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ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

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Correction

In FR Doc. 86–16958 appearing on page 27017 in the issue of Tuesday, July 29, 1986, make the following correction:

In the second column, in the second line, "is a major rule" should read "is not a major rule".

BILLING CODE 1505-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Regulation 375]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 375 establishes the quantity of California-Arizona Valencia oranges that may be shipped to market during the period August 8–14, 1986. The regulation is needed to balance the supply of fresh Valencia oranges with market demand for the period specified due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: Regulation 375 (§ 908.675) is effective for the period August 8–14, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202/447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulation is consistent with the marketing policy for 1985–86. The committee met publicly on August 5, 1986, to consider the current and prospective conditions of supply and demand and recommended the quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports that the market for Valencia oranges is slow.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because there is insufficient time between the date when information upon which this regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and the effective date.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges, Valencias.

PART 908—[AMENDED]

1. The authority citation for 7 CFR Part 908 continues to read:

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

2. Section 908.675 is added to read as follows:

§ 908.675 Valencia Orange Regulation 375.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period August 8, 1986, through August 14, 1986, are established as follows:

(a) District 1: 368,000 cartons;
(b) District 2: 432,000 cartons;
(c) District 3: Unlimited cartons.

Dated: August 6, 1986.

Joseph A. Gribbin,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–18010 Filed 8–7–86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 012CE, Special Conditions No. 23-ACE-11]

Special Conditions; Beech Model 2000 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Special Conditions.

SUMMARY: These special conditions are issued to become part of the type certification basis for the Beech Model 2000 series airplanes. The airplane will have novel and unusual design features when compared to the state of technology envisaged in the

airworthiness standards of 14 CFR Part 23 of the Federal Aviation Regulations (FAR). These novel and unusual design features include the use of advanced composite materials for primary flight structure, an electronic flight instrument system, the location of the propellers, the aerodynamic configuration, and an outward-opening, main entry door in the pressurized cabin for which the regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to that established in the regulations applicable to the Beech Model 2000 airplane.

EFFECTIVE DATE: September 8, 1986.

FOR FURTHER INFORMATION CONTACT: Bobby W. Sexton, Aerospace Engineer, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1984, Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201, made application to the FAA for a type certificate for the Beech Model 2000 airplane. The proposed type design of the Beech Model 2000 airplane contains a number of novel or unusual design features not envisioned by the applicable Part 23 airworthiness standards.

Special conditions are issued, and amended as necessary, as part of the type certification basis when the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis as provided by § 21.17(a)(2).

A Notice of Proposed Special Conditions (NPRM) Notice No. 23-ACE-11, was published in the **Federal Register** on April 8, 1986 (51 FR 11933). As a result of a petition from the Air Line Pilots Association (ALPA) requesting an extension of the comment period on that notice, a Notice of Extension of Comment Period was published in the **Federal Register** on May 12, 1986 (51 FR 17362).

Notice No. 23-ACE-11 identified several design features which the FAA has found to be novel or unusual.

The main wing incorporates aerodynamic control surfaces which function as ailerons for lateral control. Additionally, these same control surfaces are designed to also function as a part of the longitudinal (pitch) control system. Movement of the control wheel in the longitudinal axis causes deflections of the forward wing control surfaces and the main wing control surfaces simultaneously. The transmitting links connected to the main wing control surfaces are directed through a mixer box which allows both lateral and longitudinal control inputs to the same control surface. A failure of a single transmitting link could affect both the longitudinal and lateral primary control systems. A single failure which would affect both longitudinal and lateral control could pose a significant problem to flight path control.

The Beech Model 2000 will be operated at high altitudes where stall-mach buffet encounters are likely to occur and the proposed operating envelope includes areas in which Mach effects may be significant. The anticipated low drag of the airplane, coupled with the unusual design features associated with the forward areodynamic surface and the proposed operating envelope, may degrade the ability of the flight crew to promptly recover from inadvertent excursions beyond maximum operating speeds.

Beech has selected airfoil designs having airfoil pressure gradient characteristics and smooth areodynamic surfaces which may be capable of supporting natural laminar flow. Changes in flying qualities and performance may occur due to the loss of natural laminar flow caused by rain, insects, ice, or other contamination adhering to aerodynamic surfaces.

The airframe is made of advanced composite material and is assembled by the extensive use of bonding. This material and its assembly is completely different from the typical semi-monicoque aluminum airframes that have been predominant since the early 1940's. Composite materials of the type used on the Beech Model 2000 are generally not susceptible to initiation of fatigue cracks by the application of repetitive loads, but are susceptible to damage in the form of cracks, breaks, and delaminations from intrinsic and discrete sources growing under application of repetitive loads.

The Beech Model 2000 has composite material outboard fins acting as vertical stabilizers, mounted via metal fittings, at the tips of the composite material wings. The design also includes a forward lifting surface (forward wing) in lieu of a horizontal tail. This surface shares lifting loads which would be carried only by the wing in a conventional design.

The fuselage design incorporates outward-opening doors in the pressure cabin. If this type of door is not properly closed and locked, or if a failure in the door or its locking mechanism occurs, the pressure in the cabin can blow the door open resulting in explosive decompression of the cabin and possible injury to its occupants.

To maintain desired flying qualities with main wing flaps extended or retracted, the forward wing sweeps fore and aft as the main wing flaps are extended or retracted. The airplane pitching moments are balanced by the synchronized motions of these sets of aerodynamic surfaces. If synchronization is not maintained, flight characteristics and control may be degraded.

The mechanisms operating the main wing flaps and the forward wing sweep are not mechanically interconnected. Each is activated independently by electric motors and non-synchronization is detected by electric monitors. These monitors are designed to detect unsynchronized conditions and stop the extension or retraction cycle at whatever position exists when the lack of synchronization is detected.

The airplane has rear-mounted pusher propellers which may be susceptible to contact with the runway surface at the maximum pitch attitude attainable during takeoffs and landings. Passenger and ground personnel may be less aware of the proximity of the propeller blades.

Because of the aft propeller location, ice shed from the wing leading edges, engine air inlet duct inertial separator, and other parts of the airplane may impact the propeller blades. Impact of shed ice fragments may have an adverse effect on the strength and fatigue characteristics of the propeller.

Additionally, because the propeller is located aft of the engine, if engine exhaust gases are discharged into the propeller disc, exhaust gases may adversely affect the strength and fatigue characteristics of the propeller material.

Small airplanes have typically been unpressurized where smoke or toxic fumes could be evacuated by opening windows or, if pressurized, have had maximum operating altitudes such that the airplane could be readily depressurized to evacuate smoke or toxic fumes without creating an unsafe condition. The Beech Model 2000 will

not have inherent smoke evacuation provisions because of higher differential pressures and longer times needed to depressurize and ventilate the cockpit because of the need for immediate supplemental oxygen at the maximum operating altitudes.

Beech has selected Cathode Ray-Tube (CRT) Electronic Display units for an integrated engine parameter display, crew alerting function, and for other cockpit instrument displays. Beech is proposing two cockpit instrument panel configurations. The Engine Indicating and Crew Alerting System (EICAS) is proposed to be standard on both configurations. The nonsymmetrical cockpit instrument panel configuration would feature one Electronic Flight Instrument System (EFIS) on the left instrument panel, the standard EICAS in the center, and back-up conventional attitude, airspeed, and altimeter instruments on the right side of the instrument panel. The optional symmetrical instrument panel configuration would feature two EFIS (one on each side), the standard EICAS in the center, and back-up, two-inch conventional third attitude, airspeed, and altimeter instruments. Included in both the symmetrical and nonsymmetrical configurations would be two Radio Tuning Units (RTU). Proposed for future inclusion in the airplane design is a Flight Management System (FMS). In addition, autopilot and yaw damper systems are proposed for the Beech Model 2000 airplane. The engine parameter displays and crew alerting functions are proposed to be integrated into a single CRT display.

It is proposed that in the event of a failure of the EICAS display CRT, the crew may display the entire EICAS information on another CRT, the Multi-function Display (MFD) CRT. The crew would have discretionary control over the MFD, and may choose to display parameters other than the EICAS information.

In the EICAS, the Interstage Turbine Temperature (ITT) and torque displays for each engine are proposed to be combined into a single circular analog display having two pointers. The ITT, torque, N1, and propeller RPM displays provide both analog scales for trend monitoring, and digital read-outs for discrete values. The digital read-outs for each parameter match the color of the corresponding pointer on the analog display.

Emissive color on a CRT display will inevitably appear differently than reflective colors on conventional electro-mechanical displays. Different intensities and color temperatures of ambient illumination will also affect the perceived colors.

Normal operating, takeoff, and precautionary range markings, required by § 23.1549 (b) and (c), are not considered practical on CRT displays. As proposed, the ITT displays are not marked with green arcs to define the normal operating ranges as required by § 23.1549(b) and the takeoff and precautionary ranges are not marked with yellow as required by § 23.1459(c). The torque displays are not marked with green arcs to define the normal operating range as required by § 23.1549(b), and the takeoff and precautionary ranges are not marked with yellow arcs as required by § 23.1549(c). The N1 display features a variable caution scale that defines the range of gas compressor speeds which is not adequate to maintain the anti-ice capability of the inlet lip of the engine.

Special conditions are necessary because the airworthiness standards of Part 23 do not contain adequate or appropriate safety standards for the novel and unusual design features of the Beech Model 2000 airplane.

Type Certification Basis

The type certification basis for the Beech Model 2000 airplane is as follows: Part 23, effective February 1, 1965, as amended by amendments 23–1 through 23–28 and §§ 23.2 and 23.785 as amended by amendment 23–32, effective December 12, 1985; Special Federal Aviation Regulations (SFAR) No. 27, effective February 1, 1974, as amended by amendments 27–1 through 27–4; Part 36, effective December 1, 1969, as amended by amendments 36–1 through the amendment effective on the date of type certification; exemptions, if any; and the special conditions amendment adopted by this rulemaking action.

Discussion of Comments

There were seven sets of comments received by the FAA in response to Notice No. 23–ACE–11. Comments were received from the Air Line Pilots Association, Beech Aircraft Corporation, Cessna Aircraft Company, the Civil Aviation Authority of Great Britain, the Department of Aviation of Australia, the General Aviation Manufacturers Association, and the Fairchild Aircraft Corporation.

Several comments did not address specific proposed special conditions but were of a general nature. These comments are addressed first, and comments directed toward specific proposed special conditions follow.

One commenter contends that many of the proposed regulations are precedent setting, are unnecessary, and place a severe and unnecessary economic burden upon both the manufacturer and user of small airplanes. This unnecessary, additional burden makes it extremely difficult for the U.S. aviation manufacturers to maintain competitive leadership in an international arena of competition. The governmental partnership of the foreign competitor allows him to develop a competitive airplane without assuming the entire cost of these additional burdens, whereas 100 percent of the expense must be borne by the U.S. aviation manufacturers. This unnecessary, economic additional burden will require more complex airplane systems that will dictate expanded master minimum equipment list requirements for dispatch, thereby increasing the probability of preventing attainment of the airplane's full potential utility.

Finally, the commenter states that these more complex systems will also create unnecessary, additional operating costs in maintenance to the users of small airplanes over and above that of present Part 23 airplanes.

The FAA disagrees that these special conditions are unnecessary but does agree that they are precedent setting to the extent that the Beech Model 2000 airplane is precedent setting to the aviation industry. These special conditions do not require more complex systems. They are necessary to address the more complex novel or unusual design features of the Beech Model 2000 airplane and are essential to assure a level of safety for those design features equivalent to that envisioned by Part 23 for less complex designs.

Discussion of the financial involvement of foreign governments in the development of airplanes is not considered in the promulgation of Federal Aviation Regulations. However, for U.S. certification, the FAA is obligated to promulgate similar requirements for similar design features, notwithstanding whether the airplane is domestic or foreign.

It is not clear to the FAA how the economic issues cited by the commenter relate to the complexity of the airplane. The commenter did not provide sufficient information for the FAA to properly address the commenter's contention.

That commenter further contends that the FAA has attempted to change some of the Airworthiness Regulations through the normal rulemaking process without success. That commenter further contends that the FAA is seizing this opportunity to circumvent the normal process for changing rules by

imposing these regulations as special conditions upon the Beech Model 2000, because, in the FAA's view, present regulations are insufficient. That commenter does not agree that present regulations are insufficient, and contends that application of these special conditions to augment perceived deficiencies is then in effect, specific rulemaking to set the stage for application of special conditions as rules to be applied generally. Therefore, the commenter contends that changes of this magnitude should follow normal rulemaking channels and is totally inappropriate for inclusion in these special conditions.

Another commenter contends that the proposed special conditions appear to indulge subjective opinions of what some personnel wish regulations to be, rather than special conditions constrained by the boundaries specified in § 21.16.

The FAA disagrees that the intent of these special conditions is to circumvent the normal process for changing rules. These special conditions address the novel or unusual conditions described in Notice 23–ACE–11 for the Beech Model 2000 airplane for which Part 23 does not contain adequate or appropriate safety standards and are, therefore, within the boundaries of § 21.16. When the FAA determines that, as a result of changes in the aviation industry, a need exists to amend Part 23 to include requirements which address such design features, changes will be proposed using appropriate rulemaking procedures.

One commenter urges the FAA to expedite updating the rules themselves because the continued technique of the FAA setting forth design conditions on an ad hoc basis for each new design is not consistent with the avowed purpose and mission of FAA.

The FAA disagrees. When a design consists of novel or unusual design features and the Administrator finds that the airworthiness regulations do not contain adequate or appropriate safety standards for those design features, special conditions are appropriate and are within the boundaries of § 21.16. Promulgating rules, even if quickly accomplished, would not apply to the design in question because of the provisions of § 21.17.

Two commenters identify specific requirements and question why they were omitted from the special conditions. These commenters contend that additional requirements should be imposed for:

1. Windshield bird-strike tests, similar to § 25.775(b).

2. Quick-donning oxygen equipment for the crew, similar to §25.1447(c)(2), and

3. Bird-strike requirements for the forward wing.

In the case of both the windshield bird-strike test and the quick-donning oxygen equipment, the FAA finds no related novel or unusual design features on the Beech Model 2000 airplane sufficient to justify application of § 21.16. In the case of the bird-strike requirement on the forward wing, the FAA is unaware of an increase in the probability of a bird striking the horizontal surface simply because the surface is mounted forward instead of aft on the airplane. Since Part 23 has no such bird-strike requirement on an aft mounted horizontal surface, imposing one on the forward surface would be beyond the level of safety of Part 23. However, the FAA recognizes the criticality of windshield and empennage bird-strike on flight safety. The FAA is considering inclusion of appropriate requirements in future rulemaking.

One commenter observes that crew requirements are not addressed in Notice 23–ACE–11 and suggests that the special conditions include the requirement for a type-rated pilot. The FAA makes findings for minimum crew and the need for a type rating based on certification and operating requirements and the crew complement request by the applicant. Predetermining such findings by special conditions is inappropriate.

One commenter contends that the comment period chosen for these special conditions is too short. The FAA recognizes the need to provide sufficient time to allow the public to comment on proposed special conditions and also recognizes the need to provide the manufacturer with a firm certification basis in a timely manner. The comment period chosen was considered the best compromise for all parties.

One commenter agrees that Part 23, as written, is inadequate to deal with the complexities and the technically advanced nature of the Beech Model 2000 systems and states that the special conditions enhance the certification requirements and should lead to a safer airplane. That commenter is, however, concerned that, in the future, this airplane or its derivative will be operated with ten or more seats, excluding pilots seats, and may be used to carry revenue passengers. That commenter opposes the certification of any such airplane by Part 23 instead of Part 25.

The FAA has found that the Beech Model 2000, as presently proposed to the FAA, is eligible for certification using Part 23 requirements and the number of passengers is not at issue in these special conditions. If Beech had desired certification to other than the normal category of Part 23, Beech could have requested such in their application.

One commenter, in response to Special Condition No. 1, Longitudinal and Lateral Control, states that key words such as "either" or "or" should be inserted into the proposed special condition to clearly define that conditions (a) and (b) are not required to be done together. The FAA agrees that conditions (a) and (b) are not required to be accomplished concurrently. The use of key words like "either" or "or" would provide Beech with the option to accomplish either (a) or (b), but not both. The intent of the special condition is to require demonstration of both paragraphs (a) and (b) individually but not necessarily concurrently.

Another commenter refers to existing Joint Airworthiness Requirements (JAR) 25.145(e) and contends that the JARs have always assumed that adequate roll control is provided by the directional control in the event of failure of the lateral control. That commenter states that the assumption continues to be made for the Beech Model 2000 and questions whether such an assumption is valid.

The FAA is obligated to assure that the special conditions provide a level of safety consistent with the certification basis of the airplane, in this case, Part 23. This special condition requires that the Beech Model 2000 be able to establish a zero rate of descent in a landing attitude with a single link failure in the longitudinal and lateral control system similar to the requirement in existing § 23.145(e)(2)(ii) related to a single link failure in the primary longitudinal and directional control system. Accordingly, this special condition is adopted as proposed.

One commenter contends that proposed Special Condition No. 2, Buffet Onset Envelope, will require extensive testing and is precedent-setting for a Part 23 airplane. That commenter contends that at least one airplane has been certificated recently without having to comply with a similar regulation, even though that airplane operates at higher maximum speeds at the same maximum attitude as the Beech Model 2000. That commenter contends that the FAA should delete this proposed special condition due to lack of justification.

Another commenter states that the proposed criteria of this special condition is consistent with counterpart criteria administered under § 25.251(e) and § 25.1585(c). That commenter also

states that the criteria of this special condition is appropriate.

The FAA does not agree that this special condition lacks justification nor that it is precedent-setting. This special condition is identical to the requirements imposed on the Lear Fan Model 2100 airplane (48 FR 21882). The FAA position remains that the information determined as a result of this special condition is intended to show the operator those altitudes, airspeeds, weights, and center of gravity locations which the airplane may be capable of attaining by virtue of its performance but which should be avoided due to buffet onset. The first commenter does not provide specific information to support the claim relative to a previous certification without a similar requirement. However, notwithstanding previous certifications, the FAA has determined that establishment of a buffer onset envelope is necessary because the Beech Model 2000 will be operated at high altitudes where stall-mach buffet encounters are likely to occur. The FAA recognizes that the extent of testing necessary to establish this envelope may vary depending upon the margins determined during testing. Accordingly, this special condition is adopted as proposed.

Three commenters responded to Special Condition No. 3, Inadvertent Excursions Beyond Maximum Operating Speeds. Two commenters contend that this proposed special condition exceeds the level of safety for Part 23. The FAA disagrees. Sections 23.321 through 23.341 combine to define the flight envelope for the airplane. This special condition requires demonstration of the ability of the flight crew to promptly recover from speed excursions within that envelope. The ability to pull at least 1.5 *g*'s positive load factor is considered a minimum value to assure that the airplane speed does not continue to a value where recovery may not be achievable by the average pilot.

One commenter contends that this special condition would be better shown as a specific finding under § 23.253. The FAA is aware of the latitude of specific findings. However, the FAA has determined that without this special condition, no basis would exist for imposing such a required demonstration. Therefore, establishment of this special condition is appropriate.

One commenter states that the ability to pull 1.5 *g*'s could be proven by wind tunnel data and that commenter can see no reason to flight test at various weights. The FAA agrees that wind tunnel data can be used to help identify critical conditions but has determined that flight testing is necessary to assure the ability of the airplane to pull 1.5 *g*'s at critical conditions.

Two commenters contend that the demonstration of the ability to pull at least 1.5 *g* at V_D/M_{DF} exceeds the practice of Part 25. One of these commenters stated that the proposed special condition would require upset demonstrations at V_D/M_D and that demonstration to V_{DF}/M_{DF} is more appropriate. Another commenter does not define a particular reduced value of airspeed but does recommend that the demonstration speed be reduced below V_D. The FAA agrees that demonstration to V_{DF}/M_{DF} is more appropriate. The special condition is adopted with the reduction of demonstrated airspeed from V_D/M_D to V_{DF}/M_{DF}

Four commenters responded to Special Condition No. 4, Effects of Contamination on Laminar Flow Airfoils. Three commenters contend that the special condition does not have sufficient justification and should be withdrawn. One of those commenters contends that insufficient justification is presented as to where Part 23 is inadequate. The FAA disagrees that insufficient justification is provided. As stated in Notice 23-Ace-11, airfoil sections whose performance and flying qualities are substantially degraded by contamination which would normally be encountered in service were not envisioned in Part 23 requirements.

One commenter states that this special condition exceeds the level of safety of Part 23. The FAA disagrees. The special condition requires that any reductions in handling qualities or performance caused by the loss of natural laminar flow be identified and requires that the airplane comply with existing Part 23 requirements with those reductions.

Two commenters state that natural laminar flow is not new to Part 23 airplanes. One of these commenters contends that natural laminar flow has existed or certificated airplanes for over twenty years, has been operational for over forty years, and that natural laminar flow airfoils are not new to Part 23; only the recognition of natural laminar flow is new. The other commenter contends that natural laminar flow has been used in Part 25 airplanes, yet no such requirements have been imposed. The FAA understands that initial claims made during development of the Beech Model 2000 airplane implied that substantial performance would be gained by natural laminar flow. National Aeronautics and Space Administrative (NASA) research has indicated that certain natural laminar flow airfoils exhibit substantial differences in performance with and without natural laminar flow and the FAA is aware that certain experimental airplanes have exhibited these characteristics. The FAA cannot dictate the choice of airfoil section used on the airplane. However, notwithstanding previous certifications, the FAA is obligated to assure, by this special condition, that regardless of what airfoil section is chosen, the airplane exhibits safe and predictable characteristics throughout the operational envelope.

One commenter notes that NASA has shown that contamination could effect natural laminar flow, but contends that such effects are not typical of natural laminar flow airfoils. That commenter contends that NASA research indicates that airfoils can be designed without separation under turbulent boundary layers. Another commenter states that tests conducted by that commenters' company indicates that the critical performance deterioration contemplated by the special condition does not exist on contemporary airfoils and that the company was not aware of others having such deterioration experience. The FAA agrees that some natural laminar flow airfoils exist that do not have significant characteristic changes with boundary layer tripping. Since the choice of airfoil sections is left to the applicant, the proposed special condition requires demonstration that the performance of the airplane is not degraded by contamination on the airfoil and requires tests or analysis supported by tests to verify that the airplane complies with §§ 23.141 through 23.253 with contamination which would normally be encountered in service and which would cause significant adverse effects due to loss of natural laminar flow.

Two commenters express concern about the extent of effort necessary to show compliance with this special condition. One of these commenters asks the FAA to provide a clear definition of the tests and documentation necessary for compliance. The FAA considers that, at a minimum, full-scale flight testing should not be reduced below the amount necessary to prove the credibility of the wind tunnel test data. Full-scale tests beyond that minimum will be necessary if significant variations from wind tunnel test results are identified.

One commenter agrees that the FAA has properly required that compliance be shown for flight handling quality changes resulting from the loss of natural laminar flow but contends that performance losses should be determined and that those losses should be built into the basic performance data,

not simply offered as incremental corrections as implied in the special condition. The FAA disagrees that the special condition relieves the applicant from determining significant performance losses. The FAA agrees that the proposed special condition allows for incremental corrections to the performance data but disagrees that this procedure is inappropriate so long as those increments do not reduce the airplane performance below the minimum performance requirements of Part 23. The FAA recognizes that, for particular operational conditions (e.g., takeoff), it may be necessary to include these increments in the basic data to minimize the possibility of misinterpretation by the crew. In other operational conditions (e.g., cruise), incremental corrections alone may be appropriate. Accordingly, this special condition is adopted as proposed.

Five commenters responded to the Special Condition No. 5, Evaluation of Composite Structure. One commenter agrees that the current airworthiness requirements should be revised to include compostite fabrication methods but stated that the proposed special condition is too detailed and is written with only one means of compliance in mind. That commenter contends that regulations should state the basic requirements and limitations which the manufacturerer and the FAA use to develop agreeable interpretations and alternate methods of compliance. That commenter contends that the special condition should be rewritten and shortened to outline the requirements and leave the fabrication methods and design to the manufacturer. The FAA agrees that the proposed special condition is necessarily detailed and recognizes that the proposed special condition appears to restrict the applicant's use of the fatigue strength criteria presently in Part 23. It was not the intent of the FAA to go beyond the level of safety, but rather to provide an equivalent level of safety to that envisioned for Part 23 airplanes in § 23.571 Pressurized cabin, and in § 23.572 Wing and associated structured. Current criteria as developed for metals which have similar strength properties for in-plane and out-of-plane loads, known toughness properties, and known durability which has been established from many years of testing and experience. In contrast, graphite composite materials being used on the Beech Model 2000 airplane exhibit widely varying strength properties for in-plane and out-of-plane loads as well as toughness properties and durability that differ significantly from commonly used metals. Furthermore, composite materials are known to be susceptable to damage during manufacture and in service; while metals, when built into airplane structure as envisioned in §§ 23.571 and 23.572, are not likely to be so adversely affected. Because of these major differences in material physical properties, a thorough investigation is necessary to determine the ability of that airframe to withstand repetitive loads as well as damage likely to occur. The FAA has determined that, at this time, damage tolerance criteria is the only method that can readily be used to accomplish the necessary investigation for repetitive loads and damage. If subsequent information, not now available to the FAA, justifies use of different criteria, the applicant may elect, or if necessary, be required to comply with that criteria. Such action would be by amendment to these special conditions.

Two commenters contend that the proposed special condition is not sufficiently justified. One of these commenters states that the proposed special condition exceeds the boundaries of § 21.16 and questions the need to codify criteria similar to that contained in existing advisory material. In support of this position, the commenter notes that Advisory Circular (AC) 20–107A addresses composite structure and was developed as and acceptable means of compliance with requirements already in the existing rules.

The FAA disagrees that the justification for the proposed special condition is insufficient. The use of advanced composite materials and extensive bonding of these materials in primary flight structure is clearly a novel and unusual design feature with respect to the type of airplane construction envisioned by the existing airworthiness standards of Part 23 and is therefore within the scope of § 21.16.

At the request of industry, the FAA developed AC 20–107 to indicate how current standards could be implemented to take into into account the unique characteristics of composites. This was intended to be an interim measure to handle the application of composites to designs envisioned at that time and until a body of experience with the new materials could be developed. Since the development of AC 20–107 in 1978 and its revision as AC 20–107A in 1984, additional experience has been gained.

Although the Lear Fan Model 2100 Special Conditions (48 FR 21882) were in place when the 1984 revision was issued, the FAA considered in 1984 and continues to consider that all-composite airplanes are a special condition issue and that the applicable airworthiness requirements must be appropriately amended before such airplanes can be certified without special conditions. The FAA will review AC 20–107A in light of the additional experience gained and will revise the advisory circular to clarify its intended use. It is expected that a further revision will be necessary after applicable airworthiness reqirements are amended.

One commenter states that the wording of proposed special condition 5(h) prohibits the use of a non-destructive inspection techniques which assures the ultimate strength of each bonded joint and suggests changing "in lieu of" to "in the absence of." Another commenter is unaware of the existance of any such non-destructive inspection technique and interprets the special condition to therefore require proof-testing of all production joints. The FAA recognizes that currently no reliable non-destructive inspection technique exists to identify "weak bonds." However, the wording of the special condition is chosen to allow such an inspection technique if and when one is developed. The FAA finds that the wording of the special condition is appropriate as written. The FAA disagrees that proof-testing is the only other option available if non-destructive testing techniques are not reliable. Paragraph 5(h)(1) of the proposed special condition allows for design features that prevent disbonds from becoming greater than those maximum disbonds beyond which the structure can no longer support the loads specified in the special condition. Features such as mechanical fasteners or redundant designs satisfy the intent of such design features.

Three commenters express concern regarding the proposed proof-test requirement of paragraph (5)(h). One commenter states that the state-of-the-art practice is to assure the consistent performance of joints through careful control of processes and materials. Without this option, the commenter contends, limit load testing of production joints, including multiple loadings to cover all applicable loading directions, is not economical and produces opportunities for inadvertent overloads or for the creation of unobserved residual damages caused by the test itself. Another commenter states that such proof-testing provisions were not discussed or considered in government/industry review of AC 20–107A. That commenter expresses concern at the seemingly lack of confidence displayed by the FAA in

considering one of the major technological breakthroughs in recent years and requests serious reconsideration of the need for a proof test.

A third commenter recommendes that the special condition be modified to require the establishment of post-test procedures to ensure detection of any partial bond failures caused by application of the proof loading. That commenter suggests comparisons of pre-test and post-test resonant frequencies as a possible solution.

The FAA recognizes that the proof-test option is a stringent approach to assure that the airplane meets the minimum safety requirements of Part 23. The criticality of particular bonded joints, the inability to inspect the integrity of "weak bonds" by non-destructive means, and the lack of industry experience in manufacturing critical airfame major structures using such joints justifies FAA's current position. The FAA has found that failed or separated bond lines can be discovered by non-destructive inspection techniques but that bond lines that are intact but are under-strength cannot. The proof test will assure that bond lines that remain intact will carry limit load. The FAA relies on post-test, non-destructive inspection techniques to discover bond lines which have failed or separated during the load test. The FAA agrees on the need for accomplishment of post-test inspections but does not intend to regulate particular test methods.

One commenter suggests that paragraph (5)(j) be amended to read "The airplane must be shown by analysis to be free from flutter up to V_D with stiffness variations that reflect all possible combinations of damage for which residual strength is demonstrated." That commenter emphasizes that in such case, it would not be necessary to show flutter integrity to $1.2V_D$ with damage, but notes in such condition, it would be appropriate to consider a range of stiffness variations for different components, not merely consider uniform reductions in the total structure.

The FAA agrees that analysis showing freedom for flutter to V_D is sufficient for stiffness variations resulting from damage for which residual strength has been demonstrated. The special condition has been amended accordingly. However, the FAA considers that requiring demonstration of freedom from flutter with stiffness variations that reflect all possible combinations of multiple failures to be beyond the intent of this special condition. The FAA expects that single failure criteria will be applied without assuming a totally damaged airplane and that multiple failures which result from a single source of damage should be considered as a single failure.

Two commenters responded to the Special Condition No. 6, Forward Wing and Vertical Tail Loads. One of the commenters contends that the word "flight" should be removed from the second sentence in subparagraph (6)(a) to allow the use of wind tunnel data to validate load intensities and distributions. In support of that position, the commenter agrees that loads methods must be verified, but contends that flight testing is only one acceptable method. That commenter states that wind tunnel data is more consistent and of a higher quality than flight test pressure data. Additionally, that commenter contends that Beech has compared analysis versus wind tunnel data and analysis versus flight test data and has excellent agreement between flight and wind tunnel verfication methods. The FAA has concluded that flight testing is not the only acceptable method to verify load intensities and distributions over the various aerodynamic lifting and control surfaces. The FAA disagrees that the proposed special condition restricts validation to that method alone. However, as stated in the special condition, any other method chosen must be shown to be reliable or conservative for the configuration under consideration. Because of the unusual aerodynamic configuration, the FAA expects that some validation by flight test will be necessary.

One commenter supports the proposed special condition by noting that it is appropriate for the Beech Model 2000 and is consistent with yet-to-be-published FAA proposed rule changes resulting from the 1984 Part 23 Airworthiness Review.

One commenter addresses the proposed Special Condition No. 7, Doors and Exits. That commenter contends that the proposed special condition does not sufficiently justify why Part 23 is inadequate. The commenter states that it appears that the proposed special condition is extracted from § 25.785(e) without regard to differences between large and small airplanes. The commenter disagrees that the visual warning means required by subparagraph 7(c) is appropriate for small airplanes. The commenter states that such a warning is appropriate for large airplanes where the flight crew is remote from any of the multiple entries provided, but for small airplanes where the principal entry is close to the cockpit, the visual means of verification required by paragraph 7(b) is sufficient.

The FAA disagrees. Current Part 23 does not contain any airworthiness standards for the door latching and locking mechanisms. The visual warning means includes exits as well as doors. The FAA finds that the criteria provided for direct visual inspection of the locking mechanism and the visual warning means to signal a flight crewmember if any external door or exit is not fully closed and locked is consistent with the level of safety of Part 23 and is not contingent upon the door or exit location relative to the crew. Accordingly, the proposed special condition is adopted as proposed.

Two commenters responded to Special Condition No. 8, Flap Interconnection With Related Movable Surfaces. One commenter contends that since the main wing flaps and related movable surfaces must either be synchronized by mechanical connection or maintain synchronization so that the occurrences of an unsafe condition has been shown to be extremely improbable, the reliability levels between the two options should be consistent with or dictated by the same reliability levels stated in current § 23.1309. The commenter states that the reliability level identified in the proposed special condition as "extremely improbable" should be changed to "extremely remote." The other commenter contends that the term "extremely improbable" implies a requirement to demonstrate compliance to a 10^{-9} probability factor. That commenter states that the preamble text should clearly state that compliance could be shown by providing a non-critical Failure Modes and Effects Analysis (FMEA) without requiring exhaustive numerical analysis.

The reliability levels of current § 23.1309, and what was envisioned when current § 23.1309 was promulgated, were discussed in the Notice No. 23–ACE–11 relative to proposed Special Condition No. 13 and is further addressed in the disposition of comments to proposed Special Condition No. 13. To restate briefly, current § 23.1309 did not envision systems whose failure could prevent contained safe flight and landing of the airplane. Typically, asymmetric flap positions are critical to continued safe flight and landing. Therefore, § 23.701 requires a mechanical interconnect to assure asymmetric flap positions between the two sides of typical small airplanes do not occur, unless it is demonstrated the airplane can be safely flown with maximum asymmetric flap conditions.

This intent is carried into this special condition and wherein means other than mechanical interconnection are allowed, provided the level of safety intended by the mechanical interconnect requirement of current § 23.701 is maintained. As stated relative to resolving comments on proposed Special Condition No. 13, the occurrence of a failure of any system critical to continued safe flight and landing must be at least extremely improbable. Also, as stated relative to Special Condition No. 13, use of the term extremely improbable in small airplane certification is related to a failure which would create an unsafe condition and, therefore, could not be accepted. This term does not mandate a numerical analysis, but allows use of such analysis if the applicant finds it necessary to show compliance with the applicable requirement.

Relative to the recommendation to use the term "extremely remote", the FAA has determined that the use of "extremely remote" addresses less critical events than those where the term "extremely improbable" is used in these special conditions. The term "extremely improbable" is more widely used in airplane certification and is consistent with previously issued small airplane special conditions, as well as Special Condition No. 13 herein.

