 20531.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been or are presently members of or are being considered for membership on advisory committees within the jurisdiction of the *OJP.*

OJP includes the former Office of Justice Assistance, Research, and Statistics, the former Law Enforcement Assistance Administration, National Institute of Justice, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and the Office of Victims of Crime.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, documents relating to committee members, *biographical data, and Committee membership forms.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Advisory Committee Act, 5 U.S.C. App. I et seq.; *5 U.S.C. 301; 44 U.S.C. 3101.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Annual Report to the President; administrative reports to OMB and other federal agencies.

Release of information to the news media:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of Information to the National Archives and Records Administration.

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

Release of Information to Congress.

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in system is stored in file folders.

RETRIEVABILITY:

Information is retrieved by name of individual.

SAFEGUARDS:

Data is maintained in file cabinets. The entrance to the building requires building pass or security sign-in.

RETENTION AND DISPOSAL:

The data is placed in an inactive file upon discontinuance of membership, held for two years and then retired to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Federal Advisory Committee Officer; Office of General Counsel; Office of Justice Programs; 633 Indiana Avenue, NW., Washington, D.C. 20531.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information are supplied directly by individuals about whom the record pertains, references, recommendations, program personnel, and biographical reference books.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/OJP–010

SYSTEM NAME:

Technical Assistance Resource Files.

SYSTEM LOCATION:

Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consultants with expertise in criminal justice systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of resumes and other documents related to technical assistance requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is maintained under authority of 44 U.S.C. 3101 and 42 U.S.C. 5614(b)(6).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system is used to determine the qualifications and availability of individuals for technical assistance assignments. Users are State Criminal Justice Councils, and the Office of Juvenile Justice and Delinquency Prevention.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in the system is on hard copy and stored in file cabinets.

RETRIEVABILITY:

Information is manually retrieved by the name of the individual.

SAFEGUARDS:

Records are stored in file cabinets. Admittance to the building in which they are stored requires a building pass or an individual signature at the main entrance to the building.

RETENTION AND DISPOSAL:

Records are placed in an inactive file at the end of the fiscal year in which final use was made. They are held two years in the inactive file; then transferred to the Federal Records Center. Records are destroyed after six years.

SYSTEM MANAGER(S) AND ADDRESS:

Technical Assistance Coordinator; Division Director of Program area in which records are sought in the Office of Juvenile Justice and Delinquency Prevention. Office of Justice Programs, 633 Indiana Avenue, NW., Washington, DC 20531.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager(s) at the above address.

RECORD ACCESS PROCEDURES:

A request for access to a record contained in this system shall be made in writing with the envelope and letter clearly marked "PRIVACY ACCESS REQUEST." Include in the request the name and grant/contract number for the record desired. Access requests will be directed to the system manager(s) listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their requests to the system manager(s) listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are those individuals to whom the information pertains.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/OJP-011

SYSTEM NAME:

Registered Users File—National Criminal Justice Reference Service (NCJRS).

SYSTEM LOCATION:

National Criminal Justice Reference Service; 1600 Research Blvd., Rockville, MD 20850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains information on those individuals engaged in criminal justice activities, citizen groups and academicians.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system provides a record of registrants who request reference services and products from NCJRS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is maintained and established in accordance with 42 U.S.C. *3721.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in the system is used as a mailing list to supply registrants requesting services from NCJRS with information or products.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 29 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration. A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Information is stored on magnetic disc pack for use in a computer environment.

RETRIEVABILITY:

Information is retrieved by the name and user identity number of the individual or organization requesting information.

SAFEGUARDS:

Information is maintained in the Justice Data Services Center which is a secured area. Special identity cards are required for admittance to the area.

RETENTION AND DISPOSAL:

Information is retained until the individual no longer wishes to utilize the service. Upon notification by an individual that he no longer wishes to

use the service, or by lack of response of user to Annual Renewal, his record is electronically purged from the film.

SYSTEM MANAGER(S) AND ADDRESS:

Operation Services Supervisor, National Criminal Justice Reference Service; P.O. Box 6000, Rockville, MD 20850

NOTIFICATION PROCEDURE:

Address inquiries to the system manager(s) at the above address.

RECORD ACCESS PROCEDURES:

A request for access to a record contained in this system shall be made in writing with the envelope and letter clearly marked. 'PRIVACY ACCESS REQUEST.' Access requests will be directed to the system manager(s) at the above address.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their requests to the system manager(s) listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources for the information contained in this system are those individuals covered by the system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/OJP-012

SYSTEM NAME:

Public Safety Officers Benefits System.

SYSTEM LOCATION:

Bureau of Justice Assistance, Office of Justice Programs, (OJP), 633 Indiana Avenue, NW., Washington, D.C. 20531.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Public Safety Officers who died while in the line of duty and their surviving beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index by claimant and deceased Public Safety Officers: case files of eligibility documentation; and benefit payment records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintaining this system exists under 42 U.S.C. 3796 and 44 U.S.C. 3103.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information contained in this system is used or may be used to determine and record eligibility of Public Safety Officers under the Public Safety Officers Benefits Act. It may be released to:

(1) State and local agencies to verify and certify eligibility for benefits; (2) researchers for the purpose of researching the cause and prevention of public safety officer line of duty deaths; (3) appropriate Federal agencies to coordinate benefits paid under similar programs; and (4) Members of Congress or staff acting upon the member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is a party in interest.

RELEASE OF INFORMATION IN AN ADJUDICATIVE PROCEEDING:

It shall be a routine use of records within this system or any facts derived therefrom, to disseminate them in a proceeding before a court or adjudicative body before which the OJP is authorized to appear, when

i. The OJP, or any subdivision thereof, or

ii. Any employee of the OJP in his or her official capacity, or

iii. Any employee of the OJP in his or her individual capacity, where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the OJP determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the OJP to be arguably relevant to the litigation.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is maintained on a master index, in folders and on computer magnetic tape.

RETRIEVABILITY:

Information is retrievable by name of claimant, name of deceased Public Safety Officer, and case file number.

SAFEGUARDS:

Computerized information is safeguarded and protected by computer password key and limited access. Noncomputerized data is safeguarded in locked cabinets. All files are maintained in a guarded building.

RETENTION AND DISPOSAL:

Files are retained in the Public Safety Officer Benefits (PSOB) Office on hard copy. No program for disposal has been promulgated. Files are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

PSOB Program Officer Bureau of Justice Assistance Office of Justice Programs, 633 Indiana Avenue, NW., Washington, D.C. 20531.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURES:

Request for access to a record from this system should be made in writing with the envelope and the letter clearly marked "Privacy Access Request" Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above and state clearly and concisely what information is being contested, the reason for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Public agencies including employing agency, beneficiaries, educational

institutions, physicians, hospitals, official state and Federal documents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/INTERPOL-001

SYSTEM NAME:

The INTERPOL-United States National Central Bureau (INTERPOL–USNCB) (Department of Justice) INTERPOL–USNCB Records System.

SYSTEM LOCATION:

INTERPOL–U.S National Central Bureau, Department of Justice, Room 800, Shoreham Bldg., Washington, DC 20530

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been convicted or are subjects of a criminal investigation with international aspects; specific deceased persons in connection with death notices; individuals who may be associated with certain weapons, motor vehicles, artifacts, etc., stolen and/or involved in a crime; victims of criminal violations in the United States or abroad; and INTERPOL–USNCB personnel involved in litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The program records of the INTERPOL–USNCB consists of criminal and non-criminal case files. The files contain fingerprint records, photographs, criminal investigative reports, radio messages (international), teletype messages (internal U.S.), log sheets, computer printouts, letters, memoranda, and statements of witnesses and parties to litigation.

These records relate to fugitives, wanted persons, lookouts (temporary and permanent), specific missing persons, deceased persons in connection with death notices. Information about individuals includes names, alias, date of birth, address, physical description, various identification numbers, reason for the record or lookout, and details and circumstances surrounding the actual or suspected violation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 263a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the event of record(s) in this system of records indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be referred, as a routine use to the appropriate law enforcement and criminal justice agencies whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulations or order issued pursuant thereto. A record may be disclosed to federal, state or local agencies maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license grant or other benefit; to federal agencies in response to their request in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. A record may be disclosed to appropriate parties engaged in litigation or in preparation of possible litigation, e.g., to potential witnesses for the purpose of securing their testimony when necessary before courts, magistrates or administrative tribunals; to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings; to foreign governments in accordance with formal or informal international agreements; to local, state, federal and foreign agents; to the Treasury Enforcement Communications System [TECS] (Treasury/CS 00.244); to the International Criminal Police Organization (INTERPOL) General Secretariat and National Central Bureaus in member countries; *to the INTERPOL Supervisory Board, an international board comprised of three judges having oversight responsibilities regarding the purpose and scope of personal information maintained in the international archives of INTERPOL;* to employees and officials of financial and commercial business firms and private individuals where such release is considered reasonably necessary to obtain information to further investigative efforts or to apprehend criminal offenders; to other third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and to translators of foreign languages as necessary. *In addition, records are accessed by INTERPOL–USNCB employees and by volunteer students and students working under a college work-study program who have a need for the records in the performance of their duties.*

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information in behalf of and at the request of the individual who is the subject of the record.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in file folders *in the INTERPOL—United States National Central Bureau, and in file folders, in microfilm records* and on magnetic disks *in the INTERPOL Case Tracking System (ICTS) at the INTERPOL*–United States National Central Bureau, and certain limited data, *e.g.*, that which concerns fugitives and wanted persons, is stored in the Treasury Enforcement Communications System (TECS) TREASURY/CS 00.244, a system published by the U.S. Department of the Treasury.

RETRIEVABILITY:

Information is retrieved primarily by name, file name, system identification number, personal identification number, and by weapon or motor vehicle number or by other identifying data. *Prior to 1975, case files were arranged by name of subject. Since 1975, files have been arranged by year, month and sequential number.*

SAFEGUARDS:

Information maintained on magnetic disks is safeguarded and protected in accordance with Department rules and procedures governing the handling of computerized informaiton. Only those individuals specifically authorized and assigned an identification code by the system manager wil have access to the computer. Identification codes will be assigned only to those *INTERPOL–USNCB* employees who require access to the information to perform their official duties. In addition, access to the information must be accompanied through a terminal which is located in the *INTERPOL–USNCB* office that is occupied during the day and locked at night. Information in file folders *and in microfilm records* is stored in file cabinets in the same secured area.

RETENTION AND DISPOSAL:

Case files opened after April 5, 1982 have been stored on microfilm (41 CFR Sec. 101–11.506). In addition, records that were closed prior to April 5, 1982 but are recalled from the Federal Archives and Records Center (FARC) are also microfilmed.

Case files that were closed prior to April 5, 1982 are transferred to the FARC five years from the date the case is closed and are destroyed ten years thereafter, if there has been no recall from the FARC and no case activity.

Case files closed as of April 5, 1982 and thereafter are disposed of as follows: The hard copy (paper record) of the case file may be destroyed when the microfilm records have been verified for clearness, completeness and accuracy. The microfilm record of the case file is destroyed ten years after closing of the case, if there has been no case activity.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, INTERPOL–United States National Central Bureau, Department of Justice, Room 800, Shoreham Building, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Inquiries regarding whether the system contains a record pertaining to an individual may be addressed to the Chief, INTERPOL–United States National Central Bureau, Department of Justice, Room 800, Shoreham Building, Washington D.C. 20503. To enable INTERPOL–USNCB personnel to determine whether the system contains a record relating to him or her, the requester must submit a written request identifying the record system, indentifying the category and type of records, sought, and providing the individual's full name and at least two items of secondary information (data of birth, social security number, employee identification number, or similar identifying information).

RECORD ACCESS PROCEDURES:

Although the Attorney General has exempted the system from the access, contest and amendment provisions of the Privacy Act, some records may be available under the Freedom of Information Act. Inquiries should be addressed to the official designated under "Notification procedure" above. The letter and envelope should be clearly marked "Freedom of Information Request" and a return address provided for transmitting any information to the requester.

CONTESTING RECORD PROCEDURES:

See "Access procedures" above.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include investigative reports of federal, state, local, and foreign law enforcement agencies (including investigative reports from a system of records published by Department of Treasury entitled Treasury Enforcement Communications System (TECS) TREASURY/CS 00.244): other non-Department of Justice investigative agencies; client agencies of the Department of Justice; statements of witnesses and parties; and the work product of the staff of the United States National Central Bureau working on particular cases. Although the organization uses the name INTERPOL–USNCB for purposes of public recognition, the INTERPOL–USNCB is not synonymous with the International Criminal Police Organization (ICPO–INTERPOL), which is a private, intergovernmental organization headquartered in St. Cloud, France. The Department of Justice INTERPOL–USNCB serves as the United States liaison with the INTERPOL General Secretariat and works in cooperation with the National Central Bureaus of other member countries, but is not an agent, legal representative, nor organizational subunit of the International Criminal Police Organization. The records maintained by the INTERPOL–USNCB are separate and distinct from records maintained by the International Criminal Police Organization, and INTERPOL–USNCB does not have custody of, access to, nor control over the records of the International Criminal Police Organization.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has *exempted* this system from subsections (c) (3) and (4), (d), (e), (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and *(8),* (f), and (g) if the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2) and (k)(5). *Rules have been* promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and *have been* published in the **Federal Register.**

[FR Doc. 86–1673 Filed 1–28–86; 8:45 a.m.]

BILLING CODE 4410–01–M

LIBRARY OF CONGRESS

Copyright Office

Report of an Ad Hoc Group on the Legal Issues Relating to the Consideration of Adherence by the United States to the Berne Convention; Availability and Invitation To Comment

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of public availability of a Report and invitation to comment.

SUMMARY: By this Notice, the Copyright Office, in cooperation with the Department of State, announces the public availability of the Draft Report of the Ad Hoc Working Group on United States Adherence to the Berne Convention. Following receipt of comments from members of the public a final Report will be prepared. In this Report, the Ad Hoc Group analyzes the United States Copyright Act of 1976 (title 17 U.S.C.) other Federal and State statutes, and the common law, and compares them with the provisions and obligations of the Berne Convention for the Protection of Literary and Artistic Works (Paris, 1971 version). The Ad Hoc Group attempts to identify legal issues regarding the extent to which the United States copyright and other laws are or are not compatible with the Berne Convention.

DATE: Written comments should be submitted on or before March 31, 1986.

ADDRESSES: Copies of the Report are available for public inspection and copying in Room LM–401 of the James Madison Memorial Building of the

Library of Congress, First Street and Independence Avenue, SE., Washington, DC. To the extent of available stock, copies may be requested by writing to: Ralph Oman, The Register of Copyrights, Library of Congress, Department D.S., Washington, DC 20540.

Written comments should be addressed to: Harvey J. Winter, Office of Business Practices, Department of State, Washington, DC 20520.

Comments sent to the United States Copyright office will be shared with the Department of State and the members of the Ad Hoc Working Group, who will consider the comments in connection with the preparation of its final Report and publish all comments as an appendix to the Final Report. The Copyright Office will receive copies of comments sent to the Department of State. All comments will be made available for public inspection and copying in the Public Information Office of the Copyright Office, Room 401 of the James Madison Memorial Building of the Library of Congress, First Street and Independence Avenue SE., Washington, DC.

SUPPLEMENTARY INFORMATION: The Berne Copyright Convention for the Protection of Literary and Artistic Works is one of two global, multilateral copyright conventions. It was originally signed at Berne, Switzerland on September 9, 1886, and has been revised at periodic intervals since then. The latest text of the Berne Convention is that agreed to at Paris in 1971. The United States is not a member of this Convention,[1] largely because many copyright scholars and government officials thought that the United States copyright law was incompatible with certain obligations of the Berne Convention. As a result of the general revision of the United States copyright law in 1976, some of the incompatibility has been eliminated, and United States adherence to Berne would now require fewer changes in United States law.

As the Berne Convention enters its centennial year, many artists and writers, and the copyright industries generally, have expressed renewed interest in United States accession to the Convention. At the request of the Department of State, several individuals with long experience in international copyright joined together as an "Ad Hoc Working Group" to identify those provisions of United States law that were incompatible with the Berne Convention, and that might require changes in United States law. The Group addressed this overriding issue: do the United States Copyright Act, other Federal and State statutes, and common law provide protection of the nature required by the Convention for works originating in other Berne member countries?

The Ad Hoc Group prepared a Report on this technical legal issue that might assist both Houses of Congress, the Executive Branch, and the public in their consideration of United States adherence to Berne. Further information about the composition of the Group, and its methodology and purpose, may be found in an extensive foreword to the Report. Representatives of the Department of State, the Copyright Office, and the Patent and Trademark Office participated as *ex officio* members of this private sector Group.

The Report analyzes fourteen basic subjects: Compulsory Cable License; Exemptions; Jukebox License; Manufacturing Clause; Mechanical License; Moral Rights; Notice; Public Broadcasting License; Registration, Recordation, and Deposit; Renewal and Duration; Retroactivity; Self-Execution; Subject Matter; and Works-Made-for-Hire.

The purpose of this Notice is both to inform the public of the availability of the Ad Hoc Group's Report, and to invite them to submit written comment on any or all of it. The Report, along with the public comments, will be made available to Congress as it considers the question of United States adherence to the Berne Convention.

Dated: January 24, 1986.

Ralph Oman,

Register of Copyrights.

[FR Doc. 86-1892 Filed 1-28-86; 8:45 am]

BILLING CODE 1410-01-M

[1] The United States is, and has been since its inception in 1955, a member of the other international copyright convention, the Universal Copyright Convention (Geneva 1952 and Paris 1971 versions).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86-08]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's, supporting statements, instructions, transmittal letters and other documents submitted to OMB for review), may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by February 10, 1986. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546; Michael Weinstein, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl Steinmetz, NASA Agency Clearance Officer, (202) 453-1090.

Reports

Title: Non-Discrimination in Federally Assisted Programs.

Type of Request: New.

Frequency of Report: As Required.

Type of Respondent: Non-profit Institutions and Small Businesses or Organizations.

Annual Responses: 2,640.

Annual Burden Hours: 31,680.

Abstract-Need/Uses: Records and reports relating to Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, and facilities and recipients of the Federal Financial Assistance are required to comply with the objectives of the statutes and NASA implementing regulations.

L.W. Vogel,

Director, Logistics Management and Information Programs Division.

[FR Doc. 86-1874 Filed 1-28-86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMUNICATIONS SYSTEM

Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee; Meeting

A meeting of the Industry Executive Subcommittee (IES) of the National

Security Telecommunications Advisory Committee (NSTAC) will be held Thursday, March 6, 1986. The meeting will be held at the MITRE Corporation, 1820 Dolley Madison Boulevard, McClean, Virginia 22102. Registration will begin at 8:30 a.m. and the meeting will start at 9 a.m. The agenda is as follows:

A. Opening remarks.
B. Administrative remarks.
C. Briefings on industry and government activities.

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202) 692–9274 or write the Manager, National Communications System, Washington, DC 20305–2010.

David C. Brown,

Captain, USN, Chief, Joint Secretariat.

[FR Doc. 86–1864 Filed 1–28–86; 8:45 am]

BILLING CODE 3610–05–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–029]

Yankee Atomic Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the technical requirements of Appendix R to 10 CFR Part 50 to Yankee Atomic Electric Company (the licensee), for the Yankee Nuclear Power Station (Yankee) located in Rowe, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The exemption would provide alternatives, in specific areas of the plant, to the requirements for: (1) Separation of cables and equipment and associated non-safety circuits or redundant trains by a fire barrier having a 3-hour rating; (2) separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards; or (3) enclosure of cable and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating.

The Need for the Proposed Action

The proposed exemption is needed because the features described in the licensee's request regarding the existing level of fire protection and proposed modifications at the plant are the most practical method of meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protective capability.

Environmental Impacts of the Proposed Action

The proposed exemption would provide a degree of fire protection equivalent to that required by Appendix R such that there would be no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases would not be greater than previously determined. Neither does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environment impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts associated with fire protection modifications and would result in a much larger expenditure of licensee resources to comply with the Commission's regulations.

Alternative Use of Resources

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we concluded that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated December 28, 1984, as amended April 30 and November 7, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Bethesda, Maryland, this 22nd day of January, 1986.

For the Nuclear Regulatory Commission.

George E. Lear,

Director, Project Directorate #1, Division of PWR Licensing–A.

[FR Doc. 86–1691 Filed 1–28–86; 8:45 am]

BILLING CODE 1590–01–M

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on January 15, 1986 (50 FR 1868), through January 17, 1986.

Notice of consideration of issuance of amendment to facility operating license and proposed no significant hazards consideration determination and opportunity for hearing

The Commission has made a proposed determination that the following amendment requests involve 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 basis for this proposed determination for each amendment request is shown below.

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 Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By February 28, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests 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 petiton 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 requirement described above.

Not later than fifteen (15) days prior to the first prehearing conference schedule in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. 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 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 *(Branch Chief)*: 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 the 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 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Alabama Power Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of amendments request: December 16, 1985.

Description of amendments request: The licensee proposed changes to Technical Specifications (TS) to revise

the Limiting Condition of Operation (LCO) and Surveillance Requirements (SR) for the reactor trip breakers including the automatic shunt trip feature modifications. The modifications resulted from the Commission staff's Generic Letter (GL) 83–28 dated July 8, 1983, based on generic implications of the Salem ATWS events. Item 4.3 of GL 83–28 required that Westinghouse reactor plants designs be modified to add automatic reactor trip by means of a shunt trip device. This modification for the Farley Nuclear Plant was approved by Commission letter dated September 20, 1983. Item 4.3 also required addition TS to assure operability and surveillance of the modified design.

By GL 85–09 dated May 23, 1985, licensees were instructed to submit TS changes per model TS attached to the generic letter. These changes to the LCO and SR were to explicitly require independent testing of the undervoltage and shut trip attachments during power operation and independent testing of the control room manual switch contacts during each refueling outage. The licensee has administratively implemented testing of the modified reactor trip breakers, the bypass breakers, and the main control board switches. Following GL 85–09 and subsequent discussions with the Commission staff, the licensee proposes related TS changes being considered by the staff.

Basis for proposed no significant hazards consideration determination: By Attachment 2 to the licensee's December 16, 1985 letter, an analysis of a no significant hazards consideration was provided. We reviewed the licensee analysis and concur with the finding. In addition, the Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The example of actions involving no significant hazards consideration include: "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, for example, a more stringent surveillance requirement." The proposed change fits this example in that the proposed change adds additional operability and surveillance requirements on the reactor trip bypass breakers and the undervoltage and shunt trip logic as well as an additional surveillance requirement on the manual trip switch circuitry. Therefore, on this basis the staff proposes to determine that the applicant does not involve a significant hazards consideration.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Attorney for licensee: George F. Trowbridge, Espuire, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Lester S. Rubenstein.

Carolina Power & Light Company, Docket Nos. 50–324 and 50–325, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment: November 25, 1985.

Brief description of amendment: The proposed amendment would relocate a footnote from item 1.c.1 of Table 3.3.2–1 to item 1.c.1 of Table 4.3.2–1 to ensure that required surveillance testing of mechanical vacuum pumps is identified.

Currently, footnote d from item 1.c.1 of Table 3.3.2–1 indicates that upon receipt of the high radiation trip signal from the main steam line, the mechanical vacuum pumps are tripped. The proposed amendment deletes footnote d from Table 3.3.2–1 and adds it to item 1.c.1 of Table 4.3.2–1 to indicate that surveillance testing is required to verify the main steam line high radiation trip of the mechanical vacuum pumps. In addition, the footnote has been revised to include verification of the mechanical vacuum pump line value closing.

Basis for proposed no significant hazards consideration determination: The Carolina Power & Light Company (the licensee) has determined that: 1. The requested amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because relocating the footnote from the LCO table (Table 3.3.2–1) to the surveillance table (Table 4.3.2–1) does not requíre the modification or revision to any plant configuration, system function, operating parameters or setpoints.

2. The requested amendment does not create the possibility of a new or different kind of accident than previously evaluated for the same reasons as already discussed by item (1) above.

3. The requested amendment does not involve a significant reduction in a margin of safety. The proposed TS does not change any surveillance testing requirements; it only clarifies and highlights the need for verifying that the mechanical vacuum pump will trip and the mechanical vacuum pump line will close on main steam line monitor high radiation isolation signal during the surveillance test for the main steam line radiation monitor. Therefore, the margin of safety is maintained.

Based on the above, CP&L has determined that the proposed change meets the criteria of 10 CFR 50.92(c) and, therefore, does not involve significant hazards consideration.

The staff has reviewed the application and significant hazards review submited by the licensee and finds the application and the significant hazards review acceptable.

Based on the staff review of the application and the significant hazards determination above, the Commission proposed to determine that the application does not involve a significant hazard condition.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment: December 10, 1985.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for the Brunswick Steam Electric Plant Unit Nos. 1 and 2 that would make clarifications to ambiguous wording of footnotes in Specification 3/4.5.3.1.

Specification 3.5.3.1 deals with the core sprat system. Operability of the core spray system is required while in operational conditions 1, 2, 3, 4, or 5. When in operational condition 5, the core spray system need not be operable provided that the reactor vessel head is removed, the cavity is flooded, the spend fuel pool gates are removed, and the water level is maintained within specified levels. The note allowing this exception currently states in part: "The core spray system is not required to be OPERABLE when the suppression pool is inoperable provided . . .". This footnote is inconsistent with the guidance provided in the BWR/4 Standard Technical Specifications (NUREG–1234). The footnote is being revised to delete reference to supression pool operability.

When the core spray system is inoperable in operational condition 5, the reactor vessel must be flooded and the fuel pool gates removed. With the

suppression pool operable, additional assurance of core flooding is provided by one low pressure cooling injection (LPCI) loop. The plant is in a more conservative condition with the suppression pool operable than inoperable since an additional source of makeup water is available to the LPCI system. This is consistent with the basis of Specification 3.5.3.1 which does not consider suppression pool operability with regard to core spray system operability. Additionally, the revision of this footnote will minimize operator confusion and ensure operational flexibility for modification and maintenance of the core spray system. This change clarifies the footnote, removing the implication that core spray may not be inoperable while the suppression pool is operable.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 FR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee evaluated this request and has determined that:

1. The proposed amendment does not involve a significant increase in the probability or consequence of an accident previously evaluated because the changes do not result in any physical alterations of the plant configuration or changes to setpoints or operating parameters.

2. The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated for the same reasons as stated in item (1).

3. The proposed amendment does not involve a significant reduction in a margin of safety because rewording of ambiguous statements will help to avoid the possibility of operator confusion, thereby increasing the margin of safety.

Based on the above reasons, the licensee has determined that the proposed amendment does not involve a significant hazards consideration.

The staff has reviewed the licensee significant hazards consideration and finds it acceptable. Based on the above discussion the Commission proposes to determine that the proposed amendment request does not involve a significant hazards consideration.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: November 13, 1985.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) for the H.B. Robinson Steam Electric Plant Unit No. 2. The proposed revision involves deleting Technical Specification requirements for monitoring a highly borated water inventory and its associated limiting conditions for operation and surveillance.

Carolina Power and Light's (CP&L) submittal is in response to Generic Letter 85–16 which highlighted incidents at operating plants in which boric acid has crystallized in the internals of vital safety related pumps and piping thereby rendering those systems inoperable. In addition, licensees of Westinghouse plants have requested that they be allowed to either physically remove the boron injection tank from safety injection piping or reduce boron concentrations in the tank to levels safely used in other sections of the safety injection piping and refueling water storage tank. To support their request, licensees have submitted new analyses of the steamline break event that demonstrated that their purposed change involves no significant hazards consideration. The staff has review these analyses and granted these requests.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards of 10 CFR 50.92 by providing certain examples (48 FR 14870, April 6, 1983). One of the examples (vi) of actions not likely to involve significant hazards consideration relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan (SRP).

CP&L has submitted an analysis of the steamline break event with boron injection tank (BIT) removal or dilution to zero concentration boric acid for H.B. Robinson Unit 2. Although the concentration of the BIT has some potential implications or consequences of an accident, this impact is limited or bounded by the steamline break event. The CP&L analysis demonstrated that removal of capacity to inject highly borated water into the core does not produce a significant reduction in minimium departure from nucleate boiling ratio when compared to the large margin to fuel failure which remains.

The proposed changes fit example (vi) described above since the changes are clearly within all acceptable criteria with respect to the system or component specified in the SRP. On this basis, therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Attorney for licensee: Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, DC 20036

NRC Project Director: Lester S. Rubenstein.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of amendment request: December 20, 1985.

Description of amendment request: The proposed amendments to Operating License NPF–11 and Operating License NPF–18 would revise the La Salle Units 1 and 2 Technical Specifications to reflect Commonwealth Edison's (licensee) management organizational changes both at the corporate level and at the La Salle County Station as a result of a reorganization. The licensee indicates that all functions performed by individuals meet the minimum acceptable levels described in Section 4.2.4 of ANSI N18.1–1971, for each respective requirement.

Basis for proposed no signifcant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). Example (i) stated, "A purely administrative change to the Technical Specifications." These proposed

amendments fall under this example since these changes are administrative in nature.

Accordingly, the Commission proposes that the changes would fall into the category of a no significant hazards consideration determination since the changes are administrative.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue, NW., Washington, DC 20036.

NRC Project Director: Elinor G. Adensam.

Commonwealth Edison Company, Docket No. 50–373, La Salle County, Station, Unit 1, La Salle County, Illinois

Date of amendment request: January 9, 1986.

Description of amendment request: The proposed amendment to Operating License NPF–11 would revise the La Salle Unit 1 Technical Specification to change the instrument response time for the main steam line low pressure trip function in Table 3.3.2–3 from 1 to 2 seconds.

La Salle Unit 1 is in a refueling outage, and is in the process of updating unqualified equipment with environmentally qualified equipment. The licensee is replacing the Barksdale main steam line low pressure switches, similarly as was done in Unit 2, with environmentally qualified SOR switches which cannot consistently meet the less than or equal to 1 second response time required by the Technical Specifications in Table 3.3.2–3. As a consequence, analyses were performed using the new response time in order to confirm that the prvious analyses were still applicable. No new nor unanalyzed safety issue results from the extension of this sensor response time to 2 seconds versus 1 second. The purpose of this low pressure isolation is to protect the fuel by restricting reactor operation to pressure regimes covered by the data base for the GEXL correlation.

The use of 2 seconds for instrument response, as determined according to Technical Specification definitions, does not challenge nor violate this fuel protection criteria.

Basis for proposed no signficant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences for an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined and the NRC staff agrees that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the revised response time for the main steam line low pressure switches is bounded by the original analysis performed by General Electric for pressure regulatory failure-high.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident is possible by the required response time. No plant equipment is removed.

3. Involve a significant reduction in the margin of safety because the original design function is not affected and the increased response time is bounded by the original analysis.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room Locations: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln, and Beale, Suite 840, 1120 Connecticut Avenue, N.W., Washington, D.C. 20036.