One commenter contends that the language chosen in the proposed special condition is confusing with respect to the differences between "individual moveable surfaces" and "considered as a single surface." The FAA expects the level of safety provided in the proposed special condition to be equivalent to that envisioned in existing § 23.701(a). Section 23.701(a) requires mechanical synchronization of flaps unless the airplane has safe flight characteristics with flaps retracted on one side and extended on the other. Similarly, one option of the proposed special condition requires the airplane to have safe flight characteristics with any combination of extreme positions of moveable surfaces unless those surfaces are mechanically connected. The FAA recognizes that requiring demonstration of relative movements between mechanically interconnected surfaces would not be consistent with the level of safety envisioned in existing Part 23, and, therefore, is not required.

Two commenters responded to Special Condition No. 9, Propeller Ground Clearance. One commenter contends that existing § 23.925 is adequate for the Beech Model 2000 airplane and that the special condition is unnecessary. Another commenter contends that since the proposed special condition would require only "positive" ground clearance of the propeller when the airplane is at the maximum pitch attitude attainable normal takeoffs, it provides less clearance than the seven inches specified in § 23.925(a). That comenter states that in the case where pilot action can reduce the ground clearance, the requirement should be more closely comparable to the clearance requirements for tail wheel airplanes where the required clearance is nine inches. That commenter states that the FAA should not accept a zero clearance since a flat tire, collapsed shock absorber, or runway surface irregularities can lead to a propeller ground strike with attendent unsafe conditions.

The FAA has determined that § 23.925 is not adequate to address propeller ground clearance for the Beech Model 2000 airplane because of the aft location of the propellers. The proposed special condition defines requirements in addition to existing § 23.925. Existing § 23.925 requires at least seven inches clearance between the propeller and the ground in the normal takeoff attitude and a positive clearance with the critical tire deflated and the strut bottomed.

In addition to those requirements, the FAA has proposed to require that a positive clearance exist between the propeller and the ground when the airplane is in the maximum pitch attitude attainable during normal takeoffs and landings. The FAA recognizes that pilot action can reduce the ground clearance for aft-mounted pusher propellers in a manner similar to, but opposite from, that of a tail wheel configured design. The intent of the proposed special condition is to provide for the case of over-rotation of the airplane under normal takeoff conditions. FAA's choice of the term "normal takeoff" was intended to preclude the need to demonstrate propeller clearance during abnormal conditions where both the tail and wing tip would be nearly in contact with the ground.

One commenter states that tail bumpers have been installed on tricycle landing gear configured airplanes for purposes other than protection of propellers. That commenter contends that the industry has been certifying airplanes with tail bumpers for a long time without a regulation for tail bumper loads. The FAA recognizes that tail bumpers are not in themselves a new feature, but the FAA considers the protection of the propellers a critical issue and, as such, finds that appropriate design standards must be developed. The proposed special condition is adopted as proposed.

No comments were received relative to Special Condition No. 10, Propeller Marking. The special condition is adopted as proposed.

One commenter responded to Special Condition No. 11, Propeller Ice and Exhaust Impingement Protection. That commenter agrees that the concern for structural integrity of the propeller during icing encounters appears to be valid but states that the requirement of subparagraph 11(a) is too broad, lacks identifiable boundaries, and could result in administration that could exceed reasonable and economically feasible considerations. The commenter states that Part 35 Airworthiness Standards: Propellers, does not establish size or quantities of ice that can be shed into the propeller without unacceptable damage. That commenter contends that the proposed special condition could be interpreted to prohibit any ice, regardless of how minor, from forming ahead of the propeller. Further, that commenter argues "forward" could involve all areas forward of the propeller not just those areas directly forward. The commenter recommends that the FAA establish boundaries to limit the areas of consideration to those within a range of striking the propellers and that the FAA establish lower limits on the size of ice particles to be considered.

The FAA does not agree that the criteria for ice impingement on the propeller is too broad. The proposed special condition is intentionally general to allow the applicant the option of either showing that ice will not accumulate or will not create a hazardous condition if it does form and is shed into the propeller disc. The FAA disagrees that this includes all areas forward of the propeller. The intent of the special conditions is to include only those areas forward of the propeller disc which are likely to accumulate ice, and are then likely to shed that ice into the propeller. The minimum size of ice is dependent on the airplane design and can be determined by analysis and tests but should not be determined by regulatory means. The special condition is adopted as proposed.

One commenter responded to Special Condition No. 12, Cockpit Smoke Evacuation. That commenter agrees that the wording of this special condition is acceptable because it is taken directly from § 25.831(d), and that the commenter's company has voluntarily been complying with § 25.831(d). The commenter states that simply adding an established airworthiness standard of

Part 25 to the certification basis of a Part 23 airplane in lieu of a special condition, would significantly reduce the issue paper/special conditions process of airplane type certification.

The FAA recognizes that simply adding a Part 25 requirement to the certification basis of a Part 23 airplane would reduce the special conditions process. The FAA also recognizes that such a procedure has been used as standard practice by the FAA in previous years. However, the significant increase in requests to add requirements from airworthiness Parts not applicable to a particular small airplane certification project resulted in a review of how this practice started and what was its effect.

As a result of this review, the FAA has determined that this practice is not appropriate for the future certification of small airplanes. The FAA will establish the certification basis for small airplanes consistent with the applicable requirements which are contained in Part 23 and any additional requirements in accordance with § 21.16.

Four commenters responded to Special Condition No. 13, Instruments, Systems, and Installations. Some of the comments were of a general nature, some spoke to preamble material and some spoke to specific issues in the special condition. The general comments are addressed first, those relative to the preamble next, and those relative to specific requirements last.

One commenter contends that the FAA is using the issue of cathoderay tube (CRT) displays to impose § 25.1309 (transport category requirements) on the whole Part 23 airplane (small airplane). The issue that resulted in Special Condition 13 is the inclusion of complex systems in this airplane that may be safety critical systems. Such systems were not envisioned when the applicable small airplane airworthiness requirements were promulgated. The Electroinc Flight Instrument Systems (EFIS) and Engine Indicating and Crew Alerting System (EICAS) planned for use in this airplane (both use CRT displays) are complex systems that may be critical to safe flight. Other systems in the airplane may be complex and/or may be critical to safe flight due to dependence on these systems or due to their effect on other systems. The features of this airplane, the composition of the crew, and the degree of dependence of the crew on each system for safe operation in normal and emergency conditions effect the criticality of such systems. If the analysis shows a system's various failure modes would not adversely effect safe flight of the airplane, the system would not be required by the special condition to provide a level of safety above what is now required for system in small airplanes. The NPRM discussed the EFIS and EICAS features, the basis for the FAA considering these systems complex, and pointed out that the small airplane airworthiness requirements, as now promulgated, did not envision complex or safety critical systems other than those systems that were not considered to have a failure mode due to the mechnical design requirements (mechanical interconnect of flaps, etc.).

One commenter contends the special condition does not provide for equipment properly qualified to a Technical Standard Order (TSO). The FAA disagrees. A TSO is a general requirement that may or may not be suitable for this airplane. The TSO process allows prior determination that an article complies with specific performance requirements in specific environmental conditions. At the time of installation in an airplane, it remains necessary to determine that the airplane environment for the affected equipment is not more severe than that environment for which the equipment was previously quaified by the TSO process. Additionally, it must be determined tht the required TSO performance is adequate for the specific airplane's needs. This situation exists for installation of all TSO'd equipment with or without a special condition.

One commenter contends that FAA is overly concerned about CRT displays and EFIS, that loss of a CRT is similar to loss of an inverter in the previous generations of instrument systems, and that the response to a failure is similar to inverter loss in which case the pilot action would be to simply switch to the back-up inverter.

The FAA disagrees. The applicable requirements envisioned single-function instruments and were formulated such that, after a failure that caused the loss of one of these single functions, the remaining required instruments provided adequate information for continued safe flight to landing. With the complex systems proposed by Beech, multiple functions can be lost with a single failure or probable combination of failures. A failure of systems that have the greatly expanded capability are of concern to the FAA because the crew can become routinely dependent on the expanding functions, and the extent of failure could have a far greater effect on the crew's ability to function adequately with the instrumentation remaining after a failure. The crew action of switching to a back-up CRT moves the information to a different location on the instrument panel. Conversely, switching to a back-up inverter brings the information back to the crew as it was and in the same place as prior to the failure. The FAA does not consider these to be similar occurrences resulting in identical pilot actions.

One commenter contends that current "conventional" instrument systems have failure modes where a single malfunction or failure could affect more than the one primary instrument display or system and that such consequences of failures should be deleted from the special condition. Specific examples were not cited. The FAA is promulgating these special conditions relative to the applicable small airplane requirements and does not consider these applicable requirements to have envisioned instrument systems where a single malfunction or failure of an instrument system could adversely affect more than one primary instrument display.

One commenter considers applicability of the special conditions to "functions that are determined to be essential for continued safe flight" to be a reasonable concept but that a definition of "continued safe flight" is needed. This commenter also offers a definition of the phrase "continued safe flight and landing" to mean "that after the failure being considered, the airplane can be flown using the emergency procedures specified in the flight manual, without exceeding its normal operating limitations, to successful termination of the flight at an airport." The FAA agrees in concept with the commenter's recommendation. However, The FAA does not intend any different meaning or more restrictive definition for the phrase "continued safe flight and landing" in the special condition than what has been applied relative to the phrases "safe flight and landing" in § 23.655, "continued safe flight and landing" in § 23.621, and "continued safe flight" in § 23.1461. Recently, the Aerospace Industries Association of America, Inc., proposed that the phrase "continued safe flight and landing" as used in the regulation, means that the airplane is capable of continued safe controlled and stable flight and landing, possibly using emergency procedures but without requiring exceptional pilot skill or strength, allowing some airplane damage as a result of the failure condition either in flight or upon landing. The FAA has determined that the phrase is understood, it is objective and general, and the FAA does not propose to issue a definition in this special condition that would make the

requirement more narrow in scope than what the requirement encompasses in Part 23.

One commenter considers the "essential loads" requirement to be justified but, as stated, it is overly complicated and seems to extend beyond the intended applicability. This commenter did not clarify where the commenter considered the proposed requirement to extend beyond the intended applicability. The FAA has reexamined the proposed requirement for clarity and applicability. The FAA has also examined the wording of SFAR 23, Sections 59(c)(1), (c)(2), and (c)(3), as recommended by the commenter. The commenter's recommended wording considers engine failures but does not consider the effect of nonessential loads on operation of the power distribution system. The recommendation relative to reducing power loads is considered equivalent to proposed special condition paragraph (c). Therefore, no changes are adopted as a result of this comment.

One commenter considers the requirement on electronic display units to require a level of safety above that of Part 23, but that the requirement is acceptable. It is not the FAA's intent to raise the level of safety by issuing these special conditions. This special condition is intended to preclude degradation in the level of safety below that envisioned by the applicable requirements of Part 23 caused by use of features in the airplane design not envisioned when those applicable requirements were promulgated.

One commenter considers the FAA's justification for the special condition to be, in part, an understanding (by the FAA) that the method of compliance with § 23.1309 is somehow limited, and that the commenter's understanding of the rule does not indicate such a limitation. This commenter also considers current § 23.1309 to be adequate and that it should be applied (without a special condition). The FAA considers the means of compliance with current § 23.1309 to be limited to the means envisioned when it was promulgated. Section 23.1309 envisions single faults of single-function instrument systems whose failure (without a failure of a second system) would not be critical to continued safe flight. When system designs integrate functions of two or more instrument system such that a single fault can affect more than one instrument system, the FAA considers a failure of such a system to be potentially more critical to safe flight than those envisioned in § 23.1309 and that § 23.1309 is not adequate for such systems.

One commenter recommends requiring the EICAS display to switch "off" when any of the three CRT guns are lost to prevent any incorrect color presentation, because color is very significant on the EICAS. The FAA agrees that color is significant on the EICAS. However, due to the number of different colors being normally displayed, and, considering that failure of any of the three color guns would result in significant color changes that would be readily apparent to the flight crew, the FAA does not consider individual color gun monitors necessary for safety on the Beech Model 2000. After failure of one of the three color guns, information would continue to be displayed that is useful to the crew for monitoring and controlling the engines. If the manufacturer chooses to incorporate a color gun monitor into the EICAS design, such an optional feature would be evaluated for compliance with the special condition like other EICAS features.

One commenter contends that the FAA presentation of essentially equivalent draft special conditions for EFIS installations on different models of small airplanes indicates a less than thorough consideration of § 21.16 criteria in favor of a prejudged position on how Part 23 requirements could be improved through unrestrained expansion. This commenter further contends statements in the preamble (51 FR 11938) are clearly explicit in stating an intent to compel a level of safety higher than present Part 23, which is clearly contrary to the provisions of § 21.16. This commenter further contends systems more complex than those addressed in the proposed special conditions have achieved transport category airplane certification without special conditions.

The FAA is aware of many planned EFIS installations in small airplanes that are novel or unusual relative to the regulations applicable to the particular small airplane model affected. Until the regulations applicable to small airplanes can be amended to consider these novel or unusual features, the FAA must issue special conditions. Where like issues are being treated on different small airplane models, the FAA considers it necessary to promulgate like special conditions. The FAA is aware that systems as complex as proposed on the Beech Model 2000 (or more complex) have been approved on transport category airplanes without special conditions. The requirements in Part 25 applicable to transport category airplanes are different than the requirements in Part 23 applicable to small airplanes. The FAA has determined the requirements in Part 25 are adequate for certification of these systems in transport category airplanes. However, those Part 25 requirements are not applicable to small airplanes and, as repeatedly stated in the preamble to the proposed special conditions, the intent of these special conditions is to assure a level of safety equivalent to the requirements *applicable to small airplanes.*

One commenter considers it premature to lock in criteria for electronic displays through special conditions excessively tailored to a single design configuration, because the commenter contends that special conditions are nearly always the precursors of amendments to rules. This commenter expresses concern that these special conditions will preclude the development of alternative designs, or philosophies for presenting operating information to the crew. This commenter urges establishment of requirements that allow latitude for alternative designs and/or growth in presentation concepts.

The FAA is aware that overly specific requirements in amendments to the airworthiness requirements can prohibit alternative designs. In contrast, special conditions can be, and normally are, much more specific because they are limited to specific designs. In this special condition, the FAA has attempted to state the requirements objectively while the preamble describes the specifics of the design of concern. The FAA has concluded that this approach will leave the necessary latitude for alternative designs while maintaining the necessary consistency between designs.

One commenter does not consider the preamble sufficiently persuasive to show that existing Part 23 standards, including the provisions of current § 23.1309, could not be administered to achieve a level of safety consistent with the intent of the Federal Aviation Act, particularly considering the effects of presently applicable § 91.30 in the development of minimum equipment lists with attendant limitations or alternative procedures. This commenter does not identify specific issues in the preamble which the commenter does not consider persuasive; therefore, the FAA cannot provide a specific response. However, the FAA does not consider § 91.30 to be germane to the initial certification of small airplanes.

One commenter asserts the special condition proposal to require that ". . . there must be no probable combination of failures that would prevent continued safe flight and landing . . ." is consistent with present § 23.1309(b). Therefore, that commenter contends that

the proposal is unnecessary, opens the possibility of various interpretations which would be burdensome on the applicant, is not justified, and should be deleted. The FAA does not agree that present § 23.1309(b) is adequate for combinations of failures that may occur in the complex systems being incorporated into the Beech Model 2000. The preamble to Notice No. 23–ACE–11 describes the proposed installations which the FAA considers advanced complex systems and describes what types of systems and equipment were envisioned when § 23.1309(b) was promulgated. The FAA position that these are complex systems is shared by other members of the aviation community. In describing the Beech Model 2000 systems, one periodical recently stated, "Relying heavily on experience gained from its work on the Boeing 757/767 program, Collins developed a digital system that incorporates over 70 electronic Line Replaceable Units (LRU), 12 full-color, cathode-ray tube (CFT) displays and two monochromatic displays to provide the Starship pilot with an avionics system that goes well beyond what to date has been available in general aviation aircraft."

The FAA does not agree that various interpretations of the special conditions will result. Uniform policy and guidance relative to small airplane certification is the responsibility of a single FAA office; i.e., the Small Airplane Certification Directorate's Regulations and Policy Office in Kansas City, Missouri.

One commenter alleges that an inconsistency exists between the preamble and the proposed special condition because the special condition states "probable combinations" and the preamble states "extremely improbable combinations". The FAA has examined the preamble material that pertains to the proposed requirement and is unable to identify the alleged inconsistency.

One commenter, citing the FAA's position that the current § 23.1309 was promulgated based on the "single-fault" or "fail-safe" concepts, agrees the single-fault concept alone may have been used in the past for compliance substantiation but disagrees that current Part 23 is based on single-fault concepts because there is no reference to single fault in Part 23. This commenter also states the assumption that the Part 23 requirements are based solely on single-fault concepts is the interpretation of the FAA. This commenter further interprets the current § 23.1309(b) language to refer to probable malfunctions or failures of the equipment, systems, and installations. Further, because the malfunction of the system function must be considered, combinations of individual equipment malfunctions must be considered in addition to single faults. The commenter states the portion of Notice No. 23–ACE–11 pertaining to § 23.1309, as written, would require the same analysis, and is, therefore, covered by the present regulation.

Another commenter states that it is inappropriate for the FAA to imply that Part 23 regulations are defunct in providing for sufficient levels of reliability. Further, the implication that a special condition is needed to provide for requirements to assure adequate reliability of system design functions is unsubstantiated by the FAA.

The FAA is aware that many certifications have been made based on agreements between applicants and the affected FAA certificating office that a specific installation meets the level of safety intended by the applicable requirements without consideration of what was envisioned by the FAA when promulgating the applicable requirements. Such certifications resulted in significant variations in application of the requirements and in the failure to process special conditions even when they were required. The fact that "single fault" is not specifically referenced in the applicable requirements does not support the position that more than "single fault" was envisioned when the applicable requirements were promulgated. The objective statement of airworthiness requirements precludes specifically stating in the requirements all possible concerns considered in promulgation of a rule. However, the systems and equipment being installed at the time a rule was promulgated and their typical failure modes are clear indications of possible concerns considered in promulgating the rule. Section 23.1309(b) was promulgated into Part 23 December 20, 1973, and was based on § 25.1309 prior to Amendment 25–13 adopted on April 8, 1970. Earlier § 25.1309 was based on Civil Air Regulation § 4b.606 as amended by amendment 4b–6, effective March 5, 1962. The formulators of those airworthiness requirements clearly did not envision the systems and equipment being proposed for the Beech Model 2000. The FAA questions the commenter's interpretation of current § 23.1309(b) to be equivalent to the proposed special condition, as § 23.1309(b) and proposed special condition 13 are obviously significantly different, as described in the Notice No. 23–ACE–11 preamble.

Proposing a special condition does not imply the existing requirement is defunct for the features envisioned when the existing requirement was promulgated. The FAA set forth, in the preamble to Notice No. 23–ACE–11, its position that § 23.1309(b) was promulgated based on single-fault criteria and systems where single faults of the instrument system would cause the loss of only one function. The FAA further set forth the position that the single-function systems envisioned for Part 23 airplanes when § 23.1309 was promulgated were not complex systems. The FAA considers the systems described in the preamble to Notice No. 23–ACE–11 to be complex systems that may have failure modes that will result in loss of more than one instrument function. Further, that if such failure modes exist, their occurrence should be limited to a level commensurate to criticality of that failure to the continued safe flight of the airplane. The FAA position remains that existing § 23.1309(b) is not adequate for such complex systems and, therefore, a special condition is needed.

One commenter alleges that the FAA's position stated in the preamble implies complex safety-critical systems have not been used in small airplanes before the Beech Model 2000 project. That commenter contends that the present King Air Model 300 safety-critical systems possess the same level of complexity as the proposed Beech Model 2000 safety-critical systems. The FAA did not intend to imply complex and/or safety-critical systems had not previously been incorporated in small airplanes. Special conditions have previously been promulgated for small airplane safety-critical systems and, in many cases, may not have been promulgated when they should have been. Failure to promulgate special conditions on past programs does not relieve the FAA from the requirements of § 21.16.

One commenter does not agree that current small airplane regulations necessarily envision only single, isolated, and independent instruments for the engine indication function. This commenter considers engine instruments to aid in normal engine operation up to maximums, but does not consider engine instruments to be safety critical systems that cannot be failure compensated by other independent means; i.e., operation below maximums by control lever placement or by use of alternate information displays.

This commenter does not cite the basis for this position. The FAA has consistently applied §§ 23.901 and 23.903 to require independence between engines and other components affecting

the operation and safety of each engine. As with other small airplane instrumentation, the engine instruments being installed at the time the applicable rules were promulgated are clear indicators of what was envisioned by that requirement. The proposed special condition clearly allows combination of these various engine instrument functions into a single instrument system; i.e., the EICAS, contrary to the requirements of § 23.901 and § 23.903. Further, the proposed special condition does not predetermine that the EICAS is a safety critical system. The proposed special condition sets forth criteria to determine if the EICAS is a safety critical system, and if so, what must be shown to assure the intended level of safety is achieved.

One commenter incorrectly cites preamble material to justify removal of reference in the preamble to current regulations being based on single-failure concepts; i.e., § 23.1309. The FAA position remains that current § 23.1309 envisions systems and equipment such that any detectable single failure of an installed system or item of equipment would not be critical to continued safe flight. This commenter also states the term "back-up instruments" as used in the preamble has ambiguous meaning.

The FAA agrees that the term "back-up instruments" is not defined in the applicable requirements but, as used in the preamble, means instrumentation the pilot would look to for specific information to make a decision or take an action when the instrumentation that would be routinely monitored for this information has become unusable. For example, rate-of-turn, slip-skid, and airspeed (needle, ball, and airspeed) indicators are required by § 91.33 as basic instrumentation for IFR flight; however, they are "back-up instruments" for attitude information when the attitude instrument (gyro horizon) fails. Relative to the special condition, Beech may choose to provide back-up instrumentation in the form of redundant instrument displays for compliance with special condition paragraphs (a)(1) and (e)(2).

Another commenter states that engine instrument indication is provided to ensure that various engine parameters are not exceeded. The method of indication should not dictate the reliability levels, but rather, this function should be designed to provide the appropriate reliability level. Therefore, preamble reference to reliability levels of traditional engine instruments is unfounded and should be deleted. Furthermore, the commenter contends that these levels are specified adequately in the present § 23.1309 and should be reflected as such in the context of the discussion. The commenter also maintains that identification of complex safety critical systems, as well as the needed requirements, are mandated by present regulation, and therefore, the special condition is not necessary.

The FAA does not agree that engine instrument indications are limited to assuring that engine limits are not exceeded. These indications are used for routine controlling of the engines. The FAA agrees that the method of indication should not dictate different reliability levels; however, the FAA's position remains that when functions are combined into one system such that a failure can cause loss of multiple functions, such a system must have an increase in reliability over a system where only one function would be lost due to a failure. This increase in reliability must be commensurate with the criticality of having lost these functions.

One commenter states comparison of "rational analysis" and "numerical analysis alone" should be deleted.

The FAA did not compare the two analyses. As stated in the notice, the use of a rational analysis for safety assessment of systems does not mandate the use of numerical analysis. However, an applicant may find it beneficial to provide such a numerical analysis.

One commenter asks to whom does the FAA consider the "single-fault" criterion an unnecessary burden?

The FAA considers it an unnecessary burden on the applicant, because, under the criteria as envisioned by the applicable requirements, no single fault could cause loss of more than one function. The burden that would result is that the proposed systems for the Beech Model 2000 would not be approvable on a small airplane. The FAA considers this an unnecessary burden that necessitates promulgation of special conditions.

One commenter considers the specific language of the premable statement, "If it is determined that the airplane includes systems that perform more critical functions, it will be necessary to show that those systems meet more stringent requirements", to be inconsistent, to be contradictory, and to promote wide disparity of interpretation. This commenter contends the cited statement implies that if the "rational analysis" determines that the airplane includes systems that perform more critical functions, it will then be necessary to show that those systems meet more requirements; therefore, this analysis is not sufficient substantiation of compliance thereby requiring a numerical analysis.

The FAA has reviewed the cited material and does not agree with the commenter's position. Requiring increased level of showing adequate safety for an identified increased level of criticality of a system, relative to what is required for a system less critical to safe flight, in consistent with showing compliance with all airworthiness requirements.

One commenter disagrees with the preamble statement that, "Systems that perform a function that is needed for continued safety of flight and landing of the airplane, whose failure would be catastrophic, would be required to meet requirements that establish either that there will be no failures of that system, or that failure is extremely improbable." This commenter states that it is impossible to show that any system will have no failures; therefore, these words have no relevant meaning and should be removed. That commenter further states that extremely improbable levels of catastrophic failure are inconsistent with that for Part 23 multiengine airplanes and reference to that level should be removed. This commenter suggests current National Transportation Safety Board (NTSB) records should reflect an appropriate safety level.

The basic issue addressed in this comment is, "Should the FAA knowingly accept systems in small airplanes where analysis shows failures of that system would be catastrophic in the flight environment for which the system is designed to function and that such failures are likely?" Small airplane requirements have never permitted a known failure condition that would be catastrophic. That level of safety continues in these special conditions. If a system is critical to the safe operation of the airplane, and the system fails to perform its intended function, an unsafe condition exists. Accordingly, under the existing small airplane certification requirements, the FAA has no provisions for the approval of such a critical system and denial of certification is required. In contrast, a procedure has been developed and successfully used in the certification of critical systems on tranport category airplanes for almost fifteen years. This procedure, found in the transport category airplane reliability requirements, is based on the theory that if the airplane manufacturer can show that the function of this system is so reliable that its failure is never

expected to occur during the life of the design, the unsafe circumstance that would result from the system's failure does not need to be considered. The FAA recognizes that this theory does not preclude the occurrence of failures but that the likelihood of failures is reduced to an extremely low level.

Under the reliability requirements of the transport category, an extremely low level of failures has been identified as a level which is extremely improbable. When the transport category airplane manufacturer has found it necessary, the FAA has accepted numerical analysis procedures as a means of showing that these critical failures will not occur.

The FAA has not knowingly accepted any unsafe design feature in small airplanes and does not find any basis for accepting an unsafe feature in small airplanes incorporating complex systems of advanced design. The special condition provides criteria for evaluating complex systems to assure no unsafe features are incorporated into the Beech Model 2000 when such systems are installed. The commenter's proposal that the FAA consult NTSB records for an acceptable level of safety for small airplanes is unacceptable to the FAA. The NTSB records will show accidents caused by pilot error which is of no concern relative to these special conditions; the records will show accidents caused by various component failures, which must be corrected by design changes mandated by airworthiness directive action, if such failures are likely to occur in other airplanes of the same design; and the records will show other accidents not relevant to this issue.

One commenter states the preamble material on digital presentation ". . . is flawed and personnel of the Directorate must know it to be flawed from precedent experience in reviewing equivalent safety findings for digital displays in existing certificated aircraft." The preamble material cited by the commenter is ". . . may not provide adequate sensory cues to the pilot as to whether the numbers are increasing or decreasing, or a sense of how fast they are changing. A digital indication may not show the normal operating range or operational limits."

In April of 1981, the FAA Headquarters issued guidance to field offices relative to digital tachometers. This guidance stated "A digital display is not an acceptable replacement for a moving pointer tachometer." In August of 1984, the Small Airplane Certificate Directorate issued guidance that reaffirmed and expanded the guidance issued by FAA Headquarters in November 1981. The Small Airplane Certification Directorate records do not reflect any equivalent safety findings as cited by the commenter.

Relative to the proposed requirement "warning information must not tend to initiate crew action which would create additional hazards" one commenter stated "One cannot imagine how a requirement could be more vaguely stated or be more impossible to administer." This commenter knew of no means which could assure that crewmembers would not make errors in reading or interpreting warning information.

The FAA agrees there is no means to assure crewmembers will not misinterpret warnings. However, the proposed requirement stated ". . . must not tend to initiate . . ." which does not require the design to preclude crew members from making errors. To the contrary, it does require the warning system design be adequate for the crew to take immediate corrective action without further study as to criticality of warning, which engine, which system, etc., the warning applies to. The commenter does not recommend any specific clarification of wording.

Referring to paragraph (a)(4) of the proposed special condition, one commenter contends the method of compliance should not change or dictate the level of reliability of the system.

The FAA agrees the method of compliance should not affect the level of system reliability requirements. Proposed paragraphs (a)(1) and (e)(2) would require that no single failure or probable combination of failures could prevent continued safe flight while paragraphs (a)(4)(i) would allow such failures to be shown to be extremely improbable if a numerical analysis is used to support the engineering examination of the affected system.

The relaxation from a no-failure condition to allowing a showing of extremely improbable (or improbable, as appropriate) should have been in proposed paragraphs (a)(1) and (e)(2) rather than including the allowance only in proposed paragraph (a)(4). Accordingly, to clarify the requirement, proposed paragraphs (a)(1) is replaced by new paragraphs (a)(1) and (a)(2) that combine previously proposed paragraphs (a)(1), (a)(4)(i) and (a)(4)(ii). Proposed paragraphs (a)(2), (a)(3), and (a)(4) are renumbered (a)(3), (a)(4), and (a)(5), respectively. Renumbered paragraph (a)(5) is reworded to clarify its intent and paragraph (e)(2) is amended to reference paragraph (a)(1) for clarity of intent.

Conclusion

This action affects only one model series of airplanes. It is not a rule of general applicability and applies only to the series and model of airplane identified in these final special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety.

Citation

The authority citation for these Special Conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1254(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

Adoption of the Special Conditions

In consideration of the foregoing, the following special conditions are issued for type certification of the Beech Model 2000 series airplanes:

1. Longitudinal and Lateral Control

In lieu of compliance with subparagraph (e) of § 23.145, the following apply: By using normal flight and power controls, except as otherwise noted in (a), (b) and (c) of this paragraph, it must be possible to establish a zero rate of descent at an attitude suitable for a controlled landing without exceeding the operational and structural limitations of the airplane—

(a) Without the use of the primary longitudinal control system;

(b) Without the use of the primary directional control;

(c) If a single failure of any one connecting or transmitting link would affect both the longitudinal and lateral primary control system, without the use of those longitudinal and lateral primary control surfaces which would be affected by that failure.

2. Buffet Onset Envelope

In addition to the requirements of §§ 23.251 and 23.1585, with the airplane in the cruise configuration, the positive maneuvering load factors at which the onset of perceptible buffeting occurs must be determined for the ranges of airspeed or mach number, weight, and altitude for which the airplane is to be certificated. The buffet onset envelopes determined must be furnished as information in the airplane flight manual. This information must include envelopes of load factor, speed, weight, and altitude, which provide a sufficient range for normal operations. The buffet

onset envelopes presented may reflect the center of gravity at which the airplane is normally loaded during cruise if corrections for the effect of different center of gravity locations are furnished.

3. Inadvertent Excursions Beyond Maximum Operating Speeds

In addition to the requirements of § 23.251, it must be possible to achieve a positive load factor of 1.5 for recovery from inadvertent speed excursions beyond V_{MO}/M_{MO} and up to V_{DF}/M_{DF}, for each combination of weight, altitude and center of gravity.

4. Effects of Contamination on Laminar Flow Airfoils

In the absence of specific requirements for airfoil contamination, airplane airfoil designs which have airfoil pressure gradient characteristics and smooth aerodynamic surfaces which may be capable of supporting natural laminar flow must comply with the following:

(a) It must be shown by tests or analysis supported by tests that the airplane complies with the requirements of §§ 23.141 through 23.253 with any airfoil contamination which would normally be encountered in service and which would cause significant adverse effects on the handling qualities of the airplanes resulting from the loss of laminar flow.

(b) Significant performance degradations identified as resulting from the loss of laminar flow must be provided as part of the information required by §§ 23.1585 and 23.1587.

5. Evaluation of Composite Structure

In lieu of complying with §§ 23.571 and 23.572, and in addition to the requirements of §§ 23.603 and 23.613, airframe structure, the failure of which would result in catastrophic loss of the airplane, in each wing, wing carry-through, wing attaching structure, pressurized cabin, wing mounted vertical stabilizer, wing flap, and movable control surface must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (j) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aformentioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (k) of this special condition. Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (h) of this special condition.

(a) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; e.g., bond defects, or damage from discrete sources under repeated loads expected in service; i.e. between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operations and maintenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations must be documented in test proposals.

(f) The structure of the pressurized cabin must be shown by residual strength tests, or by analysis supported by residual strength tests, to be able to withstand the loads listed in subparagraphs (1) and (2) below, considered as ultimate loads, with damage consistent with the results of the damage tolerance evaluations.

(1) Critical limit flight loads with the combined effects of normal operating pressures and expected external aerodynamic pressures; and

(2) The expected external aerodynamic pressures in 1 g flight combined with a cabin differential pressure equal to 1.1 times the normal operating differential pressure without consideration of any other load.

(g) Each wing, wing carrythrough, wing attaching structure, wing flap, moveable control surface, and wing mounted vertical stabilizer structure must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(h) In lieu of a non-destructive inspection technique which assures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraph (f) and (g) of this special condition must be determined by analysis, tests, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof testing must be conducted on each production article which will apply the critical limit design load to each critical bonded joint.

(i) The effects of material variability and environmental conditions; e.g., exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(j) The airplane must be shown by analysis to be free from flutter to V_D with the extent of damage for which residual strength is demonstrated.

(k) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Impact damage in composite material components which may occur must be considered in the demonstration. The impact damage level considered must be consistent with detectability by the inspection procedures employed.

6. Forward Wing and Vertical Tail Loads

(a) In addition to the requirements of paragraph 23.301(b), the following shall be required: Methods used to determine load intensities and distribution over the various aerodynamic lifting and control surfaces must be validated by flight test measurement unless the methods used for determining those loads are shown to be reliable or conservative for the configuration under consideration.

(b) In lieu of paragraph 23.301(d), the following applies: The forward lifting surface of a tandem wing configuration must meet all the requirements of Part 23, Subpart C, "Structure," applicable to a wing.

(c) In lieu of § 23.331, the following apply:

(1) The appropriate balancing loads must be accounted for in a rational or conservative manner when determining forward and main wing loads and linear inertia loads corresponding to any of the symmetrical flight conditions specified in §§ 23.333 through 23.341.

(2) The incremental forward wing loads due to maneuvering and gusts must be reacted by the angular inertia of the airplane in a rational or conservative manner.

(3) Mutual influence of the aerodynamic surfaces must be taken into account when determining flight loads.

(d) In addition to the gust load requirements of § 23.341, the following applies:

The gust load factors for a tandem wing configuration must be computed using a rational analysis considering the gust criteria of § 23.333(c), or may be computed in accordance with § 23.341 provided the resulting load factors are shown to be conservative with respect to the gust criteria of § 23.333(c).

(e) In lieu of the balancing loads requirements of § 23.421, the following apply:

(1) A horizontal surface balancing load is a load necessary to maintain equilibrium in any specified flight condition with no pitching acceleration.

(2) Horizontal balancing surfaces must be designed for the balancing loads occurring at any point on the limit maneuvering envelope and in the flap conditions specified in § 23.345. The distribution in figure B6 of Appendix B of Part 23 may be used only on aft-mounted horizontal stabilizing surfaces unless its use elsewhere is shown to be conservative.

(f) In lieu of the maneuvering load requirements of § 23.423, the following apply:

(1) Each horizontal surface with pitch control must be designed for maneuvering loads imposed by the following conditions:

(i) A sudden movement of the pitching control, at V_A, to (1) the maximum aft movement, and (2) the maximum forward movement, as limited by the control stops, or pilot effort, whichever is critical.

The average loading of B23.11 of Appendix B and the distribution in figure B7 of Appendix B may be used only on aft-mounted horizontal stabilizing surfaces unless its use elsewhere is shown to be conservative.

(ii) A sudden aft-movement of the pitching control at speeds above V_A, followed by a forward movement of the pitching control resulting in the following combinations of normal and angular acceleration:

Condition	Normal acceleration(n)	Angular acceleration (radian/sec$_2$)
Nose up pitching	1.0	$+39/V\ n_m(n_m-1.5)$
Nose down pitching	n_m	$+39/V\ n_m(n_m-1.5)$

where—

(*a*) n_m = positive limit maneuvering load factor used in the design of the airplane; and

(*b*) V = initial speed in knots.

(2) The conditions in this section involve loads corresponding to the loads that may occur in a "checked maneuver" (a maneuver in which the pitching control is suddenly displaced in one direction and then suddenly moved in the opposite direction). The deflections and timing of the "checked maneuver" must avoid exceeding the limit maneuvering load factor. The total horizontal surface load for both down- and up-load conditions is the sum of the balancing loads at V and the specified value of the normal load factor n, plus the maneuvering load increment due to the specified value of the angular acceleration. The maneuvering load increment in figure B2 of appendix B and the distribution in figure B7 (for nose-up pitching) and in figure B8 (for nose-down pitching) of appendix B may be used only on airplane configurations with aft-mounted surfaces, unless their use elsewhere is shown to be conservative.

(g) In lieu of the gust loads requirements of § 23.425, the following apply:

(1) Each horizontal surface, other than the main wing, must be designed for loads resulting from—

(i) Gust velocities specified in § 23.333(c) with flaps retracted; and

(ii) Positive and negative gusts of 25 f.p.s. nominal intensity at V_F corresponding to the flight conditions specified in § 23.345(a)(2).

(2) When determining the total load on the horizontal surfaces for the conditions specified in subparagraph (g)(1) of this special condition, the initial balancing loads for steady unaccelerated flight at the pertinent design speeds, V_F, V_C, and V_D must first be determined. The incremental load resulting from the gusts must be added to the initial balancing load to obtain the total load.

(h) In lieu of the unsymmetrical load requirements of § 23.427, the following apply:

(1) Horizontal surfaces other than the main wing and their supporting structure must be designed for unsymmetrical loads arising from yawing and slipstream effects, in combination with the loads prescribed for the flight conditions set forth in paragraphs (e) through (g) of this special condition.

(2) In the absence of more rational data:

(i) 100 percent of the maximum loading from the symmetrical flight conditions may be assumed on the surface on one side of the plane of symmetry; and

(ii) The following percentage of that loading must be applied to the opposite side:

Percent = 100 − 10 (n-1), where n is the specified positive maneuvering load factor, but this value may not be more than 80 percent.

(3) The vertical and horizontal surfaces and supporting structures must be designed for combined vertical and horizontal surface loads resulting from each prescribed flight condition taken separately.

(i) In the absence of specific requirements for wing mounted vertical stabilizers, the following apply: Vertical stabilizers mounted on the wing must meet the applicable requirements of §§ 23.441, 23.443, and, in lieu of a more rational method, § 23.445 for vertical tail surfaces. The effect of these surfaces on the spanwise loading of the wing must also be accounted for.

7. Doors and Exits

In addition to the requirement of §§ 23.783 and 23.807, each external door and exit in a pressurized fuselage (for which the initial opening movement is not inward) must comply with the following:

(a) There must be a means to lock and safeguard each external door and exit against opening in flight either inadvertently by persons or as a result of a mechanical failure or failure of a single structural element, either during or after closure.

(b) There must be a provision for direct visual inspection of the locking mechanism by a crewmember to determine, under operational lighting conditions, or by using a flashlight or equivalent lighting source, that all external doors and exits are fully closed and locked.

(c) There must be a visual warning means to signal a flight crewmember if any external door or exit is not fully closed and locked. The means must be designed such that any failure or combination of failures that would result in an erroneous closed and locked indication is improbable.

8. Flap Interconnection With Related Movable Surfaces

In lieu of § 23.701(a):

(a) The main wing flaps and the related moveable surfaces as a system must:

(1) Be synchronized by mechanical connection; or

(2) Maintain synchronization so that the occurrence of an unsafe condition has been shown to be extremely improbable; or

(b) The airplane must be shown to have safe flight characteristics with any combination of extreme positions of individual moveable surfaces; however, mechanically interconnected surfaces are to be considered as a single surface.

9. Propeller Ground Clearance

In addition to the propeller clearance requirements of § 23.925, the following apply:

(a) The airplane must be designed such that the propellers will not contact the runway surface when the airplane is in the maximum pitch attitude attainable during normal takeoffs and landings; and

(b) If a tail bumper, or an energy absorption device is provided to show compliance with paragraph (a) of this special condition, the following apply:

(1) Suitable designs loads must be established for the tail bumper or energy absorption device; and

(2) The supporting structure of the tail bumper, or energy absorption device must be designed to withstand the loads established in subparagraph (b)(1) of this special condition and inspection/replacement criteria must be established for the tail bumper, or energy absorbing device and provided as part of the information required by § 23.1529.

10. Propeller Marking

In the absence of specific regulations, the propellers must be marked so that their discs are conspicuous under normal daylight ground conditions.

11. Propeller Ice and Exhaust Gas Impingement Protection

In the absence of protection requirements for rear-mounted pusher propellers, the following apply:

(a) Ice impingement on the propeller. All areas of the airplane forward of the propellers that are likely to accumulate and shed ice into the propeller disc during any operating condition must be suitably protected to prevent ice formation, or it must be shown that any ice shed into the propeller disc will not create a hazardous condition.

(b) Exhaust gas impingement on propeller. If the engine exhaust gases are discharged into the propeller disc, it must be shown by tests, or analysis supported by tests, that the propeller material is capable of continuous safe operation.

12. Cockpit Smoke Evacuation

In the absence of specific requirements for smoke evacuation, the following apply:

If accumulation of hazardous quantities of smoke in the cockpit area is reasonably probable, smoke evacuation must be readily accomplished starting with full pressurization and without depressurization beyond safe limits.

13. Instruments, Systems, and Installations

In lieu of § 23.1309(b) and applicable requirements of Part 23 of the Federal Aviation Regulations to the contrary, for instruments, systems, and installations whose design incorporates: Electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument display or system: and/or features that make isolation and independence between powerplant instrument systems unfeasible due to use of electronic displays; or system design functions that are determined to be essential for continued safe flight and landing of the airplane, the following special condition applies:

(a) Systems and associated components must be examined separately and in relation to other airplane systems to determine if the airplane is dependent upon its function for continued safe flight and landing, and if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each system and each component identified by this examination, upon which the airplane is dependent for continued safe flight and landing, or whose failure would reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed and examined to comply with the following:

(1) It must be shown that there will be no single failure or probable combination of failures under any anticipated operating condition which would prevent the continued safe flight and landing of the airplane, or it must be shown that such failures are extremely improbable.

(2) It must be shown that there will be no other single failure or probable combination of failures under any anticipated operating condition which would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, or it must be shown that such failures are improbable.

(3) Warning information must be provided to alert the crew to unsafe system operating conditions, and to enable them to take appropriate corrective action. This warning information must not tend to initiate crew action which would create additional hazards.

(4) Compliance with the requirements of this special condition must be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider:

(i) Modes of failure, including malfunctions and damage from foreseeable sources;

(ii) Consequence of a single failure or probable combination of failures (latent or undetected);

(iii) Appropriate levels of reliability as determined by the severity of consequence;

(iv) The resulting effects on the airplane and occupants, considering the stage of flight and operating conditions; and

(v) The crew warning cues, corrective action required, and the capability of detecting faults.

(5) Numerical analysis may be used to support the engineering examination.

(b) Each item of equipment of each system, and each installation whose functioning is essential for safe operation and that requires a power supply is an "essential load" on the power supply. The power sources and its distribution system must be able to supply the following power loads in probable operating combinations and for probable durations:

(1) Loads connected to the power distribution system with the system functioning normally.

(2) Essential equipment of each system (loads) after failure of:

(i) Any one engine on the airplane, or

(ii) Any power converter, or energy storage device, or

(iii) Essential loads for which an alternate source of power is required by this special condition, after any failure or malfunction in any one power supply system, distribution system, or other utilization system.

(c) In determining compliance with subparagraph (b)(2) of this special condition, the power loads may be assumed to be reduced or shed under a

monitoring procedure consistent with safety.

(d) In showing compliance with this section with regard to the electrical power system and to equipment design and installation, critical environmental and atmospheric conditions must be considered. For electrical generation, distribution, and utilization equipment required by or used in complying with this special condition, the ability to provide continuous, safe service under foreseeable environmental and atmospheric conditions may be shown by tests, design analysis, or reference to previous comparable service experience on other airplanes.

(e) Electronic display units, including those incorporating more than one function, may be installed in lieu of mechanical or electromechanical instruments if:

(1) The display units:

(i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight,

(ii) Do not inhibit the primary display of attitude, airspeed, altitude, or parameters needed by any pilot to set power within powerplant limitations, while in any normal mode of operation.

(iii) Do not inhibit the primary display of engine parameters needed by any pilot to properly set or monitor powerplant limitations, while in the engine starting mode of operation.

(iv) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units, and

(v) Incorporate visual displays of instrument markings, required §§ 23.1541 through 23.1553 or visual displays that alert the pilot to abnormal operational values, or approaches to unsafe values, of any parameter required to be displayed by Part 23 requirements.

(2) The display units, including their systems and installations, must be designed so that one display of information essential to continued safe flight and landing will remain available to the crew, without need for immediate action for continued safe operation, after any single failure or probable combination of failures that is not shown to comply with paragraph (a)(1) of this special condition.

Issued in Kansas City, Missouri, on July 29, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-17837 filed 8-7-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 21 and 23

[Docket No. 013CE, Special Conditions No. 23-ACE-12]

Special Conditions; Fairchild Models SA227-AT and SA227-TT Airplanes Incorporating Electronic Flight Instrument Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Special Conditions.

SUMMARY: These special conditions are issued to become part of the type certification basis for the Fairchild Aircraft Corporation Models SA227-AT and SA227-TT airplanes incorporating Electronic Flight Instrument Systems (EFIS). These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards of Part 3 of the Civil Air Regulations (CAR) and Part 23 of the Federal Aviation Regulations (FAR). These novel and unusual design features include the use of an electronic flight instrument system for which the applicable regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional airworthiness standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards applicable to the Fairchild Aircraft Corporation Models SA227-AT and SA227-TT airplanes.

EFFECTIVE DATE: September 8, 1986.

FOR FURTHER INFORMATION CONTACT: David Warner, Aerospace Engineer, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 1986, King Radio Corporation, 400 N. Rogers Road, Olathe, Kansas 66062, made application to the FAA for approval of installation of a Bendix EFS-10 Electronic Flight Instrument System (EFIS) on the Fairchild Aircraft Corporation Models SA227-AT and SA227-TT airplanes. This installation incorporates an electronic attitude direction indicator (EADI) and an electronic horizontal situation indicator (EHSI) in lieu of the traditional mechanical or electro-mechanical displays providing similar information to the flight crew.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101 do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane or installation. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

King Radio Corporation has proposed cathode-ray tube (CRT) electronic display units for primary attitude, heading, and navigation cockpit displays. The cockpit instrument panel configuration would feature five EFIS displays, an EADI and EHSI on the left and right instrument panels, and a multi-function display in the center panel. All other displays; i.e., airspeed, altitude, vertical speed, etc., will be conventional instruments. An optional configuration would provide for an EADI and EHSI on the pilot's side, conventional instruments on the copilot's side, and a multi-function display in the center panel.

Emissive color on a CRT display will inevitably appear different than reflective colors on conventional electro-mechanical displays. Different intensities and color temperatures of ambient illumination will also affect the perceived colors.

Type Certification Basis

The type certification basis for the Fairchild Aircraft Corporation Model SA227-AT airplane is as follows: Part 3 of the Civil Air Regulations, effective May 15, 1956, as amended by Amendments 3-1 through 3-8; § 23.511 amended by Amendment 23-7, effective September 14, 1969; § 23.175(d) as amended by Amendment 23-14, effective December 20, 1973; Special Conditions outlined in FAA letters dated November 19, 1965, August 19, 1967, February 5, 1968, and April 4, 1968; Amendment B of SFAR No. 41, including paragraph 4(c) and the compartment interior requirements of § 25.853(a), (b), (b-1), (b-2), and (b-3) effective September 26, 1978; Part 36, Appendix F, effective December 1, 1969, as amended by Amendments 36-1 through 36-6; and these special conditions.

The type certification basis for the Fairchild Aircraft Corporation Model SA227-TT airplane is as follows: Part 3 of the Civil Air Regulations, effective May 15, 1956, as amended by

Amendments 3–1 through 3–8; § 23.903(b) as amended by Amendment 23–17 effective February 1, 1977; Special Conditions outlined in FAA letters dated November 19, 1965, August 22, 1967, Feburary 5, 1968, and April 4, 1968; SFAR No. 23.27; Amendment B of SFAR 41, including paragraph 4(c) and the compartment interior requirements of § 25.853(a), (b), (b–1), (b–2), and (b–3) effective September 26, 1978; Part 36, Appendix F effective December 1, 1969, as amended by Amendments 36–1 through 36–6; and these special conditions.

Discussion of Comments

The FAA received no comments in response to Notice No. 23–ACE–12 published in the **Federal Register** on May 29, 1968. The closing date for comments was June 30, 1986. However, Notice No. 23–ACE–11, Docket No. 012CE, (51 FR 11933, April 8, 1986) proposing substantively equivalent special conditions for installation of EFIS on the Beach Model 2000 received extensive comments. Those comments have been analyzed for disposition. Final adoption of special conditions for the Beech Model 2000 is expected to be published prior to publication of special conditions herein. Clarifying changes as a result of comments to the Beech Model 2000 Special Conditions are incorporated into the Fairchild Models SA227–AT and SA227–TT Special Conditions, section 1(a) and (b), for consistency. These changes do not change the applicable requirements.

The SA227–AT and SA227–TT airplanes may or may not incorporate SFAR 41 requirements depending on the airplane serial number in accordance with Note 11 on Type Certification Data Sheet A5SW. Since SFAR 41 contains requirements substantively equivalent to special conditions section 1(b), (c), and (d), those special conditions are redundant on airplanes that incorporate SFAR 41 in the certification basis as cited in Note 11 of the data sheet.

Conclusion

This action affects only the Fairchild Models SA227–AT and SA227–TT airplanes incorporating EFIS. It is not a rule of general applicability and applies only to the series and model of airplane identified in these final special conditions.

List of Subjects in 14 CFR Part 21 and 23

Aviation safety, Aircraft, Air transportation, and Safety.

Citation

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

In consideration of the foregoing, the following special conditions are issued as a part of the type certification basis for the Fairchild Aircraft Corporation Models SA227–AT and SA227–TT when equipped with electronic flight instrument systems:

1. In addition to the applicable requirements of Part 3 of the Civil Air Regulations, and requirements to the contrary, for instruments, systems, and installations whose design incorporates: Electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument display or system; and/or system design functions that are determined to be essential for continued safe flight and landing of the airplane, the following special condition applies:

(a) Systems and associated components must be examined separately and in relation to other airplane systems to determine if the airplane is dependent upon its function for continued safe flight and landing, and if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each system and each component identified by this examination, upon which the airplane is dependent for continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed and examined to comply with the following:

(1) It must be shown that there will be no single failure or probable combination of failures under any anticipated operating condition which would prevent the continued safe flight and landing of the airplane or it must be shown that such failures are extremely improbable.

(2) It must be shown that there will be no other single failure or probable combination of failures under any anticipated operating conditon which would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions or it must be shown that such failures are improbable.

(3) Warning information must be provided to alert the crew to unsafe system operating conditions, and to enable them to take appropriate corrective action. This warning information must not tend to initiate crew action which would create additional hazards.

(4) Compliance with the requirements of this special condition must be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider:

(i) Modes of failure, including malfunctions and damage from foreseeable sources;

(ii) Consequences of a single failure or probable combination of failures (latent or undetected);

(iii) Appropriate levels of reliability as determined by the severity of consequences;

(iv) The resulting effects on the airplane and occupants, considering the stage of flight and operating conditions; and

(v) The crew warning cues, corrective action required, and the capability of detecting faults.

(5) Numerical analysis may be used to support the engineering examination.

(b) Each item of equipment of each system, and each installation whose functioning is essential for safe operation and that requires a power supply is an "essential load" on the power supply. The power sources and its distribution system must be able to supply the following power loads in probable operating combinations and for probable durations:

(1) Loads connected to the power distribution system with the system functioning normally.

(2) Essential equipment of each system (loads) after failure of:

(i) Any one engine on the airplane, or

(ii) Any power converter, or energy storage device, or

(iii) Essential loads for which an alternate source of power is required by this special condition, after any failure or malfunction in any one power supply system, distribution system, or other utilization system.

(c) In determining compliance with paragraph (b)(2) of this special condition, the power loads may be assumed to be reduced or shed under a monitoring procedure consistent with safety.

(d) In showing compliance with this section with regard to the electrical power system and to equipment design and installation, critical environmental and atmospheric conditions must be considered. For electrical generation, distribution, and utilization equipment required by or used in complying with this special condition, the ability to provide continuous, safe service under foreseeable environmental and

atmospheric conditions may be shown by tests, design analysis, or reference to previous comparable service experience on other airplanes.

(e) Electronic display units, including those incorporating more than one function, may be installed in lieu of mechanical or electro-mechanical instruments if:

(1) The display units:

(i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight;

(ii) In any normal mode of operation do not inhibit the primary display of attitude:

(iii) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units; and

(iv) Incorporate visual displays of instrument markings required by §§ 3.756 through 3.757, or visual displays that alert the pilot to abnormal operational values, or approaches to unsafe values, of any parameter required to be displayed by Part 3/SFAR 41 requirements.

(2) The display units, including their systems and installations, must be designed so that one display of information essential to continued safe flight and landing will remain available to the crew, without need for immediate action for continued safe operation, after any single failure or probable combination of failures that is not shown to comply with paragraph (a)(1) of this special condition.

Issued in Kansas City, Missouri, on July 28, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-17836 Filed 8-7-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-CE-28-AD; Amdt. 39-5389]

Airworthiness Directives; DeHavilland Model DHC-3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to DeHavilland Model DHC-3 airplanes which requires an initial visual inspection of the elevator pushrod, the elevator and rudder pushrod to control quadrant connecting bolts and the elevator control system cables and pulleys, the replacement of unserviceable parts, and the subsequent replacement of the elevator pushrod and both the elevator and rudder pushrod to control quadrant connecting bolts with strengthened parts. This AD is based upon reports received by the Canadian Airworthiness Authority of damage to the elevator pushrod and connecting bolt, believed to be caused by high externally induced air loads on the elevators, while the airplane is parked. Since the rudder pushrod to rear quadrant attachment bolt is the same as on the elevator quadrant, replacement of this bolt is also required at the same time to prevent possible future incorrect installation. The inspection and replacement required by this AD will preclude the possible jamming or failure of the elevator controls and the possible resultant loss of the airplane.

DATE: *Effective Date:* August 15, 1986. *Compliance:* As prescribed in the body of the AD.

ADDRESSES: Service Bulletin (S/B No. 3/35, Revision A, dated April 11, 1980, and S/B No. 3/43 dated January 18, 1985, applicable to this AD may be obtained from DeHavilland Aircraft of Canada, Limited, Downsview, Ontario, Canada, M3K 1Y5. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Lester Lipsius, Airframe Branch, ANE-172, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11587; Telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: There have been six reported cases of bent elevator pushrods and bolts connecting the pushrods to the rear quadrant on DeHavilland Model DHC-3 airplanes which have been attributed to high external induced air loads on the elevators caused by strong wind gusts or helicopter or jet blasts while the airplane is parked. A bent pushrod or bolt could result in binding of the elevator control quardrant with the elevator pushrod resulting in restricted travel of the elevators. Continued use could result in failure of the pushrod or bolt resulting in loss of elevator control. The rudder control system is similar to the elevator control system and uses the same connecting bolt part number on the rudder quadrant. As a result, DeHavilland of Canada has issued S/B No. 3/35 and S/B No. 3/43 which recommends inspection of elevator pushrod Part Number (P/N) C3-CF-167 and attaching bolt P/N AN174-16 for damage due to bending, replacing unservicable parts with new strengthened units before further flight, and replacing serviceable rudder and elevator pushrod to quadrant bolts with new stronger bolts P/N NAS1954-24D within 100 hours time-in-service (TIS). The Transport Canada who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Canada has issued Canadian AD CF-85-04 which essentially requires the actions specified in DeHavilland Service Bulletins (S/B) 3/35 and S/B 3/43 and an inspection of the pushrod threaded ends for cracks to assure the continued airworthiness of the affected airplanes. On airplanes operated under Canadian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of Transport Canada combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of the inspection of the elevator pushrod and connecting bolt, and the replacement of the pushrod and the elevator and rudder pushrod to quadrant connecting bolts with new stronger parts and the issuance of Canadian AD CF-85-04 by Transport Canada. Based on the foregoing, the FAA has determined that condition described herein is an unsafe condition that may exist or develop on other products of the same type design certificated for operation in the United States.

Therefore, an AD is being issued requiring inspection of the elevator pushrod, the elevator pushrod to quadrant attachment bolt and the elevator control system cable and pulleys, on DeHavilland Model DHC-3 airplanes within 25 hours TIS after the effective date of this AD, before further flight replacement of an unserviceable pushrod P/N C3-CF-167 with a strengthened unit P/N C3-CF-633-1, replacement of both the rudder and elevator pushrod to quadrant connecting bolts with stronger bolts P/N NAS1954-24D if the elevator bolt is unserviceable, replacement of any unserviceable elevator control system cable or pulley, and within 60 days after the effective date of this AD, the replacement of the elevator pushrod with the strengthened pushrod P/N C3-CF-633-1 and the rudder and elevator pushrod to quadrant connecting bolts P/N AN-174-16 with stronger bolts P/N NAS1954-24D. Because an emergency condition exists

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

2. By adding the following new AD:

DeHavilland: Applies to Model DHC-3 (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated, after the effective date of this AD, unless already accomplished.

To preclude loss of elevator control and to ensure proper operation of the control system, accomplish the following inspections and parts replacement:

(a) Within 25 hours time-in-service (TIS), after the effective date of this AD, visually inspect the following parts:

(1) The elevator pushrod, and the elevator pushrod to rear quadrant attachment bolt, for bending, in accordance with "ACCOMPLISHMENT INSTRUCTIONS" in DeHavilland Service Bulletins (S/B) No. 3/35, Revision A, dated April 11, 1980, and S/B No. 3/43, dated January 18, 1985.

(2) The threaded shank of the elevator pushrod rod ends, for cracks.

(3) All elevator control system cables and pulleys for damage or distortion.

(b) Replace unserviceable parts, prior to further flight, with serviceable parts as follows:

(1) Elevator pushrod, with new pushrod Part Number (P/N) C3-CF-633-1, in accordance with "ACCOMPLISHMENT INSTRUCTIONS" in DeHavilland S/B No. 3/35, Revision A, dated April 11, 1980.

(2) Elevator pushrod to rear quadrant attachment bolt with a new NAS1954-24D bolt, in accordance with paragraph (c) of this AD.

(3) Elevator control system cables and pulleys in accordance with the applicable section of the aircraft maintenance manual.

Note.—When a parked DHC-3 airplane has been subjected to wind gusts of 60 mph or greater (including helicopter or jet blasts) damage may occur to the elevator control system, and the requirements specified in paragraphs (a) and (b) of this AD should be accomplished again.

(c) If the elevator pushrod to rear quadrant attachment bolt is replaced with a NAS1954-24D bolt, replace the associated hardware and in addition, replace the rudder pushrod to rear quadrant attachment bolt with a NAS1954-24D bolt and the associated hardware in accordance with "ACCOMPLISHMENT INSTRUCTIONS" in DeHavilland S/B No. 3/43 dated January 18, 1985. Torque nuts to 65 in-pounds prior to installation of cotter pins.

(d) If no damage is found during the inspection as required by paragraph (a) of this AD, within 60 days after the effective date of this AD, unless already accomplished:

(1) Replace the elevator pushrod in accordance with paragraph (b)(1) of this AD, and

(2) Replace the elevator and rudder pushrod to rear quadrant attachment bolts in accordance with paragraph (c) of this AD.

(e) The airplane may be flown in accordance with Federal Aviation Regulations (FAR) 21.197 to a location where the requirements of this AD may be accomplished.

(f) An equivalent method of compliance with this AD, if used, must be approved by the Manager, New York Aircraft Certification Office, ANE-170, FAA, England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

(g) Upon submission of substantiating data by an owner or operator, through an FAA Maintenance Inspector, the Manager, New York Aircraft Certification Office, FAA, New England Region, may adjust the compliance intervals specified in this AD.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to DeHavilland Aircraft of Canada, Ltd., Downsview, Ontario, Canada, M3K 1Y5 or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on August 15, 1986.

Issued in Kansas City, Missouri, on July 31, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-17835 Filed 8-7-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-AGL-14]

Establishment of Transition Area—Pontiac, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Pontiac, Illinois, transition area to accommodate a new VOR-A Instrument Approach Procedure (IAP) to Pontiac Municipal Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, October 23, 1986.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 27, 1986, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Pontiac, Illinois, transition area (51 FR 19069).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes the Pontiac, Illinois, transition area to accommodate a new VOR-A Instrument Approach Procedure (IAP) to Pontiac Municipal Airport.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

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

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

2. Section 71.181 is amended as follows:

Pontiac, Illinois [New]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of Pontiac Municipal Airport (Lat. 40°41'30" N., Long. 88°38'15" W.) and within 2 miles either side of the Pontiac VORTAC 059 radial extending from the 5 mile radius southwest to the Pontiac VORTAC.

Issued in Des Plaines, Illinois, on July 29, 1986.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 86-17834 Filed 8-7-86; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Hazardous Substances and Articles; Amendment of Flammability Regulations

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission issues final amendments to regulations for classification of extremely flammable, flammable, and combustible hazardous substances which release ignitable vapors. These amendments change the definitions of these classes of hazardous substances for purposes of labeling and other requirements imposed by the Federal Hazardous Substances Act. The amendments also prescribe a different apparatus and procedure than those currently used for testing to determined flammability classification. The Commission is issuing these amendments to bring its regulations for classification of flammable hazardous substances into closer conformity with those of other Federal agencies and test methods used by voluntary standards setting organizations.

EFFECTIVE DATE: The amendments become effective August 10, 1987.

FOR FURTHER INFORMATION CONTACT: Charles M. Jacobson, Division of Regulatory Management, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6400. Technical inquiries concerning the test apparatus and procedure specified in this rule should be directed to Donald F. McCaulley, Health Sciences Laboratory, Consumer Product Safety Commission, Washington, DC 20207; telephone (202) 245-1445.

SUPPLEMENTARY INFORMATION: The Consumer Product Safety Commission issues final amendments to regulations implementing the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*) and codified at 16 CFR Part 1500 which are applicable to classification of flammable hazardous substances. The amendments issued below change the definitions of the terms "extremely flammable," "flammable," and "combustible" hazardous substances in § 1500.3(c)(6). The amendments also revise provisions of § 1500.43 [1] to prescribe use of a closed-cup apparatus and procedure for determining flashpoint temperature of volatile substances. The amendment of § 1500.43 [1] issued below specifies use of the Setaflash closed tester and a procedure which closely parallels the test method designated ASTM D 3828-81 "Standard Test Methods for Flash Point by Setaflash Closed Tester," published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

[1] The revised test method appears in § 1500.43a.

A. Background

The Federal Hazardous Substances Act requires, among other things, cautionary labeling for household products that are hazardous substances because of their flammability or combustiblity. Examples of these products include gasoline, kerosene, lighter fluids, alcohol, solvents, paint, and paint thinners. Nearly 11,000 persons seek treatment in hospital emergency rooms each year for burns associated with the use of flammable liquids. At least 100 persons die each year as a result of burn injuries associated with these products. (1) *

As originally enacted in 1960, and amended in 1969, the FHSA defined the terms "extremely flammable," "flammable," and "combustible" for purposes of labeling and other requirements applicable to volatile household products on the basis of flashpoint temperature. The FHSA further required determination of flashpoint temperature by one particular test identified as the "Tagliabue Open-Cup Method."

Classification of the flammability of household products is necessary to advise consumers of the relative fire hazards presented by materials that can burn. In the classification of the flammability of materials, one property usually considered is the lowest temperature at which the material will release vapors that can be ignited by an external source of ignition. (2) This temperature, called flashpoint temperature, can be determined experimentally for liquids, viscous liquids (pastes, gels, and semi-solids) and some solid materials by a flashpoint test. Although many test methods exist for determining flashpoint temperature, they all involve slowly heating the substance to be tested in an open or closed container, while an ignition source is periodically introduced into the vapor space of the material. The lowest temperature at which the vapors ignite is the flashpoint.

While the flashpoint temperature of a substance does not by itself provide a complete evaluation of the fire hazard of a material, flashpoint testing is generally reproducible and is relatively quick and simple to perform. Additionally, the equipment used to determine flashpoint temperature is relatively inexpensive. For these reasons, determination of flashpoint temperature forms the most commonly used basis for classification

* References in parentheses are to the Bibliography at the end of this notice.

of the flammability hazards of vapor-producing materials. (2)

Section 2(1) of the FHSA (15 U.S.C. 1261(1)) currently prescribes use of the Tagliabue open-cup tester to determine flashpoint temperature for flammability classification of volatile household products. However, this apparatus is not the only item of laboratory equipment available for flashpoint testing. Other test equipment commonly used to determine flashpoint temperature includes the Setaflash closed-up tester; the Setaflash open-up tester; the Pensky-Martens closed-cup tester; the Tagliabue closed-up tester; and the Cleveland open-cup tester. (2)

The different kinds of test equipment do not usually give exactly the same flashpoint temperature for the same material, and often do not provide a constant relationship among all of the results obtained. Additionally, different test methods using the same item of test equipment can yield different flashpoint temperatures for the same material. Because various Federal agencies, and state and local governments have issued requirements for flammable materials which specify determination of flashpoint temperature using different kinds of equipment and different test methods, a lack of uniformity exists among those requirements.

In an effort to achieve greater consistency among flammability requirements of the Federal agencies, the Department of Transportation (DOT) amended its regulations applicable to labeling and shipments of hazardous materials in 1974 to make those rules generally compatible with flammability regulations issued by the Occupational Safety and Health Administration (OSHA) of the Department of Labor, and model flammability requirements published by the National Fire Protection Association. The amended requirements for labeling and shipment of hazardous materials issued by DOT are codified at 49 CFR Parts 100 through 189, and are similar to the OSHA rules codified at 29 CFR 1910.106(a) in their specification of closed-cup apparatus and test procedures for determining flashpoint temperatures of volatile materials. The amended DOT regulations also include requirements for supplementary testing to prevent incorrect classification of materials resulting from contaminants or additives that raise or lower flashpoint temperatures obtained from laboratory testing without substantially affecting the fire performance of the materials.

After DOT amended its regulations for labeling and shipment of hazardous materials, the Commission remained among a few Federal agencies which continued to specify an open-cup test method for determination of flashpoint temperatures in flammability regulations. As noted above, provisions of section 2(1) of the FHSA defined the terms "extremely flammable," "flammable," and "combustible" hazardous substances by reference to flashpoint temperatures as determined by the Tagliabue open-cup method, thereby requiring the Commission to use that particular test procedure in its administration and enforcement of the FHSA. As a result, many product labelers and manufacturers were required to perform closed-cup flashpoint tests for purposes of compliance with regulations applicable to shipment and storage of hazardous materials enforced by DOT, and open-cup flashpoint tests for purposes of product labeling and other requirements of the FHSA and implementing regulations.

In 1978, Congress amended section 2(1) of the FHSA by adding provisions which direct the Commission to issue regulations to define the terms "extremely flammable," "flammable," and "combustible" hazardous substance, and to specify the test method for defining the flammability characteristics of those categories of hazardous substances. The 1978 amendments also direct the Commission to consider definitions and test methods used by other Federal agencies in regulations governing shipments, storage, and use of flammable and combustible materials, and to the extent possible, to establish compatible definitions and test methods in the regulations implementing the FHSA. (See Pub. L. 95-631, 92 Stat. 3742, November 10, 1978.)

Until the Commission issues the regulations described in the 1978 amendments to section 2(1) of the FHSA, the definitions of the terms "extremely flammable," "flammable," and "combustible" hazardous substance as enacted in 1960 and amended in 1969 remain in effect.

B. Proposed Amendment of FHSA Flammability Regulations

In the **Federal Register** of April 26, 1984 (49 FR 17956), the Commission proposed to amend the regulations for classification of flammable hazardous substances in accordance with provisions of the 1978 amendments of the FHSA.