NRC Project Director: Elinor G. Adensam.

Commonwealth Edison Company, Docket No. 50–254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois

Date of amendment request: October 29, 1985.

Description of amendment request: This amendment would (1) delete from the Technical Specifications (TS) maximum average planar linear heat generation rate (MAPLHGR) curves for two fuel types that will be vacated from the core (2) incorporate into the TS MAPLHGR curves for two new fuel types to be used for cycle operation (3) extend the MAPLHGR curve for one fuel type now in the core from 45,000 megawatt days per short ton (MWD/ST) to 55,000 MWD/ST to extend the protective thermal limit to higher values of average planar exposure and thereby extend the useful life of the fuel.

In addition to the above change, all MAPLHGR curves would be reissued unchanged (except as noted above) but with the curves replotted for clarity and with page numbers and sheet numbers adjusted as required to reflect the above additions and deletions.

Basis for proposed no significant hazards consideration determination: The licensee has evaluated the proposed Technical Specification amendment and has determined that it does not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration set forth in 10 CFR 50.92(c), operation of Quad Cities Unit in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because:

(a) The amendment involves restrictions on the reactor power distribution during normal operation which of itself cannot initiate an accident and therefore does not increase the probability of an accident, and

(b) These restrictions on power distribution are based on a reanalysis of accidents in accordance with NRC-approved methods, and are specific to ensure that the consequences of LOCA remain within the existing accident criteria established for Quad Cities in the FSAR; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated for the same reason as (1)(a). above; or

3. Involve a significant reduction in the margin of safety since the amendments are specifically intended to ensure that the 10 CFR 50.46 ECC criteria continue to be protected.

With regard to the second part of the proposed amendment, i.e., incorporation in the TS MAPLHGR curves for two new fuel types for use in the upcoming operating cycle, the Commission has provided guidance concerning the application of standards for determining whether a significant hazard consideration exists by providing specific examples (48 FR 14870). Example (iii) of actions not likely to involve significant hazards considerations is a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. Each of the two new fuel types is a barrier-type fuel having properties similar to fuel already in the core. Each has the same physical configuration, and similar material composition and isotopic enrichment as fuel already analyzed and approved for previous reloads. Because

the proposed use of the new fuel types is encompassed by example (iii), this action is not likely to involve significant hazards considerations.

In addition to the above changes, all other MAPLHGR curves now in the TS would be reissued unchanged but replotted for clarity, and page and sheet numbers would be adjusted to reflect the additions and deletions discussed above. Since example (i) of actions not likely to involve a significant hazards consideration includes "a purely administrative change to technical specifications", these changes to achieve clarity and consistency are purely administrative in nature, and therefore involve no significant hazards considerations.

The staff has reviewed the licensee's no significant hazards considerations determination and, based on this review, the staff has made a proposed determination that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Moline Public Library, 504–17th Street, Moline, Illinois 61265.

Attorney for licensee: Mr. Robert G. Fitzgibbons, Jr., Isham, Lincoln & Beale, Three First National Plaza, Suite 5300, Chicago, Illinois 60602.

NRC Project Director: John A. Zwolinski.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: December 6, 1985, as modified January 7, 1986.

Description of amendment request: The proposed amendment would (1) permit the repair of degraded steam generator tubes by installing metal sleeves in the degraded tubes rather than removing them from service by plugging them, (2) change the definition of tube degradation (3) add additional reporting requirements dealing with tube sleeving and (4) renumber existing technical specification pages.

Basis for proposed no significant hazards consideration determination: Item (1) of the proposed amendment, as identified above, would change the technical specifications to allow repair of defective steam generator tubes by either sleeving or plugging. Tube plugging is currently permitted by the existing technical specifications. For tube sleeving, the licensee intends to repair selected degraded steam generator tubes by installing a metal sleeve (Inconel 690) between the tube sheet and the first tube support to provide an elevated resistance to pitting experienced on the secondary side of the steam generator tube bundle. The sleeving materials and installation techniques to be applied are similar to those previously evaluated and accepted by the staff at Millstone Unit 2.

The staff has reviewed the licensee's application and based upon the information provided therein concludes that the proposed amendment does 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.

These conclusions are based on the fact that sleeve design, installation, testing and inspection procedures will assure that the required steam generator is structurally sound. Further, the proposed method of repairing the degraded tubes will restore the original capabilities of the tubes and will provide a level of safety in operation commensurate with that anticipated for the facility had it not experienced the need to repair the steam generators.

With regard to items 2, 3 and 4, as identified above, the Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples not likely to involve significant hazards considerations is example (i) which relates to an administrative change to the technical specifications. We have reviewed the licensee's proposed definition change, the addition of reporting requirements for tube sleeving, and technical specification page renumbering and conclude that these changes fall within the envelope of example (i) because they are simple administrative changes to the plant technical specifications.

Based on the above, the staff proposes to determine that the license amendment requests involve no significant hazards considerations.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: Christopher I. Gimes.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: December 11, 1985.

Description of amendment request: The proposed license amendment would change technical specifications that are directly related to the fuel cycle design and safety analyses for Cycle 14. The technical specification changes include: (1) The definition of quadrant power tilt ratio; (2) setpoints for protection instrumentation; (3) isothermal coefficient of reactivty; (4) limiting heat generation rates; (5) power distribution monitoring and controls; (6) reactor coolant system flow, temperature and pressure.

Basis for proposed no significant hazards consideration determination: The new fuel assemblies are identical to the fuel assemblies that were approved and inserted into the Haddam Neck core for fuel Cycle 13. (Operation in Cycle 13 is expected to end on January 4, 1986). The licensee, using calculational methods previously accepted by the staff, has calculated new technical specification values that maintain the current safety margins.

On the basis of its analysis, the licensee has concluded that the proposed amendment does 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 differenct kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has reviewed the proposed changes in accordance with 10 CFR 50.92, and has concluded that they do not involve a significant hazards consideration. The basis for this conclusion is that the criteria of 10 CFR 50.92(c) are not compromised, a conclusion which is supported by the licensee's determinations made pursuant to 10 CFR 50.59.

In addition, the Commission has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (48 FR 14870, April 6, 1983). The proposed changes to the technical specifications fall within the envelope of example (iii) in that they involve changes resulting from a nuclear reactor core reloading and no fuel assemblies are involved which are significantly different from those found acceptable to the NRC for a previous core at the Haddam Neck Plant. No significant changes have been made to the acceptance criteria for the technical specifications, and the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed from those which

the NRC has previously found to be acceptable.

Based on the information provided by the licensee, the staff proposes to determine that the license amendment request involves no significant hazards considerations.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City, Place, Hartford, Connecticut 06103–3499.

NRC Project Director: Christopher I. Grimes.

Detroit Edison Company, Docket No. 50–341, Fermi–2, Monroe County, Michigan

Date of amendment request: December 23, 1985.

Description of amendment request: The proposed amendment to Operating License NPF–43 would revise the Fermi–2 Technical Specifications to change the minimum rod block trip setpoint in Table 3.3.6–2 and in Specifications 4.3.7.6 and 4.9.2 from 0.7 counts per sound (CPS) to 0.3 CPS.

Since receiving its low power license in March 1985 and the full power license in July 1985, the Fermi–2 Unit has not been operated at power levels sufficent to maintain the strength of the startup sources. The licensee estimates that the source strength may be insufficient to meet the present minimum setpoint value of 0.7 CPS after mid-February 1986.

The plant was shutdown in early October 1985 to install environmentally qualified equipment and to install an independent, alternate shutdown system for fire protection. Subsequent problems with the emergency diesel generators (EDG's) will probably delay restart of the facility to mid-February 1986. The licensee's proposed revision to the Fermi–2 Techical Specifications is for a limited amount of time and only for the first core.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences for an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined and the NRC staff agrees that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the source range monitors (SRM's) which register the count rate, are not required to perform any protective fuction. Accordingly, the evaluation of accidents did not rely on either their presence or functioning.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed lower value of the rod block monitor setpoint is within the demonstrated operating range of the SRM's to detect neutron levels in the reactor core. This is ensured by the licensee's determination that it can satisfy the minimum signal to noise ratio of 2 even at a count rate three times lower (i.e., 0.1 CPS) than the proposed lower setpoint value of 0.3 CPS.

Additionally, the method of achieving criticality in the reactor is by introducing small reactivity additions by withdrawing one rod at a time through a relatively small distance. This method ensures that the reactor will go critical with a relatively long period which can be confirmed by the SRM's

3. Involve a significant reduction in the margin of safety because the SRM setpoint change does not affect the protective function of the reactor protection system. This protective function is provided by the intermediate range monitors (IRM's), and they are unaffected by the proposed revision.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Elinor G. Adensam.

Duke Power Company, et al., Docket No. 50–413 Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of Amendment Request: July 31, 1985.

Description of Amendment Request: The proposed amendment would revise Technical Specifications (TS) 6.5, 6.6, 6.8 and 6.10, concerning "Administrative Controls." This proposed amendment would (1) seek to add the Superintendent of Integrated Scheduling to TS 6.5.1.3, 6.5.1.5, 6.6.1b., 6.8.2, and 6.8.3c, (2) seek to add the Superintendent of Station Services to TS 6.5.1.8 and 6.8.1c, and (3) change the record retention period in TS 6.10.2 for records of quality assurance activities required by the QA Manual. The effect of the first part would be to allow the Superintendent of Integrated Scheduling to review and/or approve modifications of safety-related structures, systems or components (TS 6.5.1.3), proposed tests and experiments which affect nuclear safety and are not addresssed in the FSAR or the Station Technical Specifications (TS 6.5.1.5), Reportable Events (6.6.1b), and procedures specified under Specification 6.8.1 and changes thereto (TS 6.8.2 and 6.8.3), if so designated by the Station Manager. The second part is outside the scope of this notice. Regarding the third part of the proposed amendment, Specification 6.10.2 presently requires that the records of the quality assurance activities be retained for the duration of the Operating License. The proposed change would substitute a new Specification 6.10.3 requiring that these records be retained for the period specified by ANSI N45.2.9–1974, "Requirements for Collection, Storage, and Maintenance of Quality Assurance Records of Nuclear Power Plants."

Basis for proposed no significant hazards consideration: The Commission has provided guidance concerning the application of the standards for determining whether license amendments involve significant hazards consideration by providing certain examples (48 FR 14870). One of the examples (i) of actions not likely to involve a significant hazards consideration relates to administrative changes to the technical specifications.

The proposed amendment to TS 6.5, 6.6 and 6.8 is an example of (i) because the change relates to an increase in the number of supervisory positions. Since this new supervisory position is required to meet the same qualifications as the other existing supervisory positions, there would be no loss of technical review capability, and there would be no adverse impact on safety. The proposed change to TS 6.10 would involve only the substitution of a more specific and more appropriate requirement for QA records retention pursuant to a standard accepted by the NRC staff. Because this substitution would not shorten the retention period for those types of QA records which the Commission has determined should be retained for the plant lifetime, and does appropriately recognize that some of the QA record types have limited significance and may be retained for lesser periods, the proposed change has

no adverse impact on safety and matches the example. Therefore, the Commission proposes to determine that this request does not involve a significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. William L. Porter, Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242.

NRC Project Director B.J Youngblood.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: August 20, 1985 as supplemented November 6, 1985.

Description of amendment request: The proposed amendments would increase the containment overall integrated leakage rate in Technical Specification 3.6.1.2 from its current L_a value of 0.20% per day to 0.30% per day, and from its current L_t value of 0.14% to 0.21% per day. (See Appendix J to 10 CFR 50 for definitions of L_a and L_t, corresponding at McGuire to containment pressures of 14.8 psig and 7.4 psig, respectively).

Basis for proposed no significant hazards consideration determination: The licensee provided revised radiation exposure calculations for a design basis LOCA using the methodology from Revision 1 of the Standard Review Plan (SRP), Section 6.5.2. SRP Section 6.5.2 recognizes that containment spray systems with boric acid spray solutions have been shown to be effective for removal of elemental and particulate iodine. The revised analyses demonstrate for thyroid doses that the proposed 50% increase in the containment leakage rate would be nearly offset by the effect of the spray system. This permits the licensee to take credit for the iodine removal effect of the boric acid which is contained in containment spray water for other reasons. Since noble gases are unaffected by containment sprays, an increased containment leakage rate would result in increased whole body and skin doses. However, for the McGuire Nuclear Station, thyroid radiation exposure is the limiting criteria, and the licensee's calculations show that the whole body and skin doses would remain well below the acceptance criteria in Appendix A of SRP Section 15.6.5 for offsite exposure (i.e., 10 CFR 100.11 values) and acceptance criteria in SRP 6.4 (i.e., GDC 19) for control room personnel.

The results of the licensee's calculations of onsite dose inside the control room are as follows: The whole body dose increases from 0.2 to 0.3 rem, which is less than the allowable limit of 5 rem; the skin dose increases from 4 to 6 rem, which is less than the allowable limit of 30 rem; and the thyroid dose decreases from 26 to 19 rem, which is less than the allowable limit of 30 rem.

The results of the licensee's calculations of offsite dose at the exclusion area boundary are as follows: The whole body dose increases from 3 to 4 rem, which is less than the allowable limit of 25 rem; and the thyroid dose increases from 198 to 208 rem, which is less than the allowable limit of 300 rem. The results of the licensee's calculations of offsite dose at the low population zone are as follows: The whole body dose increases from 0.6 to 0.7 rem, which is less than the allowable limit of 25 rem; and the thyroid dose decreases from 65 to 51 rem, which is less than the allowable limit of 300 rem.

Preliminary review and separate calculations by the NRC support these results and statements by the licensee.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870) of actions involving no significant hazards considerations. One of the examples (vi) involves a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable crtieria with respect to the system or component specified in the Standard Review Plan; for example, a change resulting from the application of a small refinement of a previously used calculational model or design method. The proposed amendments match the example because, as noted above, the doses after a design basis LOCA with the increased containment leakage rate, but with allowance for the containment spray system, would remain below the acceptance criteria for radiological exposure in Appendix A of SRP 15.6.5 and in SRP 6.4. Other criteria in the SRP sections would not be affected by the proposed change. Therefore, the Commission proposes to determine that the change involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242.

NRC Project Director: B. J. Youngblood.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Paris, Louisiana

Date of Amendment Request: December 2, 1985.

Description of Amendment Request: The proposed change would revise the Appendix A Technical Specifications by correcting a typographical error in Section 6.4.1 "ADMINISTRATIVE CONTROLS."

Adminstrative Control 6.4.1 describes the requirements for the retraining and replacement training program at Waterford 3, including reference to ANSI 3.1–1978, "For Selection and Training of Nuclear Power Plant Personnel."

To meet the intent of Administrative Control 6.4.1, the correct citation in ANSI 3.1–1978 is Section 5.5 entitled "Operator Retraining and Replacement Training." However, due to a typographical error, Administrative Control 6.4.1 presently incorrectly cites Section 5.2 of ANSI 3.1–1978 entitled "Training of Personnel to be Licensed by the NRC". The proposed change corrects this error by referencing Section 5.5 of ANSI 3.1–1978.

Basis for Proposed No Significant Hazards Considerations Determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazrds consideration exists by providing certain examples (49 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. Example (i) relates to a purely administrative change to technical specifications, correction of an error, or change in nomenclature.

The proposed change to Administrative Control 6.4.1, as described above, will correct a typographical error by citing the proper section of ANSI 3.1–1978. Therefore, the proposed change is similar to example (i).

This change is solely for the purpose of correcting typographical error and has no effect on plant operations. Therefore, the proposed change will not: (1) Involve an increase in the probability or consequences of any accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously of a new or different kind of acident from any accident previously evaluated; or (3)

involve a reduction in a margin of safety.

As the change requested by the licensee's December 2, 1985 submittal fits the example provided, as well as satisfies the criteria of 50.92, it is concluded that: (1) The proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M St. NW., Washington, DC 20036.

NRC Project Director: George W. Knighton.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee, Atomic Power Station, Lincoln County, Maine

Date of amendment request: September 6, 1985 as suplemented October 3 and December 16, 1985.

Description of amendment request: This proposed amendment provides Technical Specification changes needed to require that the auxiliary turbine driven auxiliary be operable during plant operation. This proposed amendment would require that the reactor shall not be maintained in a power operation condition unless at least three independent steam generator auxiliary or emergency feedwater pumps and associated flow paths are operable to supply emergency feedwater to all three steam generators with:

1. Two emergency feedwater pumps, each capable of being automatically powered from separate operable emergency busses, and

2. One auxiliary feedwater pump capable of being powered from an operable steam supply system, and

3. An inventory of over 100,000 gallons of primary grade feedwater.

If one auxiliary or emergency feedwater pump is inoperable, it is to be restored to operable status within 168 hours or the plant is to be in at least hot standby status within the next 6 hours and hot shutdown within the following 6 hours.

With one emergency feedwater and one auxiliary feedwater pump inoperable, be in HOT STANDBY in 24 hours and in HOT SHUTDOWN within the following 6 hours.

With two emergency feedwater pumps inoperable be in at least HOT STANDBY within 6 hours and in HOT SHUTDOWN within the following 6 hours.

With all three auxiliary and emergency feedwater pumps inoperable, immediately initiate corrective action to restore at least one pump to OPERABLE status as soon as possible.

With the emergency feedwater flow path to a steam generator out of service, return the flow path to service within 168 hours, or be in HOT STANBY within 6 hours and in HOT SHUTSOWN within the following 6 hours.

Basis for proposed non significant hazards consideration determination: The licensee persented the following basis for no significant hazards consideration determination:

1. Discussion of the Proposed Change:

The proposed change adds a limiting condition for operation for the turbine driven auxiliary feedwater pump. Operation of the plant is allowed for up to 168 hours with the pump out of service and for up to 24 hours with the turbine driven auxiliary feedwater pump and one of the motor driven emergency feedwater pumps out of service. The current Technical Specifications do not address operability of the auxiliary feedwater pump.

The proposed change also includes minor changes to the existing Technical Specifications on the motor-driven emergency feedwater pumps, in order to improve consistency with the standard specifications for CE plants.

2. Does the proposed change involve a significant increase in the probability or the consequences of an accident previously analyzed?

No, it does not. The only design basis accident potentially affected by this change is postulated loss of main feedwater. The probability of a loss of main feedwater is not affected. The proposed change increases the reliability of the feedwater supply and could decrease the consequences of certain loss of feedwater scenarios which are beyond the design basis of the plant.

3. Does the proposed change create the possibility of a new or different kind of accident from any accident previously analyzed?

No it does not. The requirement for the turbine driven feedpump to be operable could mitigate a postulated loss of all AC power. The proposed change does not create the possibility of any non-design basis accident.

4. Does the proposed change involve a significant reduction in a margin of safety?

No it does not. The requirement for the auxiliary feedwater pump to be operable should result in an increase in the margin of safety.

5. Does the proposed change involve a significant hazards consideration as defined by 10 CFR 50.92?

Based on the above, the licensee has concluded that the proposed change does not involve a significant hazards consideration as defined by 10 CFR 50.92.

The staff agrees with the licensee's conclusion.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscassett, Maine.

Attorney for licensee: J. A. Ritscher, Esq., Ropes & Gray 225 Franklin Street Boston, Massachusetts 02210.

NRC Project Director: Ashok C. Thadani.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of amendment request: August 6, 1981 as supplemented by letter dated December 2, 1985.

Description of amendment request: Revises earlier Technical Specification change request regarding the verification of drywell-suppression chamber vacuum breakers closures.

Basis for proposed no significant hazards consideration determination: The proposed amendment would incorporate the following changes to the Technical Specifications (TSs) in addition to those previously noticed in the **Federal Register** June 20, 1984 (49 FR 25368)

1. Delete the licensee's original proposal permitting continuous operation with one drywell-suppression chamber vacuum breaker in the position between "fully closed" and "3 degrees open."

2. Require initiation of the bypass area leakage test within 8 hours of detection of a "not fully seated" position indication.

3. Require a bypass area leakage test within 24 hours following the operability test of vacuum breakers if a "not fully seated" position indication exists.

4. Require periodic bypass area leakage tests for the duration of a "not fully seated" position indication.

Further, the licensee requests several minor editorial and typographical

corrections. Typical of these requested editorial changes is a change from 'will' to 'shall' and the addition of the word 'outage' as in refueling outage.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). One of the examples of an action not involving a significant hazards consideration includes a change (ii) that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications: For example, a more stringent surveillance requirement. The major changes (items 2,3,4) described above matches this example in that they would add further operational restrictions not presently included in the TSs.

The licensee also withdrew a previously proposed TS change request as discussed in Item above. Based upon the above, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Daniel R. Muller.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of amendment requests: February 11, 1982, as amended on August 24, 1983 and November 1, 1985.

Description of amendment requests: Proposed addition of Technical Specification (TSs) provisions covering overtime work restrictions for certain plant personnel in accordance with NUREG-0737, Item I.A.1.3. The proposed amendment would add overtime work restrictions for certain plant personnel to Section 6 (Administrative Controls) of the Peach Bottom Technical Specification in accordance with Generic Letter 83-02 (NUREG-0737 Technical Specifications, January 10, 1983). The above cited Generic Letter provided Standard Technical Specifications for certain NUREG-0737 requirements, including the overtime limits identified in NUREG-0737, Item I.A.1.3. The proposed amendment would incorporate the major provisions of these Standard TSs as requested by the staff in Generic Letter 83-02.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain example (48 FR 14870). One of the examples of actions involving no significant hazards considerations is (ii) a change that constitutes and additional limitation, restriction, or control not presently included in the Technical Specifications for example, a move stringent surveillance requirement. Since the current TSs do not have requirements limiting overtime of certain plant personnel, these requested changes represent additional limitations and restrictions not presently found in the Peach Bottom TSs.

Since the application for amendment involves proposed changes that are similar to the example cited above for which no significant hazards considerations exists, the Commission proposes to determine that this action involves no significant hazards considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Daniel R. Muller.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of amendment requests: November 18, 1985.

Description of amendment requests: Certain changes regarding plant organization as specified in Section 6 (Administrative Controls) and revised organization charts. The proposed revisions to the Technical Specifications (TSs) involve the following:

1. A division of the Health Physics and Chemistry organization into two groups, each directed by a senior level supervisor;

2. A reorganization of station upper management through the introduction of two new position: Superintendent Operations and Superintendent Plant Services;

3. A new station organization chart;

4. A The addition of the Administrative Engineer, Assistant Maintenance Engineer, Outage Planning Engineer, and ALARA—Health Physicist to the station organization chart;

5. A revision to the licensed operator staffing requirements during period when both units are shutdown;

6. A provision to permit certain changes to the organization chart and onsite safety review committee composition without prior NRC approval;

7. A change in several titles on the organization charts;

8. A revision to the composition of the onsite safety review committee;

9. A provision to incorporate several minor changes in order to establish consistency between the Peach Bottom TSs and the Limerick TSs;

10. A revision to clarify the person authorized to approve procedures; and

11. A revision to the Management Organization Chart to reflect reorganization and title changes.

All of the above proposed changes would affect Section 6 (Administrative Controls) of the current Peach Bottom TSs.

Basis for proposed no significant hazards consideration determination: The proposed amendment to the TSs would permit the following:

1. Currently, Figure 6.2-2, Organization for Conduct of Plant Operations, shows the Senior Health Physicist as being responsible for both the Health Physics and Chemistry programs. The proposed change to figure 6.2-2 would divide the organization into two groups, each directed by a senior level supervisor. Health Physics activities would continue to be supervised by the Senior Health Physicist. A new position of Senior Chemist would be established with the responsibility for the supervision of the radiochemistry and conventional chemistry activities. The individual assigned to the new position of Senior Chemist meets the qualifications of Regulatory Guide 1.8, September 1975, "Personnel Selection and Training."

2. The licensee proposes changing the title of "Station Superintendent" to "Manager—Nuclear Plant" and the creation of two positions (Superintendent—Operations, and Superintendent—Plant Services) at the superintendent level to handle the plant management responsibilities previously handled in a single line organization through an Assistant Superintendent to the Station Superintendent. The Licensee indicates that Reorganization is intended to better focus management attention on the performance of each of

the primary plant organizations essential to safe and effective operations. The individuals to be assigned to the positions of Superintendent—Operations, and Superintendent—Plant services are the Assistant Superintendent and Technical Engineer, respectively. The position of Manager—Nuclear Plant will be filled by the incumbent Station Superintendent.

3. The licensee proposes to show the position of Administration Engineer, Outrage Planning Engineer, and ALARA-Health Physicist on the organization chart. The duties of the Administration Engineer include the administration of security, clerical, and selected regulatory activities. The duties of the Outrage Planning Engineer involve the planning, coordination, and management of plant outrage activities. Both positions are currently held by individuals holding an SRO license; although, this is not a requirement. The licensee indicates that the position of ALARA-Health Physicist would enhance the implementation of the Peach Bottom ALARA program.

4. The organization chart in Figure 6.2–2 has been redrawn using a new format to improve clarity and depict the plant organization more accurately.

5. The licensee proposes a change in the minimum licensed operator staffing requirements for the control room. Currently, Figure 6.2–2 requires two senior licensed operators (SRO) and three licensed operators (RO) per shift at all times. The proposes change, as stated in Note 3 on Figure 6.2.–2, would reduce the requirements to one SRO and two RO's during periods when Peach Bottom Units 2 and 3 are both in the shutdown or refuel mode. The licensee states the proposed staffing requirements are consistent with the Standard Technical Specifications and the Commission's regulation (10 CFR 50.54m).

6. Licensee proposes a change to Section 6.2.2 (page 243) that would permit certain revisions to the organization charts without prior NRC approval. The licensee states that the revisions would be limited to changes that do not decrease the effectiveness of the organization. The proposed revisions would require the reporting of changes to the NRC within 30 days, followed by a license amendment application within 4 months. The licensee proposes a similar provision regarding changes to the composition of the PORC (page 246). These provisions would permit minor revisions, and improvements, in the staff organization without the implementation delays inherent in the current license amendment process.

7. The licensee proposes changes to the organization chart on Figures 6.2–1, 6.2–2 and 7.1.1, and to pages 243, 246, 247, 248, and 254, to reflect the following title changes: "Station Superintendent" to "Manager—Nuclear Plant," and "Results Engineer" to "Performance Engineer". These proposed changes represent only a change in nomenclature, as the responsibilities of these two positions remain unchanged.

8. Licensee proposes revisions to the onsite safety review committee (PORC) composition depicted in specification 6.5.1.2 (page 246) to reflect the addition of the Superintendent—Operations, Superintendent—Plant Services, Outage Planning Engineer, and Senior Chemist to the organization as previously described. The licensee states that their experience and knowledge of nuclear plant activities would enhance the review capabilities of the PORC. To accommodate these additions, the positions of Assistant Superintendent, Results (Performance) Engineer, Reactor Engineer, and Instrument and Controls Engineer are being proposed for removal as primary PORC members. The number of PORC members is not changed by this application. These four individuals would fill senior plant management positions and the licensee states that they meet the qualifications of ANSI/ANS 3.1–1978 and ANSI N18.1 1971 for comparable positions.

9. The licensee has proposed certain changes to the Peach Bottom TS organization charts as the result of NRC staff comments dated March 18, 1985. These changes would add the position of Assistance Maintenance Engineer and delete a footnote to establish consistency with the organization chart in the Limerick TSs. In addition, minor additions have been proposed to Section 6.5.1.4, 6.5.1.6 and 6.8.2 to provide consistency within the Peach Bottom TSs and consistency between the Peach Bottom TSs and consistency between the Peach Bottom TSs and the Standard Technical Specifications (NUEREG–0123, Revision 3.)

10. A further revision to Section 6.8.2 is proposed that would explicitly permit the Plant Manager to delegate approval authority for selected procedures to the PORC member who has primary responsibility for implementation of the procedures. The licensee states that the current specification is unclear regarding the delegation of approval authority, and the proposed change would avoid interpretational problems. The licensee further states that the proposed revisions do not impact the review and approval responsibilities of procedures by PORC, and current administrative controls will continue to ensure PORC approval prior to the final signoff by the responsible PORC member. The revision would distribute this administrative task among several members of the senior plant staff and would expedite completing the approval process for needed revisions. The proposed approval process utilizes the PORC member who is most familiar with activities governed by the procedures and their revision.

11. In addition to the proposed changes described in items (6) and (7) above, Figure 6.2–1, Management Organization Chart is revised to depicit the splitting of the Generation Division into separate Fossil/Hydro and Nuclear groups, and the formation of a Nuclear Services group. The NRC was previously informed of this reorganization in letters dated April 4, 1983 and May 29, 1984. The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility is in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has determined per 10 CFR 50.92 the following:

The organizational changes described in requests 1, 2, 3, 8, and 11 do not involve a significant increase in the probability or consequences of an accident previously evaluated because they will enhance station management control over plant activities essential to safe and effective operations. These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because they likewise enhance station management control over plant activities essential to safe and effective operations. The changes do not involve a significant reduction in a margin of safety because they are intended to better focus management attention on the performance of each of the primary plant organizations essential to safe and effective operations.

Changes 4 and 7, involving a new format for the organization chart and title revisions, do not involve a significant increase in the probability or consequences of an accident previously evaluated because they improve clarity

and are revisions in nomenclature only. These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because they are administrative changes only and will improve clarity. The changes do not involve a significant reduction in a margin of safety because they are revisions in nomenclature only.

Change 5 regarding licensed operator staffing requirements does not involve a significant increase in the probability or consequences of an accident previously evaluated because it applies only to the shutdown or refuel mode of operation and conforms to the Commission regulation (10 CFR 50.54m). The change does not create the possibility of a new or different kind of accident from any accident previously evaluated because it applies only to the shutdown or refuel mode at operation. The change does not involve a significant reduction in a margin of safety because it conforms with the Commission's regulation (10 CFR 50.54m).

Changes 6, 9, and 10 which streamline the licensing process for minor revisions and establish consistency with the Standard Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously evaluated because they would permit organizational and procedural improvements without the implementation delays inherent in the current license amendment process. These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because they would permit organizational (administrative) and procedural improvements without the implementation delays inherent in the current license amendment process. The changes do not involve a significant reduction in a margin of safety because they permit manpower resources in both the utility and NRC to concentrate on issues of safety significance rather than the administrative burden of processing minor revisions to the Operating License.

The licensee has determined and the NRC staff concurs that these changes have little safety significance and that the proposed amendment will not alter any of the accident analyses.

Based on our review of the proposed modifications, the staff finds that there exists reasonable assurance that the proposed changes in Section 6 (Administrative Controls) will have little or no impact on the public health and safety.

Accordingly, the Commission proposes to determine that the proposed changes to the Peach Bottom TSs involve no significant hazards considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Daniel R. Muller.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: October 1, 1985.