The Commission proposed to amend § 1500.43 [1] of the FHSA flammability regulations to prescribe a closed-cup apparatus and procedure for determining flashpoint temperatures of volatile household substances. The proposal specified use of a Setaflash closed tester, and a procedure which closely parallels the test method designated ASTM D 3828-81, "Standard Test Methods for Flash Point by Setaflash Closed Tester," published by the American Society for Testing and Materials. (9)

The Commission also proposed to amend §§ 1500.3(b)(10) and 1500.3(c)(6) of the FHSA regulations to prescribe new definitions of the terms "extremely flammable," "flammable," and "combustible" hazardous substances. In addition to providing for determination of flashpoint temperatures by use of the closed-cup apparatus and procedure described in proposed § 1500.43, the proposed amendment of § 1500.3(c)(6) specified that the term "extremely flammable" would apply to substances having a flashpoint temperature of 20 °F or lower; that the term "flammable" would apply to substances having a flashpoint temperature above 20 °F to and including 100 °F; and that the term "combustible" would apply to substances having a flashpoint temperature above 100 °F to and including 150 °F. (9)

Existing provisions of the FHSA and §§ 1500.3(b)(10) and 1500.3(c)(6) define the term "extremely flammable" to include any substance with a flashpoint temperature of 20 °F or lower, as determined by the Tagliabue open-cup method. Existing provisions of the FHSA and implementing regulations define the term "flammable" to mean any substance with a flashpoint temperature above 20 °F to and including 80 °F; and the term "combustible" to mean any substance with a flashpoint temperature above 80 °F to and including 150 °F.

In the notice of proposal, the Commission observed that the proposed charge to the definition of the term "flammable" hazardous substance could affect products that are currently classified as "combustible" and have open-cup flashpoints from 80° F to about 110° F, or closed-cup flashpoints from about 75° F to 100° F. As a result of this proposed change, some products having flashpoints in the range described above which currently are labeled "combustible" would be reclassified as "flammable," and would require new labeling to comply with the amended regulations.

After consideration of a report on the anticipated economic consequences of the proposed change from an open-cup to a closed-cup test for determination of flashpoint temperatures for purposes of compliance with requirements of the FHSA (4), the Commission decided to add provisions to the proposed

amendment of § 1500.3(c)(6) allowing product manufacturers and labelers to continue to rely on results of open-cup flashpoint testing for purposes of compliance with FHSA requirements as long as no change is made to the formulation or labeling of the product.

In order to minimize costs to product manufacturers and labelers which might result from the proposed amendments, the Commission also decided to retain 150° F as the upper limit for classification as a "combustible" hazardous substance, rather than to extend the range of flashpoint temperatures for the "combustible" category to 200° F to achieve closer conformity with the classification system in the DOT regulations.

In the notice of proposal, the Commission observed that changing from an open-cup to a closed-cup test for determination of flashpoint temperature will benefit many product manufacturers and labelers because they will no longer be required to perform separate open-cup tests for compliance with FHSA requirements in addition to closed-cup tests for shipping and storage requirements. The Commission estimated that a reduction in testing costs of 40 percent could result for manufacturers and labelers who perform their own testing. (9) The Commission also estimated that changing from an open-cup test to a closed-cup test could reduce total testing costs for all firms subject to FHSA flammability requirements by $1 million a year. (9)

C. Comments on Proposal

In response to the notice of April 26, 1984, the Commission received comments from H.B. Fuller Co. (10), Control Data Corporation (11), Adhesives Manufacturing Association (12), Koppers Company, Inc. (13), The Adhesive and Sealant Council (14), Union Oil Company of California (15), Chemical Specialties Manufacturers Association (16), American Petroleum Institute (17), and Erdco Engineering Corporation (18). The issues raised by these comments and the Commission's resolution of those issues are discussed below.

1. *Alternate apparatus and test method.* Comments from H.B. Fuller Co. (10), Adhesives Manufacturers Association (12), The Adhesive and Sealant Council (14), and Chemical Specialties Manufacturers Association (16) urge the Commission to modify provisions of proposed § 1500.43 to specify an alternate test apparatus and procedure in addition to the Setaflash closed-cup tester and the procedure specified in the proposal. All of these comments suggested the Pensky-Martens closed-cup apparatus and ASTM test method D–93 as appropriate alternatives to the apparatus and procedure specified in the proposal. Three comments (10, 12, 14) state that regulations for classification of flammable materials issued by the Department of Transportation and the Occupational Safety and Health Administration of the Department of Labor prescribe more than one test apparatus and procedure for determining flashpoint, and include the Pensky-Martens apparatus and ASTM test method D–93 among the equipment and procedures specified in those regulations.

Comments concerning the test apparatus and procedure specified in the proposal observe that § 1500.43(a)(1) [1] of the proposal states that manufacturers and labelers of products subject to the requirements of the FHSA may use other test equipment or procedures which yield results equivalent to those obtained by using the apparatus and procedure specified in the proposed amendment. However, the comments express the view that the Commission should recognize a particular alternate apparatus and test procedure as yielding equivalent results, rather than place the burden of establishing equivalence of results on regulated firms.

The Commission's purpose in proposing to amend § 1500.43 was to change the apparatus and procedure which the Commission will use when testing products to determine if they comply with labeling or other requirements imposed under provisions of the FHSA. If the Commission made the change requested by the comments under consideration, it would be required to test products using both the Setaflash tester and procedure and the alternate apparatus and procedure, and to consider results from both tests before initiating any enforcement action. The Commission finds that specification of more than one type of apparatus and more than one test procedure in a regulation which prescribes testing to determine compliance with requirements imposed by law or regulation is not practical.

The Commission also has considered the possibility of specifying the Pensky-Martens closed-cup tester and ASTM test method D–93 rather than the apparatus and procedure set forth in the proposed amendment. However, the Commission finds that the Setaflash tester and method set forth in the proposal are more reliable and convenient for compliance testing, and in most instances will yield more reproducible results than the Pensky-Martens apparatus and ASTM test method D–93. (19) For these reasons, the amendment issued below specifies the Setaflash closed-cup tester method substantially similar to the one published in the proposal.

However, the Commission observes that for many household products, the flashpoint obtained using the Pensky-Martens closed tester and ASTM test method D–93 will be within a few degrees of the results obtained using the Setaflash closed tester and the method specified in section 1500.43 [1] as amended below. For purposes of compliance with FHSA labeling requirements for flammable or combustible hazardous substances, a manufacturer or labeler is not required to establish the precise flashpoint temperature of a particular product, but only to know if the flashpoint is 20 °F or below; between 20 °F and 100 °F; or from 100 °F to 150 °F. Manufacturers and labelers of many household products having flashpoints well above or below the break-point temperatures of 100 °F or 150 °F for classification as flammable or combustible hazardous substances may find that they can reasonably rely on the Pensky-Martens apparatus and ASTM test method D–93 to produce results equivalent to those obtained using the Setaflash apparatus. In that event, those firms may use the Pensky-Martens closed tester in accordance with provisions of § 1500.43(a)(1) as amended below.

In some cases, manufacturers and labelers of products having flashpoints within a few degrees of the break-point temperatures of 100 °F or 150 °F for classification as flammable or combustible hazardous substances may be able to rely on literature comparisons of the Setaflash and Pensky-Martens apparatus and test procedures to establish equivalence of results. In other cases, manufacturers and labelers of such products may need to conduct limited experimental testing to evaluate the equivalence of results obtained from the two items of test equipment. As long as the two items of test equipment yield equivalent results for a particular product, the manufacturer or labeler of that product may use whichever apparatus the firm considers to be appropriate.

The Commission observes that ASTM method D–93 for determining flashpoint using the Pensky-Martens closed tester contains no provision for testing materials which have flashpoints below the ambient temperature. For this reason, the Commission suggests that manufacturers and labelers should

exercise caution when evaluating the equivalence of results obtained by using the Pensky-Martens apparatus and ASTM test method D–93 with results obtained by using the Setaflash apparatus to test products with flashpoint temperatures near or below 50 °F.

2. *Flashpoint temperatures for classification of flammable and combustible hazardous substances.* As noted above, the notice of April 26, 1984, not only proposed to change the equipment and procedure which the Commission will use to determine flashpoint temperatures of volatile materials subject to regulation under the FHSA, but also proposed to change the range of flashpoint temperatures in existing regulations for classifying "flammable" and "combustible" hazardous substances. When the Commission published its notice of proposal, provisions of section 2(1) of the FHSA (15 U.S.C. 1261(1)) and 16 CFR 1500.3(b)(10) classified any substance having a flashpoint at or below 20 °F as "extremely flammable"; any substance having a flashpoint above 20 °F to and including 80 °F as "flammable"; and any substance having a flashpoint above 80 °F to and including 150 °F as "combustible." The notice of April 26, 1984, proposed to amend §§ 1500.3(b)(10) and 1500.3(c)(6) to classify any substance having a flashpoint above 20 °F to and including 100 °F as "flammable," and any substance having a flashpoint above 100 °F to and including 150 °F as combustible."

Comments from Control Data Corporation (11), Koppers Company, Inc. (13), Union Oil Company of California (15), and American Petroleum Institute (17) urge the Commission to revise the temperature range for "flammable" hazardous substances to include temperatures above 20 °F and below 100 °F. These comments state that the requested change would make the temperature range for classification of "flammable" hazardous substances in the Commission's regulation compatible with the temperature range for materials classified as "flammable" by regulations issued by the Department of Transportation (DOT) at 49 CFR 173.115 and by the Occupational Safety and Health Administration (OSHA) at 29 CFR 1910.106(a). These comments state that unless such a change is made to the Commission's proposal, a substance having a flashpoint of 100 °F would be classified as "flammable" by the Commission's regulations implementing the FHSA, but would be classified as "combustible" by regulations administered by DOT and OSHA. These comments observe that in the notice of April 26, 1984, the Commission stated that one of the purposes of the proposed amendments is to bring the Commission's regulations governing testing and classification of flammable materials into closer conformity with those of other Federal agencies.

A comment from Chemical Specialties Manufacturers Association (16) urges the Commission to retain existing provisions of the regulations implementing the FHSA which classify those substances as "flammable" which have a flashpoint above 20° F to and including 80° F. This comment states that the proposed amendment of the FHSA flammability classification regulations would have the effect of requiring many products now classified as "combustible" hazardous substances to be reclassified as "flammable" hazardous substances. The comment asserts that the notice of proposal does not adequately explain the necessity for reclassification of those products. The comment also questions the basis for a statement in the notice of proposal that few if any new costs are likely to result to manufacturers from the proposed revision of the temperature range for classification of products as "flammable" hazardous substances.

In the notice of proposal, the Commission acknowledged that revisions of the range of flashpoint temperatures for classification of a substance as "flammable" could affect some products having flashpoint temperatures between 80° F and 110° F as determined by the open-cup method by causing them to be classified as "flammable" rather than "combustible." (9) In response to the comment questioning the necessity of such reclassification, the Commission observes that one of the purposes of the proposed amendments was to achieve greater consistency of product labeling required by provisions of the FHSA and implementing regulations with labeling on cartons for shipping and storage required by regulations administered by the Department of Transportation.

In response to that portion of the comment questioning the basis of the statement that few if any new costs are likely to result to manufacturers of products from the proposed amendments, the Commission observes that revision of the flashpoint temperature range for classification of a product as a "flammable" hazardous substance will affect only those products which are already subject to combustibility or flammability labeling or other requirements of the FHSA. Manufacturers of products not previously subject to labeling or other requirements of the FHSA arising from its flammability are not affected by the proposed revision of the range of flashpoint temperatures for classification of a product as a "flammable" hazardous substance. The Commission recognizes that some costs would be associated with my change to the labeling of a product necessitated by its reclassification from a "combustible" hazardous substance to a "flammable" hazardous substance. However, the proposed amendment contained provisions to allow any firm to use the existing test procedure and classification schedule for labeling of any product subject to FHSA flammability requirements as long as no change is made in the formulation or labeling of a product. This option would minimize the potential cost of compliance with the proposed amendment.

After consideration of all of these comments, the Commission has revised § 1500.3(c)(6) of the amendments issued below to specify that substances having a flashpoint "above 20° F and below 100° F" shall be classified as "flammable." The Commission agrees with comments to the effect that this modification of the proposal will bring the Commission's regulations into closer conformity with requirements of other Federal agencies. While this modification of the proposal probably will affect a relatively small number of products, it is consistent with provisions of section 2(1) of the FHSA which require the Commission to consider definitions used by other Federal agencies, and to the extent possible, establish compatible provisions in the FHSA regulations.

Comments from Koppers Company, Inc. (13), Union Oil Company of California (15), and American Petroleum Institute (17) also urge revision of the temperature range for classification of a material as a "combustible" hazardous substance to include flashpoints above 100° F and below 200° F, thereby making the Commission's provisions for classification of "combustible" substances consistent with those in regulations issued by the Department of Transportation.

During the development of the proposed amendments, the Commission considered the possibility of revising the upper limit of the range for classification of materials as "combustible" hazardous substances to include flashpoint temperatures of 200 °F. However, a contractor's report on the economic consequences of amending the FHSA flammability regulations indicated that

such a revision would cause a large number of products not currently subject to requirements under the FHSA to be labeled as "combustible" hazardous substances. (4) To avoid the costs of new labeling to manufacturers of products not currently subject to FHSA flammability requirements, the Commission decided to leave the upper flashpoint temperature for classification as a "combustible" hazardous substance at 150 °F in the proposed amendments. (9).

Although consistency with labeling requirements of other Federal agencies is one of the Commission's objectives in this proceeding, the Commission concludes that complete achievement of that objective is not warranted in view of the costs of new labeling requirements which would be imposed on products not currently subject to provisions of the FHSA.

A comment from Control Data Corporation (11) suggests revision of the proposal to establish 141 °F as the upper limit of the flashpoint temperature range for classification of a product as a "combustible" hazardous substance. This comment states that such a revision would be consistent with labeling requirements established by the International Civil Aviation Organization and the International Maritime Organization, with recommendations of the United Nations Committee of Experts on Transportation of Dangerous Materials, and with proposed regulations published by the government of Canada in 1982.

Household products subject to regulation under the FHSA with flashpoint temperatures ranging from 141 °F to 150 °F include charcoal lighter fuels, patio torch fuels, various automotive supplies, some furniture polishes, and other household cleaning products. The Commission's experience gained from the administration and enforcement of the FHSA indicates that such products frequently present a hazard of combustibility from open-flame ignition sources when used by consumers in or around the home. (20)

As noted above, the 1978 amendments of section 2(1) of the FHSA direct the Commission to consider and seek consistency with flammability regulations established by other agencies of the United States government when issuing rules for classification and testing of flammable hazardous substances. The objective of the comment under consideration is that of obtaining consistency with flammability labeling requirements established by international organizations.

The Commission has decided not to make the revision requested by this comment because it concludes that many of the products which would be affected by a such a change present a hazard of combustibility when used in the household, and because such a change would not promote greater consistency of the Commission's regulations with flammability requirements of other agencies of the Federal government.

After consideration of all comments concerning modification of the range of flashpoint temperatures for classification of a product as a "combustible" hazardous substance, the Commission has revised § 1500.3(c)(6) of the amendments issued below to specify that substances having a flashpoint temperature "at or above 100 °F to and including 150 °F" shall be classified as "combustible."

3. *Exemption for products containing alcohol in solution.* The proposed amendment of § 1500.3(c)(6) contained language to exempt products containing "24 per cent or less alcohol by volume" from classification as a "flammable" or "combustible" hazardous substance, provided that "the remainder of the mixture does not present any flammability hazard." In the notice of proposal, the Commission stated that these provisions were similar to exemptions in the regulations issued by the Department of Transportation, and had been added to avoid overstating the flammability hazard of certain mixtures which contain alcohol. The proposal cited some liquid dishwashing detergents containing alcohol as examples of products which may have a flashpoint temperature in the "flammable" range when tested with the Setaflash closed tester, but which can be used to extinguish fires. (9)

A comment from Erdco Engineering Company (18) objects to the exemption for products containing alcohol, and asserts that the Commission has no assurance that alcohol present in such products will remain in solution at all times.

When the Commission proposed the exemption for products containing 24 percent or less alcohol by volume, it contemplated that this exemption would be available only for products containing alcohol in solution. To express this limitation on the types of products eligible for the exemption more clearly, the amendment of §1500.3(c)(6) issued below describes them as "any mixture containing 24 percent or less of water miscible alcohol, by volume, in aqueous solution."

A comment from Chemical Specialties Manufacturers Association (16) states that the proposed exemption does not state clearly how the determination will be made as to whether the "remainder of the mixture" presents a "flammability hazard." This comment suggests the addition of language to state that the remainder of the mixture shall be tested using the apparatus and procedure set forth in the proposed amendment to determine if its flashpoint temperature falls within the range of a "flammable" or "combustible" hazardous substance.

When the Commission proposed the exemption for mixtures containing alcohol, the Commission did not intend to remove the alcohol from such products and then test them to determine flashpoint. Instead, the Commission intended to exempt mixtures containing alcohol in solution from labeling requirements applicable to "flammable" or "combustible" hazardous substances as long as they do not present a flammability hazard when used by consumers. To express that intent more clearly, the amendment of § 1500.3(c)(6) issued below exempts mixtures containing 24 percent or less alcohol, by volume, in solution from classification as "flammable" or "combustible" hazardous substances provided that "the mixture does not present a significant flammability hazard when used by consumers."

4. *Flammability of products in self-pressurized containers.* Existing provisions of §§ 1500.3(c)(6) (v) and (vi) of the rules implementing the FHSA prescribe a two-step process for classification of the flammability of the contents of products in self-pressurized containers. The first step involves spraying the contents of the container in the direction of a lighted paraffin candle from a distance of six inches, measuring the distance that the flame projects, and observing whether the flame extends back to the container. This procedure is described at § 1500.45 of the existing rules. If a flame extends back to the container, the second step of the procedure is performed. This step involves exhausting the propellant from the container, removing a sample of the contents, and determining the flashpoint temperature of the contents. This procedure is described in the existing rules and in the proposal at § 1500.46.

The proposed amendments of the regulations prescribing procedures for testing substances to determine flashpoint temperatures and for classifying flammable hazardous substances did not contain any provision to change the procedures set forth in existing §1500.45. The proposed

amendments of §§ 1500.3(c)(6) and 1500.46 would affect testing and classification of products in self-pressurized containers only to the extent that a closed-cup apparatus and procedure would be used to determine flashpoint temperatures of the contents of such containers.

A comment from Control Data Corporation (11) urges the Commission to eliminate the procedures described in the proposed amendment at § 1500.46 for exhausting the propellant and removing the contents of a product from a self-pressurized container. This comment expresses the view that the procedure described in proposed §1500.46 is unnecessary and dangerous. This comment recommends that tests to determine the flashpoint temperatures of the contents of a product in a self-pressurized container should be conducted before the product is placed in the container. This comment also recommends classification of the flammability of products in self-pressurized containers on the basis of the type of gas used as the propellant.

A comment from Chemical Specialties Manufacturers Association (16) suggests elimination of the requirements in proposed § 1500.3(c)(6) for determination of the flashpoint temperature of a product in a self-pressurized container in the flammability classification of such a product. This comment states that the Aerosol Scientific Committee of Chemical Specialties Manufacturers Association has taken the position that flashpoint temperatures of products in self-pressurized containers have "insufficient correlation" with the safety of those products to be used in their classification as flammable hazardous substances. However, the comment does not make reference to any data or information considerated by the committee, or describe the process by which the committee reached its conclusion.

The Commission recognizes that the procedure for classifying products in self-pressurized containers for flammability under the FHSA has been in existence for several years, and would be modified by the proposed amendments of §§1500.3(c)(6) and 1500.46 only by specifying a closed-cup apparatus and procedure for determination of flashpoint temperatures of the contents of such products. However, consideration of the various alternative procedures for flammability classification of products in self-pressurized containers recommended in the two comments under consideration would require extensive investigation and analysis by the Commission staff. (19) At this time, the Commmission lacks the resources necessary for such an undertaking. If at some future date, resources become available for evaluation of alternative procedures for flammability classification of products in sself-pressurized containers, the Commission will consider the suggestions made in the comments under consideration. However, until the Commission is able to undertake a comprehensive review and evaluation of alternative procedures for flammability classification of products in self-pressurized containers, the Commission declines to make any of the changes recommended in these comments.

5. *Classification of a substance on the basis of other experience or data concerning its flammability hazard.* Section 1500.43(a)(4) of the proposed amendments [1] states that if experience of other data indicate that the flammability hazard of a substance is greater or less than the classification which results from determination of its flashpoint temperature in accordance with proposed § 1500.43 and provisions of proposed § 1500.3(c)(6), the Commission may "by regulation" establish a different classification for that substance. A comment from Chemical Specialties Manufacturers Association (16) observes that the language of proposed § 1500.43(a)(4) does not clearly indicate if a product manufacture or labeler may use other information or data to determine the appropriate classification of a substance in the absence of a rule issued by the Commission. This comment recommends the addition of language to the effect that product manufacturere and labelers may use experience or other reliable data indicating that the flammability hazard of a substance is greater or less than the classification which results from determination of flashpoint temperature by the method set forth in § 1500.43. This comment suggests that without such a modification, proposed § 1500.43(a)(4) would require the manufacturer or labeler of a product to petition the Commission for rulemaking to change the product's flammability classification if the firm had information indicating that the classification which results from determination of flashpoint temperature does not accurately reflect the flammability hazard of the product.

The Commission included § 1500.43(a)(4) in the proposed amendments to advise regulated firms and all other interested parties that if the Commission has reason to believe that the flammability hazard of a substance is not appropriately indicated by its classification on the basis of flashpoint temperature and that the substance should be reclassified on the basis of experience or other data or information, the Commission will initiate a rulemaking proceeding to establish a different flammability classification. Such a proceeding will give all interested parties notice of the Commission's proposed change to the classification of a substance, a statement of the Commission's reasons for proposing reclassification, and an opportunity to comment on the proposal before the Commission takes final action.

The Commission did not intend to preclude product manufacturers or labelers from using experience or other data or information as a basis for compliance with applicable labeling and other requirements of the FHSA in the absence of a Commission proceeding to reclassify a particular substance.

The Commission observes that the definition of the term "hazardous substance" in section 2(f)1(A) of the FHSA (15 U.S.C. 1261(f)1(A)) requires that a substance must not only be "flammable," as defined by section 2(1) of the FHSA and regulations issued by the Commission, but must also present a risk of "substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable use" before the substance is subject to any requirements of the FHSA as a flammable hazardous substance. This definition requires consideration of any relevant information or data concerning experience with use of a product in addition to its flammability classification based on flashpoint temperature to determine whether the product is subject to labeling or other requirements of the FHSA.

For these reasons, the Commission has modified § 1500.43(a)(4) issued below[1] to state that if the Commission has reason to believe from experience, information or other data that the flammability hazard of a substance is not appropriately characterized by its classification on the basis of flashpoint temperature and that the substance should be reclassified, the Commission will initiate a rulemaking proceeding for reclassification. The Commission has added language to state that product manufacturers and labelers may use reliable experience or other relevant information or data in addition to the flashpoint temperature of a substance as a basis for compliance with any applicable requirements of the FHSA in

the absence of a rule issued by the Commission to reclassify the substance.

6. *Reliance on open-cup tests by product manufacturers and labelers.* Section 1500.3(c)(6)(iv) of the proposed amendments states that the Commission will use the closed-cup apparatus and test procedure described in § 1500.43 of the proposal when testing for compliance with the requirements of the FHSA. However, proposed § 1500.43(c)(6)(iv) states that product manufacturers and labelers may continue to rely on properly conducted tests using the Tagliabue open-cup method and the definitions of the terms "extremely flammable," "flammable," and "combustible" which were in effect before the amendment of § 1500.3(c)(6) if all of the following conditions are met:

(1) The product was subject to FHSA requirements for "extremely flammable," "flammable," or "combustible" hazardous substances before the effective date of the amendment of § 1500.43; and

(2) No change has been made to the formulation or labeling of the product after the effective date of the amendment of § 1500.43.

The Commission included the provisions of § 1500.43(c)(6)(iv) in the proposal to minimize any adverse economic impact which the proposed amendments may have on regulated firms, particularly small businesses.

A comment from Control Data Corporation (11) objects to the provisions of proposed § 1500.3(c)(6)(iv) allowing product manufacturers and labelers to continue reliance on open-cup flashpoint tests. This comment asserts that this section of the proposal will confer no benefit on regulated firms, and may result in violation of regulations issued by the Department of Transportation and state governments. This comment states that requirements for disclosure of flashpoint temperatures as determined by closed-cup apparatus and test procedure may also be included in commercial contracts for purchase of materials.

Although this comment asserts that provisions of proposed § 1500.3(c)(6)(iv) will confer no benefit on regulated firms, the Commission has information indicating that the costs of retesting and relabeling products in accordance with provisions of the amendments issued below could be expected to range from $5,000 to $10,000 for a typical small manufacturer or labeler of products regulated under the FHSA. (4) This information also indicates that many small manufacturers would not be required to retest their products except for provisions of the amendments issued below, and in ordinary circumstances would change labels only once every five years. (4)

Provisions of proposed § 1500.3(c)(6)(iv) confer a benefit on these firms by allowing them to avoid the costs of retesting and relabeling their products solely for compliance with the amendments issued below. Instead, they may continue to use existing labels based on open-cup testing for purposes of compliance with FHSA requirements until they decide to reformulate or relabel their products in the normal course of business.

After the effective date of the amendments issued below, firms which rely on provisions of § 1500.3(c)(6)(iv) must comply with all applicable Federal and state laws and regulations requiring determination of flashpoint temperature by closed-cup testing. However, most of those firms are currently subject to Federal or state requirements based on closed-cup tests for determination of flashpoint temperature, as well as FHSA labeling requirements based on open-cup tests for flashpoint temperature. For this reason, the Commission has no reason to conclude that provisions of § 1500.3(c)(6)(iv) are likely to cause firms to violate other Federal or state laws or regulations.

As indicated by the comment under consideration, provisions of the amendments issued below which prescribe a closed-cup apparatus and procedure for determination of flashpoint temperature will be advantageous to many manufacturers and labelers of products subject to requirements of the FHSA. The ability of those firms to derive benefits of the amendments issued below after their effective date will not be affected by provisions of § 1500.3(c)(6)(iv).

A comment from Erdco Engineering Corporation (18) suggests revision of proposed § 1500.3(c)(6)(iv) to describe the open-cup test procedure set forth in § 1500.43 before the amendments issued below as "ASTM Test Method D–1310" instead of "the Tagliabue open-cup method." This comment also suggests revision of proposed Appendix I to § 1500.3 to describe the test equipment as the apparatus specified by "ASTM Test Method D–1310" rather than the "Tagliabue Open-Cup Tester," and to substitute the designation "ASTM Test Method D–92" in place of the designation "Cleveland Open-Cup (ASTM designation D–92)." This comment states that the recommended changes would allow continuous reference to a standard test method, and would reduce the use of trademarks in the description of test apparatus.

The Commission has not made the changes to § 1500.3(c)(6)(iv) and Appendix I [2] to § 1500.3 suggested by this comment. The Commission included provisions of § 1500.3(c)(6)(iv) and Appendix I in the proposed amendments to allow product manufacturers and labelers to continue to rely on tests conducted in accordance with provisions of § 1500.43 before the amendments issued below for compliance with applicable requirements of the FHSA. Appendix I to § 1500.3 [2] reprints the language of §§ 1500.3(b)(10), 1500.3(c)(6), and 1500.43 as it appeared in the Code of Federal Regulations before the amendments issued below.

Although the revisions suggested by the comment under consideration appear to be editorial and non-substantive, they could affect testing requirements if the ASTM test methods referenced in the comment were not identical in all respects to the test methods and apparatus described in § 1500.3(c)(6)(iv) and Appendix I to § 1500.3. To assure that manufacturers and labelers may continue to rely on tests conducted in accordance with § 1500.43 before its amendment, the Commission is reprinting the text of former § 1500.43 without change in Appendix I to § 1500.3 issued below.

7. *Other changes.* A comment from Erdco Engineering Corporation (18) suggests revision of proposed § 1500.43(a)(1)[1] to describe the apparatus which the Commission will use for determining flashpoint temperatures of products subject to FHSA requirements as "an equilibrium closed-cup tester with a range up to 100° C (212° F)" rather than a "Setaflash low-range closed tester." The Commission has not included this change in the amendments issued below because the Commission will use the particular item of equipment specified in proposed § 1500.43(a)(1), and no other, for purposes of compliance testing. As noted in the discussion of comments concerned with alternate test apparatus, § 1500.43(a)(1) of the amendments issued below states that manufacturers and labelers may use any item of equipment which yields equivalent results when testing to determine if their products meet applicable requirements of the FHSA and implementing regulations.

However, in response to the same comment, the Commission has revised

[2] The materials published in proposed Appendix I pertaining to § 1500.3 appears in a note following § 1500.3; a note has been added to § 1500.43 to explain conditions under which manufacturers and labelers may continue to use that test method; and the revised test method is published below as § 1500.43a.

§ 1500.43(d),[1] issued below, to set forth the dimensions and requirements of the test equipment without reference to any particular brand or manufacturer. The Commission has also eliminated the reference to a particular brand of material from footnote B of Table 3, and has described the material in generic terms, as suggested by this comment.

D. Effective Date

In the notice of proposal, the Commission stated that it was considering establishment of an effective date for the proposed amendments one year after issuance on a final basis. The Commission stated that delaying the effective date of the amendments by one year should provide sufficient time for manufacturers and labelers to perform any additional testing relabeling of products which may be required by the amended flammability regulations. The Commission expressed its desire to minimize any adverse economic consequences which the amended regulations may have for manufacturers and labelers of products which would be reclassified from "combustible" to "flammable" hazardous substances, and for small businesses.

The notice of proposal specifically solicited comment on the issue of an appropriate effective date for the amendments; however, none was received.

All information currently available to the Commission indicates that an effective date one year after issuance of the final amendments will minimize any adverse economic consequences which they may have on regulated firms, including manufacturers and labelers whose products are reclassified by the amended regulations, and small businesses. Therefore, the amendments issued below shall become effective on [insert date which is one year after date of publication].

E. Impact on Small Businesses

Section 603 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires agencies to prepare an initial regulatory flexiblity analysis of the impact of a proposal on small businessses, unless the agency certifies in accordance with section 605 of that act that the proposed rule will not have a significant economic impact on a substantial number of small entities, including small businesses, if issued on a final basis. The notice of proposal included the Commission's certification that the proposed amendments would not have a significant economic impact on a substantial number of small businesses.

In that notice, the Commission observed that provisions of proposed § 1500.3(c)(6)(iv) allow continued reliance on Tagliabue open-cup flashpoint tests by manufacturers and labelers as long as no change is made to the formulation or labeling of a product, thereby minimizing any potentially adverse economic impact of the amendments on small businesses. The notice of proposal also stated that while the amendments would in some cases decrease costs for small businesses by eliminating the need for separate open-cup testing for compliance with FHSA requirements, the potential economic benefit for most small business was not expected to be significant.

None of the comments on the proposal addressed the economic impact of the amendments on small businesses. The Commission has not received any other information concerning the economic impact of the amendments on small businesses. For these reasons, the Commission affirms the certification made in the notice of proposal that the amendments issued below will not have a significant economic impact on a substantial number of small entities, including small businesses.

F. Statutory Requirements

Section 2(1) of the FHSA, as amended, provides that in establishing definitions and test methods related to flammability and combustibility, the Commission must consider existing definitions and test methods of other Federal agencies involved with regulation of flammable and combustible substances, and to the extent possible, establish compatible definitions and test methods.

As explained in this notice and in the proposal, the Commission has considered the definitions and test methods for the flammability of hazardous substances issued by other Federal agencies, including the Department of Transportation and the Department of Labor. Based on all information currently available, the Commission concludes that the definitions and test method established by the amendments issued below are compatible to the extent possible with those of other Federal agencies.

G. Conclusion and Promulgation

After consideration of the proposal of April 26, 1984, comments received in response to that proposal, information provided by the Commission staff, and other relevant information, the Commission hereby amends the definitions of the terms "extremely flammable," "flammable," and "combustible" hazardous substances, and regulations implementing the FHSA which prescribe the apparatus and procedure for determining flashpoint temperatures of volatile substances.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous substances, Labeling.

PART 1500—[AMENDED]

Therefore, in accordance with provisions of the Federal Hazardous Substances Act (secs. 2(1), 10(a); 15 U.S.C. 1261(1), 1269(a)) and under the authority of the Consumer Product Safety Act (sec. 30(a); 15 U.S.C. 2079(a)), the Commission hereby amends Chapter II, Subchapter C, Part 1500 of Title 16 of the Code of Federal Regulations, as follows:

1. The authority citation for Part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261(1), 1269(a), 2079(a).

2. Section 1500.3 is amended by revising paragraphs (b)(10) and (c)(6) and adding a "Note" at the end of the section to read as follows:

§ 1500.3 Definitions.

* * * * *

(b) * * *

(10) The terms "extremely flammable," "flammable," and "combustible" as they apply to any substances, liquid, solid, or the contents of any self-pressurized container, are defined by regulations issued by the Commission and published at § 1500.3(c)(6).

* * * * *

(c) * * *

(6) The Consumer Product Safety Commission, by the regulations published in this section, defines the terms "extremely flammable," "flammable," and "combustible," appearing in section 2(1) of the Federal Hazardous Substances Act, as follows:

(i) The term "extremely flammable" shall apply to any substance which has a flashpoint at or below 20° F (−6.7° C) as determined by the test method described at § 1500.43, except that, any mixture having one component or more with a flashpoint higher than 20° F (−6.7° C) which comprises at least 99 percent of the total volume of the mixture is not considered to be an extremely flammable substance.

(ii) The term "flammable" shall apply to any substance having a flashpoint above 20° F (−6.7° C) and below 100° F (37.8° C), as determined by the method described at § 1500.43, except that:

(A) Any mixture having one component or more with a flashpoint at or above 100° F (37.8° C) which

comprises at least 99 percent of the total volume of the mixture is not considered to be a flammable substance; and

(B) Any mixture containing 24 percent or less of water miscible alcohols, by volume, in aqueous solution is not considered to be flammable if the mixture does not present a significant flammability hazard when used by consumers.

(iii) The term "combustible" shall apply to any substance having a flashpoint at or above 100 °F (37.8 °C) to and including 150 °F (65.6 °C) as determined by the test method described at § 1500.43, except that:

(A) Any mixture having one component or more with a flashpoint higher than 150 °F (65.6 °C) which comprises at least 99 percent of the total volume of the mixture is not considered to be a combustible hazardous substance; and

(B) Any mixture containing 24 percent or less of water miscible alcohols, by volume, in aqueous solution is not considered to be combustible if the mixture does not present a significant flammability hazard when used by consumers.

(iv) To determine flashpoint temperatures for purposes of enforcing and administering requirements of the Federal Hazardous Substances Act applicable to "extremely flammable," "flammable," and "combustible" hazardous substances, the Commission will follow the procedures set forth in § 1500.43, as amended. However, the Commission will allow manufacturers and labelers of substances and products subject to those requirements to rely on property conducted tests using the Tagliabue open-cup method which was in effect prior to the amendment of § 1500.43 (as published at 38 FR 27012, September 27, 1973 and set forth below) and the definition of the terms "extremely flammable," "flammable," and "combustible" in this section before its amendments (as published at 38 FR 27012, September 27, 1973, and amended 38 FR 30105, November 1, 1973 and set forth in the note following this section) if all of the following conditions are met;

(A) The substance or product was subject to and complied with the requirements of the Federal Hazardous Substances Act for "extremely flammable," "flammable," or "combustible" hazardous substances before the effective date of the amendment of § 1500.43; and

(B) No change has been made to the formulation or labeling of such substance or product after the effective date of the amendment of § 1500.43 to prescribe a closed-cup test apparatus and procedure.

(v) "Extremely flammable solid" means a solid substance that ignites and burns at an ambient temperature of 80 °F or less when subjected to friction, percussion, or electrical spark.

(vi) "Flammable solid" means a solid substance that, when tested by the method described in § 1500.44, ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

(vii) "Extremely flammable contents of self-pressurized container" means contents of a self-pressurized container that, when tested by the method described in § 1500.45, a flashback (a flame extending back to the dispenser) is obtained at any degree of valve opening and the flashpoint, when tested by the method described in § 1500.43 is less than 20 °F (–6.7 °C).

(viii) "Flammable contents of self-pressurized container" means contents of a self-pressurized container that, when tested by the method described in § 1500.45, a flame projection exceeding 18 inches is obtained at full valve opening, or flashback (a flame extending back to the dispenser) is obtained at any degree of valve opening.

* * * * *

Note.—The definitions of "extremely flammable," "flammable," and "combustible" hazardous substances set forth above in paragraph (b)(10) and (c)(6) are effective August 10, 1987. The definitions remaining in effect until August 10, 1987, as published at 38 FR 27012, Sept. 27, 1973, and amended at 38 FR 30105, Nov. 1, 1973, are set forth below. Manufacturers and labelers of products subject to the Federal Hazardous Substances Act may continue to use these definitions for labeling of those products under the conditions set forth in § 1500.3(c)(6)(iv), as amended.

(b) * * *

(10) "Extremely flammable" shall apply to any substance which has a flashpoint at or below 20° F. as determined by the Tagliabue Open Cup Tester; "flammable" shall apply to any substance which has a flashpoint of above 20° F., to and including 80° F., as determined by the Tagliabue Open Cup Tester; and "combustible" shall apply to any substance which has a flashpoint above 80° F. to and including 150° F., as determined by the Tagliabue Open Cup Tester; except that the flammability or combustibility of solids and of the contents of self-pressurized containers shall be determined by methods found by the Commission to be generally applicable to such materials or containers, respectively, and established by regulations issued by the Commission, which regulations shall also define the terms "flammable," "combustible," and "extremely flammable" in accord with such methods.

* * * * *

(c) * * *

(6) * * *

(i) "Extremely flammable" means any substance that has a flashpoint at or below 20° F. as determined by the method described in § 1500.43.

(ii) "Flammable" means any substance that has a flashpoint of above 20° F., to and including 80° F., as determined by the method described in § 1500.43.

3. Section 1500.43 (method for test for flashpoint of volatile flammable materials by Tagliabue open-cup apparatus) as published at 38 FR 27012, Sept. 27, 1973:, is reprinted below (see the "Note" following this section).

§ 1500.43 Method of test for flashpoint of volatile flammable materials by Tagliabue open-cup apparatus.

Scope

1. (a) This method describes a test procedure for the determination of open-cup flashpoints of volatile flammable materials having flashpoints below 175° F.

(b) This method, when applied to paints and resin solutions which tend to skin over or which are very viscous, gives less reproducible results than when applied to solvents.

Outline of Method

2. The sample is placed in the cup of a Tag Open Tester, and heated at a slow but constant rate. A small test flame is passed at a uniform rate across the cup at specified intervals. The flashpoint is taken as the lowest temperature at which application of the test flame causes the vapor at the surface of the liquid to flash, that is, ignite but not continue to burn.

Apparatus

3. The Tag open-cup tester is illustrated in Fig. 1. It consists of the following parts, which must conform to the dimensions shown, and have the additional characteristics as noted:

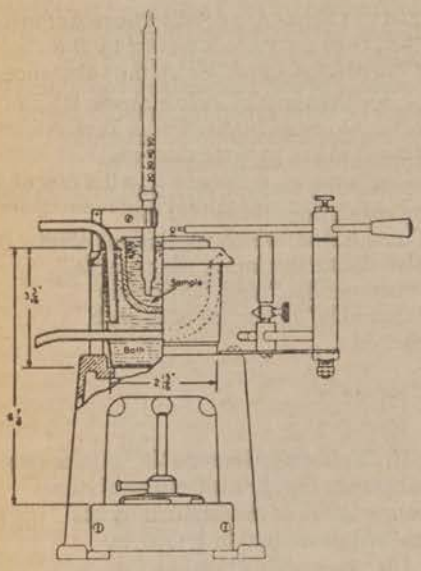


Figure 1—*Tag open-cup flash tester.*

(a) *Copper bath,* preferably equipped with a constant level overflow so placed as to maintain the bath liquid level ⅛-inch below the rim of the glass cup.

(b) *Thermometer holder.* Support firmly with ringstand and clamp.

(c) *Thermometer.* For flashpoints above 40° F., use the ASTM Tag Closed Tester Thermometer, range of +20 to +230° F., in 1° F. divisions, and conforming to thermometer 9F. of ASTM Standard E 1. For flashpoints from 20° F. to 40° F., use ASTM Tag Closed Tester, Low Range, Thermometer 57F. For flashpoints below 20° F., use ASTM Thermometer 33F. The original Tag Open-Cup (Paper Scale) Thermometer will be a permissible alternate until January 1, 1962. It is calibrated to −20° F.

(d) *Glass test cup.* Glass test cup (Fig. 2), of molded clear glass, annealed, heat-resistant, and free from surface defects.

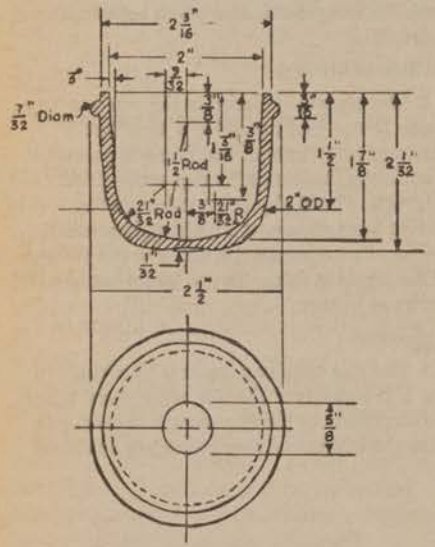


Figure 2—*Glass test cup.*

(e) *Leveling device.* Leveling device or guide, for proper adjustment of the liquid level in the cup (Fig. 3). This shall be made of No. 18-gage polished aluminum, with a projection for adjusting the liquid level when the sample is added to exactly ⅛-inch below the level of the edge or rim of the cup.

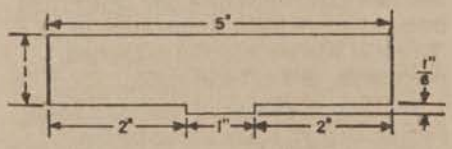


Figure 3—*Leveling device for adjusting liquid levels in test cup.*

(f) "Micro," or small gas burner of suitable dimensions for heating the bath. A screw clamp may be used to help regulate the gas. A small electric heater may be used.

(g) Ignition taper, which is a small straight, blow-pipe type gas burner. The test flame torch prescribed in the method of test for flash and fire points by Cleveland Open Cup (ASTM designation: D 92) is satisfactory.

(h) Alternative methods for maintaining the ignition taper in a fixed horizontal plane above the liquid may be used, as follows:

(1) Guide wire, 3/32-inch in diameter and 3½ inches in length, with a right-angle bend ½-inch from each end. This wire is placed snugly in holes drilled in the rim of the bath, so that the guide wire is ⅝-inch from the center of the cup and resting on the rim of the cup.

(2) Swivel-type taper holder, such as is used in ASTM METHOD D 92. The height and position of the taper are fixed by adjusting the holder on a suitable ringstand support adjacent to the flash cup.

(i) Draft shield, consisting of two rectangular sheets of noncombustible material, 24 inches × 28 inches, are fastened together along the 28-inch side, preferably by hinges. A triangular sheet, 24 inches × 24 inches × 34 inches is fastened by hinges to one of the lateral sheets (to form a top when shield is open). The interior of the draft shield shall be painted a flat black.

Procedure

4. (a) Place the tester on a solid table free of vibration, in a location free of perceptible draft, and in a dim light.

(b) Run water, brine, or water-glycol solution into the bath to a predetermined level, which will fill the bath to ⅛-inch below the top when the cup is in place. An overflow is permissible for water-level control.

(c) Firmly support the thermometer vertically halfway between the center and edge of the cup on a diameter at right angles to the guide wire, or on a diameter passing through the center of the cup and the pivot of the taper. Place so that the bottom of the bulb is ¼-inch from the inner bottom surface of the cup. If the old Tagliabue thermometer is used, immerse to well cover the mercury bulb, but not the wide body of the thermometer.

(d) Fill the glass cup with the sample liquid to a depth just ⅛-inch below the edge, as determined by the leveling device.

(e) Place the guide wire or swivel device in position, and set the draft shield around the tester so that the sides from right angles with each other and the tester is well toward the back of the shield.

(f) If a guide wire is used, the taper, when passed, should rest lightly on the wire, with the end of the jet burner just clear of the edge of the guide wire. If the swivel-type holder is used, the horizontal and vertical positions to the jet are so adjusted that the jet passes on the circumference of a circle, having a radius of at least 6 inches, across the center of the cup at right angles to the diameter passing through the thermometer, and in a plane ⅛-inch above the upper edge of the cup. The taper should be kept in the "off position, at one end or the other of the swing, except when the flame is applied.

(g) Light the ignition flame and adjust it to form a flame of spherical form matching in size the 5/32-inch sphere on the apparatus.

(h) Adjust heater source under bath so that the temperature of the sample increases at a rate of 2±0.5 °F. per minute. With viscous materials this rate of heating cannot always be obtained.

Initial Test

5. Determine an approximate flashpoint by passing the taper flame across the sample at intervals of 2 °F. Each pass must be in one direction only. The time required to pass the ignition flame across the surface of the sample should be 1 second. Remove bubbles from the surface of the sample liquid before starting a determination. Meticulous attention to all details relating to the taper, size of taper flame, and rate of passing the taper is necessary for good results. When determining the flashpoint of viscous liquids and those liquids that tend to form a film of polymer, etc., on the surface, the surface film should be disturbed mechanically each time before the taper flame is passed.

Recorded Tests

6. Repeat the procedure by cooling a fresh portion of the sample, the glass cup, the bath solution, and the thermometer at least 20 °F. below the approximate flashpoint. Resume heating, and pass the taper flame across the sample at two intervals of 2 °F. until the flashpoint occurs.

Reporting Data

7. The average of not less than three recorded tests, other than the initial test, shall be used in determining the flashpoint and flammability of the substance.

Standardization

8. (a) Make determinations in triplicate on the flashpoint of standard paraxylene and of standard isopropyl alcohol which meet the following specifications:

(i) *Specifications for p-xylene, flashpoint check grade. p-xylene shall conform to the following requirements;*

Specific gravity: 15.56 °C./15.56 °C., 0.860 minimum, 0.866 maximum

Boiling range: 2 °C. maximum from start to dry point when tested in accordance with the method of test for distillation of industrial aromatic hydrocarbons (ASTM designation: D 850), or the method of test

for distillation range of lacquer solvents and diluents (ASTM) designation D 1078). The range shall include the boiing point of pure *P*-xylene, which is 138.35 °C. (281.03 °F.).

Purity: 95 percent minimum, calculated in accordance with the method of test for determination of purity from freezing points of high-purity compounds (ASTM designation: D 1016), from the experimentally determined freezing point, measured by the method of test for measurement of freezing points of high-purity compounds for evaluation of purity (ASTM designation: D 1015).

(ii) *Specifications for ispropanol, flash point check grade.* Isopropanol shall conform to the following requirements:

Specific gravity: 0.8175 to 0.8185 at 20 °C./20 °C. as determined by means of a calibrated pycnometer.

Distillation range: Shall entirely distill within a 1.0 °C. range which shall include the temperature 80.4 °C. as determined by ASTM method D 1078.

Average these values for each compound. If the difference between the values for these two compounds is less than 15 °F. (8.5 °C.) or more than 27 °F. (16 °C.), repeat the determinations or obtain fresh standards.

(b) Calculate a correction factor as follows:

$X = 92 - A$

$Y = 71 - B$

$\text{Correction} = (X + Y)/2.$

Where:

A = Observed flash of *p*-xylene, and

B = Observed flash of isopropyl alcohol.

Apply this correction of all determinations. Half units in correction shall be discarded.

Precision

9. (a) For hydrocarbon solvents having flashpoints between 60 °F. and 110° F., repeatability is ± 2 °F. and the reproducibility is ± 5 °F.

(b) If results from two tests differ by more than 10° F., they shall be considered uncertain and should be checked. This calibration procedure provided in this method will cancel out the effect of barometric pressure if calibration and tests are run at the same pressure. Data supporting the precision are given Appendix III of the 1956 Report of Committee D–1 on Paint, Varnish, Lacquers and Related Products, Proceedings, Am. Soc. Testing Mats., Vol. 56 (1956).

Note.—The test apparatus and procedure described in §1500.43 may be used by manufacturers and labelers of products subject to the Federal Hazardous Substances Act to determine flashpoint temperatures of those products under the conditions set forth in § 1500.3(c)(6)(iv), as amended.

4. Section 1500.43a is added to read as follows:

§ 1500.43a Method of test for flashpoint of volatile flammable materials.

(a) *Scope.* (1) This method describes the test procedure which the Commission will use for the determination of the flashpoint of volatile flammable materials, using a Setaflash [1] low-range closed tester, or an apparatus producing equivalent results. The method described in this section is essentially a Setaflash equlibrium procedure which closely parallels the test method designated ASTM D 3828-81, "Standard Test Methods for Flash Point by Setaflash Closed Tester," published by the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103. Manufacturers and labelers of products subject to labeling and other requirements under the Federal Hazardous Substances Act may use other apparatus and/or test methods which produce equivalent results.

(2) At the option of the user, the procedures described in this section may be used to determine the actual flashpoint temperature of a sample or to determine whether a product will or will not flash at a specified temperature (flash/no flash).

(3) If the substance to be tested has a viscosity greater than 150 Stokes at 77°F (25°C), see paragraph (n) of this section for modifications to the testing procedure.

(4) If the Commission has reason to believe on the basis of reliable experience or other relevant information or data that the flammability hazard of a substance is greater or less than its flammability classification based on flashpoint temperature determined in accordance with this § 1500.43a and that the substance should be reclassified, the Commission will initiate a rulemaking proceeding for reclassification of the substance. Product manufacturers and labelers may use reliable experience or other relevant information or data in addition to the flashpoint temperature of a substance as a basis for compliance with any applicable requirements of the Federal Hazardous Substances Act in the absence of a rule issued by the Commission to reclassify the substance.

(b) *Summary of test methods.* (1) Method A—Flash/No Flash Test. A specified volume of sample is introduced by a syringe into the cup of the apparatus that is set and maintained at the specified temperature. After a specific time a test flame is applied and an observation made as to whether or not a flash occurred. Test procedures are set forth in detail in § 1500.43a(i).

(2) Method B—Finite (or Actual) Flashpoint. (i) A specified voume of sample is introduced into the cup of the apparatus that is maintained at the expected flashpoint. After a specified time a test flame is applied and the observation made whether or not a flash occurred.

(ii) The specimen is removed from the cup, the cup cleaned, and the cup temperature adjusted 5 °C (9 °F), lower or higher depending on whether or not a flash occurred previously. A fresh specimen is introduced and tested. This procedure is repeated until the flashpoint is established within 5 °C (9 °F).

(iii) The procedure is then repeated at 1 °C (2 °F) intervals until the flashpoint is determined to the nearest 1 °C (2 °F).

(iv) If improved accuracy is desired the procedure is repeated at 0.5 °C (1 °F). Test procedures are set forth in detail at § 500.43a(j).

(3) The test procedures will be modified, where necessary, to ensure that the results obtained reflect the hazard of the substance under reasonably foreseeable conditions of use. Thus, for example, the material, if a mixture, will normally be tested as it comes from the container, and/or after a period of evaporation. The period of evaporation for a material which is a mixture will normally be the time required for the mixture to evaporate in an open beaker under ambient conditions to 90 percent of its original volume, or a period of four hours, whichever occurs first. However, this period of evaporation will be changed if the results obtained do not represent the hazard of the substance under reasonably foreseeable conditions of use.

[1] Setaflash is a registered trademark of Stanhope-Seta Limited, Surrey, England.

(c) *Definition of flashpoint.* The lowest temperature of the sample, corrected to a barometric pressure of 101.3 kPa (760 mm Hg), at which application of a test flame causes the vapor of the sample to ignite under specified conditions of test. The sample is deemed to have flashed when a large flame appears and instantaneously propagates itself over the surface of the sample. Occasionally, particularly near actual flashpoint, the application of the test flame will cause a halo or an enlarged flame; this is not a flash and should be ignored.

(d) *Test apparatus.* The test apparatus is an equilibrium closed-cup tester with a range up to 100 °C (212 °F). The essential dimensions and requirements are shown in figure 1 and table 3, and are described in § 1500.43a(m). Closed-cup flashpoint testers and accessories meeting these requirements are available from commercial suppliers and distributors of laboratory equipment.

(e) *Safety precautions.* The operator must exercise and take appropriate safety precautions during the initial application of the test flame to the sample. Samples containing low-flash material may give an abnormally strong flash when the test flame is first applied.

(f) *Preparation of samples.* (1) Erroneously high flashpoints may be obtained if precautions are not taken to avoid the loss of volatile material. In preliminary tests of materials taken directly from the container, do not open containers unnecessarily and make a transfer unless the sample temperature is at least 10°C (18°F) below the expected flashpoint. Do not use samples in leaky containers for this test.

(2) Do not store samples in plastic (polyethylene, polypropylene, etc.) bottles since volatile material may diffuse through the walls of the bottle.

(3) A 2-ml specimen is required for each test. If possible, obtain at least a 50-ml sample from the bulk test site and store in a clean, tightly closed container.

(g) *Preparation of apparatus.* (1) Place the tester on a level, stable surface. Unless tests are made in a draft-free area, surround the tester on three sides with a shield for protection. Do not rely on tests made in a laboratory draft hood or near ventilators.

(2) Read the manufacturer's instructions on the care and servicing of the instrument and for correct operation of its controls.

(h) *Calibration and standardization.* (1) Before initial use determine and plot the relationship between the temperature control dial and the thermometer readings at each major (numbered) dial division as follows:

Turn the temperature control knob [2] fully counterclockwise ("O" reading). Advance the temperature control knob clockwise until the indicator light is illuminated.[3] Advance the knob clockwise to the next numbered line. After the thermometer mercury column ceases to advance, record the dial reading and the temperature. Advance the knob clockwise to the next numbered line. After the thermometer mercury column ceases to advance, read the dial reading and the temperature. Repeat this procedure through the full range of the instrument. Plot the dial readings versus the respective temperatures.

(2) Standardize the instrument using sample of material meeting the specifications in table 1. If the average of two determinations falls within the acceptable limits the instrument is assumed to be operating properly. If the average of the two determinations does not fall within this range, check the manufacturer's operating and maintenance instructions and determine that they are being followed. In particular, be sure that the cup lid assembly makes a vapor-tight seal with the cup, the shutter provides a light-tight seal, and that adequate heat transfer paste surrounds the thermometer bulb and the immersed portion of the barrel.

(i) *Test Method A—for determining Flash/No Flash.*

(1) Determine the target flashpoint as follows:

(i) Target flashpoint, °C=S_c—0.25 (101.3—A)

(ii) Target flashpoint, °C=S_c—0.03 (760–B)

(iii) Target flashpoint, °F=S_f—0.06 (760–B)

where:

S_c=specification, or uncorrected target, flashpoint, °C,

S_f=specification, or uncorrected target, flashpoint, °F,

B=ambient barometric pressure, mm Hg,[4] and

A=ambient barometer pressure, kPa.[4]

(2) Inspect the inside of the sample cup, lid, and shutter mechanism for cleaniness and freedom from contamination. Use an absorbent paper tissue to wipe clean, if necessary. Put cover in place and lock securely. The filing orifice may be convenienty cleaned with a pipe cleaner.

(3) Set the instrument at the target temperature.

(i) For target temperature below ambient. The instrument power switch is to be in the off position. Fill the refigerant-charged cooling block with a suitable material.[5] Raise the lid and shutter assembly, and position the base of the block in the sample cup, being careful not to injure or mar the cup. When the thermometer reads approximately 6 to 10° C (10 to 20° F) below the target temperature, remove the cooling block and quickly dry the cup with a paper tissue to remove any moisture. Immediately close the lid and shutter assembly and secure. Prepare to introduce the sample using the syringe, both of which have been precooled to a temperature 5 to 10° C (10 to 20° F) below the target temperature.

(A) Caution: Do not cool the sample block below —38° C, the freezing point of mercury.

(B) Caution: Acetone is extremely flammable. Keep away from heat, sparks, and flames and keep container closed when not actually pouring acetone. Use only in a well-ventilated area. Avoid inhalation and contact with the eyes or skin. Use cloth or leather gloves, goggles or safety shield, and keep dry ice in a canvas bag, especially when cracking.

(ii) For target temperature above ambient. Switch the instrument on and turn the coarse temperature control knob fully clockwise (full on) causing the indicator light to illuminate.[6] When the thermometer indicates a temperature about 3° C (5° F) below the target (or specification) temperature, reduce the heat input to the sample cup by turning the coarse temperature control knob

[2] If the instrument has two temperature control knobs, set the fine control (center, small knob) at its mid-position and allow it to remain there throughout the calibration. The calibration is determined by adjusting the coarse control (large, outer knob) only.

[3] When using the tester, it will be found that the indicator light may not illuminate and the temperature may not rise until a temperature control dial setting between one and two is reached.

[4] The barometric pressure used in this calculation must be the ambient pressure for the laboratory at the time of test. Many aneroid barometers, such as those used at weather stations and airports, are precorrected to give sea-level readings; these must not be used.

[5] If the target or specification temperature is not less than 5° C (40° F) crushed ice and water may be used as charging (cooling) fluid. If below 5° C (40° F), a suitable charging (cooling) fluid is solid carbon dioxide (dry ice) and acetone. If the refrigerant charged cooling module is unavailable, refer to the manufacturer's instruction manual for alternative methods of cooling.

[6] The target temperature may be attained by originally turning the coarse temperature control knob to the proper setting (see § 1500.43a(h)(1) for the temperature desired rather than the maximum setting (full on). The elapsed time to reach the temperature will be greater, except for maximum temperature. However, less attention will be required during the intervening period.

counter-clockwise to the desired control point (see § 1500.43a(i)(1)). When the indicator light slowly cycles on and off read the temperature on the thermometer. If necessary, adjust the fine (center) temperature control knob to obtain the desired test (target) temperature. When the test temperature is reached and the indicator lamp slowly cycles on and off, prepare to introduce the sample.

(4) Charge the syringe with a 2-ml specimen of the sample [7] to be tested; transfer the syringe to the filling orifice, taking care not to lose any sample; discharge the test specimen into the cup by full depressing the syringe plunger, remove the syringe.

(5)(i) Set the timer [8] by rotating its knob clockwise to its stop. Open the gas control valve and light the pilot and test flames. Adjust the test flame with the pinch valve to conform to the size of the 4-mm (5/32-in.) gage.

(ii) After the time signal indicates the specimen is at test temperature [8], apply the test flame by slowly and uniformly opening the shutter and closing it completely over a period of approximately 2½ s.[9] Watch closely for a flash at the cup openings.

(iii) The sample is deemed to have flashed when a large flame appears and instantaneously propagates itself over the surface of the sample (see § 1500.43a(c)).

(6) Record the test results as "flash" or "no flash" and the test temperature.

(7) Turn off the pilot and test flames using the gas control valve. Remove the sample and clean the instrument. It may be necessary to allow the cup temperature to decline to a safe level before cleaning.

(j) *Test Method B—for determining Finite or Actual Flashpoint.* (1) Inspect the inside of the sample cup, lid, and shutter mechanism for cleanliness and freedom from contamination. Use an absorbent paper tissue to wipe clean, if necessary. Put cover in place and lock securely. The filling orifice may be conveniently cleaned with a pipe cleaner.

(2) For expected flashpoints below ambient. (i) The instrument power switch is to be in off position. Fill the refrigerant-charged cooling block with a suitable material.[5] Raise the lid and shutter assembly, and position the base of the block in the sample cup, being careful not to injure or mar the cup. When the thermometer reaches a temperature 5 to 10°C (10 to 20°F) below the expected flashpoint, remove the cooling block and quickly dry the cup with a paper tissue to remove any moisture. Immediately close the lid and shutter assembly and secure. Prepare to introduce the sample using the syringe, both of which have been precooled to a temperature 5 to 10°C (10 to 20°F) below the expected temperature (See § 1500.43a(j)(5)).

(ii) Caution: Do not cool the sample block below −38°C, the freezing point of mercury.

(3) For tests where the expected flashpoint is above ambient. Turn the coarse temperature control knob fully clockwise (full on) causing the indicator light to illuminate. When the thermometer reaches a temperature 3°C (5°F) below the estimated flashpoint, turn the coarse temperature knob counter-clockwise to the dial reading representing the estimated flashpoint temperature as shown on the calibration curve (See § 1500.43a(h)(1)). When the indicator light slowly cycles on and off, read the temperature on the thermometer. If necessary, adjust the fine temperature control knob to obtain the exact desired temperature.

(4)(i) Charge the syringe [7] with a 2 ml specimen of the sample [7] to be tested; transfer the syringe to the filling orifice, taking care not to lose any sample; discharge the test specimen into the cup by fully depressing the syringe plunger; remove the syringe.

(ii) Set the timer [10] by rotating its knob clockwise to its stop. Open the gas control valve and ignite the pilot and test flames. Adjust the test flame with the pinch valve to conform to the size of the 4-mm (5/32-in.) gage.

(iii) After the audible time signal indicates the specimen is at test temperature,[10] apply the test flame by slowly and uniformly opening the shutter and then closing it completely over a period of approximately 2½ s. Watch closely for a flash at the cup opening.

(iv) The sample is deemed to have flashed only if a large flame appears and instanteously propagates itself over the surface of the sample. (See § 1500.43a(c).)

(v) Turn off the pilot and test flames using the gas control valve. When the cup temperature declines to a safe level, remove the sample and clean the instrument.

(5)(i) If a flash was observed in § 1500.43a(j)(4)(iii) repeat the procedure given in section 1500.43a(j)(2) or (3), and in section 1500.43a(j)(4), testing a new specimen at a temperature 5°C (9°F) below that at which the flash was observed.

(ii) If necessary, repeat the procedure in § 1500.43a(j)(5)(i), lowering the temperature 5°C (9°F) each time, until no flash is observed.[9]

(iii) Proceed to § 1500.43a(j)(7).

(6)(i) If no flash was observed in § 1500.43a(j)(4)(iii) repeat the procedure given in § 1500.43a(j)(2) or (3), and in § 1500.43a(j)(4), testing a fresh specimen at a temperature 5°C (9°F) above that at which the specimen was tested in § 1500.43a(j)(4)(iii).

(ii) If necessary repeat the procedure in § 1500.43a(j)(6)(i), above, raising the temperature 5°C (9°F) each time until a flash is observed.[9]

(7) Having established a flash within two temperatures 5 °C (9 °F) apart, repeat the procedure at 1 °C (2 °F) intervals from the lower of the two temperatures until a flash is observed.[9] Record the temperature of the test when this flash occurs as the flashpoint, allowing for any known thermometer correction. Record the barometric pressure.[4]

(8) The flashpoint determined in § 1500.43a(j)(7) will be to the nearest 1 °C (2 °F). If improved accuracy is desired (that is, to the nearest 0.5 °C (1 °F)), test a fresh specimen at a temperature 0.5 °C (1 °F) below that at which the flash was observed in § 1500.43a(j)(7). If no flash is observed, the temperature recorded in § 1500.43a(j)(7), is the flashpoint to the nearest 0.5 °C (1 °F). If a flash is observed at the lower temperature, record this latter temperature as the flashpoint.

(9) Turn off the pilot and test flames using the gas control valve. When the cup temperature declines to a safe level, remove the sample and clean the instrument.

(k) *Calculations.* If it is desired to correct the observed finite flashpoint for the effect of barometric pressure, proceed as follows: Observe and record the ambient barometric pressure[4] at the time of the test. If the pressure differs from 101.3 kPa (760 mm Hg), correct the flashpoint as follows:

[7] For target or expected temperatures below ambient, both syringe and sample must be precooled to cup temperature (see § 1500.43a(i)(3)(i)) before the specimen is taken.

[8] For target temperatures below ambient, do not set the timer. Adjust the test flame and allow the temperature to rise under ambient conditions until the target temperature is reached. Immediately apply the test flame as detailed.

[9] Never apply the test flame to the specimen more than once. Fresh portions of the sample must be used for each test.

[10] For expected flashpoint below ambient, do not set the timing device. Adjust the test flame. Allow the temperature to rise under ambient conditions until the temperature reaches 5°C (9° F) below the expected flashpoint. Immediately apply the test flame.

(1) Corrected flashpoint (°C)=C+0.25 (101.3–A)

(2) Corrected flashpoint (°F)=F+0.06 (760–B)

(3) Corrected flashpoint (°C)=C+0.03 (760–B)

Where: F=Observed flashpoint, °F,
C=observed flashpoint, °C,
B=ambient barometric pressure, mm Hg; and
A=ambient barometric pressure, kPa.

(l) *Precision.* The precision of the method as determined by statistical examination of interlaboratory results is as follows:

(1) Repeatability. The difference between two test results obtained by the same operator with the same apparatus under constant operating conditions on identical test material, would, in the long run, in the normal and correct operation of the test method, exceed the values shown in table 2 only in 1 case in 20.

(2) Reproducibility. The difference between two single and independent results obtained by different operators working in different laboratories on identical test material, would, in the long run, in the normal and correct operation of the test method, exceed the values shown in table 2 only in 1 case in 20.

(m) *Flash Test Apparatus.* (1)(i) Unit consisting of an aluminum alloy or nonrusting metal block of suitable conductivity with a cylindrical depression, or sample cup, over which is fitted a cover. A thermometer is embedded in the block.

(ii) The cover is fitted with an opening slide and a device capable of inserting an ignition flame (diameter 4±0.5 mm) into the well when the slide device shall intersect the plane of the underside of the cover. The cover is also provided with an orifice extending into the sample well for insertion of the test sample and also a suitable clamping device for securing the cover tightly to the metal block. The three openings in the cover shall be within the diameter of the sample well. When the slide is in the open position, the two openings in the slide shall coincide exactly with the two corresponding openings in the cover.

(iii) Electrical heaters are attached to the bottom of the cup in a manner that provides efficient transfer of heat. An electronic heat control is required to hold the equilibrium temperature, in a draft-free area, within 0.1 °C (0.2 °F) for the low-temperature tester. A visual indicator lamp shows when energy is or is not being applied. Energy may be supplied from 120 or 240 V, 50 or 60 Hz main service.

(2)(i) Test flame and pilot flame-regulatable test flame, for dipping into the sample cup to try for flash, and a pilot flame, to maintain the test flame, are required. These flames may be fueled by piped gas service. A gage ring 4mm (5/32 in.) in diameter, engraved on the lid near the test flame, is required to ensure uniformity in the size of the test flame.

(ii) Caution: Never recharge the self-contained gas tank at elevated temperature, or with the pilot or test flames lighted, nor in the vicinity of other flames.

(iii) Audible Signal is required. The audiable signal is given after 1 min in the case of the low-temperature tester.

(iv) Syringe. 2ml capacity, equipped with a needle suitable for use with the apparatus, adjusted to deliver 2.00± 0.05 ml.

(3) Essential dimensions of the test apparatus are set forth in table 3.

(n) *Testing high-viscosity liquids.* (1) High-viscosity materials may be added to the cup by the following procedure:

(i) Back load a 5 or 10-ml syringe with the sample to be tested and extrude 2 ml into the cup. Spread the specimen as evenly as possible over the bottom of the cup.

(ii) If the sample cannot be loaded into a syringe and extruded, other means of adding the sample to the cup may be used such as a spoon. Add approximately 2 ml of material to the spoon and then push the material from the spoon into the cup.

(iii) If the test specimen does not close the sampling port in the cup, seal the cup externally by suitable means.

(2) Using the appropriate procedure, either Method A in § 1500.43a(i) or Method B in § 1500.43a(j), determine the flashpoint of the specimen which has been added to the tester in accordance with § 1500.43a(n)(i), except that the time specified is increased from 1 to 5 minutes for samples at or above ambient temperature.

TABLE 1.—CALIBRATION OF TESTER

Material	*p*-xylene[A] (Caution).[B]
Specific gravity, 15.6/15.6°C (60/60°F).	0.850 to 0.866.
Boiling range	2°C maximum including 138.35°C (281.03°F).
Freezing point	11.23°C (52.2°F) minimum.
Flashpoint °C (acceptable range).	25.6± 0.5 (78± 1°F).

[A] Available as Flash Point Check Fluid (p-xylene) from Special Products Div., Phillips Petroleum Co., Drawer 'O,' Borger, Texas 79007.

[B] Caution: Handle xylene with care. Avoid inhalation; use only in a well-ventilated area. Avoid prolonged or repeated contact with skin. Keep away from flames and heat, except as necessary for the actual flash point determination.