Description of amendment request: The proposed amendment would modify the Technical Specification (TS) to clarify the function of the Plant Operating Review Committee (PORC). The existing wording in Section 6.5 of the TS implies that the PORC performs both a review and an audit function. Although this dual function does apply to the Safety Review Committee (SRC), the PORC performs only a review function. The proposed revision, by making this clarification, makes the TS consistent with the licensing basis of the plant.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). One example of actions involving no significant hazards consideration if (i) A purely administrative change to the Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. The proposed revision is clearly encompassed by this example.

Based on the foregoing, the Commission has made a proposed determination that the proposed license amendment does not involve significant hazards consideration.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Daniel R. Muller.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit No. 1, Callaway County, Missouri

Date of amendment request: November 15, 1985.

Brief description of amendment: The purpose of the proposed amendment is to revise technical specifications 4.6.1.1.c, 3.6.1.2.a, 3.6.1.2.b, 4.6.1.2.a, 4.6.1.2.d, 3.6.1.3.b, 4.6.1.3.b, and 4.6.1.7.2 to indicate that containment leak rate testing (Type A, B, C tests per 10 CFR Part 50, Appendix J) is to be performed at the calculated peak containment internal pressure (P_a) of 48.1 psig. This value for P_a is a result of containment pressure/temperature analyses in the SNUPPS FSAR (refer to Section 6.2.1.4.3.3 and Table 6.2.1–2).

Basis for proposed no significant hazards consideration determination: The licensee states that this change has no effect on the Integrated Containment Leakage Rate Test results submitted via the referenced letter (ULNRC–794). This Type A test was performed at 50.05 psig. However, all Local Leakage Rate Tests (Type B and C) have been performed at the current Technical Specification value of P_a (i.e., 48.0 psig). To reconcile the use of this slighly lower test pressure, an evaluation was performed to determine the impact on meeting the acceptance criteria for Type B and C tests. The results of this evaluation indicated a negligible effect on meeting the acceptance criteria (i.e., a 0.1% increase in the total leakage for Type B and C tests which remains 25% of all the allowable value of $0.6L_a$). Therefore, the error estimated to result from performing the Local Leakage Rate Test at 48.0 psig is within the uncertainty associated with the test method and is considered to be insignificant. The technical specification changes requested will ensure that future testing is performed at the correct pressure. These changes will have no effect on plant design or operation.

On April 6, 1983, the NRC published guidance in the **Federal Register** (48 FR 14870) concerning examples of amendments that are not likely to involve significant hazards considerations. This amendment request is similar to the example of a purely administrative change to the technical specifications; specifically a change to achieve consistency between the technical specifications and the FSAR. Based on the above, the requested amendment does not involve a significant licensee consideration.

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251

and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: B.J. Youngblood.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit No. 1, Callaway County, Missouri

Date of application for amendment: November 18, 1985.

Brief description of amendment: The purpose of the proposed amendment is to revise Technical Specification Figures 6.2–1 and 6.2.2 and Section 6.5.1.2 to reflect the Nuclear Function Quality Assurance organizational changes associated with the establishment of a new corporate Quality Systems Department.

Basis for proposed no significant hazards consideration determination: The Quality Systems Department will implement a quality improvement process on a corporate basis, assist various corporate functions in developing and implementing quality services programs, and be responsible for the quality assurance activities of the Nuclear Function. Nuclear Quality Assurance Division revisions reflect changes in personnel assignments and in paths of reporting relationships. Figure 6.2–1 is revised to: Delete the position of Assistant Manager, Quality Assurance; to indicate that the Manager, Quality Assurance reports to the newly created position of General manager, Quality System; to show that the Manager, QA is located at the Callaway site; to indicate that the Manager, QA is assisted by staff permanently located onsite and staff located at the general office building; and, finally, to show that the General Manager, Quality Systems has a direct path to the Vice President, Nuclear on all quality assurance matters. The General Manager, Quality Systems and the Vice President, Nuclear report to the Executive Vice President. Figure 6.2–2 is revised to show that the Manager, QA is located onsite and reports to the General Manager, Quality Systems located offsite. In addition, the Manager, QA has direct access to the Manager, Callaway Plant on all quality assurance matters. Technical Specification 6.5.1.2 is revised to indicate that quality assurance membership on the Onsite Review Committee is held by the Superintendent-Operations Support, QA.

These organizational changes were made to enhance the effectiveness and capability of the Union Electric Quality Assurance Program. While the revisions represent changes in reporting relationships, they do not represent a change in organizational commitments. While personnel assignments are changed, the revisions do not reduce commitments to minimum qualifications. The location of the Manager, QA at the site does not negatively impact the Quality Assurance Program. The Quality Assurance Division has more personnel onsite than in the general office, and the physical distance (approximately two hours by automobile) is not prohibitive for the frequent presence of the Manager, QA at both the site and the general office. Two site Superintendent positions will effectively replace the former Assistant Manager, QA position. This change will increase quality assurance management resources and at the same time offer promotional and career path options to enhance personnel reetention and experience. The two site Superintendents will meet the same minimum qualification requirements as the former Assistant Manager, QA. The site QA staff previously reported via three Supervising Engineers and one QA supervisor to the Assistant Manager, QA. The site QA staff will now report via four Supervising Engineers to the two Superintendents who report directly to the Manager, QA. The corporate QA staff will report to the Manager, QA through a Superintendent and two Supervising Engineers. Finally, the revisions do not alter the independent reporting paths between the Nuclear Quality Assurance and Nuclear Operations Departments. Under the new organization, the independence of the Quality Assurance reporting path is enhanced. The Manager, QA previously reported fully and directly to the Vice President, Nuclear. Now, the Manager, QA reports to the General Manager, Quality Systems and has direct access to the Manager, Callaway Plant on all Quality Assurance Program matters. The General Manager, Quality Systems reports to the Executive Vice President and has direct access to the Vice President, Nuclear on all QA Program matters.

In summary, the licensee concludes from the above dissussion that while personnel assignments are revised and reporting relationships are changed, the commitments to minimum qualifications and basic organizational reporting requirements are unchanged. While many of the changes are administrative in nature, the new organization does provide additional structural controls not presently included in the technical specifications.

On April 6, 1983, the NRC published guidance in the **Federal Register** (48 FR 14870) concerning examples of amendments that are not likely to involve significant hazards considerations. This amendment request is in some respects similar to the example of a purely administrative change to the technical specifications. This amendment request is in other respects similar to the example that constitutes an additional limitation, restriction or control not presently included in the technical specification. Based on the above, the requested amendment does not involve a significant hazards consideration.

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: B.J. Youngblood.

Vermont Yankee Neclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: November 15, 1985.

Description of amendment request: By letter dated November 15, 1985, the licensee, Vermont Yankee Nuclear Power Corporation, submitted a proposed license amendment for NRC review and approval which would revise the Vermont Yankee Technical Specifications to delete sections associated with the requirement that valves in the equalizer piping between the recirculation loops be closed during reactor operation. The valves were required to be closed in order to isolate the recirculation loops. The equalizer piping, including the valves, will be removed during the present pipe replacement outage. This will accomplish the desired isolation without the requirements that the values be closed.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples (vi) of actions not likely to involve a significant hazards consideration is a change which may result in some increase to the probability or consequences of a previously-analyzed accident or may

reduce in some way a safety margin, but where the results are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. This proposed Technical Specification Change deletes the requirement that equalizer valves be closed in order to isolate recirculation loops, because the new physical configuration of the piping accomplishes isolation by the absence of connecting piping. The Commission's staff concludes that any change in the safety margin will be small and the change is clearly within acceptable criteria as specified in the Standard Review Plan. Therefore, the change is similar to Commission example (vi). Accordingly, the Commission proposes to determine that this amendment does not involve a significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Daniel R. Muller.

Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, Washington

Date of amendment request: October 4, 1985, and supplemented on December 5, 1985.

Description of amendment request: This proposed amendment, if approved, will change §§ 3/4.3.5 (Reactor Core Isolation Cooling (RCIC) System Actuation Instrumentation), and 3/4.7.3 (Reactor Core Isolation Cooling System) of the WNP–2 Technical Specifications. The change would remove some of the Technical Specifications requirements pertaining to the RCIC system, reflecting a system downgrade as a result of modifications to the Automatic Depressurization System (ADS) logic. These modifications were previously approved and incorporated as Amendment No. 11 to the WNP–2 Operating License, NPF–21.

As a result of Amendment No. 11, the Supply System was authorized and required to implement an option proposed by the BWR Owners Group to eliminate the high drywell pressure trip portion of the existing ADS logic and to add a manual inhibit switch. These modifications satisfied the NRC-mandated change to the existing ADS system logic which was a condition of the WNP–2 license, License Condition 2.C(18). As a result of these changes, the ADS is now responsive to a wider range of transients and, in conjunction with the low pressure Emergency Core Cooling System (ECCS), provides an independent and separate backup to the High Pressure Core Spray (HPCS) system for high pressure events. Therefore, the scope of the requirement for RCIC as an HPCS backup is reduced.

Elimination of the need for RCIC to mitigate design basic events allows those components necessary for RCIC system operation with no other safety function to be removed from the WNP–2 equipment qualification program. Those RCIC components still required to isolate primary or secondary containment, or whose failure can result in the loss of other Class 1 functions, will remain in the equipment qualification program.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Supply System has determined and the staff agrees that it does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, because the same safety functions previously provided by the RCIC system are performed by the ADS in combination with the Low Pressure Injection Systems.

2. Create the possibility of a new or different kind of accident than previously evaluated, because no system design functions have been changed.

3. Involve a significant reduction in a margin of safety, because ADS, in combination with Low Pressure Injection Systems, provides the same function previously accomplished by the RCIC system with no change to overall system performance criteria.

Based on staff review of the requested modifications, the Commission proposes to determine that the requested changes to the WNP–2 Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for licensee: Nicholas Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, DC 20036.

NRC Project Director: E. Adensam.

Washington Public Power Supply System, Docket No. 50–397, WNP–2 Richland, Washington

Date of amendment request: October 28, 1985.

Description of amendment request: This proposed amendment, if approved, will change a license condition of the WNP–2 Operating License NPF–21. Attachment 2, paragraph 3.(b) of License Condition 2.C.(16), as amended, now requires that the licensee shall implement (install or upgrade) requirements of Regulatory Guide 1.97, Rev. 2, for flux monitoring prior to startup following the first refueling outage. The licensee has requested that implementation of this requirement be delayed until the second refueling outage.

Technical difficulties with both of the available monitor designs require resolution before a commitment is prudent. One of the two available detector designs (external core) is currently being tested on Boiling Water Reactors and apparently, has sensitivity problems at low power and low moderator temperatures. The other detector (incore) installs from the top of the reactor vessel requiring reactor vessel head removal for maintenance and neutron activation would complicate the maintenance procedures A timely resolution of these concerns does not appear imminent at this time. Given procurement lead times, the unresolved technical concerns and the need for a deliberate engineering evaluation and selection process, installation by the first refueling outage is not practical.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Supply System has determined, and the staff agrees, that the proposed change does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the existing instrumentation consists of four redundant safety-related channels. Additionally, there are unrelated systems in place to provide operators with sufficient data to assess reactor conditions (e.g., control rod position monitors, reactor vessel level and pressure monitors) in the unlikely event of an accident condition prior to replacement. (2) Create the possibility of a new or different kind of accident, because no function of the flux monitor system is being changed; therefore, no new or different kind of accident is conceivable. (3) Involve a significant reduction in a safety margin as adequate instrumentation is provided to allow the operator to assess reactor conditions without this monitor in the unlikely event of an accident condition that could cause the monitor currently in-place to fail prior to replacement.

Based on staff review of these proposed modifications, the Commission proposes to determine that the requested change to the WNP–2 License involve no significant hazards considerations.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for licensee: Nicholas Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, DC 20036.

NRC Project Director: E. Adensam.

Yankee Atomic Electric Company, Docket No. 50–29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: January 6, 1986.

Description of amendment request: The proposed change would modify the Technical Specifications (TS) to allow submission of a supplement to the January 1 semiannual radioactive effluent release report. The supplement would contain the dose and meteorological summary report, and would be required within 150 days of January 1 each year.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for making a no significant hazards consideration determination by providing certain examples (April 6, 1983, 48 FR 14870). Example (i) of actions involving no significant hazards consideration involves a change that constitutes a purely administrative change to the TS; for example, a change to achieve consistency throughout the TS, correction of an error, or a change in nomenclature. The administrative controls section of the current TS requires the submission of the radioactive effluent release report within 60 days after January 1 and July 1 each year. The January 1 report currently is required to include a summary of the previous year's hourly meteorological data, and an assessment of radiation doses from radioactive liquids and gases. The proposed change would allow an additional 90 days (total of 150 days) after January 1 to provide the hourly meteorological data and dose assessment. This proposed change does not modify the information to be submitted, only the date of submission. This proposed change constitutes an administrative change to the TS.

Based on this discussion, the staff proposed to determine that the requested action could not involve a significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: George E. Lear.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARD CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, et al., Docket No. 50–413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Dates of amendment requests: March 15, August 7, October 30, November 7, December 17, December 20 and December 23, 1985.

Brief description of amendment request: The amendment would revise the Unit 1 Technical Specifications to eliminate typographical errors, provide additional clarification, improve consistency, adjust nomenclature, bring portions of the specifications into conformance with current NRC staff positions, incorporate Unit 2 information where appropriate, and make other minor changes.

Date of publication of individual notice in **Federal Register:** January 6, 1986 (51 FR 455).

Expiration date of individual notice: February 6, 1986.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearings or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluation and/or Environmental

Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Baltimore Gas & Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: April 26, 1985.

Brief description of amendments: The amendments revised the Technical Specifications to allow completion of the third containment Integrated Leak Rate Test prior to the 10-year Inservice Inspection outage.

Date of issuance: January 8, 1986.

Effective date: January 8, 1986.

Amendment Nos.: 112 and 95.

Facility Operating License Nos. DPR–53 and DPR–69. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 6, 1985 (50 FR 46208 at 46210).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 8, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of amendments request: October 11, 1985.

Brief Description of amendments: The amendments to Operating License NPF–11 and Operating License NPF–18 revise the La Salle Units 1 and 2 Technical Specifications to remove during refueling (or unloading) of the first (last) fuel assemblies adjacent to the Source Range Monitors (SRM) the requirement that the SRM meet a minimum count rate with fuel in the core. Other loading requirements will be unchanged. The primary reason for the licensee wanting to change is to eliminate the need for sources and to minimize the need for Fuel Loading Chambers during loading operations. The primary basis for the safety of the requested change is that the core will be well subcritical during the loading of the initial assemblies, and subsequent loading will be well monitored by the SRM.

Date of issuance: January 7, 1986.

Effective date: January 7, 1986.

Amendment Nos.: 32 and 18.

Facility Operating License Nos. NPF–11 and NPF–18. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 6, 1985 (50 FR 48211)

Comments received: Yes. Source: State of Illinois by telecon.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 7, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: May 2, 1983.

Brief description of amendments: The amendments incorporate changes to the Technical Specifications which impose more stringent surveillance requirements on the use of the Economic Generation Control System for each unit.

Date of issuance: January 14, 1986.

Effective date: January 14, 1986.

Amendment Nos.: 91 and 88.

Facility Operating License Nos. DPR–29 and DPR–30. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 21, 1983 (48 FR 43131). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Moline Public Library, 504–17th Street, Moline, Illinois 61265.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Benton County, Illinois

Date of application for amendments: August 19, 1985.

Brief description of amendments: The amendments would change specimen capsule withdrawal schedule to reflect low leakage loading patterns and requirements of 10 CFR Part 50, Appendix H.

Date of issuance: January 16, 1986.

Effective date: January 16, 1986.

Amendment Nos.: 92 and 82.

Facility Operating License Nos. DPR–39 and DPR–48. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 9, 1985 (50 FR 41245) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 16, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Zion Benton Library District, 2600 Emmaus Avenue, Zion, Illinois 60099.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendments: August 6, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to include anticipatory Technical Specifications to include anticipatory reactor trip upon turbine trip. The change was directly requested by the Nuclear Regulatory Commission by Generic Letter dated September 20, 1982 and is required to satisfy NUREG–0737 "Clarification of TMI Action Plan Requirements" Item II.K.3.12. In addition the amendment includes a modification to bypass (block) the anticipatory reactor trip upon turbine trip below 35% power. The 35% power level was chosen because at this level the elimination of reactor trip on turbine trip will not challenge the probability of a small-break LOCA resulting from a stuck-open pressurizer PORV. The purpose of the modification is to increase plant availability by reducing the length of time required to restart following a readily correctable turbine trip at low power.

Date of issuance: January 13, 1986.

Effective date: January 13, 1986.

Amendment Nos.: 107.

Facilities Operating License Nos DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 25, 1985 (50 FR 38913).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: April 2, 1985.

Brief description of amendments: The amendments revise a surveillance requirement and footnote associated with Technical Specification ¾.1.3.3, Rod Position Indication System to allow closing of the reactor trip breakers to perform required surveillance. Action on that part of the proposed amendments which would have added "Control Rod Drive System capable of rod withdrawal" has been deferred pending receipt of further information from the licensee.

Date of issuance: January 9, 1986.

Effective date: January 9, 1986.

Amendment Nos.: 50 and 31.

Facility Operating License Nos. NPF–9 and NPF–17. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 6, 1985 (50 FR 46212). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 9, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: July 19, 1985.

Brief description of amendment: The amendment revised the Technical Specifications to permit continued operation at rated thermal power for a specified time following a dropped control element assembly and reformulates the action statements of Technical Specification 3.1.3.1.

Date of issuance: January 15, 1986.

Effective Date: January 15, 1986.

Amendment No.: 71.

Facility Operating License No. DPR–67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1985 (50 FR 37072 at 37081).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 15, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: October 22, 1985.

Brief description of amendment: The amendment revised the Technical Specifications to support the installation of the safety grade Auxiliary Feedwater Actuation System that has been installed to satisfy the requirements of NUREG–0737, Action Item II.E.1.2. The changes revised, and added to, Tables 3.3–3, 3.3–4, 3.3–5 and 4.3–2 and listed an additional responsibility for the Facility Review Group in Technical Specification 6.5.1.6.

Date of issuance: January 15, 1986.

Effective Date: January 15, 1986.

Amendment No.: 72.

Facility Operating License No. DPR–67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 4, 1985 (50 FR 49779 at 49785).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 15, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of application for amendments: August 23, 1985.

Brief description of amendments: The amendments revise the TSs for Hatch Units 1 and 2 to add and delete valves listed in the containment isolation valve tables to reflect drywell pneumatic system modifications that were made to Unit 2 and that will be made to Unit 1 during the outage scheduled to begin in December, 1985.

Date of issuance: December 26, 1985.

Effective Date: December 26, 1985.

Amendment Nos.: 120 and 59.

Facility Operating License No. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 25, 1985 (50 FR 38916).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 26, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366 Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of application for amendment: May 9, 1985, as supplemented August 30, 1985.

Brief description of amendments: The amendment revises the TSs to delete the breaker setpoints from Table 3.8.2.6–2, to remove the reference to these setpoints from the surveillance requirements, and to add a requirement that the breakers be tested as specified by NEMA AB–2–1980. It also corrects several erroneous identification numbers listed in Table 3.8.2.6–1.

Date of issuance: January 9, 1986.

Effective Date: January 9, 1986.

Amendment No.: 60.

Facility Operating License No. NPF–5: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 25, 1985 (50 FR 38915)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 9, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: June 19, 1985.

Brief description of amendment: Authorizes changes to the Appendix A Technical Specifications which are new requirements pertaining to the Post Accident Sampling System. These changes are to Section 6, Administrative Controls.

Date of issuance: January 14, 1986.

Effective Date: January 14, 1986.

Amendment No.: 98.

Provisional Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 28, 1985 (50 FR 34941).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 14, 1986. No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: November 13, 1985.

Brief description of amendment: This amendment revises the Technical Specifications to incorporate corrections to Radiological Effluent Technical Specifications (RETS) (a) for the Steam Air Ejector Post-treatment Monitor, (b) to reflect actual design and operating conditions, (c) for the use of vendor process control programs, and (d) of the errors of grammar and typing.

Date of issuance: January 4, 1986.

Effective date: January 4, 1986.

Amendment No.: 128.

Facility Operating License No. DPR–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 4, 1985, (50 FR 49785) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 4, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: October 17, 1984.

Brief description of amendment: This amendment revises the Technical Specifications to incorporate an action statement in Section 3.7.C, defining the actions which will be taken if the stated limiting conditions for operation cannot be met.

Date of issuance: January 9, 1986.

Effective date: January 9, 1986.

Amendment No.: 129.

Facility Operating License No. DPR–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 31, 1984 (49 FR 50806) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 9, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: April 26, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to: (1) add the requirement for maintaining the suppression pool temperature within specified limits, and (2) delete the requirement of maintain a drywell to suppression chamber differential pressure.

Date of issuance: January 7, 1986.

Effective date: January 7, 1986.

Amendment No.: 76.

Facility Operating License No. DPR–63. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 4, 1985 (50 FR 49786). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 7, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station Unit No. 2, Town of Waterford, Connecticut

Date of application for amendment: July 24, 1985, supplemented and clarified by letters dated September 16, October 17 and 28, November 25 and 27, and December 3, 1985.

Brief description of amendment: The amendment authorized the licensee to increase the spent fuel pool storage capacity from 667 to 1112 fuel assemblies.

Date of issuance: January 15, 1986.

Effective date: January 15, 1986.

Amendment No.: 109.

Facility Operating License No. DPR–65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1985 (50 FR 37072 at 37085) and November 4, 1985 (50 FR 45877). Letters received on November 25 and 27, 1985 and December 3, 1985 were for clarification only and did not materially affect the application as previously noticed; and therefore, the application remains within the scope of the previous notices.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated December 16, 1985.

No significant hazards consideration comments received: No.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of application for amendment.: July 11, 1985.

Brief description of amendment: The amendment changed the reactor vessel materials surveillance capsule removal schedule.

Date of issuance: January 10, 1986.

Effective date: January 10, 1986.

Amendment No.: 94.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1985 (50 FR 37072 at 37088).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 10, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Pacific Gas and Electric Company, Docket Nos. 50–272 and 50–311, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: September 20, 1985.

Brief description of amendments: The amendments change the combined Technical Specifications for Units 1 and 2 concerning the time interval for performing the first visual inservice inspection of safety related snubbers.

Date of issuance: January 7, 1986.

Effective date: January 7, 1986.

Amendment Nos. 5 and 3.

Facility Operating Licenses Nos. DPR–80 and DPR–82: Amendments revising the Technical Specifications.

Date of initial notice in **Federal Register:** October 23, 1985 (50 FR 43033) The Commission's related evaluation of

the amendments is contained in a Safety Evaluation dated January 7, 1986.

No significant hazards consideration comments recieved: No.

Local Public Document Room location: California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407.

Pennsylvania Power and Light Company, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: September 30, 1985.

Brief description of amendment: This amendment deletes License Condition. 2.C(14) of the Susquehanna Steam Electric Station Operating License NPF–22.

License Condition 2.C(14) previously read as follows:

(14) *Control of Heavy Loads (Section 9.1.4, SSER#6)*

Prior to startup following the first refueling outage, PP&L shall submit commitments necessary to implement changes in modifications required to fully satisfy the guidelines of Section 5.1.2 through 5.1.6 of NUREG 0612 (Phase II–nine month response to the NRC generic letter dated December 22, 1980).

Based on Generic Letter 85–11, dated June 28, 1985, "Completion of Phase II of 'Control of Heavy Loads at Nuclear Power Plants' NUREG–0612" the staff has found this License Condition to no longer be necessary. Generic Letter 85–11 concluded, based on the improvements in heavy loads handling obtained from the implementation of NUREG 0612, Phase I, further action is not required to reduce the risks associated with the handling of heavy loads. Specifically, it was concluded that a detailed Phase II review of heavy loads is not necessary and Phase II is to be considered complete.

Date of issuance: January 9, 1986.

Effective date: Upon issuance.

Amendment No.: 21.

Facility Operating License No. NPF–22: Amendment deleted License Condition 2.C.(14).

Date of initial notice in **Federal Register:** November 6, 1985 (50 FR 46216).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 9, 1986.

No comments were received regarding the Commission's proposed no significant hazards consideration determination.

Local Public Document Room Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of application for amendment: November 24, 1982; October 21, 1983; February 29, 1984.

Brief description of amendment: The amendment modifies a license condition to change the monitoring and inspection of the service water intake structure.

Date of issuance: December 20, 1985.

Effective date: December 20, 1985.

Amendment No. 48.

Facility Operating License No. NPF–12. Amendment revised the license.

Date of initial notice in **Federal Register:** May 23, 1984 (49 FR 21839).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendment: August 5, 1985.

Brief description of amendment: The amendments change the Technical Specifications to permit offgas post-treatment and main stack radiation monitors to be considered operable for up to 1 hour during purging of the instruments. The Note 4 to Table 3.2.D, requested in TVA's submittal, has not been included. It would be redundant to Limiting Condition for Operation 3.2.D.1(b).

Date of issuance: January 13, 1986.

Effective date: 90 days from the date of issuance.

Amendment Nos. 126, 121 and 97.

Facility Operating License Nos. DPR–33, DPR–52 and DPR–68. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 9, 1985 (50 FR 41256) and December 4, 1985 (50 FR 49792).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee.

Date of applications for amendments: October 2 and November 7, 1984.

Brief description of amendments: The amendments change the Technical Specifications to delete the table listing Containment Penetration Conductor Overcurrent Protection Devices and to make them meet the intent of the NRC model Radiological Effluent Technical Specifications for PWRs.

Date of issuance: January 14, 1986.

Effective date: January 14, 1986.

Amendment Nos. 42 and 34.

Facility Operating License Nos. DPR–77 and DPR–79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 31, 1984 (49 FR 50826).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 14, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: April 30, 1985.

Brief description of amendments: The amendments revise the NA–1&2 TS in accordance with the current TS and with 10 CFR Part 50, Appendices G and H. The amendments update the pressure-temperature limit curves to be applied during heatup and cooldown. The updated curves, which are valid through 10 Effective Full Power Years for NA–1&2, are based on conservative extrapolated vessel irradiation levels which reflect the results of evaluations of the first surveillance capsules removed from both NA–1&2. The removal and evaluation of these capsules constitutes part of the Reactor Vessel Materials Surveillance Program established by Virginia Electric and Power Company in accordance with 10 CFR Part 50, Appendix H. Based on the revised pressure-temperature limit curves, accompanying changes have also been made to the reactor heatup rate limits and low temperature overpressure protection setpoints.

Date of issuance: January 15, 1986.

Effective date: NA–1 within 30 days from date of issuance, NA–2 prior to restart after the forthcoming 5th refueling outage.

Amendment Nos.: 74 and 60.

Facility Operating License Nos. NPF–4 and NPF–7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1985 (50 FR 31075).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 15, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: August 9, 1985, as supplemented November 8, 1985.

Brief description of amendments: These amendments define the minimum reactor coolant temperature for criticality to be 522°F.

Date of issuance: December 31, 1985.

Effective date: December 31, 1985.

Amendment Nos. 105.

Facility Operating License Nos. DPR–32 and DPR–37: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 9, 1985 (50 FR 41257).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 31, 1985.

No significant hazards consideration comments received: No.

Local Public Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Yankee Atomic Electric Company, Docket No. 50–29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of Application for Amendment: July 19, 1985.

Brief Description of Amendment: The amendment deletes the Technical Specification requirements for inspection of control rod shroud tube assemblies and the pressurizer intervals.

Date of Issuance: January 15, 1986.

Effective Date: January 15, 1986.

Amendment No. 91.

Facility Operating License No. DPR–3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 9, 1985 (50 FR 41258). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 15, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By February 28, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests 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 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 specificially 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 schedule in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

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). Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Branch Chief*): 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 the 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).

Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, Washington

Date of amendment request: October 17, 1985.

Brief description of amendment request: This amendment revises the WNP–2 license by modifying the Technical Specifications to change the Limiting Condition of Operation, 3.3.7.7, to permit Local Power Range Monitor (LPRM) calibration in some instances with fewer than five operable Traversing In-core Probe (TIP) detector channels.

Date if issuance: January 7, 1986.

Amendment No.: 20.

Effective date: October 18, 1985.

Facility Operating License No. NPF–21: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation is contained in a Safety Evaluation dated January 7, 1986.

Attorney for the licensee: Bishop, Liberman, Cook, Purcell & Reynolds 1200 Seventeenth Street, NW., Washington, DC 20036.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Bethesda, Maryland this 23rd day of January, 1986.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Division of Boiling Water Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 86–1829 Filed 1–28–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–309, License No. DPR–36, EA 85–108]

Maine Yankee Nuclear Power Co. and Maine Yankee Atomic Power Plant; Order Imposing a Civil Monetary Penalty

I

Maine Yankee Atomic Power Company, Augusta, Maine 04336, (the licensee) is the holder of License No. DPR–36 (the license) issued by the Nuclear Regulatory Commission (the Commission or NRC) which authorizes the licensee to operate the Maine Yankee Atomic Power Plant, Wiscasset, Maine, in accordance with the conditions specified therein.

II

On August 8–16, and September 3–4, 1985, an NRC inspection was conducted to review the circumstances associated with two violations of the licensee's technical specifications involving the inoperability of the low steam generator trip function for both the Reactor Protective System and the Feedwater Trip System. A written Notice of Violation and Proposed Imposition of a Civil Penalty was served upon the licensee by letter dated October 29, 1985. The Notice states the nature of the violation, the provisions of the Nuclear Regulatory Commission requirements that the licensee had violated, the aggregate severity level of the violations, and the amount of civil penalty proposed for the violations. An answer dated November 27, 1985 to the Notice of Violation and Proposed Imposition of Civil Penalty was received from the licensee urging that the aggregate severity level of the violations be reduced.

III

Upon consideration of the answers received and the statements of fact, explanation, and argument for remission or mitigation of the proposed civil penalty contained therein, as set forth in

the Appendix to this Order, the Director, Office of Inspection and Enforcement has determined that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96–295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Eighty Thousand Dollars ($80,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, USNRC, Washington, DC 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, DC 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

VI

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be: (a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty; and (b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland this 22 day of January 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix.—Evaluation and Conclusion

In their November 27, 1985 response to the Notice of Violation and Proposed Imposition of Civil Penalty for Maine Yankee Atomic Power Company, dated October 29, 1985, the licensee admits the occurrence of the violations, but requests that consideration be given to reclassification of the aggregate violations from Severity Level II to Severity Level III. Provided below are (1) restatement of each violation, (2) a summary of the licensee's response in support of this request, and (3) the NRC evaluation of the licensee's response.

Restatement of Violation

A. Technical Specification Limiting Condition for Operation (LCO) 3.9, and Table 3.9.1, Instrument Operating Requirements for the Reactor Protective System, requires that whenever the reactor is in power operation, a minimum of three of the Reactor Protective System channels must be operable for low Steam Generator Pressure.

Contrary to the above, from June 22, 1984 until August 7, 1985, with the reactor in power operations, all four channels of the Reactor Protective System for each of the three steam generators were inoperable for low Steam Generator Pressure.

B. Technical Specification LCO 3.22, Feedwater Trip System, requires that whenever the reactor coolant boron concentration is less than that required for hot shutdown, the feedwater trip system shall be operable to assure automatic shutdown of all main feedwater pumps, automatic closure of all main feedwater valves, and automatic closure or all auxiliary feedwater valves.

Contrary to the above, from June 20, 1984 until August 7, 1985, with the reactor coolant boron concentration less than that required for hot shutdown, three of the four channels for the Feedwater Trip System for each of the three steam generators were inoperable for low Steam Generator Pressure.

Collectively, these violations have been categorized as a Severity Level II problem (Supplement I).

(Civil Penalty—$80,000.)

Summary of Licensee Response

The licensee admits that the violations occurred as stated and acknowledges the seriousness of the violations. However, the licensee requests reconsideration of the aggregate severity level classification of the violations from Severity Level II to Severity Level III, claiming that the violations did not result in the complete loss of a primary trip function, nor did they result in a system not being able to perform its intended safety function as expressed in 10 CFR Part 2, Appendix C (1985).

The licensee claims that the two protective features provided by the inoperable instrumentation still existed. These features were: (1) Provide input to the Reactor Protective System (RPS) to shut down the reactor in the event of a low steam generator (SG) pressure condition, and (2) provide input to the Feedwater Trip System to shut down the feedwater system to mitigate the severity of a cooldown transient associated with a steam line break. In the former case the licensee indicates that other redundant instrumentation would have provided an equivalent function in that even if the steam generator channels were assumed not to be operable, other RPS subsystems would have resulted in shutdown of the reactor. In the latter case the licensee asserts that the instruments were in fact sufficiently operable to provide a trip of the feedwater system because of valve leakage, although the trip would be delayed. Further, the licensee asserts that other cooldown mitigation equipment, which comprised the original plant design or licensing basis, was unaffected by the violations and, therefore, the cooldown transient on the reactor pressure vessel resulting from the inoperability of the feedwater trip system would not have been more severe than that calculated in the latest licensing case.

NRC Evaluation of Licensee Response

The NRC accepts the licensee's argument, as indicated in the October 29, 1985 letter, that other trip inputs would have resulted in a trip of the Reactor Protective System, even with the low SG pressure instrumentation inoperable. However, the licensee has not shown that redundant protection existed for the Feedwater Trip System to mitigate the consequences of a cooldown transient, nor have they presented a reasonable argument to demonstrate why the instrumentation could be considered operable.

In addition, this response does not provide a reasonable or sufficient analytical basis to support the contention that a cooldown transient on the reactor vessel would not be more severe than that calculated in the latest licensing case. The licensee provided a best estimate case analysis which concluded that a cooldown transient resulting from failure to trip the feedwater system would not be severe. However, the basis and assumptions used in this type of analysis differ from the assumptions used during licensing in a design basis event analysis. The design basis analysis uses assumptions containing sufficient conservatism to justify the ability of the plant to safely withstand a cooldown transient. Therefore, the licensee's analysis does not provide adequate justification that

the cooldown transient resulting from a failure to trip the feedwater system would be acceptable.

Although the low SG pressure trip of the feedwater pumps was not part of the initial design or licensing basis, it was specifically added because of a post TMI modification which required the installation of an automatic start feature for the auxiliary pumps in the event of a low water level condition in the SG. Absent the automatic start features of the auxiliary feed pump, the NRC would agree that a low SG pressure trip of the auxiliary feedwater pump was unnecessary. However, given an automatic start of the feedpumps, and given the inoperability of the low SG pressure instrumentation, no redundant automatic instrumentation exists to shut down the pumps.

NRC Conclusion

The licensee has not provided a sufficient basis for reduction of the aggregate severity level of the violation. Therefore, the aggregate violations remain classified at Severity Level II and an $80,000 civil penalty is being imposed.

[FR Doc. 86-1910 Filed 1-28-86; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 040-08406, License No. STB-1254, EA 85-122]

METCOA, Inc., Order Modifying License; Effective Immediately

I

METCOA, Inc., fdba as the Pesses Company, 1127 Euclid Avenue, Cleveland, OH 44115, (the licensee) is the holder of source material License No. STB-1254, which authorizes the licensee to possess a maximum of 2,000 kilograms of thorium and to metallurgically treat and/or reprocess scrap thorium alloy containing not more than 2% thorium by weight for distribution to authorized recipients. The license was issued on September 23, 1975 with an expiration date of September 30, 1980. The license has remained in effect based on a timely renewal request by the licensee in 1980. The license permits use of material at the licensee's facility at Route 551 and Metallurgical Way, Pulaski, Pennsylvania.

II

On September 21, 1984, an NRC inspector was sent to the licensee's facilities in Pulaski, Pennsylvania to conduct a routine NRC inspection of licensed activities. Upon arrival at the facility, the NRC inspector observed that the property appeared to have been abandoned. The inspector performed radiation surveys of the perimeter of the fenced area of the property, did not observe any radiation levels above instrument background, and left the site.

Subsequently, the inspector telephonically contacted Dr. Marvin Pesses, the individual listed on the license application as President of the Company, who stated that he was no longer associated with the Pesses Company, that the company was in bankruptcy proceedings, and that licensed material had not been used within the previous year.

The NRC has been informed that Pesses Company had, at some time prior to 1983, merged with METCOA Inc., retained the name METCOA Inc., conducted licensed activities under that name, and that METCOA Inc. had entered bankruptcy proceedings in mid-1983. The NRC was never notified of these events by the licensee.

During a December 1984 NRC inspection, the inspector performed surveys at selected areas both within and outside of the site boundaries. The inspector identified (1) several contaminate areas within the fenced area of the site boundary with radiation levels between 0.04 and 0.6 mrem/hour, (2) one contaminated area outside the fenced area but within the site boundary with a radiation level of 2 mrem/hour, and (3) two contaminated areas within one of the buildings on the property with radiation levels of 0.04 mrem/hour and a 0.1 mrem/hour. No contaminated areas were identified outside the site boundary. The inspector also determined that a large volume of contaminated material, equivalent to approximately 300 drums, was located within the fenced area of the site boundary and that the gates to fences and doors to the buildings were locked.

On October 9, 1985, another inspection of the facility was performed and the inspector found the facility to be in essentially the same condition that existed during the December 1984 inspection.

III

10 CFR 40.42 requires each licensee to notify the Commission immediately in writing and request termination of the license when the licensee decides to terminate all activities involving materials authorized under the license. A licensee is required by 10 CFR 40.42 to maintain access control over licensed material until radioactive contamination attributable to licensed activities is removed and the NRC terminates the license in writing. The NRC has determined that (1) the licensee and/or its legal successor in interest abandoned the licensed facility during or before 1983, (2) licensed material authorized by the license is no longer in the possession of the licensee and/or its legal successor in interest, (3) radiation levels resulting from contamination at several locations on the site are in excess of regulatory limits for release for unrestricted use, and (4) the licensee never notified the NRC or requested termination of its license in accordance with 10 CFR 40.42. As a result, there is no reasonable assurance that sufficient measures are in place (1) to prevent the unauthorized transfer of licensed material to unauthorized individuals, (2) prevent the unauthorized access of individuals to contaminated areas, or (3) to decontaminate and decommission the facility. In light of the above and in light of the apparent willfulness of the violations, I have determined that the public health and safety requires that this Order be issued and made immediately effective.

Accordingly, pursuant to sections 62, 63, 161b, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 30, it is hereby ordered, effective immediately, that the licensee and/or its legal successor in interest shall:

A. Submit a decontamination plan for the Pulaski facility to the NRC Region I office within 30 days from the date of this Order for review and approval. This plan shall contain:

(1) A complete characterization of the facility, with a description of the location and levels of all sources of radiation and contamination;

(2) A timetable for decontamination activities and transfer of contaminated waste and other licensed material to an authorized recipient; and

(3) The estimated costs and the source of funding.

B. Complete the decontamination effort within 90 days after the Regional Administrator's approval of the decontamination plan.

C. Submit to Region I office within 30 days of completion of the decontamination effort a survey report of the facility verifying that (1) contamination and radiation levels existing are within the levels specified in Option 1 of the Branch Technical Position "Disposal or Onsite Storage of Thorium or Uranium Waste from Past Operations," published in the Federal Register on October 23, 1981, 46 FR 52061, and "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of

Licenses for Byproduct, Source, or Special Nuclear Material," and (2) all materials have been transferred to an authorized recipient.

D. Control entry to restricted areas until they are suitable for unrestricted use and until the NRC has confirmed in writing that successful decontamination has been completed.

E. The Regional Administrator, Region I may for good cause relax or rescind any of the above conditions.

V

The licensee and/or its legal successor in interest or any other person whose interest is adversely affected by this Order may request a hearing on this Order within 25 days of its issuance. Any request for hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the request shall also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the effectiveness of this order.

If a hearing is requested by the licensee and/or its legal successor in interest, the Commission will issue and Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland, this 22nd day of January 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 86-1695 Filed 1-28-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-387 and 50-388]

Pennsylvania Power and Light Co., Susquehanna Steam Electric Station, Units 1 and 2; Denial of Amendments to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part requests by the licensee for amendment to Facility Operating License Nos. NPF-14 and NPF-22, issued to the Pennsylvania Power and Light Company, for operation of the Susquehanna Steam Electric Station, Units 1 and 2 located in Luzerne County, Pennsylvania. The Notice of Consideration of Issuance of Amendments was published in the **Federal Register** on October 9, 1985 (50 FR 41251).

The amendment proposed by the licensee, would change the Unit 1 and Unit 2 Technical Specification as follows: (1) Page ¾ 8-2—revising Action d to allow only three diesels to be operable instead of four. The licensee also proposed to change the time necessary to restore both offsite circuits and has included a statement which would allow a diesel (the diesel removed from service for tie-in work) to remain inoperable provided it is inoperable for work connected with the tie-in work. The staff has denied this change the Action d based on the fact that the licensee's proposal would allow the operation of 2 Units in a condition in which A.C. power sources have been severely degraded. The staff has denied this change so that the licensee must abide by the previously issued Action d which does not allow the plants to remain at power for any appreciable amount of time if both offsite circuits are inoperable unless all diesel generators are operable. (2) ¾ 8-2—revising Action e to clarify that when the three diesel generators have been restored, a diesel generator may remain inoperable provided it is inoperable for work connected with the preparation for the installation of the fifth diesel generator. Additionally, the licensee would delete the requirement to perform Surveillance requirement 4.8.1.1.2.a.4 for one diesel generator at a time, within two hours. The staff has denied the licensee's proposal to delete this surveillance requirement. The Technical Specifications for both Units presently require doing this surveillance when in Action e, which is encountered when two or more of the required diesels are inoperable. The licensee proposed to delete Surveillance Requirement 4.8.1.1.2.a.4 because one of the diesels would be declared inoperable because of the tie-in work. The staff believes that the reason for a diesel being out of service has no bearing on and does not justify deleting this requirement. The staff finds it unacceptable to reduce testing during an extended outage for one of the diesel generators when the reduced testing has not safety benefit. All other portions of the proposed amendments were granted on December 3, 1985, Amendment Nos. 51 and 19 to Units 1 and 2, respectively. Notice of issuance of Amendment Nos. 51 and 19 were published on December 18, 1985 (50 FR 51638).

By Feburary 24, 1986, the licensee may demand a hearing with respect to the denials described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must comply with the requirements of the Commission's Rules of Practice, 10 CFR Part 2, and must be filed with the Secretary of the 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.

A copy of any petitions should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

For further details with respect to this action see (1) the application for amendments dated December 21, 1984, as supplemented on July 1, August 7, August 23, and September 4, 1985, and (2) the Commission's letter to the licensee dated December 3, 1985, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Osterhout Free Library, Reference Department, 71 South Frankin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Bethesda, Maryland, this 24th day of January 1986.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, BWR Project Directorate No. 3 Division of BWR Licensing.

[FR Doc. 86-1692 Filed 1-28-86; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Order No. 659, Docket No. A86-8]

Post Office Closings, Order Accepting Appeal and Establishing Procedural Schedule; Quaker Street, NY

Issued: January 22, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Docket No. A86-8.

Name of affected Post Office: Quaker Street, New York 12141.

Name(s) of petitioner(s): John D. Peters and others.

Type of determination: Closing.

Date of filing of initial appeal papers: January 16, 1986.

Categories of issues apparently raised:

1. Compliance with required procedure [39 U.S.C. 404(b) (1), (3) and (4)].

2

Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission Orders

(A) The record in this appeal shall be filed on or before January 31, 1986.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

January 16, 1986—Filing of Petition;
January 22, 1986—Notice and Order of Filing of Appeal;
February 10, 1986—Last day for filing petitions to intervene [*see* 39 CFR 3001.111(b)].
February 20, 1986—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)];
March 12, 1986—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)];
March 27, 1986—(1) Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].
April 3, 1986—(2) Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].
May 16, 1986—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 85-1871 Filed 1-28-85; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 23, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

CNW Corporation
Class A Common Stock, $.28 Par Value (File No. 7-8774)
GAP, Inc. (The)
Common Stock, $.05 Par Value (File No. 7-8775)
Walgreen Co.
Common Stock, $1.25 Par Value (File No. 7-8776)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 13, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are conistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

FR Doc. 86-1954 Filed 1-28-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 23, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Patrick Petroleum Company (New)
Common Stock, $.02 Par Value (File No. 7-8777)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 14, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-1955 Filed 1-28-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 5-86]

Treasury Notes, Series V-1988

Washington, January 23, 1986.

The Secretary announced on January 22, 1986, that the interest rate on the notes designated Series V-1988, described in Department Circular—Public Debt Series—No. 5-86 dated January 16, 1986, will be 8⅛ percent. Interest on the notes will be payable at the rate of 8⅛ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-1901 Filed 1-28-86; 8:45 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

International Exchange of Athletes; Reimbursement of Expenses

Pursuant to Public Law 99-93, The United States Information Agency will consider requests for reimbursement of expenses associated with the international exchange of athletes, coaches and officials for international games for the handicapped held in the United States.

Reimbursements to specific organizations named in the Congressional Record of December 16, 1985, shall not exceed amounts specified therein. Other eligible requests will also be considered.

Claims will be reviewed by USIA auditors and reimbursement amounts will be determined within 30 days after the deadline for submission of claims to the U.S. Information Agency.

For information on procedures and standards for reimbursement, write to the United States Information Agency, Office of Private Sector Programs, 301 Fourth Street SW., Washington, DC 20547. Applications for reimbursement must be received by February 28, 1986.

Dated: January 24, 1986.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86-1896 Filed 1-28-86; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 19
Wednesday, January 29, 1986

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

	Item
Federal Communications Commission	1
Federal Reserve System	2
National Council on the Handicapped	3
National Labor Relations Board	4
Securities and Exchange Commission	5

1

FEDERAL COMMUNICATIONS COMMISSION

January 23, 1986.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 30, 1986, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: Legislative Proposal Package. Summary: The Commission will consider whether to submit to Congress a request for various amendments of the Communications Act of 1934, as amended.

Private Radio—1—Title: Notice of Proposed Rule Making to amend Part 90 of the Commission's Rules to restrict the use of radio equipment with external frequency controls that would permit the selection of unauthorized frequencies. Summary: The Commission will consider adoption of a NPRM which proposes to restrict the use of radio transmitters with external frequency controls that would permit the selection of unauthorized frequencies. The Commission has concern because of the grave potential for interference this equipment presents for accidental or intentional off-frequency operation.

Private Radio—2—Title: Creation of a new Consumer Radio Service. Summary: The Commission will decide whether to adopt a Notice of Inquiry to consider restructuring the General Mobile Radio Service.

Common Carrier—1—Title: Report and Order detariffing the maintenance and installation of inside wiring. Summary: The Commission will consider whether to detariff the maintenance and installation costs associated with inside wiring. The Commission will also consider whether to require relinquishment of ownership of telephone company provided inside wiring.

Common Carrier—2—Title: In the Matter of Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers. Summary: The Commission will consider AT&T's Petition for Waiver of the Phase I Order in CC Docket 84-800.

Mass Media—1—Title: Reconsideration of the *Second Report and Order* in MM Docket No. 83-523, concerning the Instructional Television Fixed Service. Summary: The Commission considers petitions for reconsideration and clarification of certain rules and policies adopted in the ITFS *Second Report and Order*.

Mass Media—2—Title: Amendment of Part 73 of the Commission's Rules Relating to the Non-network Program Territorial Exclusivity Rules. Summary: The Commission will consider the Mass Media Bureau's recommendation to delete the rule limiting territorial exclusivity in non-network television program arrangements.

Mass Media—3—Title: Tender Offers and Proxy Contests (MM Docket No. 85-218). Summary: The Commission will consider the matters raised in the *Notice of Inquiry* relating to the procedures to be used in connection with tender offers and proxy contests involving corporate licensees.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Addititional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Issued: January 23, 1986.

FR Doc. 86-1973 Filed 1-27-86; 9:56 am]

BILLING CODE 6712-01-M

2

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, February 3, 1986.

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: January 24, 1986.

James McAfee,

Associated Secretary of the Board.

[FR Doc. 86-1947 Filed 1-27-86; 8:55 am]

BILLING CODE 6210-01-M

3

NATIONAL COUNCIL ON THE HANDICAPPED

TIME AND DATE:

11:00 a.m.-5:30 p.m.—January 29, 1986
9:00 a.m.-5:00 p.m.—January 30, 1986

PLACE: Salons F & G, Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC 20037 (202) 872-1500.

STATUS: Open Meeting

MATTERS TO BE CONSIDERED:

General Business including: Approval of Minutes

Presentations by: Louis Harris Associates, National Rehabilitation Hospital, Statue of Liberty/Ellis Island Foundation and the National Park Service

PLEASE NOTE: Any person requiring an interpreter or other special services, please contact NCH Staff no later than January 28, 1986.

CONTACT FOR MORE INFORMATION: Lex Frieden, Executive Director, National Council on the Handicapped (202) 453-3846.

Lex Frieden,

Executive Director, National Council on the Handicapped.

[FR Doc. 86-1958 Filed 1-27-86; 8:57 am]

BILLING CODE 6820-GS-M

4

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 9:30 a.m., Wednesday, January 29, 1986.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices).

MATTERS TO BE CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, D.C. 20570, Telephone: (202) 254-9430.

Dated: Washington, DC, January 24, 1986.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 86–1952 Filed 1–27–86; 8:56 am]

BILLING CODE 7545-01-M

5

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To be published].

STATUS: Closed/open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Friday, January 17, 1986.

CHANGE IN THE MEETING: Additional items.

The following additional item will be considered at a closed meeting scheduled for Tuesday, January 28, 1986, at 2:30 p.m.

Modification of administrative proceeding of an enforcement nature.

The following additional item will be considered at an open meeting scheduled for Thursday, January 30, 1986, at 10:00 a.m.

Consideration of: (1) A proposal by the Philadelphia Stock Exchange, Inc. to trade options on the European Currency Unit (File No. SR–Phlx–85–10) and (2) a proposal by the Option Clearing Corporation to issue, clear and settle such options (File No. SR–OCC–85–14). For further information, please contact Alden Adkins at (202) 272–2843.

Commissioner Grundfest, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Gerald Laporte at (202) 272–3085.

Dated: January 23, 1986.

John Wheeler,

Secretary.

[FR Doc. 86–1939 Filed 1–24–86; 4:09 pm]

BILLING CODE 8010-01-M

federal register

Wednesday
January 29, 1986

Part II

Environmental Protection Agency

40 CFR Part 763

Asbestos; Proposed Mining and Import Restrictions and Proposed Manufacturing Importation and Processing Prohibitions

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-62036; FRL 2947-3]

Asbestos; Proposed Mining and Import Restrictions and Proposed Manufacturing, Importation, and Processing Prohibitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a rule under section 6 of the Toxic Substances Control Act (TSCA) to prohibit the manufacture, importation, and processing of asbestos in certain products and to phase out the use of asbestos in all other products. The products EPA proposes to ban are asbestos-cement pipe and fittings, roofing felts, flooring felts (and felt-backed sheet flooring), vinyl-asbestos floor tile, and asbestos clothing. Under this rule, EPA would also allow only those persons with permits issued by EPA to mine or import asbestos for use in products that are not banned. Eventually, all mining or importation of asbestos would be prohibited, except for that mining or importation allowed under an exemption process. EPA is proposing this rule to reduce the serious unreasonable risk to human health presented by exposure to asbestos. As an alternative, EPA is considering prohibiting the manufacture, importation and processing of categories of asbestos products at staged intervals. EPA is considering banning the manufacture, importation, and processing of asbestos construction products and asbestos clothing soon after the rule's promulgation with the category of asbestos friction products banned about 5 years later, and other asbestos products banned at a later time. EPA believes that this alternative approach would also be an effective way of reducing the serious unreasonble risk presented by exposure to asbestos and specifically requests comment on a staged ban of asbestos product categories. Finally, under both this alternative and the proposed approach, EPA is considering requiring labeling for all asbestos products that are not banned, including products manufactured pursuant to permits issued by EPA during the phase-down period, or pursuant to an exemption process. The Agency requests comments on the feasibility and effectiveness of such a requirement.

DATES: Public hearings will be held beginning approximately May 14, 1986. The exact times and locations of the hearings will be available by calling EPA's TSCA Assistance Office. Comments on this proposed rule and requests to participate in the informal hearings must be submitted by April 29, 1986. Reply comments made in response to issues raised at each hearing must be submitted no later than 1 week after the close of that hearing.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-209, 401 M St. SW., Washington, DC 20460.

Comments should include the docket control number OPTS-62036. Nonconfidential comments and nonconfidential versions of confidential comments received on this proposal will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. E-107, at the address given above.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, Office of TSCA Assistance (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, DC 20460, Toll free: (800-424-9065), In Washington, DC: (554-1404), Outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Introduction

Asbestos, since the advent of its large scale use, has resulted in thousands of painful, premature deaths from lung cancer and other diseases. Because of the widespread use of asbestos and its particular nature, piecemeal control of the risks it presents is not satisfactory; only elimination of asbestos to the extent feasible will produce acceptable reduction of risks. Prevention of further deaths, therefore, requires forceful, integrated action against asbestos risks. To achieve this end, EPA has established a coordinated asbestos program, aimed at controlling exposure to asbestos from products already in use and eliminating risks from future uses. The rule EPA is proposing today, which would ban certain uses of asbestos and phase out all other uses, forms a central element of this program. Regulatory alternatives, which are discussed in this notice and which involve staged bans of various asbestos product categories, could also form a central element of the program.

The risks EPA is addressing in this proposal and its overall asbestos program are serious and well documented. Asbestos is a known human carcinogen that causes lung cancer, mesothelioma (a cancer of the chest and abdominal lining) and is also linked to other cancers. It has been estimated that 3,300 to 12,000 cancer cases a year occur in the United States as a result of past exposure to asbestos; almost all of these cancer cases are fatal. In addition, asbestos causes asbestosis (a serious lung disorder). About 65,000 persons in the United States are estimated to be suffering from asbestosis today. Assuming current exposure levels, EPA estimates that about 2,560 persons will develop lung cancer or mesothelioma as a result of exposure to asbestos from products made over the next 15 years, unless asbestos exposures are reduced through regulatory action. As discussed later, even with a relatively low workplace PEL of 0.2 f/cc, EPA estimates that almost 1,325 cancers will result from asbestos products made over the next 15 years. The underlying data upon which the risk assessments for asbestos are based come from a number of high quality epidemiologic studies. Unlike most potential carcinogens, asbestos has been studied often and thoroughly for its effects on humans.

Asbestos presents a particularly insidious threat because of the unique quality of its fibers. These fibers are small, colorless, odorless, often invisible except through a microscope, and indestructible in most uses. They can be transported on clothes and other materials, and they have aerodynamic features that allow them to be easily suspended and resuspended in the air and to travel long distances. Once released, asbestos fibers are difficult to detect and contain, and they readily enter the ambient air. Thus persons are exposed not only at the time and place of release, but long after the release has occurred and far from its source. There is constant renewal of risk as asbestos fibers reenter the atmosphere repeatedly over time.

Despite the known risks of asbestos, substantial amounts of the material are still mined, imported, and used in commercial products. About 240,000 metric tons, for example, were used domestically in 1984. Hundreds of products are still made with asbestos, including paper and textiles, cement pipe and sheets, tiles and felts, and automobile brakes. Asbestos fibers are released to the air at many stages of the commercial life of these products. Typical activities that lead to the

release of asbestos include the mining of asbestos, fiber processing into products, installation of products (e.g., the sawing, drilling, and sanding associated with asbestos-cement products), product use (e.g., release of fibers during use of asbestos cloth), product maintenance (e.g., buffing and scraping of vinyl-asbestos floor tile or repair of asbestos-containing brakes), dismantling and removal of products (e.g., removal of asbestos roofing felts), and disposal.

Release of fibers from these activities is substantial, resulting in exposure to both workers and non-workers. EPA estimates that about 700 metric tons are released to the air during mining and milling each year, about 100 metric tons during product manufacture, and about 18 metric tons from landfills. These estimates are probably low because they do not include releases from secondary fabrication of such products as millboard and asbestos-cement sheet, much of which is done in small shops with inadequate emission controls. Observations that levels of asbestos in the air near manufacturing plants and in cities are considerably greater than rural background levels seem to confirm that these releases occur and are significant.

Release of asbestos fibers occurs not only in the manufacture and processing of asbestos products, but also in their use and maintenance. This release can occur without the knowledge of the user or maintenance personnel. For example, construction workers tap into asbestos-cement pipes already in place. The workers often do not know that the pipe contains asbestos and thus do not take steps to limit fiber release. Similarly, significant releases occur as a result of the use and repair of asbestos brakes and other friction products, which constituted about 22 percent of the total asbestos market in 1984. Ambient levels of asbestos are elevated near freeways, presumable due to release from asbestos brakes.

Thus, the manufacture, processing, and use of asbestos products leave a legacy of asbestos in the ambient air. This ambient loading, while difficult to quantify, is a significant problem. The National Academy of Sciences, after analyzing studies of outdoor air, estimated typical concentrations of asbestos in outdoor ambient air in urban areas to be approximately 0.00007 f/cc (Ref. 6). Many millions of people are daily exposed to these levels of asbestos in the air. The National Academy of Sciences has also estimated that persons in urban areas face a lifetime risk of between about 1 in 100,000 to about 7 in 100,000 of developing cancer as a result of asbestos in the ambient air both indoors and outside of buildings (Ref. 6). Therefore, any comprehensive control strategy must take into account the potential for exposure during the entire lifecycle of asbestos products.

To date, EPA has focused its attention primarily on asbestos in buildings, a major source of asbestos release into the ambient environment. In the 1970s, EPA banned the use of sprayed-on asbestos and asbesto-containing pipe lagging under the Clean Air Act, and since then has taken steps to reduce risks from asbestos already in place in buildings. It has issued an air standard to reduce emissions from asbestos removal and renovation projects in buildings; issued a rule requiring inspection of schools for friable asbestos; and established an extensive technical assistance program, which provides guidance to public and private building owners on the identification and safe removal of asbestos. EPA has also proposed an immediately effective regulation to protect State and local public employees who take part in asbestos abatement activities.

These actions are primarily remedial, addressing risks from asbestos already in place; they do no address the substantial risks that will result from the continued manufacture and use of asbestos. Several other Federal agencies have already taken steps that partially reduce these risks. The Occupational Safety and Health Administration (OSHA) has an occupational standard for asbestos with a permissible exposure limit (PEL) of 2.0 f/cc. OSHA has proposed to lower this standard to either 0.2 or 0.5 f/cc. In addition, the Consumer Product Safety Commission (CPSC) has banned use of respirable asbestos in consumer patching compounds and artifical emberizing materials. However, substantial risk to workers and the general population remains. For this reason, EPA believes that only a major regulatory initiative under TSCA leading to the eventual elimination of most asbestos product manufacture and importation can satisfactorily reduce the overall risk to all segments of the population.

The limitations of exposure-based regulations in preventing asbestos-fiber release, and the need for more comprehensive action under TSCA, are illustrated by the use of PELs to control workplace exposure. In the first place, it appears infeasible to set a PEL for asbestos low enough to reduce risk to a satisfactory level. Even at 0.2 f/cc, the lowest PEL proposed by OSHA, OSHA, using the same lung cancer and mesothelioma models used by EPA, estimates that about 7 in 1,000 asbestos workers may die from an asbestos-related disease. Furthermore, it is unreasonable to assume complete compliance with a PEL of 0.2 f/cc, especially given the nature of the asbestos industry. Many of the workers exposed are in the service and construction industries, where worksites change frequently and the worker population is transient. Also, workers often do not know they are exposed to asbestos and therefore will not take the necessary precautions. As a result, PELs and other exposure controls are difficult to apply and enforce. Beyond these considerations, a workplace-based approach does not address risks to the general population. EPA estimates that, even if OSHA reduces the PEL to 0.2 f/cc, almost 1,325 cancers will still result from asbestos products made over the next 15 years.

Because of this residual risk, EPA is proposing under section 6 of TSCA a ban on the manufacture, importation, and processing of asbestos-cement pipe and fittings, roofing felts, flooring felts (and felt-backed sheet flooring), vinyl-asbestos floor tile, and asbestos clothing. These uses would be banned because safer, economically competitive substiutes are available, and because these asbestos uses are likely to contribute large amounts of asbestos to the ambient environment or present disproportionately high risk.

In addition, EPA is proposing to establish a permit system to phase out all other asbestos products. Under this system, EPA would allocate permission to mine or import a specific volume of asbestos to current miners and importers. The amount of asbestos a miner or importer would be allowed to mine or import would decline every year until after 10 years no mining or importation would be allowed, except under a specific exemption. This permit system would allow the market to allocate asbestos, based on the availability and cost of asbestos substitutes. After 10 years, EPA would put in place an exemption system for those asbestos applications for which no substitutes had been developed. EPA anticipates that there will be few such applications, because the permit system would create strong incentives for the development of substitutes. EPA is also considering a requirement that all asbestos products that are not banned be labeled as containing asbestos. This would apply to products made pursuant to permits issued by EPA to mine or import asbestos, and to products made pursuant to an exemption process.

In encouraging the development of substitutes, EPA will be promoting a

significant reduction in risk. Currently, all products that are replacing asbestos in its many uses appear to present lower risk. However, EPA will monitor the development of substitutes during the 10-year phase-down period, and will use section 4 of TSCA to require testing of substitutes if necessary to ensure their safety.

As explained more fully later, EPA is also actively considering other approaches to carry out a regulatory policy of phasing out the manufacture, importation, and processing of asbestos products. Approaches under consideration include banning categories of asbestos products at staged intervals. Two categories under consideration are asbestos construction products and asbestos friction products. Under this approach, EPA would ban the manufacture, importation, and processing of all asbestos products within the category at the same time.