TABLE 2.—REPEATABILITY AND REPRODUCIBILITY

Temperature, °C (°F)	Repeatability, °C (°F)	Reproducibility, °C (°F)
20(68)	0.5(0.9)	1.4(2.6)
70(158)	0.5(0.9)	2.9(5.3)
93(200)	1.3(2.3)	4.9(8.8)
150(300)	2.0(3.6)	7.5(13.5)
200(400)	2.6(4.7)	9.9(17.9)
260(500)	3.3(5.9)	12.4(22.3)

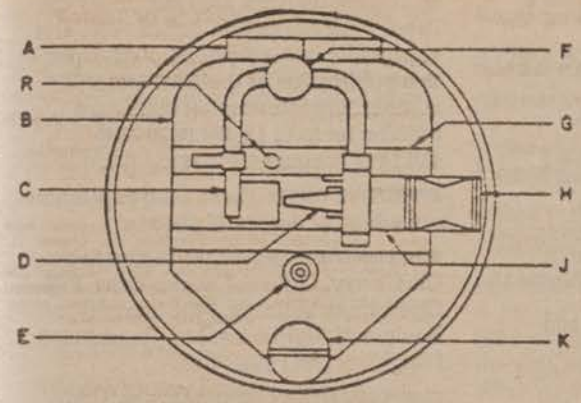
TABLE 3.—ESSENTIAL DIMENSIONS OF FLASH TEST APPARATUS [A, B]

Sample Block	
Block diameter	61.5–62.5
Sample well diameter	49.40–49.70
Sample well depth	9.70–10.00
Top of block to center of thermometer hole	16.00–17.00
Diameter of thermometer hole (approx.)	7.00
Cover	
Large opening length	12.42–12.47
Large opening width	10.13–10.18
Small opening length	5.05–5.10
Small opening width	7.60–7.65
Distance between extreme edges of small openings	48.37–48.32
Filling orifice diameter	4.00–4.50
Bore or filler tube	1.80–1.85
Maximum distance of filler tube from base of well with cover closed (max.)	0.75
Slide	
Large opening length	12.42–12.47
Large opening width	10.13–10.18
Small opening length	5.05–5.10
Small opening width	7.60–7.65
Near edge of large opening to end of slide	12.80–12.85
Extremes of large and small openings	30.40–30.45
Jet	
Length of jet	18.30–18.40
External diameter at end of jet	2.20–2.60
Bore of jet	1.60–1.65
Height of jet center above top surface of cover	11.00–11.20
Jet pivot to center of block with cover closed	12.68–12.72

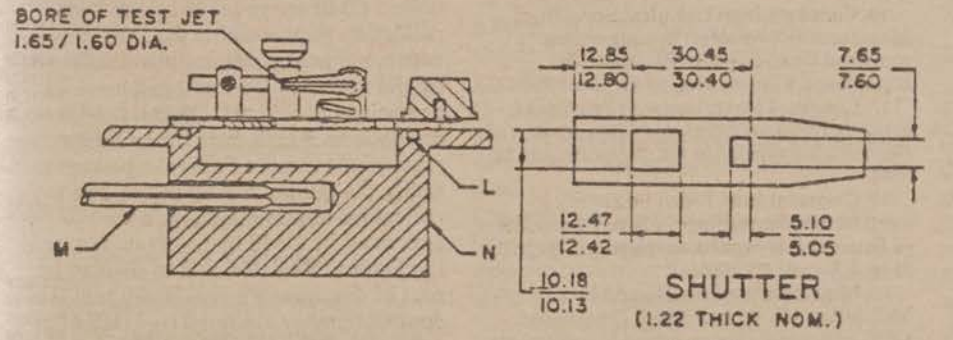
[A] The O-seal or gasket which provides a seal when the cover is shut, should be made of a heat-resistant material capable of withstanding temperatures up to 150 °C for the low-range apparatus.

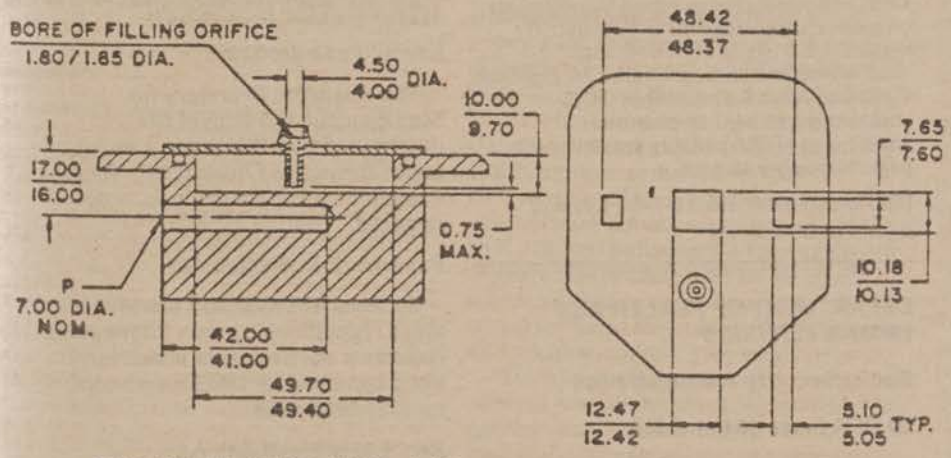
[B] When in position, the thermometer bulb should be surrounded with heat-conducting thermoplastic compound, such as a paste comprised of zinc oxide and mineral oil.

BILLING CODE 6355-01-M



A - Hinge
B - Lid
C - Pilot flame jet
D - Test flame jet
E - Filling orifice
F - Test flame gas control screw
G - Shutter guide
H - Shutter knob
J - Shutter
K - Lid lock
L - Lid sealing O-ring
M - Thermometer
N - Sample cup
P - Thermometer pocket
R - Test flame guage





(All dimensions are in millimeters)

FIGURE 1 - Closed-cup tester

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5. Section 1500.46 is revised to read as follows:

§ 1500.46 Method for determining flashpoint of extremely flammable contents of self-pressurized containers.

Use the apparatus described in § 1500.43a. Use some means such as dry ice in an open container to chill the pressurized container. Chill the container, the flash cup, and the bath solution of the apparatus (brine or glycol may be used) to a temperature of about 25 ° F below zero. Puncture the chilled container to exhaust the propellant. Transfer the chilled formulation to the test apparatus and test in accordance with the method described in § 1500.43a.

Effective date: These amendments shall be effective on August 10, 1987.

Dated: July 31, 1986.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Bibliography

1. Memorandum from Robert E. Frye, CPSC, to James Sharman, concerning injuries from flammable liquids; 1 page; September 20, 1985.

2. Memorandum from Donald F. McCaulley, CPSC, to George Anikis, CPSC, concerning briefing package for flashpoint changes in the FHSA; 9 pages; April 6, 1979.

3. Memorandum from Donald F. McCaulley, CPSC, to Stan Morrow, CPSC, concerning FHSA flammability test revisions, with attachments; 27 pages; February 22, 1980.

4. Final report "Flammability Criteria Changes: Consumer Products Affected and Related Economic Impacts," by Donald Slivka and John J. Scarry, Batelle, Columbus Division; 46 pages; February 27, 1980.

5. Memorandum from Julia Clones, CPSC, to Stan Morrow, CPSC, concerning FHSA test-method changes, with attachment; 4 pages; March 27, 1980.

6. Report on additional evidence in support of closed cup flashpoint method by Joseph M. Kuchta Safety Research Center, Bureau of Mines, U.S. Department of the Interior; 10 pages; June 18, 1970.

7. Memorandum from Allen F. Brauninger, OGC to the Commission concerning amendment of regulations for classification of flammable hazardous substances and specification of test method to determine flashpoint temperatures, with attachment; 55 pages; March 2, 1984.

8. Vote sheet for approval of draft **Federal Register** notice to propose amendment of regulations for classification of flammable hazardous substances and specification of test method to determine flashpoint temperatures; 1 page; March 2, 1984.

9. **Federal Register** notice proposing amendment of regulations for classification of flammable hazardous substances and specification of test method to determine flashpoint temperatures; 11 pages; April 26, 1984.

10. Comment from H.B. Fuller Company concerning proposed amendment of flammability regulations; 3 pages; June 4, 1984.

11. Comment from Control Data Corporation concerning proposed amendment of flammability regulations, with attachments; 7 pages; June 11, 1984.

12. Comment from Adhesives Manufacturers Association concerning proposed amendment of flammability regulations; 2 pages; August 7, 1984.

13. Comment from Koppers Company, Inc. concerning proposed amendment of flammability regulations; 2 pages; August 15, 1984.

14. Comment from the Adhesive and Sealant Council concerning proposed amendment of flammability regulations; 2 pages; August 22, 1984.

15. Comment from Union Oil Company of California concerning proposed amendment of flammability regulations; 1 page; August 20, 1984.

16. Comment from Chemical Specialties Manufacturers Association concerning proposed amendment of flammability regulations; 6 pages; August 23, 1984.

17. Comment from American Petroleum Institute concerning proposed amendment of flammability regulations; 2 pages; August 22, 1984.

18. Comment from Erdco Engineering Corporation concerning proposed amendment of flammability regulations; 5 pages; August 21 and August 27, 1984.

19. Memorandum from Donald F. McCaulley, HSHL, to Allen F. Brauninger, OGC, concerning issues raised by comments on proposed amendments of flammability regulations; 6 pages; March 15, 1985.

20. Memorandum from Charles M. Jacobson, CARM, to Allen F. Brauninger, OGC, concerning comment on proposed amendment of flammability regulations; 1 page; November 12, 1985.

[FR Doc. 86-17607 Filed 8-7-86; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

Social Security Benefits and Supplemental Security Income: Payment of Travel Expenses; Office of Management and Budget Control Number

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These regulations supply the Office of Management and Budget (OMB) control number for the information collection requirements in §§ 404.999d and 416.1499 of our final regulations on payment of travel expenses published March 14, 1986 (51 FR 8805). OMB approved the requirements April 15, 1986, under the Paperwork Reduction Act of 1980, and approval expires April 30, 1989. Upon this publication of the OMB control number, the information collection requirements in §§ 404.999d and 416.1499 become effective.

EFFECTIVE DATE: These final regulations are effective August 8, 1986.

FOR FURTHER INFORMATION CONTACT: Cliff Terry, Office of Regulations, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7519.

SUPPLEMENTARY INFORMATION: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), Federal agencies are required to obtain OMB approval of information collection requirements that are contained in any regulations published by the agencies. To implement provisions of this act, OMB issued regulations. 5 CFR Part 1320. OMB's regulations require Federal agencies to notify the public that an information collection requirement has been approved by OMB by issuing a notice in the **Federal Register**, and to display as part of the agency's regulatory text the control number assigned by OMB after approval of the requirement.

Executive Order 12291

The Assistant Secretary for Management and Budget has determined that this is not a major rule under Executive Order 12291. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

Sections 404.999d and 416.1499 of these regulations contain information collection requirements which have been approved by OMB under control number 0960-0434.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities. The effect of these regulations is to permit the information collection requirements in §§ 404.999d and 416.1499 of our previously published regulations to become effective. Those regulations apply directly only to individuals. Any indirect impact on small entities that provide transportation services will be too small and diffuse to be significant. Therefore, a regulatory flexibility analysis as required by Pub. L. 96-354, the Regulatory Flexibility Act of 1980, is not necessary.

(Catalog of Federal Domestic Assistance Program Nos. 13.803—Social Security Disability Insurance; 13.802–Social Security Retirement Insurance; 13.805—Social Security Survivors' Insurance; 13.807—Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, survivors and disability insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: July 10, 1986.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: August 1, 1986.

S. Anthony McCann,

Assistant Secretary for Management and Budget.

PARTS 404 AND 416—[AMENDED]

Parts 404 and 416 of 20 CFR are amended as follows:

1. The authority citation for Subpart J of Part 404 is revised to read as follows, and all other authority citations which appear throughout Subpart J are removed:

Authority: Secs. 201, 204, 205, 1102, 1127, and 1631 of the Social Security Act (42 U.S.C. 401, 404, 405, 1302, 1327, and 1383); sec. 5 of Reorganization Plan No. 1 of 1953.

2. Section 404.999d is amended by revising the parenthetical note at the end to read as follows:

§ 404.999d When and how to claim reimbursement.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0434.)

3. The authority citation for Subpart N of Part 416 is revised to read as follows, and all other authority citations which appear throughout Subpart N are removed:

Authority: Secs. 205, 1102, 1631, and 1633 of the Social Security Act (42 U.S.C. 405, 1302, 1383, and 1383b).

4. Section 416.1499 is amended by revising the parenthetical note at the end to read as follows:

§ 416.1499 When and how to claim reimbursement.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0434.)

[FR Doc. 86–17883 Filed 8–7–86; 8:45 am]

BILLING CODE 4190–11–M

Food and Drug Administration

21 CFR Part 176

[Docket No. 84F–0285]

Indirect Food Additives; Paper and Paperboard Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of increased levels of 1,2-dibromo-2,4-dicyanobutane as a preservative in the manufacturer of paper and paperboard that may contact food. This action responds to a petition filed by Calgon Corp.

DATES: Effective August 8, 1986; objections by September 8, 1986.

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

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 26, 1984 (49 FR 37850), FDA announced that a petition (FAP 4B3814) had been filed by Calgon Corp., Calgon Center, Box 1346, Pittsburgh, PA 15230, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of increased levels of 1,2-dibromo-2,4-dicyanobutane as a preservative in the manufacture of paper and paperboard that may contact food.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petitions are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule pubished in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

Any person who will be adversely affected by this regulation may at any time on or before September 8, 1986 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the hearing of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food and Safety and Applied Nutriton, Part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 176.170(b)(2) table by revising the entry for "1,2-Dibromo-2,4-dicyanobutane" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(b) * * *

(2) * * *

List of substances	Limitations
* * * * *	
1,2-Dibromo-2,4-dicyanobutane (CAS Reg. No. 35691-65-7).	For use only as a preservative at levels not more than 0.05 weight percent and not less than 0.01 weight percent: in latexes used as pigment binders in coatings; in pigment slurries used in coatings; and/or in coatings themselves. The total level of the preservative in the finished coating shall not exceed 0.04 weight percent of the finished coating solids.
* * * * *	

Dated: August 1, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 17853 Filed 8-7-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510, 520, 522, 546, and 558

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor of several new animal drug applications (NADA's) from SDS Biotech Corp. to Fermenta Animal Health Co., a subsidiary of SDS Biotech Corp.

EFFECTIVE DATE: August 8, 1986.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: Fermenta Animal Health Co., 7528 Auburn Rd., P.O. Box 8001, Painesville, OH 44077, filed supplemental NADA's providing for a change of sponsor from SDS Biotech Corp. Fermenta Animal Health Co. is a subsidiary of SDS Biotech Corp. The NADA's affected are:

NADA	Product	Ingredient
31-512	ATGARD V/Swine Wormer.	Dichlorvos.
33-803	TASK Dog Anthelmintic.	Dichlorvos.
35-918	EQUIGARD/Horse Wormer.	Dichlorvos.
38-200	OXY WS (Turkey)	Oxytetracycline hydrochloride.
39-077	CSP 250, CSP 500 (Swine).	Chlortetracycline sulfathiazole, penicillin.
40-848	ATGARD C Swine Wormer.	Dichlorvos.
43-606	ATGARD V/Swine Wormer.	Dichlorvos.
45-143	OXYJECT (Cattle)	Oxytetracycline hydrochloride.
46-699	CTC Premixes (e.g., CTC 10, CTC 50, CTC 100 MR) (Swine, Chicken, Turkey).	Chlortetracycline.
48-237	EQUIGEL Equine Anthelmintic.	Dichlorvos.
48-271	TASK TABS Anthelmintic for Cats & Puppies.	Dichlorvos.
49-032	ATGUARD C Production Efficiency Improver (Swine).	Dichlorvos.
65-020	Micro CTC-100 (Chicken, Turkey, Swine).	Chlortetracycline.
65-178	CTC Soluble (Chicken, Turkey, Swine, Cattle).	Chlortetracycline hydrochloride.
65-486	CTC Bisulfate Soluble (Chicken, Turkey).	Chlortetracycline bisulfate.
97-452	OXYJECT 100 (Cattle, Swine).	Oxytetracycline hydrochloride.
134-644	DENAGARD Soluble Antibiotic.	Tiamulin.

This action concerns a change of sponsor and does not involve any changes in manufacturing facilities, equipment, procedures, or production personnel. Therefore, the NADA's and the regulations are amended in 21 CFR 510.600(c) to reflect the new sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

21 CFR Part 522

Animal drugs.

21 CFR Part 546

Animal drugs, Antibiotics.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts, 510, 520, 522, 546, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended in paragraph (c)(1) by removing the entry "SDS Biotech Corp." and by adding a new entry alphabetically, and in paragraph (c)(2) by removing the entry "052313" and adding a new entry numerically, to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Fermenta Animal Health Co., 7528 Auburn Rd., P.O. Box 8001, Painesville, OH 44077	054273
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
054273	Fermenta Animal Health Co., 7528 Auburn Rd., P.O. Box 8001, Painesville, OH 44077.
* * * * *	

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

3. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.600 [Amended]

4. Section 520.600 *Dichlorvos* is amended in paragraph (c) by removing "052313" and inserting in its place "054273."

§ 520.2455 [Amended]

5. Section 520.2455 *Tiamulin* is amended in paragraph (b) by removing "052313" and inserting in its place "054273."

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

6. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 522.1662a [Amended]

7. Section 522.1662a *Oxytetracycline hydrochloride injection* is amended in paragraphs (a)(2) and (g)(2) by removing "052313" and inserting in its place "054273."

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

8. The authority citation for 21 CFR Part 546 is revised to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 546.110c [Amended]

9. Section 546.110c *Chlortetracycline powder* (*chlortetracycline hydrochloride powder*) is amended in paragraph (c)(2) by removing "052313" and inserting in its place "054273."

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

10. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.15 [Amended]

11. Section 558.15 *Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals* is amended in paragraph (g)(1) in the table under "Drug sponsor" by changing "SDS Biotech Corp." to read "Fermenta Animal Health Co.," and in paragraph (g)(2) in the table under "Drug sponsor" by changing "SDS Biotech Corp." to read "Fermenta Animal Health Co."

§ 558.155 [Amended]

12. Section 558.155 *Chlortetracycline, procaine penicillin, and sulfathiazole* is amended in paragraph (a) (1) and (2) by removing "052313" and inserting in its place "054273."

§ 558.205 [Amended]

13. Section 558.205 *Dichlorvos* is amended in paragraph (a) by removing "052313" and inserting in its place "054273."

Dated: July 25, 1986.

Marvin A. Norcross,

Associate Director for New Animal Drug Evaluation.

[FR Doc. 86–17852 Filed 8–7–86; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lincomycin; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the document that reflected approval of a supplemental new animal drug application that provided for the safe and effective use of lincomycin. That document failed to reflect a reorganization of the regulations that FDA published in the **Federal Register** of March 3, 1986 (51 FR 7384). This document corrects that oversight.

EFFECTIVE DATE: April 9, 1986.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6243.

SUPPLEMENTARY INFORMATION: In FR Doc. 86–7825 appearing on page 12137 in the issue of Wednesday, April 9, 1986, the following corrections are made:

§ 558.325 [Corrected]

1. On page 12137, third column, amendment 2. should have read "2. In § 558.325 by revising paragraph (a) and by adding new paragraph (c)(2)(v) to read as follows:"

2. On page 12137, third column, under § 558.325 *Lincomycin*, the paragraph designated as "(b)" should have been designated as "(a)" and all references in that paragraph to "(f)" should have read "(c)".

3. On page 12138, first column, under § 558.325 *Lincomycin*, the paragraph designated as "(f)" should have been designated as "(c)".

Dated: July 25, 1986.

Marvin A. Norcross,

Associate Director for New Animal Drug Evaluation.

FR Doc. 86–17851 Filed 8–7–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing, Federal Housing Commissioner

24 CFR Parts 207 and 221

[Docket No. R–86–1301; FR–2125]

Technical Revision of Multifamily Provisions Relating To Discrimination Against Families With Children

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule revises HUD regulations in Parts 207 and 221 to clarify that the prohibition on discrimination against families with children is inapplicable to projects specifically designed for housing the elderly or handicapped. In the case of Part 207 this rule only applies to the insurance of mortgages covering existing projects. It revises existing language on this subject matter to set out the current HUD practice of requiring a nondiscrimination certification (by mortgagors)—*except* in the case of projects for the elderly or handicapped. The existing regulation purports to require a case-by-case FHA Commissioner "determination" with regard to the intended occupancy of the project. Such a determination is in fact not made separately and the rule revises the language of the regulation to more clearly reflect actual practice.

EFFECTIVE DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: James L. Hamernick, Office of Multifamily Housing Development, Room 6132, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–6500. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under current departmental practice, mortgages for projects designed for housing the elderly or handicapped may be insured or coinsured under section 221, or under section 207 pursuant to section 223(f). The statutory provision in section 207(b)(2) of the National Housing Act, prohibiting mortgagor discrimination against families with children, is not applicable to such projects. However, current regulations in Part 221 do not recognize an exception for such projects, and the exception in current § 207.32a(h) is not a clear reflection of the actual method used to except multifamily projects from the otherwise applicable nondiscrimination requirement. This rule would revise §§ 207.32a(h) and 221.536(a) to more clearly reflect existing practice, which does not require the certification of nondiscrimination against families with children where projects are specifically designed for the elderly or handicapped.

Procedural Requirements

This rule is a procedural revision of the kind excluded by 24 CFR 50.20 from

the environmental review requirements of 24 CFR Part 50—HUD's rules implementing the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 21, 1986 (51 FR 14060) under Executive Order 12291 and the Regulatory Flexibility Act.

The catalog of Federal Domestic Assistance program numbers are 14.135 and 14.137.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule reflects no change in HUD programs or policies.

The Department usually provides for prior notice and comment, even when not required by the Administrative Procedure Act, before a rule is published for effect. Although this is the general policy of the Department, we have determined in this instance, given that the rule is merely a technical clarification of existing policy and is noncontroversial, that to delay the rule's implementation would not be in the public interest. Accordingly, the Department has determined that good cause exists for publishing these changes as a final rule.

List of Subjects

24 CFR Part 207

Mortgage insurance, Rental housing.

24 CFR Part 221

Mortgage insurance, Low and Moderate income housing.

Accordingly, Parts 207 and 221 are amended as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for 24 CFR Part 207 continues to read as follows:

Authority: Secs. 207, 211, National Housing Act (12 U.S.C. 1713, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 207.32a(h)(1) is revised to read as follows:

§ 207.32a Eligibility of mortgages on existing projects.

* * * * *

(h) *Occupancy requirements.* (1) The mortgagor shall certify under oath to the Commissioner that as long as the Commissioner is the insurer, holder or reinsurer of the mortgage, the mortgagor will not use tenant selection procedures that discriminate against families with children, unless the project was specifically designed for housing the elderly or handicapped.

* * * * *

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

3. The authority citation for 24 CFR Part 221 continues to read as follows:

* * * * *

Authority: Secs. 211, 221, National Housing Act (12 U.S.C. 1715b, 1715l); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. In § 221.536, the introductory paragraph and paragraph (a) are revised to read as follows:

§ 221.536 Occupancy requirements applicable to all mortgagors.

The mortgagor shall certify under oath to the Commissioner that as long as the Commissioner is the insurer, holder or reinsurer of the mortgage, the mortgagor will not:

(a) Use tenant selection procedures that discriminate against families with children, unless the project was specifically designed for housing the elderly or handicapped;

Dated: August 5, 1986.

Silvio J. DeBartolomeis,

General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

[FR Doc. 86-18004 Filed 8-7-86; 8:45 am]

BILLING CODE 4210-27-M

24 CFR Parts 203 and 204

[Docket No. R-86-0836; FR-837]

Mutual Mortgage Insurance and Rehabilitation Loans, Condition of Property—Adjustment for Damage or Neglect

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes the conditions under which HUD will accept a conveyance of a damaged single family property or an assignment of the mortgage on such a property. On August 26, 1980, the Department published an interim rule (at 45 FR 56800), which this action makes final. Among other things, this final rule states the circumstances under which HUD will accept a conveyance or mortgage assignment relating to a fire-damaged property, and states the procedures that govern whether HUD will make a deduction from the insurance benefits for which the mortgagee has made a claim, to offset the costs of repairs.

EFFECTIVE DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Fred Pfaender, Acting Director, Single Family Servicing Division, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, (202) 755-6672 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department's regulations governing "contract rights and obligations" that pertain to its insurance of single family homes under section 203 of the National Housing Act, 12 U.S.C. 1709, appear at Subpart B of 24 CFR Part 203. This rule makes final, with amendments, the interim rule at 24 CFR 203.379. In addition, the rule makes final, without change, technical amendments that the interim rule made to 24 CFR 203.402(c) and 204.322(c).

A. Interim Rule

Section 203.379 (adjustment for damage or neglect) sets out conditions under which HUD, as insurer of the mortgage, will accept the conveyance of a property or the assignment of a mortgage on a property (where the mortgage is FHA insured), when the property has been damaged. Under the interim rule, if damage has occurred as a

result of fire, flood, earthquake, tornado, or, for mortgages insured after January 1, 1977, because the mortgagee failed to take necessary actions (delineated at 24 CFR 203.377, "Inspection and preservation of properties") to protect and preserve a vacant or abandoned property, HUD will generally not accept the property conveyance or mortgage assignment unless the damage has already been repaired. However, the rule also delineates specific conditions, that are exceptions to the general rule, under which the Department will accept a conveyance of the damaged property or assignment of the mortgage.

The first exception, 24 CFR 203.379(a), addresses the situation where a mortgagee does not wish to make repairs to the damaged property before conveying the property or assigning the mortgage to the Department. The rule states that the Department may elect to accept the conveyance or assignment, subject to its deducting from the mortgagee's (FHA) insurance benefits either: (1) The cost of making the repairs as estimated by HUD; or (2) Any hazard insurance benefit received by the mortgagee (under its hazard insurance policy), whichever amount is greater. Thus, the impact of this exception to the general rule is that the mortgagee will still bear the costs of the repairs, but will not be required to make them before the conveyance or assignment.

The second exception, 24 CFR 203.379(b), applies specifically to a conveyance or assignment related to fire-damaged property. It addresses the situation where a mortgagee, for reasons considered acceptable under the rule, has been unable to maintain fire insurance coverage that is sufficient to protect the mortgagee's "continuing interest" (*i.e.*, coverage not less than an amount sufficient to repair the damage to the property in case of a partial loss, or to pay the mortgage in full in the case of total loss). This provision recognizes the unwillingness of fire-insurance carriers to extend or renew "continuing interest" coverage, where the fair market value of the property has become less than the outstanding amount of the mortgage principal balance, or in other cases where a hazard insurance carrier considers a risk to be unacceptable (e.g., vacant properties).

Under the interim rule, the Department will accept the conveyance or assignment and pay the mortgagee the full amount of FHA benefit, subject only to the deduction of the fire insurance benefit, if any, actually received by the mortgagee. The mortgagee, however, is required to make express certifications under this part of the interim rule. In essence, the mortgagee must certify that: (1) At the time HUD insured the mortgage, the property was covered by fire insurance adequate to protect the mortgagee's continuing interest; (2) the insurer later cancelled this coverage or refused to renew it for reasons other than nonpayment of premium, and the mortgagee could not thereafter secure such coverage; (3) the mortgagee made diligent, albeit unsuccessful, efforts annually to secure replacement coverage or coverage under a FAIR Plan, at a "reasonable rate" (as defined in 24 CFR 203.379(c)); and (4) the mortgagee has complied with the requirements in 24 CFR 203.377, pertaining to protecting and preserving a property which has been vacated or abandoned.

The interim rule specifically amended the former rule at 24 CFR 203.379(b) to eliminate the requirement that a mortgagee must notify the Department within 30 days of an insurance carrier's cancellation of, or refusal to renew, a fire insurance policy. Also, the rule defined the terms "reasonable rate" and "sufficient to protect the mortgagee's continuing interest" (at 24 CFR 203.379(c) and (d) respectively), and required the mortgagee to certify (at § 203.379(b)(1)) that at the time HUD insured the mortgage, the mortgagee had fire insurance *sufficient to protect its continuing interest.* (emphasis added). Under the former rule that existed before HUD's adoption of the interim rule in 1980, a mortgagee was required to certify that at the time the mortgage was HUD-insured, the property was covered by fire insurance. The interim rule did not amend the former requirement at 24 CFR 203.379(a).

In addition, the interim rule made technical amendments to 24 CFR 203.402(c) and 204.322(c). Section 203.402 identifies items that are included in insurance benefits paid by HUD to a mortgagee in connection with a conveyed property. Section 204.322 identifies items for which insurance benefits are paid in the situation where the mortgage on a conveyed property is subject to HUD's single family coinsurance regulations. Each section contains a provision, §§ 203.402(c), and 204.322(c), respectively, that identifies "hazard insurance premiums" as an item for which benefits are paid. Each subsection states that the benefits paid will include "hazard insurance premiums . . . not in excess of a reasonable rate as defined in § 203.379(c)," (with benefits prorated to the date of disposition of the property, in the coinsurance situation). Under the interim rule at § 203.379(c), a "reasonable rate" is defined as one "not in excess of the rate or advisory rate set by the principal State-licensed rating organization for essential property insurance in the voluntary market, or if coverage is available under a FAIR Plan, the FAIR Plan rate."

B. Comments and Discussion

Two comments were submitted in response to the interim rule. The commenters expressed concern with the requirement in § 203.379(b)(1), under which a mortgagee must certify that "*at the time the mortgage was insured*, the property was covered by fire insurance in an amount and under such terms *sufficient to protect the mortgagee's continuing interest* . . ." (emphasis added). Commenters noted that even at the time of HUD's insurance endorsement, in some areas, it is becoming increasingly difficult to acquire "continuing interest" coverage. Rather, private insurance companies, and State governments offering FAIR Plans, frequently write fire insurance policies that only contemplate payments not in excess of the fair market value of a property at the time of the damage. Accordingly, commenters argue that many mortgagees will not be able to gain relief under § 203.379(b) unless the certification requirement in § 203.379(b)(1) is revised.

The Department does not by regulation require a mortgagee of an FHA-insured single-family property to acquire hazard (e.g., fire) insurance on the property. However, under the general rule at 24 CFR 203.379, and the exception at 24 CFR 203.379(a), the mortgagee must bear the cost of necessary repairs to an FHA-insured property in the event of a conveyance or assignment. For this reason, a mortgagee, for its own financial protection, may elect to acquire hazard insurance. The exception to the general rule, at 24 CFR 203.379(b)(1), is narrowly drawn to cover the singular situation where a mortgagee initially acquired fire insurance sufficient to cover its continuing interest, but subsequently, through no fault of the mortgagee's and despite diligent efforts, could not maintain such insurance coverage. The Department will absorb repair costs in this instance, because the mortgagee's changing circumstances were not forseeable at the time of insurance endorsement, and were beyond the mortgagee's control.

However, it is now necessary to revise somewhat the certification provision in § 203.379(b)(1) given the

practical problems alluded to by the commenters, and the fact that mortgagees may also be precluded from acquiring "continuing interest" type coverage under various State laws that limit hazard insurance amounts to that sufficient to restore the improvements on a property, as opposed to the value of land plus improvements. For example, see Connecticut Public Act No. 84–212, effective October 1, 1984.

In revising this certification requirement, HUD must strike a balance between, on the one hand, a "level of insurance coverage" requirement with which mortgagees can reasonably comply, and on the other, HUD's express intention (now, as always) not to be a *carte blanche* insurer against property damage to homes with HUD-insured mortgages.

The term "continuing interest" used in the regulation was coined and defined by the Department at the time it adopted the interim rule. We have since ascertained, however, that as a practical matter, this amount of coverage may not be available to a mortgagee because, at the time coverage is sought, the mortgage balance may exceed the value of the property. As noted, in some States insurance recoveries may be limited by law so as not to exceed property values. Also, an insurer may refuse to cover a property in an amount exceeding its market value. Typical hazard insurance coverage relates to the value of the insured property rather than the balance of the mortgage loan. "Cost value" coverage takes depreciation into account in calculating any insurance recovery. "Replacement cost" coverage, which commands a higher premium, does not consider depreciation, but allows a recovery sufficient to replace the property in the event of a total loss or to fully compensate for any partial damage. Since "continuing interest" coverage may not be accessible to a HUD mortgagee (and, accordingly, under § 203.379(b), in such cases the Department will become the hazard insurer), it makes little sense to require this level of coverage in the certification provision.

HUD will now revise the rule. Initially, the rule will require a mortgagee to certify that, at the time the mortgage was insured by HUD, the property was covered by fire insurance in an amount at least equal to the lesser of 100 percent of the insurable value of the improvements (*i.e.*, the value of property exclusive of land value), or the mortgage loan principal balance. This requirement recognizes the need to acquire coverage sufficient to cover the mortgagee's financial interest in the property to the fullest extent possible. If such coverage is later cancelled or not renewed for reasons other than nonpayment of premium, the certifying mortgagee (under § 203.379(b)(2) would be required to have sought a substitute hazard insurance policy, at a reasonable rate, that provided coverage equivalent to the lesser of the value of the property improvements, the mortgage balance, or if neither of these coverages is available, whatever lesser coverage is available at reasonable rates. In essence, the mortgagee must obtain the best coverage available at a reasonable rate. If a fire occurred, and this coverage proved inadequate to cover the mortgagee's financial interest in the property (*i.e.*, the mortgage principal balance) or to fully repair the property, only the amount of insurance recovery received by the mortgagee would be deducted from the HUD insurance benefits paid under a claim. If no hazard coverage was available at reasonable rates, the claim would not be surcharged.

The revised rule will ensure that a mortgagee seeking relief under the special exception provision seeks and obtains a reasonable measure of hazard insurance protection on the property at the time that HUD originally insures the mortgage. Because the final rule recognizes and addresses a potential problem that arose under the interim rule, its application shall be made retroactive to the date upon which the interim rule took effect. Thus, the rule revision will apply to mortgagees that issued mortgage loans insured by HUD on or after September 22, 1980. The revised section indicates that for loans insured by HUD before that date, the certification requirement in effect before September 22, 1980 applies.

C. Other Matters

The definition of "reasonable rate" at 24 CFR 203.379(c) does not provide for the situation where a State neither offers a FAIR Plan nor has a State-licensed rating organization for essential property insurance in the voluntary market. Where this situation occurs, the final rule provides that the Department will accept a rate as reasonable if a mortgagee provides information about available rates and the Department finds that the rates approximate the FAIR Plan rate offered for comparable coverage on a similarly situated property in a (preferably contiguous) State that offers a FAIR Plan or maintains a State-licensed rating organization.

Four technical changes have been made to the interim regulation at § 203.379(b). Language has been added to clarify that the mortgagee must make the required certification at the time that the mortgagee's claim for insurance benefits is filed. Secondly, in § 203.379(b)(2) the word "or", where it appears for the third time in the paragraph, has been changed to "and". The word "or" in the interim rule was inserted as a result of a typographical error, and a reading of the preamble discussion of the 1980 interim rule makes clear that the relief offered mortgagees under this provision is only intended in cases where insurance is cancelled or renewal refused by a carrier, *and* efforts are made to obtain replacement coverage. Section 203.379(c) has been rephrased to update and simplify it. Finally, in § 203.379(b)(3), reference to the need for FAIR Plan approval by the Federal Emergency Management Agency (FEMA) has been deleted, since FEMA no longer approves or disapproves State Fair Plans (as of September 30, 1984).