EPA is considering this category approach because products within each of the categories have similar exposure patterns, raise similar exposure control issues, and have similar substitutes. EPA believes that it may be good public policy to ban such categories of products at the same time. This approach would address similar exposure patterns in the same way and treat all parts of an industry sector similarly. In addition, both the construction products category and the friction products category contain products that could substitute for other products in the category if all are not banned. Thus, a ban of the entire category may be necessary to reduce risk most effectively.

EPA also considered referring asbestos risks to OSHA and CPSC under section 9 of TSCA. EPA decided against this approach because OSHA and CPSC, in EPA's opinion, cannot adequately reduce the risk, given their authority and current control technologies. These agencies cannot comprehensively reduce the total volume of asbestos in commerce and cannot protect all of the many population groups at risk. Thus, action by these agencies under their separate authorities would still leave a large residual risk to workers and the general population. EPA concluded, therefore, that this approach would not adequately address the risks to society posed by the continued manufacture, processing, and use of asbestos-containing products. EPA is convinced that restrictions on the manufacture, importation, and processing of asbestos and asbestos products is the surest and most effective strategy for eliminating these risks.

II. Background

EPA announced that it was exploring possible use of TSCA to reduce the risk to human health from exposure to asbestos in an Advance Notice of Proposed Rulemaking (ANPR) published in the **Federal Register** of October 17, 1979 (44 FR 60061). Following publication of the ANPR, EPA investigated industrial and commercial uses of asbestos. Under section 8(a) of TSCA, EPA promulgated an asbestos reporting rule under 40 CFR 763.60 published in the **Federal Register** of July 30, 1982 (47 FR 33207). This rule required miners, millers, importers, and processors of asbestos to report information concerning (1) quantities of asbestos used in product manufacture, (2) employee exposure to asbestos, (3) waste disposal practices, and (4) emission control practices. The information reported under that rule has been used with other data to evaluate the risks and benefits of asbestos use.

Under section 21 of TSCA, a person may petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under various sections of TSCA. On June 21, 1979, EPA was petitioned to prohibit the future use of asbestos-cement pipe in water systems. EPA granted that petition by a notice published in the **Federal Register** of October 18, 1979 (44 FR 60155). On September 12, 1984, the Natural Resources Defense Council (NRDC) petitioned EPA to prohibit further use of asbestos in motor vehicle brakes. EPA granted that petition by a notice published in the **Federal Register** of December 18, 1984 (49 FR 49311). This proposal is in part a result of the proceedings conducted after granting those two petitions. EPA has identified effective substitutes for asbestos-cement pipe and is proposing to ban that product. EPA analyzed the availability of substitutes for asbestos in brakes but is not prepared to propose an immediate ban. Effective substitutes are still not available for many applications of asbestos in brakes. Instead, EPA is proposing to phase out use of asbestos in brakes and use market forces to encourage the more rapid development of substitutes. As an alternative, EPA is considering a ban of asbestos friction products about 5 years after this rule is promulgated. This alternative would also encourage the rapid development of substitutes.

III. Regulatory Assessment

Section 6 of the TSCA authorizes EPA to prohibit or limit by rule the amount of a chemical substance which may be manufactured, processed, or distributed in commerce if EPA finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance, or any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment.

Under section 6(c)(1) of TSCA, EPA must consider the following factors when determining whether a chemical substance or mixture presents an unreasonable risk:

(1) The effects of such substance or mixture on health and the magnitude of the exposure of human beings to such substance or mixture.

(2) The effects of such substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture.

(3) The benefits of such substance or mixture for various uses and the availability of substitutes for such uses.

(4) The reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

After considering the above factors, EPA presents the following findings concerning the unrestricted mining and importation of asbestos, including asbestos imported in products.

A. Health Effects and Magnitude of Exposure to Asbestos

1. *Health effects.* This unit summarizes the health effects of asbestos. Detailed discussion and assessment of the health effects of asbestos may be found in the "Report to the United States Consumer Product Safety Commission (CPSC) by the Chronic Hazard Advisory Panel on Asbestos" (CHAP) (Ref. 1), "Health Effects and Magnitude of Exposure" in EPA's "Support Document for Final Rule on Friable Asbestos-Containing Materials in School Buildings," (Ref. 4) and the "Report of the (National Research Council) Committee on Nonoccupational Health Risks of Asbestiform Fibers" (Ref. 6).

EPA finds that the adverse human health effects from exposure to asbestos are extremely serious. Asbestos is a known human carcinogen that also causes other lung diseases. Asbestos has been thoroughly examined in numerous epidemiology studies. The life-threatening diseases that have been repeatedly identified are asbestosis, lung cancer, and mesothelioma. Also associated with asbestos exposure in some studies are cancers of the larynx,

pharynx, gastrointestinal tract, kidney, and ovary and respiratory dieseases such as pneumonia. Major health effects are discussed below.

Lung cancer is currently responsible for the largest number of deaths from exposure to asbestos. It has been associated with exposure to all the principal commercial asbestos fiber types. Excess lung cancer has been documented in groups involved with the mining and milling of asbestos and the manufacture and use of asbestos products. Studies in which the extent of exposure can be approximated provide evidence that lung cancer increase linearly with both level and duration of exposure. Cigarette smoking and asbestos have a strong synergistic interaction in development of lung cancer. Asbestos exposure appears to multiply the underlying risk of lung cancer. Consequently, when exposed to asbestos, the risk of lung cancer for smokers (for whom the risk of lung cancer is already high) is much higher than that for nonsmokers exposed to asbestos. Most persons who develop lung cancer die within 2 year.

Many human studies have also shown that exposures to asbestos produce mesotheliomas, which are cancers that occur as thick diffuse masses in the serous membranes (mesothelia) that line body cavities. Mesotheliomas occur in the pleura (the membrane that surrounds the lungs and lines the lung cavity) and the peritoneum (which surrounds the abdominal organs and lines the abdominal cavity). Most persons who develop mesothelioma die within the first 2 years after diagnosis, often after having been in constant pain. Epidemiology studies suggest that the incidence of mesothelioma is related to dose and time from first exposure. Association of mesothelioma with smoking is weak or nonexistent. Asbestos fibers appear, by far, to be the most common cause of mesotheliomas.

Asbestosis, which involves fibrosis of lung and pleural tissues, is another serious chronic disease associated with exposure to asbestos. There is no effective treatment for asbestosis and it is often disabling or fatal. Asbestosis is diagnosed from findings which may include radiographic changes, breathlessness, and abnormal lung function. Since some clinical symptoms of asbestosis are similar to those of other fibrosing lung diseases, a history of occupational exposure to asbestos is often a key feature of its diagnosis. Asbestosis can appear and progress decades after exposure to asbestos fibers. Under working conditions where average fiber concentrations in the air were high (more than 10 fibers per cubic centimeter (f/cc)) asbestosis has accounted for more than 7 percent of observed deaths (Ref. 11). It is apparently less common than lung cancer or mesothelioma at exposures lower than the current Occupational Safety and Health Administration (OSHA) workplace standard of 2.0 f/cc. Some recent data on the incidence of asbestosis appear compatible with a linear exposure-response relationship with no threshold (Ref. 12). However, it is still considered uncertain whether asbestosis occurs as a result of nonoccupational exposures.

In occupational studies where the primary route of exposure is through inhalation, lung cancer and mesotheliomas usually account for about 90 percent of the excess cancers seen among workers exposed to asbestos. However, as noted in the CHAP report (Ref. 1), a number of other cancers, principally of the gastrointestinal tract, have been associated with asbestos exposure. These are cancers of the larynx, pharynx, oral cavity, esophagus, stomach, colon, and rectum. Statistically significant excesses of cancers of the kidney and ovary have also been shown. In addition, the excess of cancers at all other sites combined is statistically significant in some studies.

The conclusions from epidemiology studies concerning the health effects of asbestos are also supported by results of laboratory studies. Animals treated with asbestos have shown increased incidence of fibrosis, lung cancer, and mesotheliomas. All commercial forms and several other types of asbestos are implicated from a variety of modes of exposure.

Most occupational studies have been conducted on populations exposed to high airborne concentrations of asbestos for relatively long periods of time. However, short-term occupational exposures have also been shown to increase the risk of lung cancer and mesothelioma. One group of asbestos factory workers with less than 2 months of occupational exposure had a twofold increase in lung cancer risk (Ref. 9). In addition, there are many documented cases of mesothelioma linked to extremely brief exposure to high concentrations of asbestos or long-term exposure to low concentrations (Ref. 4).

Direct evidence of adverse health effects from non-occupational asbestos exposure also exists. Persons who lived in the households of asbestos workers have developed pleural mesothelioma and asbestos-related radiographic changes. In an ongoing study, 4 cases of mesothelioma have been diagnosed among 626 family contacts of amosite workers (Ref. 10). These figures are much higher than that expected to be found among the general population. In addition, 35.9 percent of the contacts showed chest x-ray abnormalities as compared with 4.6 percent of control subjects drawn from the same community. A number of mesotheliomas have also been documented among populations whose only identified exposure was from living near asbestos mining areas, asbestos product factories, or shipyards where asbestos use had been very heavy (Ref. 4). An estimated 1,600 cases of mesothelioma occur yearly in the U.S. among various populations exposed to asbestos (Ref. 6).

In addition to exposure to asbestos fibers in the air, the general population is also exposed through various oral sources, including drinking water containing asbestos. Because of the potential for oral exposure as well as the excess of gastrointestinal tract cancers that has frequently been found in occupational groups exposed to asbestos in the air, there has been much study of the possible health effects of ingestion of asbestos fibers. Despite those efforts, evidence showing health effects from ingestion is still ambiguous.

2. *Cancer risk extrapolation.* As discussed above, numerous human studies have demonstrated that exposure to asbestos has increased the risk of cancer and asbestosis. Since a number of epidemiology studies indicate a positive relationship between asbestos exposure and the risk of lung cancer, several models may be used to extrapolate from risk at higher exposure to risk at lower exposure. The model that EPA believes is most consistent with the available human and animal data is the linear non-threshold dose/response model. This model assumes that (1) any exposure increases risk, and (2) the increase in risk is proportional to the background risk in the nonexposed population and to the level of exposure, defined as duration of exposure times concentration of asbestos fibers to which populations may be exposed.

The choice of the linear model is reasonable since there is no evidence for a threshold level of asbestos exposure below which there is no increased risk. It is further supported by evidence of cancers among populations whose asbestos exposure is believed to have been lower than levels reported in the epidemiology studies of asbestos workers mentioned above.

The model adopted by EPA to estimate excess mesothelioma incidence due to asbestos exposure relates disease

incidence to dose and the time from first exposure (minus 10 years) raised to the third power. This model reflects a delay (or minimum latency period) of 10 years between first exposure and the likely earliest possible appearance of the disease. Both the lung cancer and mesothelioma models have also been adopted by OSHA (Ref. 12). The National Research Council Committee on Nonoccupational Health Risks of Asbestiform Fibers also adopted a similar linear no-threshold model to estimate risk to nonoccupational populations from exposure to asbestos (Ref. 6). The derivation and validation of the models is discussed in detail in the CHAP report (Ref. 1) and in EPA's "Regulatory Impact Analysis of Controls on Asbestos and Asbestos Products" (RIA) (Ref. 3).

Although EPA believes that excess mortality from asbestosis and cancers other than lung cancer and mesothelioma will occur from exposure to asbestos released during the lifecycle of the products under study, EPA has not attempted to quantify that excess mortality. Thus, the model could understate the risk to humans from exposure to asbestos.

The risk of asbestos-induced disease may be modified by several factors. As mentioned in the earlier discussion on lung cancer, smoking drastically increases the risk of developing lung cancer from exposure to asbestos. Because of their lower underlying risk, the absolute increase of incidence of lung cancer in nonsmokers is about one-tenth of that in smokers. However, even complete control of the smoking factor (if possible) would leave a substantial health risk since the risk of mesothelioma (which is apparently unaffected by smoking) and the risk of lung cancer to nonsmokers would still remain.

Another factor that may affect the risk of asbestos-induced disease is the possible differences in biological potency among the different fiber types. The National Research Council (Ref. 6) studied this issue and concluded:

> Results of studies of various groups of workers indicate that it is extremely difficult to assess the role of fiber type (e.g., chrysotile or crocidolite) in determining the risk for developing either lung cancer or mesothelioma. Analysis of the epidemiological studies is complicated because of variations in type of industry, the diverse fiber characteristics within an industry, and the usual inadequacy of exposure data. Some scientists have interpreted the available epidemiological data to indicate that chrysotile asbestos, the asbestos type most commonly used in the United States, is less hazardous than the other types of asbestos, especially crocidolite. Such arguments have been used in the United Kingdom and other countries to rationalize different regulatory controls for crocidolite and chrysotile. However, in view of the laboratory evidence and great uncertainty about the nature of the fibers of asbestos to be found in nonoccupational exposure situations, the committee decided not to differentiate among them in the quantitative risk assessment. Furthermore, some of the apparent discrepancies may be explained by differences in physical properties of the fibers, their concentrations, and their characteristics in the different environments. These possibilities need further testing.

In view of this uncertainty about the relative potency of the various asbestos types and in view of the well-documented health hazard of the most common commercial form of asbestos, EPA has concluded that it is prudent to treat all asbestos fiber types as having equivalent biological activity.

Fiber morphology has also been suggested as a factor that may affect incidence of asbestos-induced disease. Animal studies in which asbestos fibers were applied by injection or implantation suggest that longer and finer fibers are more carcinogenic than shorter and coarser fibers. This has not, however, been confirmed by inhalation studies. EPA has not differentiated among fiber sizes in assessing the potential risk of asbestos. First, asbestos fibers released during the life cycle of asbestos products consist of a great range of dimensions, including those suggested as most dangerous. Second, it has not been clearly shown that short fibers pose a significantly smaller risk. No dimensional threshold for potency has been established.

3. *Magnitude of human exposure.* Asbestos fibers are released to the air during all stages of the lifecycle of asbestos products. Fiber release to the air occurs during normal operations of mining and milling, fiber processing into products, installation of products, product use, maintenance, renovation, dismantling, removal, and disposal. Asbestos fibers have special characteristics that affect exposure. They are colorless, odorless, and frequently invisible except by microscope, thus presenting risk to persons who are not aware that they may be exposed. Asbestos fibers are extremely durable and have aerodynamic properties that allow them to remain suspended in the air for a long time. They are basically nonbiodegradable and therefore persist for a very long time in the environment.

Asbestos fibers easily reenter the atmosphere after settling out and can travel long distances through the air. A report from Finland found that asbestos had traveled as far as 27 kilometers from a mine under study. Persons can be exposed to asbestos fibers long after those fibers have been released to the ambient air and a considerable distance from the source of the release. Asbestos fiber concentrations have been measured in areas far from obvious asbestos sources. Atmospheric sampling programs conducted in remote rural areas in the United States and Germany have found asbestos fiber levels between 0.01 and 0.12 nanogram/meter^3 (ng/m^3) (1 ng is one billionth of a gram). Conversion factors between asbestos fiber counts and mass counts are variable. However, EPA estimates that 1 ng of asbestos in air equals about 30 fibers visible by light microscopy. Using this conversion factor for asbestos in outdoor air, then the above measurements are the equivalent of about 3×10^{-7} to 3.6×10^{-6} f/cc. In areas of higher human population density, measured asbestos concentrations in the air are typically much greater. A survey of large cities showed mean readings of 2.6 to 5.0 ng/m^3 (7.8×10^{-5} to 1.5×10^{-4} f/cc). Measurements taken in New York City ranged from means of 8 to 30 ng/m^3 (2.4×10^{-4} to 9×10^{-4} f/cc). Typical fiber concentrations are much higher in densely populated areas because of fiber release from construction work (including renovation or demolition), from asbestos-containing brakes of motor vehicles, and from other activities during the lifecycle of asbestos products. In general, levels of asbestos in the air in cities and near manufacturing plants are considerably greater than rural background levels.

Thus, throughout their entire lifecycle, that is throughout their manufacture, processing, use, and disposal, asbestos products leave a legacy of asbestos in the ambient air. This ambient load, while difficult to quantify, is a significant problem. The National Academy of Sciences, after analyzing studies of outdoor air, estimated typical concentrations of asbestos in outdoor ambient air in urban areas to be approximately 0.00007 f/cc (Ref. 6). Many millions of people are exposed to those levels of asbestos in the air each day. Therefore, any comprehensive control strategy must take into account the potential for exposure during the entire lifecycle of asbestos products.

Some products do not present as much potential for releases to the ambient air during certain stages of their lifecycle. For example, there are likely to be releases to the ambient air during the manufacture, processing, installation, and repair of asbestos-cement pipe. However, there generally will be no release of asbestos to the ambient air during actual use of asbestos-cement

pipe since it is commonly buried in the ground.

A large proportion of the U.S. population is at risk from this asbestos in the air. Tables I through III show the numbers of persons exposed to asbestos during the more readily quantifiable stages of the lifecycle of asbestos products and the levels to which they are exposed. Exposure levels are "best estimates" based on monitoring studies. Additional information can be found in Refs. 2 and 3 which are included in the rulemaking record. To avoid disclosing confidential business information, the tables sometimes use a range rather than a single number. The notation NA means that data are not available.

TABLE I.—EXPOSURE DATA FOR MANUFACTURING—OCCUPATIONAL

Asbestos product	Primary manufacturing	
	Exposure level (10^6 f/yr)	Number of persons exposed
Commercial paper	5,691	0–150
Millboard	682	0–150
Pipeline wrap	307	0–150
Beater-add gasket paper	495	264
High-grade electrical paper	5,934	47
Unsaturated roofing felt	540	0–150
Saturated roofing felt	1,313	0–200
Flooring felt	NA	NA
Specialty paper	381	82
V/A floor tile	802	580
Felt-backed vinyl flooring	NA	NA
Asbestos/cement pipe	581	837
Flat A/C sheet	1,016	0–150
Corrugated A/C sheet	2,778	46
A/C sheet shingle	766	0–150
Drum brake lining	1,447	1,222
Disc brakes (LV)	1,568	1,038
Disc brakes (HV)	1,005	0–150
Brake blocks	1,608	456
Clutch facings	1,374	418
Friction products—automatic transmission	538	186
Friction products—commercial	1,361	479
Cloth	2,216	0–150
Thread	3,302	150–300
Sheet gasketing	780	105
Packing	1,084	247
Surface coatings	854	500
Sealants	638	708
Plastics	695	566
Insulation	438	0–150
Mixed fiber	1,348	150–300
Other	641	1,020

TABLE II.—EXPOSURE DATA FOR MANUFACTURING—AMBIENT

Asbestos product	Primary manufacturing	
	Exposure level (10^6 f/yr)	Number of persons exposed
Commercial paper	.00168	10,000
Millboard	.00168	30,000
Pipeline wrap	.00168	150,000
Beater-add gasket paper	.00168	350,000
Electrical paper	.00168	10,000
Unsaturated roofing felt	.00168	200,000
Saturated roofing felt	.00168	60,000
Flooring felt	NA	NA
Specialty paper	.00168	10,000
V/A floor tile	.0495	660,000
Felt-backed vinyl flooring	NA	NA
A/C pipe	3.07	1,700,000
Flat A/C sheet	3.07	790,000

TABLE II.—EXPOSURE DATA FOR MANUFACTURING—AMBIENT—Continued

Asbestos product	Primary manufacturing	
	Exposure level (10^6 f/yr)	Number of persons exposed
Corrugated A/C sheet	3.07	70,000
A/C sheet single	3.07	310,000
Drum brake lining	.0069	720,000
Disc brakes (LV)	.0069	320,000
Disc brakes (HV)	.0069	NA
Brake blocks	.0069	450,000
Clutch facings	.0069	70,000
Friction products—automatic transmission	.0069	NA
Friction products—commercial	.0069	90,000
Cloth	.0554	24,000
Thread	.0554	180,000
Sheet gasketing	.7326	690,000
Packing	.7326	90,000
Surface coatings	.00002	2,000,000
Sealants	.00002	4,350,000
Plastics	.00002	1,320,000
Insulation	NA	NA
Mixed fiber	NA	NA
Other	NA	NA

Table III.—Exposure Data For Installation, Use, Repair, and Disposal

Asbestos product	Installation		Repair/disposal	
	Exposure level (10^6 f/yr)	Number of persons exposed	Exposure level (10^6 f/yr)	Number of persons exposed
Commercial paper	NA	NA	NA	NA
Millboard	107	75	NA	NA
Pipeline wrap	NA	NA	NA	NA
Beater-add gasket paper	NA	NA	NA	NA
Electrical paper	120	18	NA	NA
Unsaturated roofing felt	160	7,577	NA	NA
Saturated roofing felt	160	2,423	NA	NA
Flooring felt	NA	NA	NA	NA
Specialty paper	130	75	NA	NA
V/A floor tile	90	5,100	NA	NA
Felt-backed vinly flooring	NA	NA	NA	NA
A/C pipe	5,000	27,520	NA	NA
Flat A/C sheet	4,700	8,147	NA	NA
Corrugated A/C sheet	4,700	758	NA	NA
A/C sheet shingle	4,700	3,095	NA	NA
Drum brake lining	NA	NA	250	385,149
Disc brakes (LV)	NA	NA	105	164,822
Disc brakes (HV)	NA	NA	105	1,145
Brake blocks	NA	NA	NA	NA
Clutch facings	NA	NA	250	36,184
Friction products—automatic transmission	NA	NA	NA	NA
Friction products—commercial	NA	NA	NA	NA
Cloth	675	850	675	850
Thread	NA	NA	NA	NA
Sheet gasketing	1,380	4,586	NA	NA
Packing	12	2,914	NA	NA
Surface coatings	120	100,000	NA	NA
Sealants	NA	NA	NA	NA
Plastics	NA	NA	NA	NA
Insulation	NA	NA	400	3,000
Mixed fiber	NA	NA	NA	NA
Other	NA	NA	NA	NA

4. *Exposure from imported and exported asbestos and asbestos products.* EPA has determined that significant exposure is likely from imported asbestos products. Although some exposure to United States populations is avoided when asbestos products are manufactured abroad and imported rather than manufactured domestically, significant exposures will still occur after their import into this country. Exposures will occur during installation and use of the product; maintenance of the product; and during dismantling, removal, and disposal of the product. Much asbestos can be released to the ambient air as a result of these activities. Large numbers of people are exposed to asbestos during these activities and the level of exposure can be quite high.

Significant exposures will also occur during the domestic life cycle of bulk asbestos and asbestos products manufactured in this country for export abroad. These exposures will occur during the mining and milling of asbestos fiber and during the processing of fiber into products. There is much exposure to workers during the mining and milling of asbestos and manufacture of asbestos products. In addition, families of workers, and populations living near mining and manufacturing sites are also exposed to asbestos as a result of these activities.

5. *Exposure from various categories of asbestos products.* EPA has noted that various categories of asbestos products present very similar exposure patterns. For example, the products within the construction products category all present significant potential for fiber release to the air and subsequent human exposure during their installation, repair, removal, and disposal. These products are often cut, torn, sawed, and drilled during installation repair, and removal. All of these activities can release fibers to the air. In addition, sanding of these products during use often releases fibers to the air.

Similarly, products within the friction products category all present significant potential for fiber release and subsequent exposure during use and repair. Friction products wear down during use, often releasing fibers to the air either during actual use of the product or during maintenance or repair operations in which previously confined asbestos-containing dust is disturbed and becomes airborne.

Often, fiber releases from asbestos products in these categories occur in close proximity to other products within the same category, making it difficult to attribute observed fiber levels to a particular product. For example, EPA used monitoring data from automobile repair shops to estimate asbestos exposures resulting from repair of asbestos disc brakes, drum brakes, clutch facings, and automatic transmission friction components. Because there are no data available to estimate differences in fiber releases in the various repair activities, EPA

developed exposure estimates for each product using a weighting scheme based on the relative production volumes of each of the friction products which are the sources of the exposure. Similarly, it is common for many of the asbestos construction products to be used at one building site, making it difficult to attribute fiber release to one particular product. The estimation of ambient exposures due to releases from individual construction products, such as the various flooring products, was difficult since monitoring data were gathered in buildings where more than one type of asbestos flooring product was in place.

For these reasons, EPA believes that it may be appropriate to consider a categorial approach to analyze the risk presented by asbestos products and to control that risk. Table IV lists the products that are included in the construction products and friction products categories.

TABLE IV—EXAMPLES OF ASBESTOS PRODUCT CATEGORIES

Asbestos product category	Asbestos product
Construction product category.	Unsaturated roofing felt, Saturated roofing felt, Flooring felt, Vinyl asbestos floor title, Felt-backed vinyl flooring, A/C pipe, Corrugated A/C sheet, Flat A/C sheet, A/C sheet shingle.
Friction products category.	Drum brake lining, Disc brakes (LV), Disc brakes (HV), Brake blocks, Clutch facings, Friction products—automatic transmission, Friction products—commercial.

6. *Quantitative cancer risk estimates.* As discussed above, there exist many asbestos exposure-producing activities to which many kinds of populations are exposed. Applying the cancer models described above to the available data on exposure and populations, EPA has estimated the number of cancers that may be avoided by implementing the EPA's proposed regulatory program. (A full discussion of the risk estimates is contained in the "Regulatory Impact Analysis of Controls on Asbestos and Asbestos Products (Ref. 3)". Using available data and assuming current exposure levels, EPA calculates that about 2,560 lung cancers and mesotheliomas in the United States would result from production of asbestos products over 15 years without EPA action under TSCA. EPA calculates that this rule would avoid about 1,930 of those potential cancers. Assuming that OSHA achieves strict compliance with a PEL of 0.2 f/cc, EPA calculates that about 1,325 lung cancers and mesotheliomas would result unless EPA takes action under TSCA. EPA calculates that this rule would avoid about 1,000 of those potential cancers.

EPA also calculated the number of potential cancers avoided by the regulatory alternatives discussed later. Assuming current exposure levels, alternative 1, which would ban the asbestos construction products category and asbestos clothing soon after promulgation of the rule and ban the asbestos friction products category about 5 years later, would avoid about 2,100 cancers; alternative 2, which would ban the asbestos construction products category and asbestos clothing soon after promulgation of the rule, ban the asbestos friction products category about 5 years later, and ban the remaining asbestos products about 10 years later, would avoid about 2,120 cancers; and alternative 3, which would ban the asbestos construction products category and asbestos clothing soon after promulgation of the rule and cover all other asbestos products under the phase-down, would avoid about 2,020 cancers.

EPA believes these estimates of potential number of cancers, and therefore the potential number of cancers avoided, may be low for the following reasons:

a. The estimate is based only on exposures resulting from manufacture of asbestos products through the year 2000. Without regulatory action, manufacture of asbestos products may continue beyond that date.

b. The risk estimates often do not include cancers from consumer and other nonoccupational exposures to asbestos since data are either unavailable or uncertain. However, EPA believes that many people in these categories are at risk. An estimated lifetime risk of cancer of about 1 in 100,000 to about 7 in 100,000 exists for anyone who merely resides in a major city from exposure to asbestos in the ambient air both indoors and outside of buildings. (Ref. 6). Any additional exposure from asbestos products, such as consumer renovation of a house containing asbestos products, residing or working near plants that manufacture asbestos products, or residing or working in the vicinity of a construction project where asbestos-containing products are being installed or removed, will add to the risk of cancer. This additional exposure could increase the lifetime risk of cancer by more than an order of magnitude.

c. The risk estimates did not include all workers whose occupation causes them to come in contact with asbestos products. For example, the estimates do not include occupational exposure during repair, removal, and disposal of asbestos products other than friction products and cloth.

d. EPA did not make a worst case estimate of asbestos risk. Rather, the risk estimates were based on a relatively conservative interpretation of the dose-response relationship for mesothelioma and lung cancer. Risk estimates more than four times as high could be justified (Ref. 3).

e. EPA did not attempt to quantify reductions of cases of asbestosis and cancers other than mesothelioma and lung cancer. These diseases may add 10 to 20 percent more deaths to the total. OSHA estimates that at an exposure of 0.5 f/cc over a working career, 12 workers per 1,000 will develop asbestosis (Ref. 12). Thus, incidence of asbestosis could be significant among worker populations and possibly among other populations as well. In addition, in a major study of insulation workers exposed to asbestos, about 10 percent of all excess deaths were attributed to cancers other than lung cancer and mesothelioma (Ref. 11).

B. Environmental Effects

Section 6(c) of TSCA requires that EPA state the relevant environmental factors and key considerations which form the basis for regulatory action under section 6(a). The unreasonable risk finding of this proposal is based solely on risks to human health since these risks are by far the most serious consequence of commercial use of asbestos and are sufficient to support this proposed action.

C. Benefits of Asbestos Products and Availability of Substitutes

The benefits of the asbestos-containing products affected by the proposed rule are discussed below. Overall, EPA finds that the benefits to society of these asbestos-containing products are small since suitable substitutes are now available for most uses and applications of asbestos, and products are being developed that will replace almost all uses and applications of asbestos during the phase-down period of this proposal.

1. *Substitutes.* The detailed results of EPA's analysis of the availability of suitable substitutes for asbestos-containing products are reported in Appendix H, "Asbestos Products and Their Substitutes," of the RIA (Ref. 3) and are summarized in Table V.

TABLE V—SUMMARY TABLE OF ASBESTOS PRODUCTS, THEIR MAJOR USES, AND THE EXTENT TO WHICH THEY CAN BE SUBSTITUTED

Asbestos product	Major uses	Extent to which substitutes are available to replace asbestos products	
		Entirely	Partially
Asbestos cement pipe & fittings.	Water & sewer pipe.	X	
Flooring felt	Backing for vinyl sheet flooring products.	X	
Saturated roofing felt.	Construction of built-up roofing.	X	
Unsaturated roofing felt.	Production of saturated roofing felt.	X	
Vinyl/asbestos floor tile.	Floor tile for buildings.	X	
Asbestos-felt-backed vinyl sheet flooring.	A general floor surfacing medium.	X	
Adhesives & sealants.	Binding surfaces (adhesive) filling gaps in equipment & building construction (sealants).		X
Corrugated asbestos cement sheet.	Siding & roofing for buildings.	X	
Flat asbestos cement sheet.	Wall linings in buildings.	X	
Asbestos cement shingles.	Siding & roofing on buildings.	X	
Asbestos-reinforced plastics.	Components of appliance, electrical, automotive & printing equipment.		X
Friction components—transmission.	To dissipate heat when gears are changed.		X
Beater-add gaskets.	To provide nonleaking joints.		X
Brake blocks	To provide protection against heat & wear caused by braking in vehicles.		X
Asbestos textiles—cloth.	Material in safety curtains, fire blankets, & safety clothing.		X
Clutch facings	Friction materials in manual transmissions.		X
Commercial paper	General insulation paper & muffler paper.	X	
Corrugated paper	Pipe covering & block insulation.	X	
Disc brake pads (heavy vehicles).	Components of brakes in heavy vehicles.		X
Disc brake pads (light & medium vehicles).	Components of brakes in light & medium vehicles.		X
Drum brake linings (light & medium vehicles).	Components of brakes in light & medium vehicles.		X
Friction materials—industrial & commercial.	Materials that support braking & gear changing in vehicles & industrial equipment.		X
High grade electrical paper.	Electrical conductor fire insulation.		X
Millboard	To protect a supporting structure against heat, corrosion, moisture.		X
Asbestos packing	To seal fluids in applications where motion takes place.		X
Paints & surface coatings.	Protect surfaces from corrosion & water. Surfaces include chimneys, tanks, pipes, appliances.		X
Pipeline wrap	Wraps for gas, oil, hot water, & steam piping; primarily underground.		X
Rollboard	Protection against fire, heat, corrosion & moisture in industrial & office equipment & residential items.	X	
Sheet gasketing	Material used to seal fluids.		X
Specialty papers	Filters to purify or clarify liquids; cooling tower fill; & diaphragms for electrolytic cells.		X
Textiles—thread, yarn lap, roving, cord, & wick.	Insulation for wiring & electrical conductors; reinforcement for plastics; insulation for tools, packings, seals, & tape.		X
Total number		13	18

The following examples illustrate the types of substitutes available for those asbestos products EPA proposes to ban, either in this proposal or in one of the 3 regulatory alternatives described in this proposed rule, including the category of asbestos construction products and the category of asbestos friction products. A more complete analysis can be found in the Regulatory Impact Analysis (RIA) (Ref. 3).

a. *Friction products.* Substitutes exist or are being developed for almost all uses of asbestos in friction products. Replacement of asbestos in friction products has been more difficult than in the other asbestos product categories because of the unique combination of physical properties of asbestos which make it so well suited for friction products, e.g., heat resistance, corrosion resistance, high tensile strength, thermal stability, and processability. However, substitutes which are nearly as cost-effective as asbestos products have been developed for most uses of asbestos in friction products.

Asbestos automatic transmission friction components are currently being replaced with cellulose-based friction components. Only one of three domestic manufacturers of clutch facings makes them using asbestos. Clutch facings made of fiberglass and textile fibers have begun to replace asbestos facings to a significant extent. However, these substitutes are inferior to the asbestos clutch facings in durability, quietness, and tensile strength. Product development is continuing, however, to improve fiberglass facings to increase strength, wear, and ability to withstand heat through the use of special binders. Aramid-fiber-based clutch facings are also being developed. However, these have been relatively expensive compared to the asbestos and fiberglass clutch facings.

Semi-metallic disc brake pads have largely replaced asbestos disc brake pads in domestic cars with front wheel drive. Currently, about 85 percent of new domestic cars have front wheel drive and are equipped with semi-metallic front disc pads. Also, a number of brake manufacturers have begun to introduce an aramid fiber into production of disc brake pads.

The development of substitutes for asbestos drum brake linings has not been nearly as successful as it has been for disc brakes. Manufacturers have reported problems in processing nonasbestos fibers and problems in meeting standards of durability and heat resistance. There has been limited progress to date. One automobile manufacturer has reported that its new minivans are equipped with semi-metallic drum brake linings and one brake manufacturer has begun marketing aramid fiber-based linings for the replacement brake market. In addition, one automobile manufacturer has reported progress in developing a nonasbestos drum brake lining using an aramid fiber. However, domestic car manufacturers have not begun installing aramid-based or semi-metallic-based drum brakes linings on new vehicles except in very limited applications. A number of other substitute fibers are being tested by manufacturers and may have potential as a substitute for asbestos in brakes.

b. *Asbestos cloth products.* Asbestos cloth has been used as a final product in safety curtains, fire blankets, protective clothing, and high-temperature conveyor belts. Asbestos cloth is used as an input product in gaskets, packing, friction materials, and thermal and electrical insulation.

There currently are a number of substitute fibers for asbestos use in

cloth. These include glass fibers, ceramic fibers, carbon fibers, organic fibers, quartz fibers and cotton fibers. Replacement fibers for asbestos in cloth uses depend upon the specific application.

Substitutes appear to be available for almost all high-temperature applications of asbestos cloth. If asbestos cloth were not available, EPA expects that the following substitutes would replace asbestos cloth as follows:

Fiberglass cloth products: 50 to 60 percent.

Aramid cloth products: 20 to 25 percent.

Carbon/graphite cloth products: 5 to 10 percent.

Ceramics and silicon-based cloth products: 10 to 15 percent.

Because of their temperature and flame resistance, asbestos clothing products protect wearers from fire and heat. However, substitute products have been developed for asbestos clothing products. Aramid cloth products can substitute for asbestos in protective garments, but are more expensive. Some other textile products made without asbestos are less expensive than the counterpart product made with asbestos cloth. Substitute products for asbestos clothing include nomex, fiberglass, and zetex. Asbestos clothing has been replaced by substitutes in most or all firefighting and industrial applications.

c. *Asbestos-cement pipe and fittings.* Products in this category are manufactured for various uses. Most pipe is used to carry water or sewage. A small amount is used to carry chemicals or is used as air ducts. Pipe varies in construction depending on use and such factors as how deep it will be buried, the rate of fluid transmitted and whether it is under pressure.

EPA believes that at least one suitable substitute is available for each of the many pipe types and sizes. Based on information from manufacturers, EPA concluded that operation and maintenance costs and service life of all products are essentially similar. Asbestos-cement pipe does not dominate any segment of the pipe market, but is popular for certain applications such as carrying water at low pressure. If this rule is promulgated, EPA expects that the following substitutes will replace asbestos-cement pipe as follows:

Polyvinyl chloride (PVC) pipe	72 percent
Ductile iron pipe	23 percent
Prestressed concrete pipe	4.2 percent
Reinforced concrete pipe	0.15 percent

These estimates are only approximate and do not take into account other possible substitutes that EPA considered somewhat less suitable than those noted above. These include various plastic and vitrified clay pipes.

All of the substitutes considered are well established in the pipe market and can be joined to or replaced existing asbestos-cement pipe sections.

d. *Roofing felt.* Asbestos roofing felt is used for built-up roofing, primarily on flat roofs. "Built-up" refers to the practice of layering felt lengths on top of each other with hot roofing tar or asphalt mopped between layers of adhesion and additional weather protection.

Currently, less than 10 percent of roofing felt sold contains asbestos. Organic felt, fibrous glass felt, and single-ply membrane roofing all have greater shares of the flat roof market than asbestos felt.

Of these three well-established products, fibrous glass felt most closely approximates asbestos roofing felt in purchase and installation prices and service life. Organic felt has a lower purchase price, but has lower insulation value and moisture resistance and a somewhat shorter service life. Single-ply membrane roofing consists of a laminate of a modified bitumen or polymeric system such as polyvinyl chloride or ethylene propylene diene monomer. A typical product consists of a five-layer laminate composed of a thick plastic core protected on each surface by a layer of modified bitumen and an outer film of polyethylene. The purchase price of single-ply membrane roofing is several times that of asbestos felt, is about as expensive to install, but is expected to have a longer service life. Single-ply membrane also has the advantage of not requiring the use of hot asphalt during installation.

e. *Flooring felt and felt-backed vinyl sheet flooring.* Asbestos flooring felt was used as a backing for vinyl sheet flooring products. The felt confers dimensional stability and helps prolong floor life when moisture from below the surface is a problem. EPA does not believe that flooring felt is currently being produced in the U.S.

A large number of non-asbestos vinyl flooring products have entered the market in the last 5 years. These products include sheet backed with felt containing fibrous glass, cellulose, polyethylene or polypropylene fibers, ceramic fibers, and plastic foam. Also available are unbacked sheet and numerous traditional flooring products such as ceramic tiles, capeting, and wood flooring. Among these many products, consumers will find adequate substitutes for any particular use of asbestos containing felt or felt-backed flooring.

EPA has found that price differentials between asbestos and non-asbestos vinyl sheeting are negligible. Overall, the backing is a small part of the total cost for vinyl sheet products. Maintenance and service life are not materially affected by the backing. The wide range of prices found among various vinyl flooring products are mostly attributable to the colors and patterns of the vinyl as well as the wear-layer thickness.

f. *Vinyl-asbestos floor tile.* Vinyl-asbestos floor tile is used in numerous applications, but has been especially popular for use in heavy traffic areas such as in stores, kitchens, and entry ways. Addition of fiber contributes to abrasion and indentation resistance, dimensional stability, and resistance to moisture, heat, and oil.

Currently, the most suitable available substitutes for vinyl-asbestos floor tiles are various asbestos-free vinyl composition floor tiles. In place of asbestos fibers, manufacturers are using synthetic fibers including fibrous glass, polypropylene, polyethylene, and cellulose.

There are also several types of vinyl tiles that contain various fillers and resins in place of fiber. Many non-asbestos vinyl tile products have been on the market for only a few years. Consequently their service lives are not well established. Some industry contacts believe the non-asbestos tiles will last as long as the asbestos tiles, while others believe service lives will be shorter. EPA currently assumes that service lives of the non-asbestos tiles will be about one-third shorter than for the asbestos tiles.

g. *Asbestos-cement sheet.* There are a number of cost competitive substitutes for asbestos-cement sheet. These include both products using substitute fibers and other product substitutes. Glass-reinforced concrete is suitable for most corrosion and heat-resistant applications where asbestos-cement sheet is now used. Glass-reinforced concrete is widely available at a price that has been declining relative to that of asbestos-cement sheet. Cement-wood board is suitable for the general construction applications of asbestos-cement sheet. The use of resins and surface coatings with cement-wood board makes the product suitable in weather-resistant applications.

In the siding market, asbestos-cement products have no cost advantage over galvanized steel, aluminum, or concrete. However, asbestos-cement sheet may have greater corrosion resistance than the other products. In cooling towers, polyvinyl chloride products or ceramic

tile products are cost competitive and are suitable for most applications. There are also a number of products that can substitute for asbestos-cement sheet as a laboratory desk top and fume hood bench. However, it appears that comparably priced products may not fully match the qualities of asbestos-cement sheet in these applications.

h. *Asbestos-cement shingles.* There are substitutes for asbestos-cement shingles for both roofing and siding applications. The primary substitutes for asbestos-cement roofing shingles are asphalt-fiberglass composition shingles, cedar wood shingles, and various synthetic and natural tiles, such as Monray roofing tile and concrete tile. Asphalt-fiberglass composition shingles cost about half as much as asbestos-cement shingles in terms of purchase and installation costs but have only about half the operating life. Cedar wood shingles have a slightly greater cost then asbestos-cement shingles but have a greater operating life.

Substitutes for asbestos-cement shingle siding include wood, wood shingles, aluminum siding, PVC siding, stucco or concrete block, vinyl, and brick. Aluminum and PVC siding are both virtually identical to asbestos-cement shingles in terms of price and durability. Cedar shingle siding is also very competitive in terms of price, but it is somewhat less durable.

The total substitute market for both applications is approximately as follows:

Asphalt/fiberglass	50 percent
Wood products	30–35 percent
Aluminum siding	5–10 percent
PVC siding	5–10 percent
Brick, tile	5 percent

2. *Possible hazards of substitutes.* EPA has analyzed available data on the health effects of major substitutes for asbestos (Ref. 14). Some of the substitutes such as wood-based products (e.g., cellulose fiber products) and construction products made of brick and concrete appear to present little risk. While other substitutes present some risk, EPA has concluded that the available information suggests that none of the substitutes appear to present as great a potential for risk to human health as asbestos. EPA made extensive use of the work of the National Research Council and agrees with their conclusion that: "Current population risk from exposures to the various substances considered, including fibrous glass, attapulgite, and carbon fibers, appears to be much less than for risk from asbestos, especially chrysotile" (Ref. 6). The conclusions of EPA's analysis of specific substitutes follows.

a. Fibrous glass appears to be considerably less hazardous than asbestos based on (1) morbidity and mortality studies in workers, (2) *in vivo* and *in vitro* experimental data, (3) the order of magnitude lower exposure potential in the workplace, (4) the generally less respirable nature of the airborne fibers, and (5) the less durable nature of the fibers in the lungs.

b. Mineral wood does not appear to present the significant risks that asbestos does based on (1) limited animal data and morbidity and mortality studies for workers, and (2) the lower exposure potential in the workplace.

c. Ceramic fibers do not appear to present a comparable risk to that of asbestos based primarily on (1) the moderate workplace concentrations, and (2) the specialized applications which include its encapsulation or incorporation into products.

d. Carbon/graphite fibers are probably not a significant health risk based on the (1) use of coatings on the fibers which may reduce their respirability, and (2) low intrinsic respirability characteristics.

e. Aramid fibers appear to present relatively low risk because they are basically nonrespirable as currently produced and processed.

f. Polyethylene and polypropylene pulps and fibers appear to present relatively little risk since they appear to be relatively nontoxic and nonrespirable.

g. Attapulgite has large general exposure potential but available evidence suggests that attapulgite from U.S. mines may present little hazard. In addition, attapulgite is not a major substitute for asbestos.

h. Polyvinylcholoride does not appear to present a health hazard comparable to asbestos, although vinyl chloride, the monomer used to produce polyvinylchloride, is a carcinogen. The polyvinylchloride product itself presents little risk and workplace exposures are apparently adequately controlled.

i. Ductile iron pipe does not present a health hazard comparable to that of asbestos.

EPA recognizes that some asbestos substitutes may be new chemical substances for which a premanufacture notice (PMN) must be submitted under section 5 of TSCA. A goal of EPA's PMN review program is to encourage the development of new chemical substances that are less hazardous than the chemical substances they replace. EPA encourages the development of less hazardous new chemical substances as asbestos replacements. Potential developers of new chemical substances intended as asbestos substitutes may wish to discuss their plans with EPA during a prenotice consultation. Such a consultation can be arranged by contacting the Prenotice Communications Coordinator by telephone at (202–382–3745) or by writing to the Prenotice Communications Coordinator, Chemical Control Division (TS–794), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Through a prenotice consultation, EPA can inform potential PMN submitters of legal requirements, possible EPA health concerns about the substance, and possible test data that EPA may believe necessary to evaluate the risk potential of the substance. During a prenotice consultation and any PMN review of a new chemical substance that is intended as a substitute for asbestos, EPA will consider the relative risks presented by asbestos and potentially presented by the asbestos substitute. EPA will make every reasonable effort to provide prompt and clear information concerning the likely result of PMN review in view of EPA's policy of encouraging less hazardous substitutes for asbestos.

D. Economic Effects of Proposed Rule

This portion of the preamble presents EPA's determination of the "reasonably ascertainable economic consequences of the rule" as required by section 6(c)(1)(D) of TSCA.

EPA has prepared a "Regulatory Impact Analysis of Controls on Asbestos Products" (Ref. 3) which analyzes the potential economic impact of this proposed rule. The economic impact is summarized and explained below.

Estimated costs are mainly from 1981 data obtained under EPA's section 8(a) asbestos reporting rule (40 CFR 763.60). Some of the data were adjusted to reflect more current information on production of asbestos products. Specifically, EPA gathered more current information on the use of asbestos clothing and asbestos flooring felt and then adjusted the estimated costs and benefits of the rule to reflect declining use of these products. The sources of the information are noted in the record for this rule. The costs are presented as the net present value of costs incurred due to changes in asbestos product production between 1985 and 2000. Costs are likely to be overstated since the baseline production levels used in the cost model probably overstate production in the future. In addition, the cost estimation model assumes that the relative prices of substitutes for

asbestos products will remain constant over the time period used for measurement of costs. Actually, price differentials are likely to decrease over time.

Two types of costs are estimated in the RIA: (1) Costs to consumers and (2) costs to producers. These are discussed below. The costs represent the present value of losses incurred over the 15-year period from 1985 to 2000, using a discount rate of 10 percent.

1. Consumer losses due to the rule would result from increases in costs incurred for asbestos products or substitutes for asbestos products and from inferior performance of substitute products. Total consumer losses due to the rule are estimated to be $1.77 billion. However, this loss would be spread across the entire consumer population and would average less than $10 per consumer over 15 years. This rule would not cause dramatic cost increases in typical consumer products.

2. Losses would accrue to producers as a result of the rule when producers are forced to forgo some portion of the return on their capital stock used to produce asbestos products. Owners of equipment which can be readily converted to make other products are not expected to lose nearly as much as owners of equipment which cannot be easily converted. Total producer costs are estimated to be about $209 million for the rule.

3. In addition, the rule would result in transition costs to workers who are displaced by phasing down production of asbestos products. These losses are incurred in the form of lost wages and job search costs. EPA believes that transition costs of the phase-down will be relatively modest since the rule would allow industry to scale back production gradually and shift production to other products and that the transition costs from the proposed product bans will be small in comparison to the consumer and producer costs.

The sum of these costs, about $1.98 billion, represents the estimated total real resource costs of the rule. This cost would be spread over 15 years. The cost will also be spread over a large population and the impact on most persons would be negligible.

In addition, EPA estimated the real resource costs of the product bans proposed in this rule. These estimates are shown below:

Product	Real resource cost
A/C Pipe	$165.4 Million
Floor tile	$119.5 Million
Flooring felt	No Cost
Asbestos clothing	$.1 Million
Roofing felt	$4.2 Million

The above costs of the rule will be offset to some extent by the following avoided costs.

By reducing the amount of asbestos-related deaths and illnesses this rule would reduce the cost to society of the health resources used to treat asbestos-related illnesses (e.g., hospital and medical treatment) and the productivity (wages and lost work capacity of sick workers, etc.) lost as a result of illness caused by asbestos exposure. EPA estimates that the avoided morbidity cost is about $1,275 per case. This is measured in 1985 dollars using a 10-percent discount rate.

This figure is relatively low because people generally contract mesothelioma or lung cancer after a long latency period. Thus most medical costs occur far in the future and are therefore discounted heavily.

EPA did not attempt to value the loss of life itself. In addition, no value was assigned to "pain and suffering," "loss of 'leisure time,'" and other similar losses.

Substantial asbestos removal and disposal costs would be avoided as a result of this proposed rule. These include avoided expenses as well as avoided health risks for people exposed during removal and disposal activities. Use of nonasbestos products in construction reduces demolition and disposal costs in the future. Removal and disposal costs of products are likely to be considerably higher for asbestos products than nonasbestos substitutes because of the extra precautions required to meet OSHA and Clean Air Act (CAA) requirements. Avoided removal and disposal costs are a major benefit of this proposed regulation. These costs can be substantial. EPA has estimated that removing asbestos from school buildings costs between $2 and $13 per square foot of asbestos removed.

OSHA and EPA both have regulations to limit asbestos exposure at work sites. Certain costs related to compliance with these regulations would be avoided as a result of this rule. To comply with OSHA's current workplace standard for asbestos, employers incur expenses related to:

a. Monitoring for fibers.

b. Providing engineering methods to control exposures (this includes enclosing or isolating asbestos fiber generating activities, providing exhaust ventilation, dust collection, etc.)

c. Providing hand tools such as saws, scorers, drills, and abrasive wheels that have local exhaust ventilation systems.

d. Modifying work practices to reduce exposure.

e. Providing special clothing, change rooms, lockers, and special laundering.

f. Labeling asbestos material and posting caution signs.

g. Providing special procedures for collection and processing of asbestos waste.

h. Providing medical examinations for employees exposed to asbestos.

i. Responding to recordkeeping and reporting requirements.

EPA's CAA regulations require that activities during milling, manufacture, demolition and renovation, waste disposal, and some other asbestos-related activities release "no visible emissions." To comply with this requirement, persons must obtain and maintain air-cleaning devices such as filters and may be required to modify work and waste disposal practices to reduce emissions.

In addition, both OSHA and EPA may require stricter workplace controls for asbestos in the near future. The costs of complying with those requirements would be avoided at least in part by this rule.

United States courts and workman's compensation boards have been inundated with thousands of claims for compensation for deaths and illnesses caused by exposure to asbestos. Some past producers of asbestos products have declared bankruptcy because of these many claims. The continued use of asbestos can only exacerbate the problem. Each case of disease avoided relieves the various systems affected of a considerable burden. This rule, by reducting exposure to asbestos and reducing the number of asbestos-related illnesses and deaths, would reduce these costs.

As required by section 6(c)(1)(D) of TSCA, EPA has analyzed the economic impact of this proposed rule on small businesses. The effect of this rule on such businesses is expected to be small because (1) there are few small businesses producing asbestos products and (2) producer losses are expected to be small since capital equipment for production of most asbestos products can be converted fairly easily to other forms of production. A maximum of 27 out of the 212 primary processors of asbestos products are small businesses. EPA acknowledges that these 27 companies could incur losses under the rule. EPA was unable to determine how many of the secondary processors of asbestos products are small businesses.

However, EPA acknowledges that a higher percentage of secondary processors are likely to be small businesses than the percentage of primary processors that are small businesses. In addition, 5 of the 11 companies that manufacture the products that this rule proposes to ban are small businesses. This proposed rule could have significant impact on these few companies.

The estimated costs of the rule could be seen as significant. However, the overall benefits to society of asbestos-containing products are diminishing with the current availability and the continued development of various nonasbestos substitutes. The costs of the rule are speculative and probably are overestimated. In addition, many economic impacts of this rule are likely to be short-term and spread across large populations with only negligible impact on the typical consumer. This rule is not expected to cause dramatic price increases in typical consumer products. Consumer losses caused by this rule would be spread across the entire consumer population. Jobs displaced by this rule are likely to be offset by increased employment in companies producing substitutes for asbestos products. Potential consumer and producer costs are likely to be offset by the economic costs avoided by this rule, i.e., avoidance of the morbidity costs of asbestos-related diseases; the cost of removal and disposal of asbestos products; the costs of special control to reduce exposure to asbesto; and costs associated with legal actions seeking compensation for asbestos-related illnesses and deaths. Finally, the estimated costs of this rule appear reasonable in view of the unreasonably large number of asbestos-related deaths and serious illnesses that would occur without a phase-out of asbestos.

EPA expects that this proposed rule would have a positive impact on technological innovation and encourage the continued rapid development of nonasbestos substitute products. This development of new products is likely to involve significant technological innovation.

IV. Other Options Considered

Section 6 of TSCA requires that EPA apply the least burdensome requirements to reduce an unreasonable risk. EPA is considering a number of options for implementing the regulatory policy of phasing out the manufacture and importation of asbestos products. These options involve staged bans of categories of asbestos products. This approach would ban the manufacture, importation, and processing of all asbestos products within a certain category at the same time. EPA is considering a category approach for groups of asbestos products with similar exposure patterns, similar exposure control issues, and similar substitutes. Examples of categories under consideration are construction products and friction products. EPA believes it may be good public policy to ban categories of products at the same time. This approach would address similar exposure patterns in the same way and treat all parts of an industry sector similarly. In addition, both the construction products category and the friction products category contain products that could substitute for other products in the category if all are not banned. Thus, a ban of the entire category may be necessary to reduce risk most effectively.

One option under active consideration in addition to the ones embodied in the proposal is banning the manufacture, importation, and processing of the asbestos construction products category and asbestos clothing with the ban effective soon after promulgation of the rule; banning the manufacture, importation, and processing of the asbestos friction products category about 5 years after promulgation of the rule; and gathering up-to-date production, exposure, and use data on the remaining asbestos products under section 8(a) of TSCA to support possible bans of other asbestos products at that time. Another option is banning the manufacture, importation, and processing of the asbestos construction products category, asbestos clothing, and the asbestos friction products category as stated above and banning the remaining asbestos products at a later time (e.g., 10 years), thus allowing time for the development of effective substitutes while strongly encouraging substitute development. A third option is banning the manufacture, importation, and processing of the asbestos construction products category and asbestos clothing as stated above and covering all other asbestos products under the phase-down. Under each of the options, EPA is also considering a requirement that products not banned soon after promulgation be labeled as containing asbestos.

EPA is actively considering these options as alternatives to this proposed rule and specifically requests comment on these alternatives. EPA may adopt a final rule based closely on one or a combination of these alternatives. These alternatives are discussed more fully below.

1. *Ban the asbestos construction products category and asbestos clothing soon after promulgation of the rule, ban the asbestos friction products category about 5 years later, and gather additional information on other asbestos products.* Under this alternative, EPA would ban the manufacture, importation, and processing of the asbestos construction products category (i.e., asbestos-cement pipe and fittings, roofing felts, flooring felts and felt-backed sheet flooring, vinyl-asbestos floor tile, corrugated asbestos-cement sheet, flat asbestos-cement sheet, and asbestos-cement shingles) and asbestos clothing soon after promulgation of the rule. Effective substitutes exist for these products. The rule would also ban the manufacture, importation, and processing of the asbestos friction products category (i.e., drum brake linings, disc brake pads for light, medium, and heavy vehicles, brake blocks, clutch facings, automatic transmission friction components, and industrial and commercial friction materials) 5 years after promulgation of the rule. This alternative would reduce exposure to asbestos without the administrative burden of EPA establishing and operating a permit system as in the proposed approach. This alternative, by banning asbestos friction products 5 years after promulgation, would strongly encourage the rapid development of additional effective substitutes for asbestos friction products. The 5-year delayed ban would also allow time for expansion of production capacity for non-asbestos friction products.

EPA estimates that this alternative, assuming current exposure levels, would avoid about 2,100 cancer cases that EPA can quantify while costing about $2.11 billion. This is a cost of about 1.01 million per cancer case avoided.

Because OSHA has proposed lowering the workplace PEL for asbestos to 0.2 f/cc, EPA also estimated the numbers of cancer cases avoided assuming strict compliance with this lower PEL. Assuming strict compliance with an OSHA PEL of 0.2 f/cc, EPA estimates that this alternative would avoid about 1,060 cancer cases that EPA can quantify, while costing about $2.11 billion. This is a cost of about $2.00 million per cancer case avoided.

To determine how sensitive the cost per cancer case avoided was to the banning of particular products, EPA conducted a sensitivity analysis, excluding asbestos-cement pipe from the ban.

Without a ban of asbestos-cement pipe and assuming strict compliance

with an OSHA PEL of 0.2 f/cc, EPA estimates that this alternative would avoid about 840 cancer cases that EPA can quantify, while costing about $1.87 billion. This is a cost of about $2.22 million per cancer case avoided.

EPA believes that effective substitutes are increasingly becoming available for asbestos friction products and will be readily available by the date the delayed ban would become effective. However, EPA is considering an exemption process for essential uses without substitutes. One area EPA is studying in particular is the aftermarket for asbestos brakes. Some persons have stated that asbestos brakes now in use cannot safely be replaced by asbestos-free brakes when they wear out, while others have disagreed with this assertion. EPA is aware of the potential risk to the public from poorly performing brakes. EPA specifically requests comment on this issue.

EPA considered various approaches for addressing the risk presented by asbestos products not banned either soon after promulgation or 5 years after promulgation under this alternative. One approach would be to propose and promulgate a rule under section 8(a) of TSCA to gather contemporaneous data concerning the production and use of and exposure to these products at the time the first products ban rule becomes effective or at a date a few years later. EPA would analyze that data and then decide whether to ban additional asbestos products. EPA would also determine the date of these bans, which may be at staged intervals. After deciding these issues, EPA would propose and promulgate the bans of these asbestos products. Another approach for addressing the risk presented by these remaining asbestos products is discussed as alternative 2 below.

2. *Ban the asbestos construction products category and asbestos clothing soon after promulgation of the rule, ban the asbestos friction products category about 5 years later, and ban remaining asbestos products about 10 years later.* Under this alternative, as in alternative 1, EPA would ban the manufacture, importation, and processing of the asbestos construction products category and asbestos clothing soon after promulgation of the rule, and ban the manufacture, importation, and processing of the asbestos friction products category 5 years after promulgation of the rule. This alternative would also ban the manufacture, importation, and processing of all other asbestos products 10 years after promulgation of the rule. This alternative would relatively quickly ban a number of asbestos products for which effective substitutes exist while strongly encouraging the rapid development of effective substitutes for other asbestos products.

This alternative, unlike alternative 1, avoids the necessity of future rulemakings to gather additional data and then ban additional products. It would also provide greater certainty about the status of all asbestos products and more strongly encourage the development of substitutes for all applications of all products.

As in alternative 1, EPA is considering the need for an exemption process for asbestos friction products in connection with the staged product bans.

EPA estimates that this alternative, assuming current exposure levels, would avoid about 2,120 cancer cases that EPA can quantify while costing about $2.29 billion. This is a cost of about $1.08 million per cancer case avoided.

Assuming strict compliance with an OSHA PEL of 0.2 f/cc, EPA estimates that this alternative would avoid about 1,070 cancer cases that EPA can quantify, while costing about $2.29 billion. This is a cost of about $2.13 million per cancer case avoided.

Without a ban of asbestos-cement pipe and assuming strict compliance with an OSHA PEL of 0.2 f/cc, EPA estimates that this alternative would avoid about 950 cancer cases that EPA can quantify, while costing about $2.02 billion. This is a cost of about $2.12 million per cancer case avoided.

3. *Ban the asbestos construction products category and asbestos clothing soon after promulgation of the rule and cover all other asbestos products under the phase-down.* Under this alternative EPA would ban the manufacture, importation, and processing of the asbestos construction products category and asbestos clothing soon after the promulgation of the rule and cover all other asbestos products under the phase-down.

This alternative, unlike the current proposal, would ban all asbestos-cement products at the same time, thus addressing similar exposure patterns in the same way and treating all parts of an industry sector similarly. The phase-down would operate to restrict use of asbestos in other industry sectors.

EPA estimates that this alternative, assuming current exposure levels, would avoid about 2,020 cancer cases that EPA can quantify while costing about $2.01 billion. This is a cost of about $1.00 million per cancer case avoided.

Assuming strict compliance with an OSHA PEL of 0.2 f/cc, EPA estimates that this alternative would avoid about 1,010 cancer cases that EPA can quantify while costing about $2.01 billion. This is a cost of about $1.98 million per cancer case avoided.

Without a ban of asbestos-cement pipe and assuming strict compliance with an OSHA PEL of 0.2 f/cc, EPA estimates that this alternative would avoid about 950 cancer cases that EPA can quantify while costing about $1.86 billion. This is a cost of about $1.95 million per cancer case avoided.

The following Table VI summarizes the estimated costs and estimated cancer cases avoided that EPA could quantify for the proposal and the three alternatives discussed earlier, first assuming current exposure levels and then assuming strict compliance with an OSHA PEL of 0.2 f/cc.

TABLE VI—ESTIMATED COSTS AND CANCER CASES AVOIDED

	Proposal	Alt. 1	Alt. 2	Alt. 3
Assuming Current Exposures				
Cost (billions)	$1.98	$2.11	$2.29	$2.01
Cancer cases avoided	1,930	2,100	2,120	2,020
Cost per cancer case avoided (millions)	$1.02	$1.01	$1.08	$1.00
Assuming Strict Compliance With an OSHA PEL of 0.2f/cc				
Cost (billions)	$1.90	$2.11	$2.29	$2.01
Cancer cases avoided	1,000	1,060	1,070	1,010
Cost per cancer case avoided (millions)	$1.99	$2.00	$2.13	$1.98

Alternative 1—Ban asbestos construction products and asbestos clothing soon after promulgation and ban asbestos friction products in five years.