Specific instructions for complying with the certification provisions at § 203.379(b) are included in Handbook 4330.1, Administration of Insured Home Mortgages, which is being amended in harmony with this final rule.

Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environment Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The collection of information requirements contained in this rule have been approved by the Office of

Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control no. 2502–0349.

Under the Regulatory Flexibility Act, 5 U.S.C. 601, the undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities because the final rule, which relaxes requirements on mortgagees making certification to qualify for insurance benefits, does not effect a substantial number of small entities, nor does it significantly alter the current economic impact on mortgagees involved in the mortgage insurance program.

This rule was listed as item number 857 in the Department's Semiannual Agenda of Regulations published on April 21, 1986 (51 FR 14036), under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program number is 14.117.

List of Subjects

24 CFR Part 203

Home improvement, Loan programs—housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 204

Mortgage insurance.

Accordingly, the Department amends 24 CFR Parts 203 and 204 as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for Part 203 shall continue to read as follows:

Authority: Secs. 203 and 211, National Housing Act, (12 U.S.C. 1709 and 1715b); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d); In addition, Subpart C also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. Section 203.379 is revised to read as follows:

§ 203.379 Adjustment for damage or neglect.

If the property has been damaged by fire, flood, earthquake or tornado, or, for mortgages insured on or after January 1, 1977, the property has suffered damage because of the mortgagee's failure to take action as required by § 203.377, the damage must be repaired before conveyance of the property or assignment of the mortgage to the Secretary, except under the following conditions:

(a) If the prior approval of the Commissioner is obtained, there will be deducted from the insurance benefits the Commissioner's estimate of the cost of repairing the damage or any insurance recovery received by the mortgagee, whichever is greater.

(b) If the property has been damaged by fire and was not covered by fire insurance at the time of the damage, or the amount of insurance coverage was inadequate to repair fully the damage, only the amount of insurance recovery received by the mortgagee, if any, will be deducted from the insurance benefits, provided the mortgagee certifies, at the time that a claim is filed for insurance benefits, that:

(1) At the time the mortgage was insured, the property was covered by fire insurance in an amount at least equal to the lesser of (i) 100 percent of the insurable value of the improvements, or (ii) the principal loan balance of the mortgage; and

(2) The insurer later cancelled this coverage or refused to renew it for reasons other than nonpayment of premium; and

(3) Within 30 days of any cancellation or non-renewal of hazard insurance, the mortgagee notified HUD, and has made diligent efforts (within that 30 day period, and at least annually thereafter) to secure other coverage or coverage under a FAIR Plan, in an amount described in paragraph (b)(1) of this section, or if coverage to such an extent was unavailable at a reasonable rate, the greatest extent of coverage that was available at a reasonable rate; and

(4) The extent of coverage obtained by the mortgagee in accordance with paragraph (b)(3) of this section was the greatest available at a reasonable rate, or if the mortgagee was unable to obtain insurance, none was available at a reasonable rate; and

(5) The mortgagee took the actions that § 203.377 requires.

The certification requirements set out in § 203.379(b) (above) apply to any mortgage insured by HUD on or after September 22, 1980, for which a claim has not been filed before September 30, 1986. Any mortgage insured on or after September 22, 1980, for which a claim has been filed before September 30, 1986, but the claim has not been settled before that date, will be governed by § 203.379(b) (1986 Edition) as it existed immediately before September 30, 1986.

(c)(1) As used in this section, "reasonable rate" means a rate that is not in excess of the rate or advisory rate set by the principal State-licensed rating organization for essential property insurance in the voluntary market, or if coverage is available under a FAIR Plan, the FAIR Plan rate.

(2) If a State has neither a FAIR Plan nor a State-licensed rating organization for essential property insurance in the voluntary market, the mortgagee must provide to the HUD Field Office having jurisdiction, information concerning the lowest rates available from an insurer for the types of coverage involved, with a request for a determination of whether the rate is reasonable. HUD will determine the rate to be reasonable if it approximates the rate assessed for comparable insurance coverage applicable to similarly situated properties in a State that offers a FAIR Plan or maintains a State-licensed rating organization.

(Approved by the Office of Management and Budget under control number 2502–0349.)

3. Section 203.402(c) is revised to read as follows:

§ 203.402 Items included in payment—conveyed properties.

* * * * *

(c) Hazard insurance premiums on the mortgaged property not in excess of a "reasonable rate" as defined in § 203.379(c).

* * * * *

PART 204—COINSURANCE

4. The authority citation for Part 204 shall continue to read as follows:

Authority: Secs. 244 and 211, National Housing Act (12 U.S.C. 17152–9 and 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. Section 204.322(c) is revised to read as follows:

§ 204.322 Items included in payment.

* * * * *

(c) Hazard insurance premiums on the mortgaged property not in excess of a "reasonable rate" as defined in § 203.379(c), prorated to the date of disposition of the property.

* * * * *

Dated: August 5, 1986.

Silvio J. DeBartolomeis,

General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

[FR Doc. 86–18005 Filed 8–7–86; 8:45 am]

BILLING CODE 4210–27–M

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24 CFR Part 390

[Docket No. R–86–1161; FR–1962]

Government National Mortgage Association; Securitization of Adjustable Payment Mortgages

AGENCY: Government National Mortgage Association, HUD.

ACTION: Final rule.

SUMMARY: In this final rule, the Government National Mortgage Association (GNMA) amends its regulations to provide for adjustable payment mortgage-backed securities. The amendments allow the introduction of an adjustable payment mortgage-backed securities program intended to finance adjustable rate mortgages (*i.e.*, mortgages on which the interest rate is adjusted periodically based on a published national index). The regulatory amendments also authorize the securitization of other types of adjustable payment mortgages, which may be introduced by the Federal Housing Administration (FHA) or the Veterans Administration (VA). Other technical amendments are being made to the regulation to accommodate the introduction of the GNMA II Program, to consolidate the sections dealing with issuer default, and to clarify limits on issuer eligibility to issue securities.

EFFECTIVE DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Louis C. Gasper, Executive Vice President, Government National Mortgage Association, Room 6100, 451 Seventh Street, SW., Washington, DC 20410; Telephone (202) 755-5926. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98-181 (1983 Act), approved November 30, 1983, authorized HUD to insure various kinds of mortgage instruments which do not provide for fixed-rate, level payments. Accordingly, HUD issued an interim rule for adjustable rate mortgages (ARMs) on June 6, 1984 (49 FR 23580) and will soon issue a final rule on this subject. (While HUD has proposed a rule providing for the insurance of certain single family indexed mortgages (49 FR 23063) and has statutory authority under the 1983 Act to insure other alternative mortgage instruments, including shared appreciation mortgages and various non-level payment mortgages for multifamily properties, currently HUD plans only to implement the ARMs program.)

In order to provide a secondary market for these new instruments, on June 6, 1984 (49 FR 23586), GNMA issued an interim rule amending 24 CFR Part 390, Subpart C to provide for the securitization of these types of mortgages. The interim rule also made minor miscellaneous technical amendments to Part 390.

The interim rule was written in general terms in order to accommodate a wide variety of adjustable payment mortgages. The detailed requirements for the securities and their issuance are contained in the GNMA Mortgage-Backed Securities Guide. The preamble to the interim rule, however, described the general features of the program as follows.

The program is established only under the GNMA II Program. (However, GNMA's non-level payment subprograms for graduated payment mortgage-backed securities and for growing equity mortgage-backed securities continue to be available under both GNMA I and GNMA II Programs.) The GNMA II Program is chiefly characterized by a central paying and transfer agent, a later securities payment date, and a mechanism for allowing issuers to combine small loan packages into large multiple issuer pools against which securities are issued. All loans within any one pool must have precisely the same terms. Such terms include the type of index to be applied, the method of adjusting mortgage terms based on the index, the general maturity range of mortgages within a pool, the frequency of mortgage payment adjustment, the date of mortgage payment adjustments, and the applicability of ceiling (or caps) on periodic adjustments. However, loans with different initial interest rates can be included within the same pool if the interest rates fall within a one point range. The program employs the modified pass-through approach to the issuance of securities (24 CFR 390.45) and requires that investors be provided with full disclosure of the terms of the pooled mortgages and the method by which securities payments are adjusted.

The preamble to the interim rule stated that the adjustable payment mortgage-backed securities program would be implemented through two subprograms. The first subprogram is described in revisions to the GNMA Mortgage-Backed Securities Guide (GNMA-5500.2) issued July 9, 1984 and is intended to facilitate the financing of FHA-insured ARMs. This subprogram generally provides for a highly standardized securities instrument backed by ARMs originated under essentially identical terms.

The second subprogram allows the pooling of a wide range of different types of VA and FHA-insured adjustable payment mortgages that do not meet the strict requirements of the first program. This subprogram accommodates the financing of a range of innovative mortgage instruments. The implementation of this second program through revisions to the GNMA Mortgage-Backed Securities Guide, however, has been delayed until such time as HUD may decide to issue final regulations governing other alternative mortgage instruments.

GNMA invited comments on all aspects of the adjustable payment mortgage security program as well as comments on the interim rule. In response to this request, GNMA received five comments.

Commenters generally supported the interim rule and favored the description of the GNMA adjustable payment mortgage-backed securities program. Specific comments were received supporting the pooling of loans with diffferent interest rates (within a one percentage point range) and the requirement that adjustments be rounded to the nearest one-eighth of a percentage point.

Only two areas gave rise to adverse comment. The first involved the requirement that adjustable payment mortgages be placed in GNMA II multiple issuer pools. Most commenters felt that this requirement would be beneficial since it would promote volume and liquidity in the GNMA II Program and participation by small volume issuers. One commenter, however, noted that this requirement could cause potential adverse tax consequences to home builders under the builder bond program. However, as the commenter recognized, this concern has been alleviated through the use of custom pools which contain a single loan package.

The second area of controversy involved the index that may be used to compute interest rates for adjustable rate mortgages. The comments will be addressed in the final ARM rule.

The final rule makes certain minor technical changes to the interim rule. For example, the final rule deletes the reference to indexed mortgages in § 390.45 which describes characteristics of underlying mortgages in the non-level payment mortgage-backed securities program. Currently, HUD has no plans to implement its discretionary authority to insure these types of mortgages.

Findings

In accordance with 24 CFR 50.20(f), this rulemaking is not subject to the environmental assessment requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of this rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) Cause a major increase in cost or prices for consumers,

individual industries, Federal, State or local government agencies, or geographical regions; or (3) Have a significant adverse effect on competition, employment, investments, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule merely expands the types of mortgages eligible for GNMA mortgage-backed securities to include adjustable payment mortgages. It will impose no involuntary economic benefits or burdens.

This rule was listed as item 878 in the Department's Semiannual Agenda of Regulations published on April 21, 1986 (51 FR 14036, 14062) under Executive Order 12291 and the Regulatory Flexibility Act.

The adjustable payment mortgage-backed securities program is not listed in the Catalog of Federal Domestic Assistance.

List of Subjects in 24 CFR Part 390

Mortgage, Securities.

Accordingly, the interim rule published on June 6, 1984 (49 FR 23586), as amended by a March 7, 1985 final rule making nomenclature changes, is adopted as final without further change, except as indicated below.

PART 390—GUARANTY OF MORTGAGE-BACKED SECURITIES

1. The authority citations of Part 390, Subparts A, B, C, D and E are removed, and the authority citation for Part 390 is revised to read as follows:

Authority: Secs. 306(g) and 309(a) of the National Housing Act, 12 U.S.C. 1721(g) and 1723a(a); sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

§ 390.45 [Amended]

2. Paragraph (a) of § 390.45 is amended by removing the phrase ", and indexed mortgages" wherever it appears in the first sentence.

Dated: July 31, 1986.

Glenn R. Wilson, Jr.,

President, Government National Mortgage Association.

[FR Doc. 86-17919 Filed 8-7-86; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8093]

Income Taxes; Below-Market Loans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to temporary rules.

SUMMARY: This document contains corrections to temporary regulations that were published in the **Federal Register** on July 10, 1986 (51 FR 25032) as Treasury Decision 8093. The rules relate to the treatment for Federal income tax purposes of both the lender and the borrower in certain below market interest rate loan transactions.

FOR FURTHER INFORMATION CONTACT: Sharon Hall of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202-566-3828 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of this corrections notice amended temporary Income Tax Regulations (26 CFR Part 1) under section 7872 of the Internal Revenue Code of 1954.

Need for Correction

As published, Treasury Decision 8093 inadvertently omitted the word "gift" in two locations in the preamble and in one location in the text of the regulations.

Correction of Publication

Accordingly, the publication of Treasury Decision 8093, which was the subject of FR Doc. 86-15618, is corrected as follows:

Paragraph 1. In the preamble, on page 25033, first column, in the paragraph captioned "Exemptions for Loans to Charitable Organizations", the word "gift" is added in the second sentence immediately before the word "loans", and in the third sentence immediately before the first appearance of the word "loans".

§ 1.7872-5T [Corrected]

Paragraph 2. In § 1.7872-5T, paragraph (b)(9), on page 25033, second column, in the first sentence the word "Loans" is removed and the words "Gift loans" are added in its place.

Paul A. Francis,

Acting Director, Legislation and Regulations Division.

[FR Doc. 86-17939 Filed 8-7-86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

Permanent State Regulatory Program of New Mexico

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing its decision to further extend the deadline for New Mexico to promulgate and submit rules governing the training, examination and certification of blasters. On March 3, 1986, New Mexico requested an additional year for the development of a blaster certification program. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) were required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSMRE's regulations provides that the Director, OSMRE, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State an additional one year extension of time to submit a proposed blaster certification program.

EFFECTIVE DATE: August 8, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, NW., Room 216, Albuquerque, New Mexico 87102; Telephone (505) 766-1486.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSMRE issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Part 850 (48 FR 9686). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of

explosives in surface coal mining operations within 12 months after approval of a State program or within 12 months after publication date of OSMRE's rule at 30 CFR Part 850, whichever is later. In the case of New Mexico's program, the applicable date is 12 months after publication date of OSMRE's rule, or March 4, 1984.

On March 5, 1984, New Mexico advised OSMRE that it would be unable to meet the March 4, 1984 deadline and requested an extension to develop and adopt a blaster certification program. On May 14, 1984, OSMRE granted New Mexico an extension to March 4, 1985 (49 FR 20287).

On February 6, 1985, the Director of the New Mexico Energy and Mineral Department advised OSMRE that the State would require another extension of time to submit its blaster training and examination program. On May 8, 1985, OSMRE granted New Mexico an extension to March 4, 1986 (50 FR 19356). On March 3, 1986, the Director of the Energy and Minerals Department requested another one-year extension of time for the submission of its blaster certification program. On April 29, 1986, the State of New Mexico sent details of the activities which transpired during the past year (NM–324) and the causes which delayed New Mexico's program development. This letter also explained the steps New Mexico expected to complete through June 30, 1986, including submittal of a draft proposal stating the alternative New Mexico wishes to use in order to fulfill the requirement.

In the June 9, 1986 **Federal Register** (51 FR 20843), OSMRE proposed an additional one-year extension for New Mexico to submit to OSMRE a proposed blaster certification program. Public comment on this proposal was sought for 30 days ending July 9, 1986.

Director's Determination

In accordance with the State's request, the Director has decided to extend the deadline for New Mexico to submit a proposed blaster training program until March 4, 1987. This extension will allow the Director of the New Mexico Energy and Minerals Department to develop and adopt an adequate blaster certification and training program consistent with Federal requirements.

Public Comments

The Bureau of Indian Affairs (BIA) responded to the proposed action. BIA's comments included a recommendation that the State not be granted an extension of time to submit a blaster certification program to OSMRE.

OSMRE found that the factors which delayed New Mexico's blaster certification program development included events that were both unanticipated and not totally under the State's control. Further, OSMRE determined that New Mexico had made a good faith attempt to propose a program. Therefore, the time extension request has been determined to have merit by OSMRE and the extension granted.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule 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.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 1, 1986.

Brent Walquist,

Acting Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

PART 931—NEW MEXICO

1. The authority citation for 30 CFR Part 931 continues to read as follows:

Authority: Sec. 503, Pub. L. 95–87, 91 Stat. 470 (30 U.S.C. 1253), unless otherwise noted.

2. 30 CFR Part 931 is amended by revising § 931.16 to read as follows:

§ 931.16 Required program amendments.

Pursuant to 30 CFR 732.17, New Mexico is required to submit for OSMRE's approval the following proposed amendment by the dates specified.

(a) By March 4, 1987, New Mexico shall submit for OSMRE's approval:

(1) Rules governing the training, examination and certification of blasters, and

(2) A program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operations.

(b) [Reserved]

[FR Doc. 86–17872 Filed 8–7–86; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 943

Extension of Deadline for Submission of Program Amendments to the Texas Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing its decision to extend the deadline for Texas to (1) promulgate rules governing the training, examination and certification of blasters and (2) develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation. In letters dated May 6, 1986, and June 9, 1986, Texas requested a twelve-month extension of the deadline for submission of a blaster program. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSMRE's regulations provides that the Director, OSMRE, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State an additional twelve-month extension of time to submit a proposed blaster certification program.

EFFECTIVE DATE: August 8, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West Fourth Street, Room 3432, Tulsa, Oklahoma 74103; Telephone: (918) 581–7927.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSMRE issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Part 850 (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSMRE's rule at 30 CFR Part 850, whichever is later. In the case of Texas' program, the applicable date was 12 months after the publication date of OSMRE's rule, or March 4, 1984.

On March 1, 1984, Texas submitted an amendment to its approved program which was intended to implement the Federal requirements for a blaster training, examination and certification program. OSMRE published a notice of public comment period and opportunity for public hearing in the **Federal Register** on March 23, 1984 (49 FR 10943). In its subsequent review of the proposed amendment, OSMRE identified several deficiences and pointed these out to the State. On June 25, 1984, Texas advised OSMRE that is would require a six-month extension of the deadline for resubmission of a blaster program to prepare necessary revisions and additions to the program. On September 21, 1984. OSMRE announced its decision to extend the deadline for submission of the blaster program to March 21, 1985 (49 FR 37062).

On March 7, 1985, Texas requested an additional four-month extension to July 15, 1985, to submit a blaster training and certification program. On June 3, 1985, OSMRE announced its decision to extend the deadline for submission of the blaster program to July 15, 1985 (50 FR 23299). On October 15, 1985, Texas requested another extension to May 15, 1986, to submit a blaster training and certification program. In the January 17, 1986 **Federal Register**, OSMRE announced its decision to extend the deadline to May 15, 1986.

In letter, dated May 6, 1986, and June 9, 1986, Texas requested an additional twelve months to submit its blaster certification program citing "continuing regulatory program changes and an unusually high demand for staff time." Texas said that there is only one operation in Texas which conducts blasting and the operation conducts limited blasting only once a year. Texas said that as a result there has been a greater public expression of need for regulation in other surface mining requirements and therefore, priority attention was being given in these areas.

In the June 19, 1986, **Federal Register** (51 FR 22310), OSMRE sought comment on Texas' request for another extension to resubmit a proposed blaster training program. Public comment on this proposal was sought for 30 days ending July 21, 1986. No comments were received during the comment period.

Section 850.12(b) of the Federal regulations provides that the Director, OSMRE may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

Director's Determination

In accordance with the State's request, the Director has decided to extend the deadline until May 15, 1987, for Texas to resubmit rules governing a blaster certification and training program consistent with Federal requirements. This extension is granted in light of procedural restrictions in Texas' rulemaking schedule and Texas' explanation for its concentration of resources on other rulemaking activities.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule 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.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 943

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 1, 1986.

Brent Walquist,

Acting Deputy Director, Operations and Technical Services.

PART 943—TEXAS

30 CFR Part 943 is amended as follows:

1. The authority citation for Part 943 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR Part 943 is amended by revising paragraph (a) of § 943.16 to read as follows:

§ 943.16 Required program amendments.

Pursuant to 30 CFR 732.17, Texas is required to submit for OSMRE's approval the following proposed program amendments by the date specified.

(a) By May 15, 1987, Texas shall submit for OSMRE's approval;

(1) Rules governing the training, examination and certification of blasters; and

(2) A program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operations.

[FR Doc. 86–17874 Filed 8–7–86; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 60457–6119]

Revision of Trademark Fees; Correction

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule for the revision of trademark fees that appears at page 28052 in the **Federal Register** of Monday, August 4, 1986 (51 FR 28052). This action is necessary to correct typographical errors.

FOR FURTHER INFORMATION CONTACT: Margaret M. Laurence at (703) 557–3061.

The following corrections are made in FR Doc. 86–17552 beginning on page 28052 in the issue of August 4, 1986:

1. On page 28052 in the first column, the Effective Date should read: "October 4, 1986."

2. On page 28052 in the second column, in the second complete paragraph under Type of Fee, the proposed fee for Copies of trademarks should read "$1."

3. On page 28053 in the first column, the eighth line should read "adjusted fees for the three-year period."

4. On page 28053 in the first column, in the first complete paragraph, the dates of October 1, 1986 should read "October 4, 1986."

5. On page 28057 in the third column, five asterisks should appear between paragraphs (a) and (n) of § 2.6.

Dated: August 6, 1986.

Donald J. Quigg,

Assistant Secretary and Commissioner, Patents and Trademarks.

[FR Doc. 86-17987 Filed 8-7-86; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[SWH-FRL-3058-4]

Hazardous Waste Management System; Final Codification Rule; Technical Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; technical correction.

SUMMARY: This document provides a technical correction to the July 15, 1985 Final Codification Rule in which EPA amended its hazardous waste regulations to incorporate statutory revisions under the Hazardous and Solid Waste Amendments of 1984. EPA is today amending the biennial report regulations to make the biennial waste minimization report applicable to all generators of hazardous waste.

EFFECTIVE DATE: August 8, 1986.

ADDRESS: The official record for the Final Codification Rule is located in Room S-212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday thru Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline (800) 424-9346 (in Washington, DC, call 382-3000), the Small Business Hotline, (800) 368-5888, or Robert Axelrad, (202) 382-5218, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: On November 8, 1984, the President signed into law the Hazardous and Solid Waste Amendments of 1984 (HSWA) which made significant changes to the management of hazardous waste under the Resource Conservation and Recovery Act (RCRA). EPA amended its existing hazardous waste regulations on July 15, 1985, to incorporate HWSA provisions with immediate or short-term effects on the regulated community (50 FR 28702) (Final Codification Rule).

One of the HSWA provisions with immediate impact on the regulated community was the amendment to section 3002(b) of RCRA which requires generators of hazardous waste to provide in biennial reports a description of their efforts to minimize waste. EPA codified this requirement by amending the generator biennial report regulation in 40 CFR 262.41. However, the amendment made in the Final Codification Rule was inadvertently made applicable only to generators who ship their waste off-site for treatment, storage, or disposal. Because the statutory requirement applies to all generators, regardless of whether their waste is managed on-site or off-site, this document corrects the omission of generators who manage their waste on-site from the regulations concerning biennial waste minimization reports. Therefore, EPA is today amending 40 CFR 264.75 and 265.75 to require biennial waste minimization reports.

List of Subjects

40 CFR Part 264

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 265

Hazardous waste, Reporting and recordkeeping requirements.

Dated: July 27, 1986.

Lee M. Thomas,

Administrator.

PART 264—[AMENDED]

Accordingly, EPA is correcting 40 CFR Parts 264 and 265 to read as follows:

1. The Authority citation for Part 264 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 3005, of the Solid Waste Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

2. Section 264.75 is amended by revising paragraph (h) and adding paragraphs (i) and (j) to read as follows:

§ 264.75 Biennial Report.

* * * * *

(h) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.

(i) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.

(j) The certification signed by the owner or operator of the facility or his authorized representative.

* * * * *

PART 265—[AMENDED]

3. The authority citation for Part 265 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 3005, and 3015, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6905, 6912(a), 6924, 6925 and 6935).

4. Section 265.75 is amended by revising paragraph (h) and adding paragraphs (i) and (j) to read as follows:

§ 265.75 Biennial Report.

* * * * *

(h) For generators who treat, store, or dispose of hazardous waste on-site, a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.

(i) For generators who treat, store, or dispose of hazardous waste on-site, a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for the years prior to 1984.

(j) The certification signed by the owner or operator of the facility or his authorized representative.

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[FR Doc. 86-17350 Filed 8-7-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 761

[OPTS-66008E; TSH FRL-3061-8]

Response to Exemption Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule addresses 22 petitions for exemption from the prohibition against the manufacture, processing, and distribution in commerce of PCBs. In this rule, EPA

grants 10 individual exemption petitions; grants a class exemption including 6 individual exemption petitions; grants in part and denies in part 1 exemption petition, denies 3 individual exemption petitions; and dismisses 2 individual exemption petitions.

DATES: This rule shall be promulgated for purposes of judicial review under section 19 of the Toxic Substances Control Act (TSCA) at 1 p.m. Eastern Daylight Time August 25, 1986. This rule shall become effective on September 8, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Toll free: (800-424-9065), In Washington, DC: (554-1404), Outside the USA: (Operator-202-554-1404).

ADDRESS: Copies of this final rule can be obtained from the TSCA Assistance Office listed above. Copies of the support documents for this final rule can be obtained by contacting: Document Control Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. All requests for copies of support documents from the public docket should reference Docket Number 66008E.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of August 29, 1985 (50 FR 35182), EPA issued a proposed rule addressing 22 petitions for exemption from the prohibitions on the manufacture, processing, and distribution in commerce of PCBs. The August 29, 1985 Proposed PCB Exemptions Rule proposed to grant eight individual exemption petitions, grant a class exemption including six individual exemption petitions, deny six individual exemption petitions, and dismiss two individual exemption petitions. One petition was withdraw during the comment period, and one new exemption petition was accepted for consideration. Thus, 22 exemption petitions remain to be resolved. EPA is taking final action on 20 exemption petitions in this rule and is dismissing two exemption petitions.

II. Background

A. Statutory Authority

Section 6(e) of the Toxic Substances Control Act (TSCA) 15 U.S.C. 2605(e), generally prohibits the manufacture of PCBs after January 1, 1979, and the processing and distribution in commerce of PCBs after July 1, 1979.

Section 6(e)(3)(B) of TSCA provides that any person may petition the Administrator for an exemption from the prohibition against the manufacture, processing, and distribution in commerce of PCBs. The Administrator may by rule grant an exemption if the Administrator finds that "(1) an unreasonable risk of injury to health or environment would not result, and (ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl." The Administrator may set terms and conditions for an exemption and may grant an exemption for not more than 1 year.

EPA's Interim Procedural Rules for PCB Manufacturing Exemption describe the required content of manufacturing exemption petitions and the procedures EPA follows in rulemaking on exemption petitions. Those rules were published in the **Federal Register** of November 1, 1978 (43 FR 50905) and are codified at 40 CFR 750.10 through 750.21.

EPA's Interim Procedural Rules for Processing and Distribution in Commerce Exemptions describe the required content of processing and distribution in commerce exemption petitions and the procedures EPA follows in rulemaking on exemption petitions. Those rules were published in the **Federal Register** of May 31, 1979 (44 FR 31558) and are codified at 40 CFR 750.30 through 750.41.

B. History of This Rulemaking

In the **Federal Register** of July 10, 1984 (49 FR 28172), EPA promulgated the final PCBs Exclusions, Exemptions, and Use Authorizations Rule (hereinafter referred to as the Uncontrolled PCB Rule) addressing the manufacture, processing, distribution in commerce, and use of certain inadvertently generated and recycled PCBs in low level concentrations. That rule amends the PCB rule published in the **Federal Register** of October 21, 1982 (47 FR 46980) (the Closed and Controlled Waste Manufacturing Processes Rule) by excluding additional low risk processes from regulation.

In the same issue of the **Federal Register**, the final PCB Exemptions Rule (49 FR 28154) acted on 109 pending exemption petitions and deferred action on the petition from Ward Transformer and on 49 other petitions for exemption to manufacture, process, and distribute in commerce inadvertently generated PCBs. EPA believed that many of these 49 petitions may have been made unnecessary by the Uncontrolled PCBs Rule (which excluded certain low risk activities from the prohibitions on the manufacture, processing and distribution in commerce of PCBs).

In the July 10, 1984 proposed rule-related notice (49 FR 28203), EPA requested that the 49 petitioners potentially affected by the Uncontrolled PCB Rule evaluate that rule and determine whether they still needed an exemption. Any petitioner still needing an exemption was to submit written comments renewing its petition by October 1, 1984. EPA stated that the Agency would issue a notice of proposed rulemaking on any renewed petitions. Eight of the 49 petitions were renewed. The other 41 petitioners either withdrew their petitions or failed to renew their petitions by the end of the comment period.

In the July 10, 1984 proposed rule-related notice (49 FR 28203), EPA requested that Ward Transformer submit additional information, and indicated that the Agency would take final action on the Ward Transformer petition after evaluating the additional information. In the August 29, 1985 **Federal Register** (50 FR 35192), EPA issued a notice of final action denying the Ward Transformer petition.

After promulgation of the Final PCB Exemptions Rule, EPA received and accepted for consideration 14 new exemption petitions. In the **Federal Register** of August 29, 1985 (50 FR 35182), EPA issued a proposed rule addressing 22 petitions (14 new exemption petitions and eight renewals) for exemption from the prohibitions on the manufacture, processing, and distribution in commerce of PCBs.

The August 29, 1985 proposed PCB Exemptions Rule (hereinafter "the proposed rule") proposed to grant eight individual exemption petitions, grant a class exemption including six individual exemption petitions, deny six individual exemption petitions, and dismiss two individual exemption petitions. One petition for exemption was withdrawn during the comment period because the manufacturing process will not be operating during the exemption period. One new petition for exemption to manufacture PCBs in small quantities for research and development was accepted for consideration because the petitioner showed good cause for filing late in accordance with EPA's policy statement published in the **Federal Register** of March 5, 1980 (45 FR 14247), and good cause for inclusion of the new exemption petition in this rulemaking.

The November 1, 1983 Proposed PCB Exemptions rule describes in detail the history of PCB regulations. Specific PCB

regulations and their history are discussed in later units of this rule where applicable to the disposition of exemption petitions.

C. Effect of This Rule on Previous Policy Statements

In the **Federal Register** of January 2, 1979 (44 FR 108), EPA announced that petitioners who had previously filed manufacturing exemption petitions could continue the activities for which they sought exemption until EPA acted on their petitions. In the **Federal Register** of March 5, 1980 (45 FR 14247), EPA extended this policy to allow all petitioners to continue the activities for which they sought exemption until EPA acted on their petitions, as long as activities were underway before January 1, 1979 (for manufacturing) or July 1, 1979 (for processing and distribution in commerce).

The majority of the exemption petitions addressed in this rule are for activities which were underway prior to the effective dates of the manufacturing prohibition (January 1, 1979) and the prohibition of processing and distribution in commerce (July 1, 1979). Those petitioners whose activities were in progress prior to the effective dates of the prohibitions are authorized to continue their activities until the effective date of this final action. Since the activities were not ongoing prior to the effective dates of the above prohibitions, EPA did not allow activities under the following petitions to proceed until the effective date of this final action: the Mobay petition to distribute in commerce or export PCBs; the Dainichiseika petition to export PCBs; the Supelco petition to export PCBs; the Radian petition to export PCBs; and the ALCOA petitions to distribute in commerce, import and export PCBs.

The grandfathering policy for petitioners whose activities were ongoing prior to the effective dates of the ban on the manufacture, processing and distribution in commerce of PCBs was instituted by the Agency in 1980 because the Agency was unable to take final action on exemption petitions until PCB regulations affecting the petitioners' activities were issued. In the final PCB Exemptions Rule published in the **Federal Register** of July 10, 1984 (49 FR 28154), EPA revoked its policy of permitting activities to continue under pending exemption petitions for those pre-1979 petitions on which final action was taken. EPA reasoned that once EPA acts to grant or deny an exemption petition, that policy becomes unnecessary.

EPA will revoke the grandfathering policy for the exemption petitions included in this rulemaking. However, the Agency reserves the authority to reinstate the grandfathering policy on a case-by-case basis for petitioners who are able to show good cause for grandfathering the activity, provided that grandfathering the activity is consistent with the "unreasonable risk" and "good faith efforts" findings in this final rule.

A petitioner whose exemption is granted will be allowed to manufacture, process or distribute in commerce PCBs only for the period of time granted in the final rule. When the exemption expires, a petitioner will not be permitted to engage in such activities, even if it renews its exemption request, until (1) EPA acts on that request, or (2) the Agency determines that the petitioner has shown good cause for grandfathering the activity until final EPA action by rule. This limitation does not apply to manufacturers, processors, and distributors of PCBs in "small quantities for research and development" for whom EPA is granting exemption in Unit V.C of this final rule.

Since EPA must act on petitions for exemption from the prohibitions on PCBs by rule, and since rulemaking on exemption petitions requires a minimum of one year, persons petitioning for renewal of exemptions granted in this final rule can face a lengthy waiting period during which their activities may not continue. To reduce the negative impact of an uncertain waiting period, the Agency encourages those petitioners granted exemption in this final rule who wish to renew their petitions to file a renewal request a minimum of 6 months before the expiration of their exemption.

EPA will continue its policy of requiring petitioners submitting new exemption petitions to show "good cause" why EPA should accept the petition as described in the notice published in the **Federal Register** of March 5, 1980 (45 FR 14247). This policy applies to exemption petitions submitted by petitioners who are denied exemptions in this final rule.

III. Unreasonable Risk Finding

Section 6(e)(3)(B)(i) of TSCA requires a petitioner to show that granting an exemption would not result in an unreasonable risk of injury to health or the environment.

To determine whether a risk is unreasonable, EPA balances the probability that harm will occur against the benefits to society from granting an exemption. Specifically, EPA considers the following factors:

1. The effect of PCBs on human health and the environment, including the magnitude of PCB exposure to humans and the environment.

2. The benefits to society of granting an exemption and the reasonably ascertainable economic consequences of denying an exemption petition.

A. Effects on Human Health and the Environment

In deciding whether to grant an exemption, EPA considers the effects of PCBs on human health and the environment, including the magnitude of PCB exposure to humans and the environment. The effects of PCBs are described in various documents that are part of the rulemaking record for the PCB Ban Rule published in the **Federal Register** of May 31, 1979 (44 FR 31514). Before the proposed PCB Exemption Rule was published, EPA evaluated this information along with new information submitted to the Agency and other recent literature. The results are presented in EPA's "Response to Comments on the Health Effects of PCBs" (August 19, 1982, Docket No. OPTS–62015C). During the proposed PCB Exemptions Rule, two comments presented additional information on the adverse health effects of PCBs. EPA evaluated this information as well as other recent literature, and has determined that none of the information submitted changes EPA's conclusions about the health effects of PCBs. The results are presented in EPA's "Response to Comments on the Proposed PCB Exemptions Rule" (June 1984, Docket No. OPTS–66008A) and "Response to Comments on the Uncontrolled PCB Rule" (June 1984, Docket No. OPTS–66032A). All of these documents are included in the rulemaking record and are summarized below. Copies of these documents are available from EPA's TSCA Assistance Office (see the ADDRESS section of this Final rule.