Alternative 2—Ban asbestos construction products and asbestos clothing soon after promulgation, ban asbestos friction products in five years and ban remaining products in ten years.

Alternative 3—Ban asbestos construction products and asbestos clothing soon after promulgation and cover remaining products under the phase-down.

4. *Require labeling of asbestos products subject to a ban.* As part of this alternative, EPA also proposes and requests comment on a labeling requirement. In particular, it is proposed that products not immediately banned but subject to regulation 5 or 10 years from now be labeled in the interim. The labeling would advise purchasers that the product contains asbestos. EPA requests comments on this proposal, in particular on (1) the appropriateness of this proposal for all or some subset of the products in this category; (2) the appropriateness of a simple content warning as opposed to a more extensive labeling provision; and (3) the extent to which labeling would serve to reduce exposure to asbestos.

EPA also considered a number of alternatives for implementing the phase-down. These include options concerning the following: who would be assigned permits; how persons would be granted

permits; whether permits would be transferable; whether permits would be bankable; and how imported products containing asbestos would be treated. EPA also considered a number of options before adopting its current regulatory strategy for controlling the risk from asbestos. These options are discussed in documents which are included in the rulemaking record.

V. Finding of Unreasonable Risk

EPA has weighed the health risks from continued use of asbestos and asbestos-containing products against the costs attributable to the proposed regulation. EPA has concluded, that the avoidance of about 1,930 cancer cases that can be quantified assuming current exposure levels, or the 1,000 cancer cases that can be quantified assuming strict compliance with an OSHA PEL of 0.2 f/cc, many other cancer cases that cannot be quantified, and many cases of asbestos-related disease substantially outweigh the costs to consumers, producers, and users of asbestos products from the proposed regulation. Therefore, EPA finds that the continued mining and importation of asbestos and asbestos products in the United States for domestic use and for export present an unreasonable risk to human health. The finding is based on the following points:

1. The health effects from asbestos exposure are very serious. Asbestos is a demonstrated human carcinogen. The cancers caused by asbestos are usually fatal and cause much pain and suffering. In addition, asbestos causes other lung diseases such as asbestosis.

2. Available evidence supports the conclusion that there is no safe level of exposure to asbestos. This conclusion is consistent with present theory of cancer etiology and is further supported by the many documented cases where low or short-term exposure has been shown to cause asbestos-related disease.

3. Models developed to estimate the relative risk of developing cancer from exposure to asbestos show a linear dose-response relationship. Based on data from epidemiology studies, these models predict that humans exposed to very low levels of asbestos incur some risk. Individuals frequently exposed to levels typically found at asbestos worksites are estimated to have very high risks of contracting cancer, perhaps greater than 1 in 100.

4. Asbestos fibers are colorless, odorless, and frequently invisible, thus presenting risk to persons not aware that they may be exposed. Asbestos fibers are extremely durable and have aerodynamic properties that allow them to remain suspended in the air for a long time. Asbestos fibers easily reenter the atmosphere after settling out and can travel long distances through the air.

5. Health risks from exposure to asbestos fibers during the lifecycle of the asbestos products covered by this proposed rule occur to many population groups during many activities. Persons can be exposed to asbestos fibers long after those fibers have been released to the air and at a considerable distance from the source of release. The vast majority of the general population of the U.S. is exposed to asbestos in the air. More than 40,000 workers are exposed during manufacture and processing of asbestos products covered by this proposal. Many additional thousands of workers and consumers are exposed during product installation, use, maintenance, renovation, removal, and disposal of asbestos products. Finally, many millions of people who reside near asbestos worksites are also exposed to significant concentrations of asbestos in the air.

6. Using typical, rather than worst-case, data and assumptions, EPA has estimated that this proposed rule banning certain asbestos products and phasing out all others, if promulgated, would avoid approximately 1,930 cases of cancer which would otherwise result from exposure to asbestos between the years 1985 to 2000. EPA underestimated the number of cancer cases avoided because of the lack of comprehensive data on releases of asbestos to the ambient air from many activities. EPA estimates that the following numbers of cancer cases would be avoided as a result of the proposed product bans, assuming both current exposure levels and strict compliance with an OSHA PEL of 0.2 f/cc.

Product	Cancer cases avoided	
	Current exposure	At 0.2 f/cc
Asbestos clothing	1	0
A/C pipe	533	82
Floor tile	469	468
Flooring felt	0	0
Roofing felt	4	4

These estimates of cancer cases avoided by the product bans should not be viewed in isolation, since asbestos use in other product sectors would theoretically decrease at less than the current rate unless all asbestos use is phased out.

7. Even if OSHA promulgates and achieves strict compliance with a PEL of 0.2 f/cc, almost 1,325 cancers would still result from asbestos products made over the next 15 years. This rule would avoid about 1,000 of those cancer cases.

8. The estimated costs of this proposed rule are reasonable in view of the number of cancers and other adverse health effects that would be avoided. Substitutes for asbestos are readily available for many products and can be expected to become available during the phase-down period for most, if not all, other uses. Even though the costs are probably overestimated, the cost per cancer case avoided, assuming current exposure levels, that EPA can quantify, is about $1.02 million. Even if OSHA promulgates and achieves strict compliance with a PEL of 0.2 f/cc, the cost per cancer case avoided that EPA can quantify is about $1.99 million. If all cancer cases and the incidence of other diseases could be quantified, the cost per case of disease prevented would be substantially lower. In addition, the overall costs of the rule are spread over a large population so that the cost to any individual would be negligible. Further, EPA expects substantial savings to result from this rule from such factors as avoided costs in treating asbestos related diseases, avoidance of lost productivity caused by these diseases, avoided costs in asbestos removal and disposal, and avoidance of litigation costs resulting from asbestos disease claims.

EPA also finds that the costs of alternatives 1, 2, and 3 are reasonable in view of the numbers of cancers and other adverse health effects that they would avoid. The costs per cancer case avoided that EPA can quantify of these alternatives are approximately the same as for the proposed rule.

As discussed earlier, EPA conducted a sensitivity analysis to see how sensitive the cost per cancer case avoided by this rule and the cost per cancer avoided by the regulatory alternatives discussed earlier were to the banning of particular products. Specifically, EPA analyzed the cost per cancer case avoided for the proposal and the other options excluding asbestos-cement pipe or vinly-asbestos floor tile from the bans. Even with these relatively high exposure products excluded from the bans, the cost per cancer case avoided by the proposal and the alternatives are similar.

For example, without a ban of asbestos-cement pipe and assuming strict compliance with an OSHA PEL of 0.2 f/cc, this proposed rule would cost about $1.96 million per cancer case avoided that EPA can quantify. Without a ban of vinyl-asbestos floor tile and assuming strict compliance with an OSHA PEL of 0.2 f/cc, this proposed rule

would cost about $2.28 million per cancer case avoided that EPA can quantify.

VI. Other EPA Statutes

Section 6(c) of TSCA requires that if EPA determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under another statute administered by EPA, EPA may not promulgate a rule under section 6(a) of TSCA unless EPA finds it is in the public interest to protect against the risk by action under TSCA. EPA finds that no other law administered by EPA will eliminate or reduce the risks from asbestos to a sufficient extent.

Several EPA statutes have been used to limit asbestos exposure. In 1973, EPA used the authority of the CAA to list asbestos as a hazardous air pollutant, establish a "no visible" emission standard for manufacturers, and ban the use of spray-applied asbestos-containing material as insulation in buildings, published in the **Federal Register** of April 6, 1973 (38 FR 8826). EPA amended this regulation in 1975 to ban asbestos-containing pipe lagging, by a rule published in the **Federal Register** of October 12, 1975 (40 FR 48292); and in 1978, extended the ban to all uses of sprayed-on asbestos by a rule published in the **Federal Register** of June 19, 1978 (43 FR 26372). The CAA rule, which was last amended on April 5, 1984 (49 FR 13658), also regulates the removal of asbestos from buildings and the disposal of wastes generated by removal.

However, the CAA has limitations. The CAA does not apply directly to indoor air in the workplace or home. Consequently, any possible additional use of that statute may leave many workplace or home exposure situations inadequately controlled.

Another EPA statute that could be used to limit asbestos exposure is the Safe Drinking Water Act (SDWA). EPA announced its intention to consider asbestos for inclusion in its proposed National Revised Primary Drinking Water Regulations by a Notice published in the **Federal Register** of October 5, 1983 (48 FR 45502). However, even if the SDWA is used to set a drinking water standard for asbestos, it would necessarily ignore the inhalation risk associated with asbestos.

An additional EPA statute that could be used to limit asbestos exposure is the Resource Conservation and Recovery Act (RCRA). Under RCRA, EPA could list asbestos as a hazardous waste and subject asbestos waste to general RCRA requirements designed to reduce exposure. However, such action under RCRA would only reduce exposure during the disposal of asbestos and asbestos products.

VII. Analysis Under Section 9(a) of TSCA

Under section 9(a)(1) of TSCA, the Administrator is required to submit a report to another Federal agency when two determinations are made. The first determination is that the Administrator has reasonable basis to conclude that a chemical substance or mixture presents or will present an unreasonable risk of injury to health or the environment. The second determination is that the unreasonable risk may be prevented or reduced to a sufficient extent by action taken by another Federal agency under a Federal law not administered by EPA. Section 9(a)(1) provides that where the Administrator makes these two determinations, EPA must provide an opportunity to the other Federal agency to assess the risk described in the report, to interpret its own statutory authorities, and to initiate an action under the Federal laws that it administers. Section 9(a) of TSCA thus requires EPA to review other Federal authorities not administered by EPA to determine whether action under those authorities may prevent or sufficiently reduce unreasonable risk. The following unit summarizes past and contemplated action by other agencies and then discusses why those agencies are not able to prevent or sufficiently reduce the unreasonable risk presented by asbestos.

A. Other Authorities Affecting Asbestos

Under the authority of the Consumer Product Safety Act (CPSA, 15 U.S.C. 2051) the CPSC has issued rules banning consumer patching compounds containing respirable asbestos (16 CFR Part 1304) and artificial emberizing materials containing respirable asbestos (16 CFR Part 1305). The CPSC took those actions based on findings that the use of those products in the household would result in increased risk of cancer. Earlier, the Food and Drug Administration under the Federal Hazardous Substances Act (FHSA, 15 U.S.C. 1261) banned "general-use garments containing asbestos other than garments having a bona fide application for personal protection against thermal injury and so constructed that the asbestos fibers will not become airborne under reasonably foreseeable conditions of use" (16 CFR 1500.17). The FHSA is now administered by the CPSC.

In 1980, CPSC issued a general order requiring persons to furnish information on the use of asbestos in certain consumer product categories. CPSC has also measured potential consumer exposure to asbestos from such products as asbestos millboard, asbestos paper products, and stove door gaskets.

OSHA began to regulate asbestos in the workplace in 1971 under the Occupational Safety and Health Act (29 U.S.C. 51, OSHAct). Since the first workplace standard setting a limit of 12 f/cc was promulgated in May 1971, the workplace standard has been twice revised and is now 2 f/cc (TWA). An Emergency Temporary Standard (ETS) establishing a permissible level of 0.5 f/cc was published in the **Federal Register** of November 4, 1983 (48 FR 51086), but the ETS was found invalid by a court. OSHA proposed a revised standard in the **Federal Register** of April 10, 1984 (49 FR 14116).

The Mine Safety and Health Administration (MSHA) acting under the Mine Safety and Health Act has adopted workplace standards designed to protect workers engaged in pit and underground mining and milling. The MSHA standards are similar to those administered by OSHA for other workplaces. The MSHA standard was last amended in 1976 and calls for a PEL of 2 f/cc.

Possible jurisdiction over other aspects of asbestos risk may lie with still other Federal agencies. For example, the Asbestos Information Association (AIA), commenting before a Senate subcommittee on early versions of TSCA, noted that the Federal Trade Commission may have authority to require labeling, distribution, and marketing of asbestos products and that the Department of Transportation has authority to control transportation of hazardous substances, such as asbestos. 1971 Senate Hearings at 224–227.

State and local public employees are generally excluded from coverage under the OSHAct. However, under section 19 of the OSHAct, OSHA has approved State plans for 23 States and two territories, thus effectively extending OSHA protections to State and local public employees in the jurisdictions. EPA has proposed a rule to establish requirements similar to those of the OSHA Asbestos Standard for State and local public employees not under a State plan who conduct asbestos abatement work. However, other public employees, such as firefighters, are not covered by this rule.

B. EPA's Determination Under Section 9(a) of TSCA

EPA is not required to submit a report to other agencies under section 9(a) on the asbestos risks described in this notice since EPA has determined that such risks cannot be prevented or

reduced to a sufficient extent by actions taken under a Federal law not administered by EPA. Certain activities involving asbestos present risks that fall under the jurisdiction of a number of different Federal laws such as the OSHAct, the Consumer Product Safety Act, and the Clean Air Act, but no one statute, other than TSCA, can adequately address all its risks. Referral would result in fragmented assessment of risks and potentially duplicative regulatory efforts, inefficient control of risk, and an adverse effect on public health. Furthermore, even if EPA were to refer asbestos risks to other agencies, action taken by those other agencies would still leave a substantial residual risk. EPA's reasons for reaching this conclusion are set forth below.

1. *Interpretation of section 9(a) of TSCA.* The comprehensive nature of TSCA has long been recognized. TSCA allows regulation of a chemical substance based on all its risks and, thereby, allows the Government to remedy the deficiencies in other statutes that can deal only with parts of the risk. (Statement of the President on signing S. 3149 Into Law, October 12, 1976, Weekly Compilation of Presidential Documents, vol. 12, No. 42, Oct. 18, 1976, at 1489; S. Rep. No. 94–698, 94th Cong., 2d Sess. at 2.) The need for a total exposure approach to chemical regulation and the dangers of a fragmented regulatory approach were recognized even during the early congressional hearings on TSCA. See, e.g. 1973 Senate Hearings at 212–214; 1972 House Hearings at 65–67. No other single law provides authority to deal comprehensively with multi-media hazards.

In particular, Congress designed TSCA to deal with chemical substances for which the most appropriate remedy would be a total ban on their production and distribution in commerce. In this regard, Congress focused on the risk of asbestos and the dangers of fragmented regulation of asbestos during the legislative hearings. See 1971 Senate Hearings and 1973 Hearings. Asbestos risks were described in the workplace and in over 3,000 uses that could present risks to the general population. (H.R. Rep. No. 94–1341, 94th Cong., 2d Sess., at 5 (1976).) Members of Congress believed it intolerable that no agency could deal comprehensively with chemical risks, including the risk from asbestos. See 1973 Senate Hearings at 319–320 (Letter from Senator Tunney to Dow Chemical Company); 1975 Senate Hearings at 131–133 (Remarks of Senator Tunney).

EPA's decision not to refer the risks associated with asbestos is divided into two parts. First, EPA determines that there is no other Federal authority capable of addressing the combination of activities involving asbestos. Section 9(a) requires EPA to consider the issues necessary to make this determination because the Agency believes that the combination of asbestos activities, under the jurisdiction of a number of Federal laws, presents an unreasonable risk. Second, EPA examines the residual risks that would remain if other agencies were to regulate asbestos and determines that such residual risks would still be unreasonable.

2. *Capability of other Federal authorities to deal with the combination of asbestos activities.* EPA has concluded that asbestos is a clear example for TSCA action rather than referral to other agencies. It is a substance for which there is broad exposure to populations in numerous situations—in the workplace, through ambient concentrations, and from consumer products. With the exception of TSCA, there is no one unified authority to deal with these multiple exposures. No one of the other potential Federal regulatory authorities, in looking at its specific part of the overall exposures, can either evaluate or deal with the totality of the risk presented. Thus, OSHA may set exposure limits for workers, but there may be venting of asbestos into the atmosphere; EPA, under the Clean Air Act, may regulate ambient emissions, but not workplace or consumer exposures; and in each step of the process, only a fraction of the risk is evaluated. Only EPA under TSCA may look across the range of asbestos use to evaluate whether it presents an unreasonable risk. There is no other Act that affords such authority and, accordingly, referral is inappropriate.

EPA's analysis of the jurisdiction over the risks presented by asbestos among a number of agencies and statutory authorities is set out below. OSHA has authority under the OSHAct for risk presented to private sector manufacturing, construction, and service employees from workplace exposures, and may approve State plans covering State and local public employees. CPSC has authority under the CPSA and FHSA concerning risk presented to consumers from consumer products. The Mine Safety and Health Administration has authority under the Mine Safety and Health Act concerning risk presented during the mining and milling of asbestos. State and local public employees, such as firefighters who may wear asbestos clothing, in about half the States are not covered even indirectly by OSHA regulations and are subject to State authority.

3. *Residual risks.* Even if other Federal agencies took additional action to reduce the risk associated with asbestos during the various stages of the lifecycle of asbestos products clearly within their jurisdiction, a substantial and unreasonable residual risk would still remain.

Many groups outside of OSHA jurisdiction are at risk from exposure to asbestos. State and local public employees, such as firefighters, are not protected by OSHA regulations in about half the States. The general population is exposed to asbestos in the ambient air as a result of release during the manufacture, processing, use, repair, and disposal of asbestos products. EPA estimates that about 540 persons will develop cancer as a result of exposure to asbestos in the ambient air as a result of releases associated with products imported or manufactured over the next 15 years.

Even if OSHA promulgates and achieves strict compliance with a PEL of 0.2 f/cc, a substantial and unreasonable residual risk would remain. About 1,325 persons would still develop cancer as a result of exposure to asbestos in products imported or manufactured over the next 15 years. These include cancers in populations totally outside of OSHA's jurisdiction. Even with a lower workplace PEL, EPA estimates that about 540 persons will develop cancer from exposure to asbestos in the ambient air. In addition, at a PEL of 0.2 f/cc, EPA estimates that about 785 workers under OSHA jurisdiction would develop cancer as a result of workplace exposure to asbestos in products imported or manufactured in the next 15 years.

EPA calculated these figures using well-accepted models. EPA used the Nicholson relative risk model to estimate the number of lung cancer cases and the Nicholson absolute risk model to estimate the number of mesothelioma cases. The dose-response constants used in the risk assessment were those estimated by Selikoff in a study of asbestos insulation workers (Ref. 11). A number of epidemiological studies have estimated dose-response constants for asbestos-related diseases and estimates vary by as much as an order of magnitude. The Selikoff estimates fall approximately in the middle of the ranges of dose-response estimates for both lung cancer and mesothelioma. In addition, the Selikoff estimates have the lowest variance among all of the estimates. These models and dose response constants were recommended by the CPSC's Chronic Hazard Advisory Panel on

asbestos (Ref. 1) and were also used by OSHA to estimate the risk posed by asbestos in support of the proposed revision of OSHA's asbestos standard.

OSHA's choice of 0.2 f/cc as a proposed PEL was based on the feasibility of measuring asbestos levels in the workplace. At a level of 0.2 f/cc, OSHA, using the same lung cancer and mesothelioma models as EPA, estimates that there would be 670 excess cancer deaths per 100,000 workers exposed over a working career (Ref. 12). In 1980, a joint NIOSH/OSHA Asbestos Work Group stated that there was no level of exposure to asbestos below which clinical effects did not occur and recommended a PEL of 0.1 f/cc based on the limitation of current technologies for measuring air concentrations of asbestos (Ref. 7). Even a level of 0.1 f/cc, OSHA estimates that there could be 336 excess cancer deaths per 100,000 workers exposed over a working career (Ref. 12).

It is likely that a PEL of 0.2 f/cc will be exceeded in many cases since it is particularly difficult to apply the PEL in the construction and service sectors. Many of the workplace exposures to asbestos occur downstream in the construction and service sectors rather than the manufacturing sector. Over 80 percent of workers exposed to asbestos are in the construction and service sectors. Employees in those sectors often do not know when they are exposed to asbestos because they do not know that they are working with asbestos products. Compliance inspections are also difficult in the construction and service sectors since employees frequently do not have a fixed worksite. In fact, the current PEL of 2.0 f/cc has been exceeded in many cases in these sectors. Thus, it is likely that many workers in the construction and service sectors will develop cancer unless EPA takes action. Finally, many asbestos control measures, in particular, the use of respirators, only put the asbestos exposure problem elsewhere because they do not control the release of large quantities of asbestos to the ambient environment, where it continues to present a risk both to other workers and the general population.

Similarly, CPSC cannot evaluate or deal with the totality of the risk presented by asbestos. CPSC may ban or require safety standards for asbestos-containing consumer products based exclusively on risk to consumers. CPSC is unable to consider risk to other groups from releases of asbestos during the lifecycle of those products.

After carefully analyzing other Federal authorities, EPA concludes that action under TSCA is appropriate to reduce the unreasonable risk to human health posed by asbestos. Use of other Federal authorities cannot reduce risk to a reasonable level because (1) they cannot reduce the total volume of asbestos in commerce, (2) they cannot protect the many population groups at risk, and (3) they all have jurisdictional gaps.

VIII. Provisions of the Proposed Rule

A. Product Prohibitions

EPA proposes to prohibit the manufacture, importation, and processing of several asbestos products. The prohibitions will take effect at the same time that the restrictions on the mining and importation of all asbestos and asbestos products become effective. Thus, when this rule becomes operational, no person could mine or import asbestos without a permit issued by EPA. In addition, no person could manufacture, import, or process the following asbestos containing products: Asbestos cement pipe and fittings, roofing felts, flooring felts (and felt-backed sheet flooring), vinyl-asbestos floor tile, and asbestos clothing. EPA is proposing to ban asbestos clothing because it presents a particularly serious risk because of high exposure potential. EPA is proposing to ban the other products because effective substitutes are currently available for all applications. As an alternative, EPA is considering banning these several asbestos products by a date soon after the promulgation of this rule.

B. Mining and Import Restrictions

EPA proposes to prohibit the mining or importation of bulk asbestos, and the importation of the asbestos products listed in § 763.145 of the proposal, unless the miner or importer holds a permit issued by EPA allowing mining or importation of that quantity of asbestos. EPA is considering the requirement that products made under the permitting system be labeled as containing asbestos. Labeling would ensure that persons working with or otherwise handling the products would know that the products contained asbestos, and it would enable them to take steps to reduce the likelihood of exposure.

EPA proposes to reduce the amount of asbestos that may be imported or mined in set decrements each year for 10 years. EPA proposes to define "mine" as "to produce asbestos other than as an unintended contaminant or impurity by extracting asbestos-containing ore so that the ore may be (1) distributed in commerce or (2) milled for distribution in commerce." Thus, the unintentional mining of asbestos in connection with mining of another substance such as vermiculite would not be covered by this proposal unless the asbestos were later milled or sold for use. EPA is concerned about possible unintended asbestos contamination of vermiculite and other minerals. However, any attempt to cover the unintentional mining of asbestos under this rule would complicate the operation of the rule considerably and perhaps make it unworkable.

The proposal defines "import" as "to bring into the customs territory of the United States except for (1) shipment through the customs territory of the United States for export without any domestic use or processing; or (2) entering the customs territory of the United States as part of a product during normal personal or business activities involving use of the product." Thus, asbestos that is shipped through the United States for export without any domestic processing or use would not be covered by this proposed rule. The proposed rule also excludes from coverage situations where an item, such as an automobile containing asbestos, travels across the United States border in the course of normal personal or business activities. In addition, asbestos contained in products that are imported in small quantities solely for personal use by consumers would not be covered by the proposal. Thus, under this provision an individual could bring an item such as a consumer appliance containing asbestos into the United States for his or her own use without obtaining a permit. EPA believes that any attempt to cover these situations would make this rule very complex and difficult to administer. However, EPA specifically requests comment on whether, in view of the serious health hazard posed by asbestos, all asbestos products should be covered by this rule.

This proposal covers mining and importation of asbestos and the importation of specific asbestos products. EPA proposes to define "asbestos" as "the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); tremolite; anthophyllite, and actinolite that are mined or milled." EPA requests comment on this definition, including whether asbestos which has been chemically treated or altered should be included within the definition. EPA also proposes to cover under this phase-down the asbestos contained in a number of products listed in § 763.145 of this proposal. Persons would be allowed to import these products only if they held permits allowing the importation of the amount of asbestos contained in the

products. EPA is covering these particular products in this proposal because they represent the largest quantities of asbestos imported as part of products. EPA is proposing to cover asbestos in products because of the risk posed by possible asbestos exposure during use and disposal of the products and to treat domestic producers and importers of these products similarly.

To implement this program, EPA is proposing that importers of listed products estimate the typical asbestos content of the products. To aid those estimates, EPA has ascertained the typical asbestos content of the asbestos products covered by this proposal. If persons do not know the exact asbestos content of products they import, they can rely on the EPA figures to estimate the amount of asbestos they import. EPA would allow persons to use an amount other than the EPA figure if they can show that their imported product contains a different amount of asbestos. Such persons would be required to maintain records supporting their determinations of typical asbestos content and would be subject to appropriate enforcement action if EPA discovered that their imported products actually had a higher asbestos content than they estimated. EPA believes that this is a practical way to implement the phase-down of asbestos use.

C. Permits to Mine or Import Asbestos

EPA proposes to issue current miners and importers of asbestos permits that would allow those persons to mine or import set amounts of asbestos. The permit would be letters from EPA stating the amount of asbestos that a person may import or mine during each year of the 10-year phase-down period. The "permitted" amount of mining or importation would be a uniform percentage of the average amount of asbestos each person mined or imported yearly during the base period of 1981, 1982, and 1983. The "permitted" amount of asbestos would be 30 percent of the person's average base year volumes during the first year of the phase-down period and would decline to 27 percent of average base year volumes during the second year, 24 percent during the third year and so on until it reached 3 percent in year 10. EPA chose these "permitted" amounts based on projections of future asbestos use after analysis of current use trends, publicly available information on asbestos use, and information reported under the section 8(a) asbestos reporting rule. In addition, the "permitted" amounts chosen reflect the EPA has proposed to ban certain high volume uses of asbestos where suitable substitute products are avilable.

Persons would apply to EPA for permits, listing in their applications their mining or import volumes during those years. Persons who do not apply for permits would not be granted any. EPA would compare volume information included in applications with information reported under the section 8(a) asbestos reporting rule, which covered 1981, United States Customs Service data, and Bureau of Mines data. Persons who include false information in their application would be subject to enforcement action, including criminal prosecution in appropriate cases.

EPA would similarly cover importers of asbestos contained in the products listed in this rule. Those persons would apply for permits, including in their application the total amount of asbestos in their imported products during the base years 1981, 1982, and 1983. Those persons could use EPA's estimates of typical asbestos content of products if they do not know the typical asbestos content of their product.

The proposal contains an appeals procedure for persons who disagree with EPA's allocation of permits to them. However, since the proposed rule would allocate each miner and importer a uniform percentage of their base volume levels, EPA would expect few appeals. The only issue in an appeal would be whether EPA allocated permits based on the correct base years' volume information.

Persons would be allowed to transfer their permission to mine or import asbestos to other persons, including persons who were not issued permits by EPA. Permits issued to miners, importers of bulk asbestos, and importers of asbestos in products would be interchangeable. Persons could transfer all or only part of their yearly permitted amount to one person or a number of persons. Persons transferring all of part of their permitted amount would be required to report each transfer to EPA.

Persons would also be allowed to reserve or "bank" permisison to import asbestos during any year of the phase-down period for use during any later year of the phase-down period. Persons would be required to report each "banking" of asbestos permits to EPA. A person who banks permission to mine or import a certain amount of asbestos would be allowed to use only part of that amount during later years of the phase-down period. The amount of asbestos mining or importation permitted by banked permits would decline yearly at a rate of 10 percent. Permits not used by the conclusion of the 10-year phase-down period would no longer permit the holder to import or mine asbestos in any quantity and would have no value of any kind for any purpose.

EPA is considering an alternative of having banked permits not decline in value. This alternative would provide greater incentive for the banking of permits and thus incentive for greater reductions in asbestos mining and importation in early years of the phase-down period.

Under the proposed approach, at the end of the 10-year phase-down period, all mining or importation of asbestos would be banned except that allowed under an exemption procedure. EPA would consider applications for exemptions and grant them for essential uses of asbestos for which substitutes are not available. In addition, EPA is considering a requirement that products not banned be labeled as containing asbestos. This requirement could be imposed as part of this rulemaking or by a separate rulemaking.

As an alternative, EPA is considering allowing a residual amount of asbestos mining and importation after the 10-year phase-down period. This general approach would avoid the potentially heavy administrative burden and expense of an exemption process. As part of this alternative, EPA is considering allowing permits banked during the 10-year phase-down period to continue to be used during the later period when a much smaller percentage of base years volume is permitted. Such an approach would provide additional incentive for the banking of permits and thus additional incentive for greater reductions in asbestos mining and importation during early years of the phase-down period.

EPA specifically requests comment on this series of alternatives to a ban with an exemption process after the 10-year phase-down period.

D. Reporting

EPA proposes to require persons to report the amount of asbestos imported during each import transaction. EPA specifically requests comment on whether this report should be sent directly to EPA or whether persons should turn the report over to the United States Customs Service, which would forward the report to EPA. Requiring the report to be turned over to the Customs Service as part of each import transaction may facilitate enforcement of the rule.

The proposal also would require persons to report to EPA each transfer of permission to mine or import asbestos. This reporting would be under authority of section 8(a) of TSCA and

would apply to all importers, including small businesses. Section 8(a) exempts small businesses from reporting in certain cases. However, EPA may require miners and importers of a substance subject to a rule under section 6 of TSCA to report. Since asbestos is already subject to rules under section 6 and would be subject to this one, the small business exemption of section 8(a) would not apply. EPA believes that these reporting requirements represent very little burden and are necessary for effective enforcement of the phase-down rule. EPA would use the information in these reports to maintain a computerized record of the quantities of asbestos each person is permitted to mine or import as compared to the actual level of mining or importation. EPA would investigate cases where the quantity of asbestos mined or imported appears to exceed the quantity of asbestos that a person is permitted to mine or import and take appropriate enforcement action for any violation of the phase-down rule.

To facilitate the transfer of permits, EPA is considering making readily available to interested parties information concerning the persons holding permits and the quantities they hold. EPA may allow persons computer access to an EPA data bank if this would not reveal confidential business information. EPA specifically requests comment on whether EPA should facilitate the transfer of permits and on ways for EPA to accomplish this without revealing confidential business information.

E. Recordkeeping

EPA proposes to require persons to retain documentation of information concerning all transfers of permission to mine or import asbestos and the amount of asbestos mined or imported each year. The proposal would require these records to be kept for 5 years after the end of the last year of the phase-down period covered by the rule. Importers of asbestos contained in products covered by this proposal would also have to keep records concerning their levels of importation. EPA believes that these recordkeeping provisions would be essential to enforcement of this proposed rule.

IX. Enforcement

Section 15 of TSCA makes it unlawful to fail or refuse to comply with any provision of a rule promulgated under section 6 of TSCA. Therefore, any failure to comply with this proposed rule when it becomes effective would be a violation of section 15 of TSCA. In addition, section 15 of TSCA makes it unlawful for any person to: (1) Fail or refuse to establish and maintain records as required by this rule; (2) fail or refuse to permit access to or copying of records, as required by TSCA; or (3) fail or refuse to permit entry or inspection as required by section 11 of TSCA.

Violators may be subject to both civil and criminal liability. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation. Each day of operation in violation of this rule when it becomes effective could constitute a separate violation. Knowing or willful violations of this rule when it becomes effective could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In addition, other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injuction to restrain violations of this rule when it becomes effective and seizing any chemical substance or mixture manufactured or imported in violation of this rule when it becomes effective.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies. In particular, EPA may proceed against individuals who report false information or cause it to be reported.

X. Confidentiality

A person may assert a claim of confidentiality for any information, including public comments, submitted to EPA in connection with this proposed rule or in connection with this rule after it is promulgated. Any person who submits a confidential public comment must also submit a nonconfidential version. Any claim of confidentiality must accompany the information when it is submitted to EPA. Persons would claim information confidential by circling, bracketing, or underlining it and marking it with "CONFIDENTIAL" or some other appropriate designation. EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR Part 2, Subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

XI. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS—62040). A public version of the record, without any confidential business information, is available in the Office of Toxic Substances Public Information Office, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Public Information Office is located in Rm. E–107, 401 M St., SW., Washington, D.C.

The record includes information considered by EPA in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following categories of information: (1) **Federal Register** notices, (2) support documents, (3) reports, and (4) memoranda and letters.

EPA will identify the complete rulemaking record by date of promulgation. EPA will accept additional material for inclusion in the record at any time between this notice and designation of the complete record. The final rule will also permit persons to point out any errors or omissions in the record.

XII. References

(1) USCPSC. Report to the U.S. Consumer Product Safety Commission by the Chronic Hazard Advisory Panel on Asbestos. July 1983.

(2) USEPA, OPTS, OTS, Exposure Assessment for Asbestos. Draft January 9, 1984.

(3) USEPA, OPTS, OTS. Regulatory Impact Analysis of Controls on Asbestos and Asbestos Products. January 1986.

(4) USEPA, OPTS, OTS. Support Document for Final Rule on Friable Asbestos-Containing Materials in School Buildings—Health Effects and Magnitude of Exposure. January, 1982.

(5) National Research Council. "Asbestos" *In:* "Drinking Water and Health." Vol. 3. National Academy Press. Washington, D.C. (1982): 223–263.

(6) National Research Council. "Nonoccupational Health Risks of Asbestiform Fibers." National Academy Press. Washington, D.C. (1984).

(7) NIOSH–OSHA Asbestos Work Group. Workplace Exposure to Asbestos: "Review and Recommendations" DHHS (NIOSH) Publication No. 81–103. U.S. Government Printing Office, Washington, D.C. 20402. (1980).

(8) OSHA. "Quantitative Risk Analysis for Asbestos-Related Cancers: A Preliminary Report." (1983).

(9) Seidman, H. Selikoff, I.J., Hammond, E.C., "Short-Term Asbestos Work Exposure and Long-Term Observation." *Annals of the New York Academy of Science*, 330 (1979): 61–89.

(10) Selikoff, I.J., Anderson, H.A., Seidman, H. "Asbestos Disease Among Household Contacts of Asbestos Workers" *In:* "Disability Compensation for Asbestos-Associated Disease in the U.S.," edited by I.J. Selikoff. Environmental Sciences Laboratory, Mount Sinai School of Medicine of the City University of New York. (1982): 73–76.

(11) Selikoff, I.J., Hammond, E.C., Seidman H., "Mortality Experience of Insulation Workers in the U.S. and Canada, 1943–1976." *Annals of the New York Academy of Science*, 330 (1979): 91–116.

(12) USDOL, OSHA. "Occupational Exposure to Asbestos; Emergency Temporary Standard." (November 4, 1983; 48 FR 51086).

(13) USDOL, OSHA. "Occupational Exposure to Asbestos; Proposed Rule and Notice of Hearing" (April 10, 1984; 49 FR 14116).

(14) USEPA, OPTS, OTS. Asbestos Substitutes and Related Materials. April 24, 1985.

XIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA has determined that this proposed rule is a "Major Rule" and has developed an RIA. The RIA estimates that this proposed rule would cost about $1.98 billion over 15 years. However, the RIA also estimated that this proposed rule, if promulgated, would avoid approximately 1,930 cases of cancer. As shown in Unit V above, EPA believes that these costs are reasonable and that this proposed action is a cost-effective way of reducing the unreasonable risks related to asbestos.

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

B. Regulatory Flexibility Act

EPA has analyzed the economic impact of this proposed rule on small businesses. A summary of EPA's analysis appears in Unit III.

C. Paperwork Reduction Act

The reporting and recordkeeping provisions in this proposed rule will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs at OMB and marked Attention: Desk Officer for EPA. Any final rule will explain EPA's response to OMB and public comments on the proposed reporting and recordkeeping requirements.

List of Subjects in 40 CFR Part 763

Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Asbestos.

Dated: January 22, 1986.

Lee M. Thomas,

Administrator.

PART 763—[Amended]

Therefore, it is proposed that 40 CFR Part 763 be amended as follows:

1. The authority citation for Part 763 is revised to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c).

2. By adding new Subpart H to read as follows:

Subpart H—Asbestos Mining and Import Restrictions

Sec.

763.140 Scope.
763.143 Definitions.
763.145 Mining and import restrictions.
763.147 Permits to mine or import asbestos.
763.148 Issuance of permits.
763.149 Appeals concerning permits.
763.150 Transfer of permits.
763.151 Banking of permits.
763.153 Recordkeeping.
763.154 Reporting.
763.156 Enforcement.
763.157 Inspections.
763.159 Confidentiality and public access to information.

Subpart H—Asbestos Mining and Import Restrictions

§ 763.140 Scope.

This Subpart prohibits the mining or importation of asbestos, including asbestos in certain asbestos products, unless authorized by a permit issued by EPA.

§ 763.143 Definitions.

The definitions in section 3 of TSCA, 15 U.S.C. 2602, apply to this Subpart. In addition, the following definitions apply:

(a) The terms "act," "article," "byproduct," "customs territory of the United States," "EPA," "importer," "manufacturer," "persons," and "United States" have the same meanings as in § 720.3 of this chapter.

(b) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite, (cummingtonite-grunerite); tremolite; anthophyllite, and actinolite that are mined or milled.

(c) "Asbestos product" means any mixture or article containing asbestos.

(d) "Consumer" means a natural person who uses a product for personal rather than business purposes.

(e) "Import" means to bring into customs territory of the United States for any purpose except (1) for shipment through the customs territory of the United States for export without any domestic use or processing; or

(2) entering the customs territory of the United States as part of a product during normal personal or business activities involving use of the product.

(f) "Milled" means the separation of asbestos fibers from asbestos ore, the grading and sorting of asbestos fibers, or the fiberizing of asbestos ore.

(g) "Mine" means to produce asbestos other than as an unintended contaminant or impurity by extracting asbestos-containing ore so that the ore may be (1) distributed in commerce or (2) milled for distribution in commerce.

(h) "Miner" means a person who mines asbestos.

§ 763.145 Mining and import restrictions.

(a) Beginning the first day of the calendar year after this rule becomes effective, or if this rule becomes effective during the last 4 months of a calendar year, beginning the first day of the second calendar year after this rule becomes effective, no person other than a person authorized by a permit issued by EPA as provided in this part may:

(1) Mine asbestos in the United States or

(2) Import asbestos, including asbestos in an asbestos product listed in this section, except in small quantities solely for personal consumer use, into the customs territory of the United States.

(b) The following asbestos products may not be imported into the customs territory of the United States except in small quantities by a consumer solely for his or her personal use unless authorized by a permit issued by EPA as provided in this Subpart:

(1) Appliances.

(2) Pipeline wrap.

(3) Thread, yarn, lap, roving, cord, rope, or wick.

(4) Sheet gasketing, rubber encapsulated compressed.

(5) Disc brake pads (light-medium vehicles).

(6) Cloth, other than asbestos clothing.

(7) Brake blocks.

(8) Millboard.

(9) Packing.

(10) Mixed or repackaged asbestos fiber.

(11) Thermoplugs.

(12) Tape.

(13) Roof coatings.

(14) Clutch facings.

(15) Automotive gasket kit.

(16) Drum brake linings.

(17) Yarn.

(18) Automobiles and other motor vehicles.

§ 763.147 Permits to mine or import asbestos.

(a) Persons may mine in the United States or import into the customs

territory of the United States only the quantity of asbestos for which they hold permits issued under this Subpart.

(b) The amount of asbestos contained in imported product listed in § 763.145 will count toward the total amount of asbestos a person may mine or import during a year.

(c) Persons must estimate typical asbestos content of imported asbestos products covered by this rule. Persons may use EPA's estimate of typical asbestos content if they are not certain of the typical asbestos content of a product.

§ 763.148 Issuance of permits.

(a)(1) EPA will issue permits for the mining or import of asbestos, including asbestos contained in the asbestos products listed in § 763.145.

(2) Applications for permits must be sent to the Office of Toxic Substances (TS–792), EPA, 401 M St., SW., Washington, D.C. 20460.

(b)(1) Persons must apply to EPA for permits by 30 days after the effective date of this rule.

(2) Persons must list in their application for permits the amount of asbestos, including asbestos contained in the asbestos products listed in § 763.145, that they imported or mined during 1981, 1982, and 1983.

(c) If an application is mailed to EPA, the application must be postmarked by 30 days after the effective date of this rule.

(d) EPA will allocate to persons who apply for permits a uniform percentage of the amount of asbestos those persons reported mining or importing during 1981, 1982, and 1983.

(e) Each permit will allow a person to mine or import the following percentages of the average amount of asbestos he or she mined or imported yearly during 1981, 1982, and 1983.

Year 1—30 percent.
Year 2—27 percent.
Year 3—24 percent.
Year 4—21 percent.
Year 5—18 percent.
Year 6—15 percent.
Year 7—12 percent.
Year 8—9 percent.
Year 9—6 percent.
Year 10—3 percent.

§ 763.149 Appeals concerning permits.

(a) A person may appeal EPA's initial disposition of his or her application for a permit.

(b) The person must appeal in writing to the Director of the Office of Toxic Substances (TS–792), EPA, 401 M St., SW., Washington, DC 20460, within 20 days after receipt of EPA's announcement of the disposition of his or her application. If the appeal is mailed, the letter must be postmarked within 20 days after receipt of EPA's announcement of disposition.

(c) A person must indicate in an appeal why he or she should receive a permit or be allowed to mine or import additional asbestos under the permit.

(d) The Director of the EPA Office of Toxic Substances will either grant or deny the appeal within 60 days after its receipt. The disposition of the appeal will be announced by letter to the person making the appeal.

§ 763.150 Transfer of permits.

(a) A person issued a permit by EPA to mine or import a quantity of asbestos may transfer that permit in whole or in part to another person.

(b) A person who transfers a permit to mine or import a quantity of asbestos and a person who receives such a transferred permit must report that transfer to the Office of Toxic Substances (TS–792), EPA, 401 M St., SW., Washington, DC 20460, within 10 days of the transfer.

(c) The parties involved in a transfer may report either jointly or separately.

(d) If a report is mailed to EPA, the report must be postmarked within 10 days of the transfer.

§ 763.151 Banking of permits.

(a) Persons issued permits by EPA to mine or import a quantity of asbestos during one particular year may reserve or "bank" all or part of the permitted amount and use it to mine or import asbestos during a later year during the 10-year phase-down period.

(b) The amount of asbestos that a person is permitted to mine or import will decline from year to year when it is reserved or "banked" at a rate of 10 percent per year.

(c) A person who "banks" a permit in whole or in part must report that "banking" to the Office of Toxic Substances (TS–792), EPA, 401 M St. SW., Washington, DC 20460, within 60 days of the end of the year for which the permit was issued.

(d) If a report is mailed to EPA, the report must be postmarked within 60 days of the end of the year for which the "banked" permit was issued.

§ 763.153 Recordkeeping.

(a) Any person who mines or imports asbestos or any asbestos product listed in § 763.145 must retain in one location documentation of information showing:

(1) The name of any person to whom he or she transferred permission to mine or import asbestos.

(2) The name of any person from whom he or she received permission to mine or import asbestos.

(3) The amount of asbestos mined or imported each year, including asbestos imported in any asbestos product listed in § 763.145.

(4) The typical asbestos content of any asbestos product listed in § 763.145.

(5) The number of individual asbestos products listed in § 763.145 imported each year.

(b) This information must be retained for 5 years from the end of the last year of the 10-year phase-down period covered by this rule.

§ 763.154 Reporting.

(a) Any person who imports asbestos, including asbestos in an asbestos product listed in § 763.145, must report to the Office of Toxic Substances (TS–792), EPA, 401 M. St. SW., Washington, DC 20460, within 2 days of the day of import indicating:

(1) The person's name.

(2) The amount of asbestos imported.

(3) The number of individual asbestos products listed in § 763.145 imported.

(4) A certification that the person was either issued a permit by EPA to import at least that amount of asbestos that year or obtained that permission from another person as provided in § 763.148.

(b) Within 60 days of the end of each year covered by this Subpart, each person who mines or imports asbestos including asbestos in an asbestos product listed in §763.145 must report to the Office of Toxic Substances (TS–792), EPA, 401 M. St., SW., Washington, DC 20460:

(1) The total amount of bulk asbestos that person mined or imported that year.

(2) The total amount of asbestos that person imported in asbestos products listed in §763.145 that year.

(3) The number of individual asbestos products listed in §763.145 that person imported that year.

(4) The amount of asbestos that person had permission to mine or import that year.

(c) If a report is mailed to EPA, the report must be postmarked within 60 days of the end of each year covered by this Subpart.

§ 763.156 Enforcement.

(a) Failure to comply with any provision of this Subpart is a violation of section 15 of the Act (15 U.S.C. 2614).

(b) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(c) Failure or refusal to permit entry or inspection as required by section 11 of the Act (15 U.S.C. 2610) is a violation of section 15 of the Act (15 U.S.C. 2614).

(d) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(e) EPA may seek to enjoin the mining or import of asbestos or asbestos products in violation of this Subpart, or act to seize any asbestos or asbestos products in violation of this Subpart, or take other actions under the authority of section 7 or 17 of the Act (15 U.S.C. 2606 or 2616).

§ 763.157 Inspections.

EPA will conduct inspections under section 11 of the Act (15 U.S.C. 2610) to ensure compliance with this Subpart and to verify that information submitted to EPA under this Subpart is correct.

§ 763.159 Confidentiality and public access to information.

(a) A person may assert a claim of confidentiality for any information he or she submits to EPA under this Subpart.

(b) Any claim of confidentiality must accompany the information when it is submitted to EPA.

(c) EPA will disclose information subject to a claim of confidentiality asserted under this section only to the extent permitted by TSCA and Part 2 of this title.

(d) If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

3. By adding new Subpart I to read as follows:

Subpart I—Prohibition of the Manufacture, Processing, and Distribution in Commerce of Certain Asbestos-Containing Products

Sec.

763.160 Scope.
763.163 Definitions.
763.165 Manufacture—prohibitions.
763.167 Processing—prohibitions.
763.169 Enforcement.

Subpart I—Prohibition of the Manufacture, Processing, and Distribution in Commerce of Certain Asbestos-Containing Products

§ 763.160 Scope.

This Subpart prohibits the manufacture, importation and processing, of the following categories of asbestos-containing products: asbestos-containing roofing felt, asbestos-containing flooring felt (including vinyl sheet flooring backed with flooring felt), vinyl-asbestos floor tile and asbestos-cement pipe and fittings and asbestos clothing.

§ 763.163 Definitions.

The definitions in section 3 of the Toxic Substances Control Act and the following definitions apply to this subpart.

(a) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); tremolite; anthophyllite, and actinolite.

(b) "Asbestos-cement pipe and fittings" means an asbestos-containing product that contains cement and is intended to transmit water or sewage; for use as conduit pipe for the protection of electrical or telephone cable; or for use as air ducts.

(c) "Asbestos clothing" means an asbestos-containing product made of cloth and designed to be worn by individuals.

(d) "Asbestos-containing product" means any material which contains more than 1.0 percent asbestos by weight.

(e) "Flooring felt" means an asbestos-containing product made of paper felt and intended as an underlayment for floor coverings, or to be bonded to the underside of vinyl sheet flooring.

(f) "Roofing felt" means an asbestos-containing product made of paper felt and intended for use on building roofs as a covering or underlayment for other roof coverings.

(g) "Vinyl-asbestos floor tile" means an asbestos-containing product composed of vinyl resins, containing fillers, stabilizers and pigments and used as floor tile.

§ 763.165 Manufacture—prohibitions.

Beginning the first day of the calendar year after this rule becomes effective, or if this rule becomes effective during the last 4 months of a calendar year, beginning the first day of the second calendar year after this rule becomes effective, no person shall manufacture or import the following asbestos-containing products either for use in the United States or for export: asbestos-containing roofing felt, asbestos-containing flooring felt (including vinyl sheet flooring backed with flooring felt), vinyl-asbestos floor tile, asbestos-cement pipe and fittings, and asbestos clothing.

§ 763.167 Processing—prohibitions.

Beginning the first day of the calendar year after this rule becomes effective, or if this rule becomes effective during the last 4 months of a calendar year, beginning the first day of the second calendar year after this rule becomes effective, no person shall process the following products, either for use in the United States or for export: asbestos-containing roofing felt, asbestos-containing flooring felt (including vinyl sheet flooring backed with flooring felt), vinyl-asbestos floor tile, asbestos-cement pipe and fittings, and asbestos clothing.

§ 763.169 Enforcement.

(a) Failure to comply with any provision of this Subpart is a violation of section 15 of the Act (15 U.S.C. 2614).

(b) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(c) Failure or refusal to permit entry or inspection as required by section 11 of the Act (15 U.S.C. 2610) is a violation of section 15 of the Act (15 U.S.C. 2614).

(d) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(e) EPA may seek to enjoin the manufacture or import of asbestos products in violation of this Subpart, or act to seize any asbestos products in violation of this Subpart, or take other actions under the authority of section 7 or 17 of the Act (15 U.S.C. 2606 or 2616).

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Daily Federal Register

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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

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Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-188.....2
189-336.....3
337-576.....6
577-718.....7
719-874.....8
875-1234.....9
1235-1360.....10
1361-1480.....13
1481-1766.....14
1767-2336.....15
2337-2468.....16
2469-2668.....17
2669-2870.....21
2871-3026.....22
3027-3164.....23
3165-3320.....24
3321-3462.....27
3463-3568.....28
3569-3760.....29

CFR PARTS AFFECTED DURING JANUARY

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

Proclamations:
5425.....719
5426.....1237
5427.....2337
5428.....2339
5429.....2341
5430.....2469
5431.....2871
5432.....3165
5433.....3463

Executive Orders:
11157 (Amended by EO 12541).....585
12490 (Amended by EO 12545).....2343
12496 (Amended by EO 12540).....577
12526 (Amended by EO 12542).....587
12540.....577
12541.....585
12542.....587
12543.....875
12544.....1235
12545.....2343

Administrative Orders:

Presidential Determinations:
No. 86-4 of December 24, 1985.....1481

Memorandums:
January 10, 1986.....1483

5 CFR

352.....337
513.....318
530.....721
1200.....3321

Proposed Rules:
530.....400
831.....3470

7 CFR

17.....2471
54.....589
225.....3322
301.....2873
400.....877
451.....1239
800.....1767
907.....189, 1244, 2669, 3167
971.....1
1007.....1245
1062.....1361
1136.....2669
1137.....1361
1789.....2788
1900.....2345
1924.....3325, 3569
3015.....1485

Proposed Rules:
Ch. IV.....761
Ch. X.....1378
226.....3603
443.....961
800.....606
959.....760
1131.....2506
1136.....2506
1205.....209
1240.....3605
1772.....2403
1788.....607
1924.....2507
1944.....2507, 2516
3015.....762

8 CFR

Proposed Rules:
103.....2895
243.....3471

9 CFR

50.....2345
78.....2346
92.....3167
166.....2347
318.....1769
381.....3569

Proposed Rules:
92.....613
381.....3621

10 CFR

1.....731
463.....593

Proposed Rules:
19.....1092
20.....1092
30.....1092
31.....1092
32.....1092
34.....1092
40.....1092
50.....1092
61.....1092
70.....1092
762.....3624
904.....3471

12 CFR

207.....1771
330.....731
337.....880
563.....731, 1246
563b.....593
611.....2472

Proposed Rules:
18.....27
204.....27
210.....613
217.....31, 1379
352.....2519
556.....33

13 CFR

302 ... 1782
305 ... 1492, 1782
306 ... 1492
307 ... 1492
308 ... 1492
314 ... 1783

Proposed Rules:

111 ... 966

14 CFR

11 ... 1218, 2348, 2873
21 ... 2671
39 ... 2-5, 337-339, 732-736, 1247, 1363, 1489-1491, 2348-2350, 2676-2679, 3027-3029, 3326
61 ... 1226
63 ... 1226
71 ... 5-9, 189, 190, 340, 341, 737, 1247, 1248, 2350-2352, 2682, 3168, 3328
73 ... 191, 738, 2682
75 ... 9, 2683
91 ... 1226
93 ... 2873
97 ... 341, 2352
107 ... 1350
108 ... 1350
121 ... 1218
125 ... 873
1260 ... 2626

Proposed Rules:

39 ... 37, 1383, 1514, 1515 2520, 3073, 3074, 3472
71 ... 38, 614, 1385, 2403, 2896, 3341, 3473
73 ... 614
75 ... 2721
121 ... 1330

15 CFR

376 ... 1493
385 ... 2353
390 ... 2353
399 ... 1493, 2683
904 ... 1249
911 ... 3465

Proposed Rules:

303 ... 1386

16 CFR

13 ... 3580
305 ... 3581
1750 ... 10

Proposed Rules:

13 ... 967
423 ... 614
435 ... 1516
453 ... 978

17 CFR

1 ... 2684
200 ... 738, 1783
211 ... 739
230 ... 2472
240 ... 2472, 3031

Proposed Rules:

240 ... 2521, 3186

18 CFR

37 ... 343, 3328
271 ... 191, 1364-1366, 3582
282 ... 3583
292 ... 2354

Proposed Rules:

11 ... 211
271 ... 1387
410 ... 3473
1301 ... 2403

19 CFR

Proposed Rules:

101 ... 2897

20 CFR

234 ... 3035
237 ... 3035
238 ... 3035
404 ... 288
416 ... 288
422 ... 288

Proposed Rules:

404 ... 614, 979
416 ... 614, 979
656 ... 3191

21 CFR

51 ... 593
73 ... 2477
74 ... 375
81 ... 375
82 ... 375
101 ... 3466
172 ... 1495, 2692, 3333
173 ... 1495
175 ... 1495
176 ... 881, 1495
177 ... 882
178 ... 1495
184 ... 1495
436 ... 1367
442 ... 2478
520 ... 2693
522 ... 740
529 ... 593
555 ... 1367
558 ... 594, 3333
561 ... 1784

Proposed Rules:

101 ... 2405
145 ... 1388
163 ... 1257, 3075
193 ... 3632
606 ... 2523
864 ... 2898
870 ... 564, 3075
880 ... 1910

22 CFR

Proposed Rules:

71 ... 3633

23 CFR

658 ... 1367

Proposed Rules:

628 ... 1389

24 CFR

115 ... 595
200 ... 1369
201 ... 596, 1249, 1495, 3333
203 ... 596, 1249, 3333
207 ... 2358
213 ... 2358
220 ... 2358
221 ... 2358
231 ... 2358
232 ... 2358
234 ... 596, 1249, 3333
241 ... 2358
242 ... 2358
300 ... 597

Proposed Rules:

203 ... 216
204 ... 216
905 ... 280
964 ... 979
968 ... 979

25 CFR

115 ... 2873

Proposed Rules:

11 ... 400
89 ... 2722
169 ... 1391

26 CFR

1 ... 376, 741, 883, 1496, 1785, 2478, 3466, 3583
20 ... 1496
25 ... 1496
48 ... 11
51 ... 3597
154 ... 11
602 ... 11, 376, 741, 1496, 2478
2619 ... 3040

Proposed Rules:

1 ... 401, 619, 763, 985, 1392, 1517, 2524, 2726, 2898, 3075, 3193, 3474, 3634
7 ... 2726
31 ... 619, 3474
602 ... 2898

27 CFR

9 ... 749
19 ... 598
240 ... 598
245 ... 598
270 ... 598
285 ... 598
295 ... 598

Proposed Rules:

5 ... 1393, 3208
9 ... 2728
19 ... 3208

28 CFR

16 ... 750-753, 883

Proposed Rules:

16 ... 986

29 CFR

102 ... 3597
1952 ... 2481
2619 ... 1788

Proposed Rules:

541 ... 2525
1910 ... 312, 3474
1915 ... 312
1926 ... 312

30 CFR

906 ... 884
917 ... 3168
936 ... 1508, 2360
943 ... 2489
944 ... 2361

Proposed Rules:

75 ... 2525
733 ... 272
914 ... 989
917 ... 1517, 2731, 3342
944 ... 1519
948 ... 1520
950 ... 21, 1816

31 CFR

10 ... 2875
550 ... 1354, 2462

Proposed Rules:

210 ... 2899

32 CFR

199 ... 2490, 3041
251 ... 3041
286a ... 2364
290 ... 3045
706 ... 23, 24

Proposed Rules:

199 ... 3210
1602 ... 3635
1605 ... 3635
1609 ... 3635
1618 ... 3635
1621 ... 3635
1624 ... 3635
1630 ... 3635
1633 ... 3635
1636 ... 3635
1639 ... 3635
1642 ... 3635
1648 ... 3635
1651 ... 3635
1653 ... 3635
1656 ... 3635
1657 ... 3635

33 CFR

100 ... 2693
110 ... 394, 2881
117 ... 395, 396, 886, 1509, 2393-2395, 2884
165 ... 2396, 2693
334 ... 1370

Proposed Rules:

110 ... 991, 2731
117 ... 402
162 ... 402, 1521
165 ... 224-228
166 ... 1257
167 ... 2408
402 ... 763, 1521

34 CFR

772 ... 2396

Proposed Rules:

500 ... 1393
501 ... 1393
505 ... 1393
510 ... 1393
514 ... 1393
525 ... 1393
526 ... 1393
527 ... 1393
537 ... 1393
561 ... 1393
573 ... 1393
574 ... 1393

36 CFR

261 ... 1250

Proposed Rules:

223 ... 3158

37 CFR

201 ... 599

38 CFR

3 ... 1510, 1789

21 2694
Proposed Rules:
3 2904
17 992
21 ..... 764, 2408

39 CFR

961 1251
Proposed Rules:
111 ..... 993, 1257, 3079, 3219

40 CFR

52 ..... 192, 600, 755, 886, 2397–2401, 2492, 2695–2698, 3046, 3335, 3466
60 ..... 150, 1790, 2699, 3171, 3172
61 ..... 1511, 2699, 3172, 3173
81 886
166 1896
180 ..... 25, 844, 1790, 2702, 3597
202 850
205 850
261 ..... 1253, 2702
271 ..... 1370, 1791
471 2884
716 ..... 1233, 2702, 2890
799 ..... 1793, 3048, 3468
Proposed Rules:
Ch. I 1257
52 ..... 38, 41, 1394, 2732, 3219, 3343, 3346, 3475
60 ..... 854, 2996, 3298
65 627
81 3219
180 ..... 229, 765, 3635
228 3348
260 ..... 229, 1602, 3220
261 ..... 229, 1602, 2526, 3220
262 ..... 229, 1602
264 ..... 229, 1602
265 ..... 229, 1602
266 3220
268 ..... 229, 1602
270 ..... 229, 1602, 3220
271 ..... 229, 496, 631, 1394, 1602, 3220
302 3220
461 3477
704 1521
721 1396
763 3738
766 2736
796 ..... 472, 1521, 1522
797 ..... 472, 1521, 1522
798 ..... 1521, 1522
799 ..... 472, 1521

41 CFR

Ch. 101 1511
101–26 1793
101–47 193
Proposed Rules:
51–2 766

42 CFR

Proposed Rules:
405 2736

43 CFR

2620 3599
2740 1795
2910 3599
Public Land Order:
3305 (Amended by 6612) 3599
6612 3599
Proposed Rules:
11 3480

44 CFR

2 ..... 194, 2499
64 ..... 1795, 2499, 3600
Proposed Rules:
67 ..... 2529, 2905, 2906, 3637

45 CFR

95 3337
2002 3173
Proposed Rules:
92 2806

46 CFR

169 888
170 888
171 888
173 888
Proposed Rules:
52 3352
56 3352
58 3352
61 3352
62 3352
110 3352
111 3352
113 3352

47 CFR

1 2702
2 2704
63 2708
65 1795
67 ..... 2708, 3176
68 929
69 1371
73 ..... 1374, 2501, 2704, 2711, 3049
76 1255
87 1512
94 2702
97 ..... 2401, 2712, 3069
Proposed Rules:
Ch. I 405, 1817
2 2906
21 2906
22 405
67 1400
68 1261
69 ..... 633, 2907, 3352
73 42
74 2906
78 2906
90 2910
94 2906

48 CFR

1 2648
2 2648
4 2648
5 ..... 2648, 3070
6 2648
8 2648
9 2648
10 2648
13 2648
14 2648
15 2648
17 2648
19 2648
22 2648
25 2648
27 2648
28 2648
30 2648
31 2648
32 2648
36 2648
42 2648
45 2648
46 2648
47 2648
48 2648
49 2648
52 2648
53 2648
513 1814
549 194
552 194
1301 1377
1302 1377
1304 1377
1305 1377
1306 1377
1314 1377
1315 1377
1319 1377
1331 1377
1337 1377
1351 1377
2801 758
2835 758
Proposed Rules:
31 2536

49 CFR

212 756
217 756
219 756
225 756
543 706
571 603
573 397
1039 3340
1048 1815
1105 196
1150 2503
1152 ..... 196, 2504
1312 ..... 3071, 3340
Proposed Rules:
Ch. X 2740
171 3085
172 3085
173 3085
176 3085
177 3085
178 3085
180 3085
192 3085
531 2912
533 3221
543 715
571 ..... 641, 657, 994, 1542, 1826, 2536, 3227
1180 1828
1244 767
1248 229

50 CFR

17 ..... 952, 3182
216 197
611 ..... 202, 956
650 208
652 757
655 959
663 1255
671 ..... 757, 2892, 3468, 3602
672 956
675 956
Proposed Rules:
17 ..... 230, 996, 2409, 2410, 2741, 2893, 3229
20 ..... 409, 3086
80 769
216 2929
611 2929
640 3087
642 769
651 232
655 ..... 658, 2929
681 1262

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List January 21, 1986

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