1. Health effects. EPA has determined that PCBs are toxic and persistent. PCBs can enter the body through the lungs, gastrointestinal tract, and skin, circulate throughout the body, and be stored in the fatty tissue.

Available animal studies indicate an oncogenic potential, the degree to which depends on exposure. Available epidemiologic data are not adequate to confirm or negate oncogenic potential in humans at this time. Additonal epidemiological research is needed to correlate human and animal data, but EPA finds no evidence to suggest that the animal data would not predict an oncogenic potential in humans.

In addition, EPA finds that PCBs may cause reproductive effects, developmental toxicity, and oncogenicity in humans exposed to PCBs. Available data show that some PCBs have the ability to alter reproductive processes in mammalian species, sometimes even at doses that do not cause other signs of toxicity. Animal data and limited available human data indicate that prenatal exposure to PCBs can result in various degrees of developmental toxic effects. Postnatal effects have been demonstrated in immature animals, following exposure to PCBs prenatally and via breast milk.

In some cases chloracne may occur in humans exposed to PCBs. Severe cases of chloracne are painful and disfiguring, and symptoms may persist for an extended time. Although the effects of chloracne are reversible, EPA considers these effects to be significant.

2. Environmental effects. Certain PCB congeners are among the most stable chemicals known and decompose very slowly once they are in the environment. They remain in the environment and are taken up and stored in the fatty tissue of organisms. EPA has concluded that PCBs can be concentrated in fresh water and marine organisms. The transfer of PCBs up the food chain from phytoplankton to invertebrates, fish, and mammals can result ultimately in human exposure through consumption of food sources containing PCBs. Available data show that PCBs affect the productivity of phytoplankton and the composition of phytoplankton communities, cause deleterious effects on environmentally important freshwater invertebrates, and impair reproductive success in birds and mammals.

PCBs also are toxic to mammals at very low exposure levels. The survival rate and reproductive success of fish can be adversely affected in the presence of PCBs. Various sublethal physiological effects attributed to PCBs have been recorded in the literature. Abnormalities in bone development and reproductive organs have also been demonstrated.

3. Risks. Toxicity and exposure are the two basic components of risk. Based on animal data, EPA concluded that in addition to chloracne, there is the potential for reproductive effects, developmental toxicity, and oncogenicity in humans. EPA also concluded that PCBs present a hazard to the environment.

Minimizing exposure to PCBs should minimize any potential risk. EPA takes exposure into consideration in evaluating exemption petitions.

B. Benefits and Costs

The benefits to society of granting an exemption and the reasonably ascertainable costs of denying a petition vary depending on the petitioner and the activity for which exemption is requested. EPA is taken the benefits and costs into consideration when evaluating each exemption petition. The specific benefits and costs of denying each petition are discussed in later units of this final rule.

IV. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA requires petitioners to make good faith efforts to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for PCBs before EPA can grant an exemption. EPA considers several factors in determining whether a petitioner has made good faith efforts. For each exemption petition, EPA considers the kind of exemption which the petitioner is requesting, whether substitutes exist, and whether the petitioner expended time and money to develop or search for a substitute. In each case the burden is on the petitioner to show specifically what it does to substitute non-PCBs for PCBs or to show why it does not seek to substitute non-PCBs for PCBs. EPA's evaluation of each petitioner's attempt to demonstrate a good faith effort is discussed in later units of this final rule.

V. Disposition of Exemption Petitions

A. Inadvertently Generated PCBs

The Uncontrolled PCB Rule excluded from the prohibition on the manufacture, processing, distribution in commerce, and use of PCBs those PCBs inadvertently generated in an "excluded manufacturing process." An "excluded manufacturing process" as defined at 40 CFR 761.3 is a manufacturing process or importation in which the concentration of inadvertently generated PCBs in the product is limited to an annual average of less than 25 ppm, with a 50 ppm maximum, except that the concentration of inadvertently generated PCBs in the components of detergent bars must be less than 5 ppm. Limits are also placed on the concentration of PCBs discharged to air and water from an excluded manufacturing site.

The following eight petitions for exemption to manufacture, process, and distribute in commerce inadvertently generated PCBs above allowable concentration levels for "excluded manufacturing processes" were renewed. EPA is dismissing two of these exemption petitions, granting four exemptions, and denying two exemption petitions.

1. Reed Plastics, and U.S. Printing Ink Corporation. Reed Plastics (Reed), Holden, MA 01520 (PDE-224), and U.S. Printing Ink Corporation (USPI), East Rutherford, NJ 07073 (PDE-164.3), each petitioned for individual exemptions to process pigments containing PCBs at concentrations greater than those limits placed on inadvertently generated PCBs in the Uncontrolled PCB Rule.

These companies currently have no inventories of pigment containing PCBs above these limits. However, they requested exemptions to process pigments containing PCBs above regulatory limits in the event that their suppliers exceed regulatory limits. In the August 29, 1985 proposed rule, EPA determined that Reed and USPI do not need exemptions and proposed to dismiss the petitions. EPA received no comments on the proposed dismissal of these two petitions. The Agency is dismissing both the Reed and USPI petitions because processors, distributors, and users of products generated in "excluded manufacturing processes" do not need exemptions.

The Uncontrolled PCB rule published in the **Federal Register** of July 10, 1984 (49 FR 28172), placed limits on the concentration of PCBs leaving the site of processes which generate PCBs as inadvertent byproducts. EPA also placed limits on the concentration of inadvertently generated PCBs in products imported into the United States. The processing, distribution in commerce, and use of products of "excluded manufacturing processes" are excluded from the prohibitions on the processing, distribution in commerce, and use of PCBs. Thus, the intent of the Uncontrolled PCB Rule is to limit the addition of PCBs into the environment by regulating the concentration of inadvertently generated PCBs in products at the point where the PCBs are introduced into commerce.

Processors and distributors of products containing inadvertently generated PCBs are responsible for determining that their suppliers' processes qualify as "excluded manufacturing processes," or that their suppliers have exemptions to manufacture or import, and distribute PCBs over regulatory limits. However, since EPA regulates concentrations of inadvertently generated PCBs in products at the point of the original manufacture or import of the PCBs, a manufacturer or importer can not assign its duty to comply with the limits on "excluded manufacturing processes" to downstream processors, distributors or

users. Therefore, processors and distributors of inadvertently generated PCBs should not need exemptions except where an exemption is needed to process or distribute inadvertently generated PCBs in inventories accumulated prior to the effective date of the Uncontrolled PCB Rule (October 1, 1984).

In considering petitions for exemption to manufacture, import, or distribute in commerce inventories of inadvertently generated PCBs above the limits established in the Uncontrolled PCB Rule, EPA will evaluate the exposures and risks associated with the further processing, distribution and use of the PCBs. EPA considered such exposure issues when it established average and maximum concentration levels for inadvertently generated PCBs at the point of their introduction into commerce, and included the further processing, distribution and use of those PCBs in the Uncontrolled PCB Rule.

2. Aluminum Company of America (ALCOA). Following promulgation of the Uncontrolled PCB Rule and the proposed rule-related notice in the July 10, 1984 **Federal Register** (49 FR 28172, 49 FR 28203), the Aluminum Company of America, Pittsburgh, PA 15219, renewed its petitions for exemption (a) to manufacture anhydrous aluminum chloride ($AlCl_3$) contaminated with inadvertently generated decachlorobiphenyl above allowable levels (ME–3); and (b) to distribute in commerce $AlCl_3$, containing inadvertently generated PCBs above the limits established in the Uncontrolled PCB Rule (PDE–13).

Although the plant is not in operation, ALCOA's Anderson County Works houses a process in which $AlCl_3$ is produced and 90 percent of the $AlCl_3$ is converted to aluminum metal. ALCOA provided information indicating that there would be no PCBs in the aluminum metal and that all PCBs are concentrated in process wastes which would be disposed of in accordance with EPA regulations. Thus, the 90 percent of the $AlCl_3$ which would be converted to metallic aluminum is part of an "excluded manufacturing process" since the metalic aluminum contains no PCBs and EPA considers a manufacturing process to be all of a series of unit operations at one site (a contiguous property) resulting in the production of a product. Thus, ALCOA would not need an exemption to manufacture $AlCl_3$ for use in the production of aluminum metal at Anderson County Works.

Of the $AlCl_3$ produced by the Anderson County Works process, 10 percent is not converted to aluminum metal. ALCOA petitioned for exemptions to manufacture and distribute in commerce that 10 percent of $AlCl_3$ as a product as well as to distribute in commerce a substantial amount of $AlCl_3$ in ALCOA's inventory. Although the Anderson County Works was not in operation, ALCOA's petitions requested that it be allowed to manufacture and distribute in commerce 10 percent of its $AlCl_3$ production capacity as a product should the plant be reopened within the exemption period. ALCOA specified that if an exemption were granted, the existing inventory of $AlCl_3$ would be distributed in commerce, whether or not the plant is reopened.

EPA proposed to deny both of the ALCOA exemption petitions. Due to lack of information on the downstream uses of ALCOA's $AlCl_3$, and because EPA was aware that $AlCl_3$ is commonly used in the manufacture of products such as deodorants, blood coagulants and dermatological antacids, EPA concluded that the processing and distribution in commerce of $AlCl_3$ would result in an unreasonable risk of injury to human health and the environment.

EPA was concerned that use of $AlCl_3$ containing PCBs over the limits established in the Uncontrolled PCB Rule in dermatological consumer products would result in some additional risk of consumer exposure to PCBs, and higher risks. In the proposed rule, EPA expressed concern about the possibility that several times the amount of ALCOA's existing inventory would be distributed in commerce for use in dermatological products if the plant were to become operational for a substantial portion of the 1-year exemption period. Assuming that the plant would be operational during the entire exemption period, EPA determined in the proposed rule that denial of the petitions would not result in a large economic impact to ALCOA.

In addition, EPA determined that should the plant become operational during the 1-year exemption period and ALCOA continued to produce $AlCl_3$ containing PCBs over regulatory limits, EPA would not be able to find that the petitioner had demonstrated good faith efforts because (a) information submitted by ALCOA over the past 5 years shows no significant reduction in the level of PCBs in the $AlCl_3$, and (b) there are alternative supplies of $AlCl_3$ which do not contain PCBs above the limits established in the Uncontrolled PCB Rule.

During the comment period on the proposed rule and the public meeting on November 6, 1985, ALCOA withdrew its petition for exemption to manufacture $AlCl_3$, stating that ALCOA has no plans to resume production of $AlCl_3$ for its anhydrous aluminum process. ALCOA also amended its petition for exemption to distribute in commerce $AlCl_3$ containing PCBs at concentrations above the limits established in the Uncontrolled PCB Rule. The amended petition requests exemption only to distribute in commerce its existing inventory. ALCOA also provided information on the downstream use of the $AlCl_3$ and the economic consequences to ALCOA of a petition denial.

ALCOA currently has in inventory 1,116,225 pounds of $AlCl_3$ contaminated with decachlorobiphenyl at a concentration falling in the range of 82 to 115 ppm. ALCOA stated that should EPA grant their petition to distribute the $AlCl_3$ inventory in commerce, the $AlCl_3$ will be sold only to Kemira, Incorporated of Savannah, Georgia for use in a pigment manufacturing process. ALCOA expects that 500,000 pounds of $AlCl_3$ will be sold to Kemira during the 1-year exemption period. EPA grants the ALCOA petition for exemption to distribute in commerce its existing inventory of $AlCl_3$ provided that: (i) The $AlCl_3$ is sold only to Kemira, Inc. for use in the production of pigments, or (ii) the $AlCl_3$ is sold to a company other than Kemira, Inc. for use only in the production of pigments and notice of such sale is provided to the Agency 30 days before delivery of the $AlCl_3$.

In granting the ALCOA petition to distribute in commerce its existing inventory of aluminum chloride, EPA is also exempting from the prohibitions on the processing, distribution in commerce and use of PCBs, the further processing and distribution in commerce of these PCBs. Accordingly, processors and distributors of ALCOA's inventory of $AlCl_3$ do not have to apply for separate exemptions.

Since ALCOA has approximately twice the amount of $AlCl_3$ in inventory as it expects to distribute in commerce during the 1-year exemption period, EPA anticipates that ALCOA will request a renewal of the exemption to allow further distribution in commerce at the end of the 1-year approval period. Should ALCOA request another 1-year exemption, EPA will expect the petitioner to provide sufficient information to conclude that ALCOA has acted in good faith compliance with the terms of this exemption, and that the information relied upon by the Agency in its determinations remains applicable.

a. Unreasonable risk finding. EPA has determined that granting this ALCOA exemption petition will not pose an

unreasonable risk of injury to human health or the environment. ALCOA submitted detailed information on the Kemira process which shows that the concentration of PCBs in the Kemira pigment will be about 5 ppm, and that releases to air and water from the process are well below levels specified for "excluded manufacturing processes." Further, the Agency has previously determined that pigments compose as little as 2 percent and no more than 20 percent of final consumer products.

In developing the Uncontrolled PCB Rule, the Agency determined that no unreasonable risks would result from the processing, distribution in commerce and use of inadvertently generated PCBs in pigments, assuming that pigment is contaminated with PCBs at the maximum level of 50 ppm. The exposures and associated risks involved in the distribution in commerce of the $AlCl_3$ for use in the maunfacture of pigments, as well as the further processing, distribution in commerce and use of the $AlCl_3$ are estimated to be on the same order of magnitude as the concentration levels allowed for "excluded manufacturing processes" in the Uncontrolled PCB Rule.

Based on specific information submitted by ALCOA during the comment period, EPA estimates that the economic consequences of denying the petition would involve the costs of disposing of 500,000 pounds of $AlCl_3$ (the amount to be sold during the 1-year exemption period) in accordance with the regulations on the disposal of PCBs at 40 CFR 761.60 and the lost sale value of the pigment. ALCOA specified that the cost of disposal includes the cost of rendering the material non-reactive prior to disposal. EPA concludes that the total economic consequences to ALCOA if its exemption petition were denied would be about $995,000.

After careful consideration of the risks posed by the use of the $AlCl_3$ in the production of pigment, and by the use of the pigment in downstream processes and products, EPA has determined that the economic consequences of a denial to ALCOA are not warranted when compared with the relatively low risks associated with granting this exemption.

b. Good faith efforts finding. In the proposed rule, EPA expressed concern that the petitioner had failed to demonstrate good faith efforts to reduce the concentration of PCBs in the $AlCl_3$. Since ALCOA has limited its exemption petition to existing inventory and indicated that ALCOA does not intend to produce any additional $AlCl_3$, that good faith efforts concern is no longer pertinent. The current inventory was produced by ALCOA under the EPA policy that allowed activities to continue under pending PCB exemption petitions until final EPA action (see Unit II.C). Thus, the Agency finds that the petitioner has demonstrated good faith efforts.

The Agency does not anticipate that any new petitions will be filed to distribute in commerce stocks of inadvertently generated PCBs at concentrations above regulatory limits. Any new petitioner requesting exemption to distribute in commerce inadvertently generated PCBs over regulatory limits will have a substantial burden of proof in demonstrating "good cause" for acceptance of the petition for consideration by the Agency, and in demonstrating good faith efforts.

3. American Hoechst Corporation (Hoechst). The American Hoechst Corporation, Somerville, NJ 08876, renewed its petitions for exemption (a) to import diarylide pigment containing inadvertently generated PCBs over the levels established in the Uncontrolled PCB Rule (ME–5), and (b) to distribute in commerce pigment containing inadvertently generated PCBs over the levels established in the Uncontrolled PCB Rule (PDE–70.5). EPA proposed to grant both Hoechst petitions for a period of 1 year because granting an exemption would not result in an unreasonable risk of injury to health or the environment, and the petitioner has demonstrated good faith efforts. EPA proposed, as a condition of the exemption, a requirement that Hoechst notify its customers that the concentration of PCBs in the pigment may exceed the regulatory maximum of 50 ppm. No comments were submitted during the comment period. EPA is granting both Hoechst petitions on the condition that Hoechst notify its customers that the concentration of PCBs in the pigment may exceed the regulatory maximum of 50 ppm.

a. Unreasonable risk finding. The concentrations of PCBs in the pigment, submitted as proprietary information, are only slightly above the concentration limits established in the Uncontrolled PCB Rule. The total amount of PCBs imported and distributed in commerce would be less than 2.5 lbs during the exemption period. The pigment would be distributed in commerce for use as a colorant in automotive paints, plastics, and wallpaper. EPA has previously determined that pigments generally compose no more than 20 percent of these types of final products.

American Hoechst estimated the reasonably ascertainable costs of denial to be equal to the lost value of potential sales of the imported pigment. Based on information submitted by Hoechst, EPA has determined that the costs of denial of the petitions will be substantial given the small quantity of PCBs involved. The incremental costs of denying the petitions are estimated to be in the range of $160,000 to $580,000 per lb of PCBs in the pigments, less the acquisition cost of the pigment. EPA believes the actual incremental costs to fall in the high end of the range, less acquisition costs, because of the low concentration of PCBs involved.

b. Good faith efforts finding. American Hoechst has demonstrated good faith efforts (i) to develop a substitute for the pigment, and (ii) to reduce the concentration of PCBs in the pigment. Since the submission of its original 1978 petition, Hoechst has expended substantial sums in the search for a substitute and in research to reduce the PCB concentration in the pigment. Hoechst maintains that it has thus far found no adequate substitutes. Information submitted by Hoechst since 1978 indicates that the concentration of PCBs in the product has decreased over that time. In granting the Hoechst exemption petitions, EPA presumes the petitioner's continued good faith efforts. Hoechst will have a substantial burden of proof should it apply for renewal at the end of the exemption period.

4. Dainichiseika Color & Chemicals America, Incorporated. Dainichiseika Color and Chemicals America (Dainichiseika), Clifton, NJ 07012, imported phthalocyanine blue crude from Taiwan in 1982 under a petition for exemption to import crude colorants containing PCBs at concentrations of 50 ppm or greater. EPA policy allowed the petitioner to continue activities until EPA acted on that petition. (See Unit II.C of this preamble). Before EPA acted, Dainichiseika's U.S. customer withdrew its petition for exemption to process and distribute pigments containing greater than 50 ppm PCBs, leaving Dainichiseika without a domestic buyer. Dainichiseika subsequently withdrew its pending petition for exemption to import PCBs (ME–24).

In response to the July 10, 1984 proposed rule-related notice, renewed its exemption petition to distribute its remaining inventory of 62,400 lbs of blue crude containing inadvertently generated PCBs at 80 ppm (PDE–58). The petitioner also requested that if EPA denies its petition for exemption to distribute the crude within the U.S., EPA consider a new Dainichiseika petition for exemption to (a) export the PCBs to a foreign buyer, or (b) return (export) the PCBs to the original manufacturer in Taiwan (PDE–58.1).

EPA proposed to grant Dainichiseika a 1-year exemption to distribute in commerce its existing inventory of 62,400 lbs of phthalocyanine crude contaminated with PCBs at 80 ppm, provided that Dainichiseika notifies its customers of the PCB concentration in the crude. No comments were submitted during the comment period. Thus, EPA grants Dainichiseika a 1-year exemption to distribute in commerce its existing inventory of 62,400 pounds of phthalocyanine blue crude within the United States, provided that Dainichiseika notify its customers of the PCB concentration in the crude.

EPA has determined that no unreasonable risk of injury to health or the environment will result, and that the petitioner has demonstrated good faith efforts to comply with the letter and spirit of the PCB regulations. In granting the Dainichiseika petition to distribute in commerce its existing inventory of blue crude containing 80 ppm PCBs, EPA is also exempting from the prohibitions of the processing, distribution in commerce and use of PCBs, the further processing and distribution in commerce of these PCBs. Accordingly, processors and distributors of Dainichiseika's inventory of phthalocyanine blue crude do not have to apply for exemptions.

a. Unreasonable risk finding. In making the unreasonable risk finding for this petition, EPA considered the exposures and associated risks involved in the further processing, distribution in commerce and use of the crude. EPA previously considered these exposure issues when it excluded certain post manufacturer activities involving inadvertently generated PCBs from the section 6(e) prohibitions (see Unit V.A.1).

The exposures, and associated risks involved in the distribution in commerce of this crude, as well as the further processing, distribution in commerce and use of the crude are estimated to be on the same order of magnitude as the concentration levels allowed for "excluded manufacturing processes" in the Uncontrolled PCB Rule. The crude will be processed into pigment for use in the manufacture of plastics, paints and printing inks. The rulemaking record in that rule shows that downstream processing of pigments results in the reduction of PCB concentration in consumer products. Pigments generally compose no more than 20 percent of the final paint and printing ink products, and no more than 2 percent of final plastic products. The total amount of PCBs that will be distributed in commerce under this exemption is less than 5 lbs

Granting this exemption is consistent with the purpose of the Uncontrolled PCB Rule which is to limit the addition of PCBs into the environment by regulating the concentration of inadvertently generated PCBs in products at the point where the PCBs are introduced into commerce. No additional PCBs will be generated and introduced into commerce if this petition is granted. Less than 5 lbs of existing PCBs will be distributed in commerce under this exemption.

EPA has determined that no unreasonable risk will result from the distribution in commerce of Dainichiseika's inventory of 62,400 lbs of phthalocyanine blue crude containing 80 ppm PCBs, or from the further processing, distribution in commerce and use of this pigment. These determinations are consistent with the unreasonable risk determination made in issuing the Uncontrolled PCB Rule. The economic consequences of denying the Dainichiseika petition, including the lost sale value of the pigment and the costs of disposal in accordance with EPA regulations at 40 CFR 761.60, would be in the range of $141,000 to $163,000.

b. Good faith efforts finding. The petitioner imported the pigment under an exemption petition with the reasonable expectation that its U.S. customer could and would legally process and distribute the pigment. Dainichiseika no longer intends to import pigments containing inadvertently generated PCBs above the levels established in the Uncontrolled PCB Rule. In finding that Dainichiseika has made and is making good faith efforts to comply with the PCB regulations, EPA considered: (1) the fact that EPA policy allowed the petitioner to import the existing inventory under a pending petition; and (2) the petitioner's compliance with EPA regulations issued since the import of the PCBs.

In view of these circumstances, EPA is granting a 1-time exemption, after finding that the concentrations and quantity of PCBs in the blue crude will not pose an unreasonable risk. EPA does not anticipate that any similar exemption petitions will be filed. Any person or company filing a new exemption petition to distribute in commerce inadvertently generated PCBs over regulatory limits will have a substantial burden of proof in demonstrating "good cause" for acceptance of the petition for consideration by the Agency, and good faith efforts to comply with the PCB regulations.

5. Mobay Chemicals Corporation. Mobay (previously Harmon Colors Corporation), Union, NJ 07083, petitioned for exemption to distribute in commerce its inventory of phthalocyanine pigment containing inadvertently generated PCBs at 150 to 210 ppm (PDE–157.10). When the Mobay filed its petition in 1983, the PCB regulations prohibited the import of pigments containing greater than 50 ppm PCBs. Mobay contends that the supplier had previously assured Mobay that the pigment would not be contaminated above the 50 ppm cutoff level. Heving discovered that the pigment contained greater than 50 ppm PCBs, Mobay submitted an exemption petition to distribute in commerce its inventory of this pigment. Mobay requested that, should EPA deny Mobay's petition for exemption to distribute in commerce its inventory within the United States, Mobay be granted a 1-time exemption to return the pigments to the original manufacturer in Germany. Mobay has not been allowed to distribute this pigment in commerce under the pending petition.

EPA proposed to deny both requests by Mobay. EPA received no comments on this proposal during the comment period. EPA denies the Mobay petition for exemption to distribute in commerce pigment containing inadvertently generated PCBs, and the alternate request for exemption to return (export) the PCBs to the original German manufacturer.

a. Distribution in commerce. EPA denies the Mobay petition for exemption to distribute in commerce its inventory of pigment containing PCBs over the levels established in the Uncontrolled PCB Rule because the Agency cannot find that the petitioner has made "good faith efforts" to comply with those levels. The pigments contained PCBs well over the 50 ppm cutoff in effect at the time of import and the petitioner did not have an exemption to import PCBs above 50 ppm. Importers of PCB products are responsible for complying with the PCB regulations.

Denial of the petition will result in costs to Mobay of disposing of the pigment in accordance with the regulations at 40 CFR 761.60. EPA estimates the economic consequences of denying the petition to be in the range of $75,000 to $306,000 per lb of PCBs. EPA concludes that the cost of denying the petitions will be on the low end of the range because of the relatively high concentration of PCBs in the pigment. Further, the bulk of the cost estimate reflects the lost sale value of the pigment, which is a cost resulting from the business transaction between Mobay and its supplier rather than the

consequences of the denial or of a change in the regulatory status of the PCBs. The exemption process is not the proper mechanism for obtaining relief from the consequence of private transactions.

b. Export. In considering Mobay's request for an alternate exemption to distribute in commerce PCBs for purposes of return (export) to the foreign manufacturer, EPA considered whether the return of PCBs to a manufacturer constitutes export, and should be treated in accordance with EPA policy on exemption petitions for export of PCBs. In a policy published in the Federal Register of May 1, 1980 (45 FR 29115), EPA specified what petitioners who want to export PCBs must demonstrate to meet the statutory requirements of section 6(e)(3)(B) of TSCA:

i. EPA will not grant an exemption unless the nation to which export is destined has proper facilities for ultimate disposal.

ii. EPA will not grant an exemption for an export for a use which is not authorized within the United States.

iii. In the context of export, good faith efforts to find a substitute means that the burden is on the petitioner to show that there are no substitutes for the PCBs, produced either by the petitioner or a competitor, and that the petitioner proves it has expended time and money searching for a substitute.

Based on consideration of EPA's intent in issuing the above policy, the Agency has determined that petitions for exemption to return (export) to a foreign supplier should be evaluated by the same criteria as petitions for exemption to export PCBs for distribution in commerce and use. The Agency treats petitions for export of PCBs more stringently than petitions for exemption to distribute the PCBs within the United States because EPA will have no control over the distribution, use, and disposal of PCBs once the PCBs have been exported. Whether exported to a foreign customer, or reexported to a foreign supplier, the concern over the ultimate distribution, use and disposal of PCBs remains.

Pigments containing greater than the maximum concentration of 50 ppm are not authorized for use within the United States. The Agency does not know of, and the petitioner has not demonstrated, the existence of proper PCB disposal facilities within Germany. Also, the petitioner did not legally import the PCBs into the United States. In accordance with the discussion of good faith efforts above, EPA must place the responsibility for compliance with import regulations on the importer. The petitioners have, thus, failed to demonstrate "no unreasonable risk" and "good faith efforts" in accordance with the statutory standards for EPA evaluation of exemption petitions to export PCBs.

B. Processing, Distribution in Commerce, Import, and Export of Equipment Containing PCBS, and Equipment Contaminated With PCBS

EPA received from the Aluminum Company of America (ALCOA) three petitions for exemption to (1) process and distribute in commerce within the U.S. hydraulic and heat transfer systems containing PCBs and other equipment contaminated with PCBs (PDE–13.1A); (2) export hydraulic and heat transfer systems containing PCBs and other equipment contaminated with PCBs (PDE–13B); and (3) import hydraulic and heat transfer systems containing PCBs, and other equipment contaminated with PCBs (ME–3.1). EPA proposed to deny all three ALCOA petitions. ALCOA submitted written comments during the comment period and provided additional clarification during a public meeting on the proposed rule on November 6, 1985.

EPA denies the ALCOA petitions for exemption to import, and to export heat transfer and hydraulic systems, and equipment contaminated with PCBs on the surface, for reuse. EPA treats petitions for exemption to import or export much more stringently than petitions to distribute in commerce within the United States. Without specific information about the types and quantities of equipment to be distributed in commerce, and about the concentrations of PCBs involved, EPA can not determine that no unreasonable risks will result from granting the exemption to import and export equipment.

In this final rule, EPA is granting in part and denying in part ALCOA's petition for exemption to distribute in commerce heat transfer and hydraulic systems containing PCBs, and equipment contaminated with PCBs. EPA is granting the ALCOA petition to distribute in commerce PCB–containing or PCB-contaminated equipment only so far as to allow ALCOA to distribute in commerce heat transfer and hydraulic systems containing PCBs at concentrations less than 50 ppm PCBs, provided that the equipment is drained of all free-flowing liquid prior to distribution in commerce. The factors EPA considered in evaluating the ALCOA exemption petitions, the comments submitted by ALCOA during the comment period and the public meeting, and EPA's statutory findings on these petitions are discussed below.

1. ALCOA heat transfer and hydraulic systems. On May 31, 1979, the Agency authorized the non-totally enclosed use of PCBs at concentrations above 50 ppm in heat transfer and hydraulic systems. A condition of the use authorization was that all systems that ever contained PCBs at concentrations above 50 ppm were to be tested, flushed, and refilled with fluid containing less than 50 ppm PCBs at least annually until the PCB concentration in the system fell below 50 ppm. All heat transfer and hydraulic systems were to have less than 50 ppm PCBs by July 1, 1984. In the Federal Register of July 10, 1984 (49 FR 28172), EPA continued the use authorization for heat transfer and hydraulic systems containing less than 50 ppm PCBs. The use of heat transfer and hydraulic systems containing 50 ppm PCBs or greater is prohibited.

ALCOA has undetermined quantities of heat transfer and hydraulic systems placed in storage for salvage prior to July 1, 1979. ALCOA also owns an undetermined quantity of heat transfer and hydraulic systems currently in operation containing less than 50 ppm PCBs. ALCOA requested exemptions to distribute in commerce, export, and import these systems as salvage.

ALCOA intends to drain all systems containing between 50 and 1,000 ppm PCBs prior to sale. Equipment with greater than 1,000 ppm PCBs will also be flushed with a non-PCB solvent. Outside surfaces of all equipment will be scraped, and steam or solvent cleaned. These activities are authorized under 40 CFR 761.60 for heat transfer and hydraulic systems prior to disposal, or for servicing and maintenance by the owner, but not for purposes of processing these systems for distribution in commerce, export, or import.

In the proposed rule, EPA concluded that the petitioner had failed to demonstrate good faith efforts in its handling of heat transfer and hydraulic equipment containing PCBs. EPA was particularly concerned about the equipment placed in storage prior to July 1, 1979. The ALCOA petition indicated that most of the equipment in storage contains PCBs at 50 ppm or greater, with some containing more than 1,000 ppm PCBs. EPA stated in the proposed rule that if this equipment was placed in storage for disposal, 40 CFR 761.65(a) required disposal of the equipment before January 1, 1984. EPA noted that, if the equipment was placed in storage for reuse, the systems should all contain less than 50 ppm PCBs if ALCOA was in

compliance with the conditions of the use authorization.

EPA further concluded that granting exemptions to ALCOA to process, distribute in commerce, import, and export the heat transfer and hydraulic systems would pose an unreasonable risk of injury to health or the environment due to the high concentrations of PCBs involved and the normal leaks and spills associated with the handling of this equipment. Without specific information on the concentrations of PCBs, the number of systems, or on the amount of PCB waste that would be generated during the exemption period, EPA could not estimate the costs of denying the ALCOA petitions.

ALCOA commented that the EPA's concern that ALCOA may not be in compliance with the regulations were unfounded. ALCOA stated that they have no heat transfer or hydraulic systems which were placed in storage for disposal prior to July 1, 1979. ALCOA stated that it does have equipment in storage for reuse, some of which may have contained greater than 50 ppm PCBs, and possibly higher than 1,000 ppm PCBs. ALCOA stressed, however, that all equipment in storage was drained prior to storage. ALCOA also reiterated that all heat transfer and hydraulic systems currently used by ALCOA contain less than 50 ppm PCBs.

EPA partially grants the ALCOA distribution in commerce petition to allow the distribution in commerce of heat transfer and hydraulic systems in use, or in storage for reuse, which have been shown to contain less than 50 ppm PCBs by testing, provided that these systems are drained of all free-flowing liquids prior to distribution in commerce. EPA considered the risks associated with the continued use of this equipment in authorizing the use of systems containing less than 50 ppm and found that no unreasonable risks would result. EPA expressed concern in the proposed rule that the possible leaks and spills from this equipment during distribution in commerce may pose unreasonable risks. However, if the equipment is drained of all free flowing liquid prior to distribution in commerce, EPA finds that no unreasonable risks will result.

EPA is denying the petition to distribute in commerce equipment in storage for reuse whose fluid has not been tested and demonstrated to contain less than 50 ppm PCBs. The deadline for reducing the concentration of PCBs in heat transfer and hydraulic systems to less than 50 ppm was July 1, 1984. Any procedure for reducing the concentration of PCBs in systems which contain PCBs at concentrations of 50 ppm or greater must be approved by the appropriate EPA regional office under its enforcement authority. EPA will not grant exemptions for the distribution in commerce of materials or equipment (e.g., heat transfer and hydraulic systems containing 50 ppm or greater PCBs) which are not authorized for use. If such systems which contain 50 ppm or greater PCBs are reduced to below 50 ppm under an agreement with an EPA regional office, the systems may then be distributed in commerce under this exemption.

2. ALCOA equipment contaminated with PCBs. ALCOA has undetermined quantities and types of equipment which were never designed to contain PCBs but which are contaminated with PCBs, and anticipates that additional equipment may be found to be contaminated with PCBs during the exemption period. ALCOA requests exemptions to process, distribute in commerce, export, and import this equipment after decontamination to 50 ug/100 cm^2. ALCOA has provided little or no information on location, types and quantities of equipment contaminated with PCBs and the levels at which the equipment is contaminated. In the proposed rule, EPA concluded that the petitioner itself has no real knowledge of the magnitude of the contamination problem.

Under current EPA regulations and policies, no equipment or material contaminated with PCBs may be processed or distributed in commerce. However, EPA recognizes the tremendous economic and societal costs of prohibiting the distribution in commerce of all equipment and materials contaminated with PCBs. Therefore, EPA has maintained the policy of allowing the owners of such items to work with the EPA regional offices in decontaminating the equipment or materials. When the regional office determines the decontamination to be adequate, the items are allowed to be distributed in commerce. EPA is currently drafting a national clean-up policy to provide a framework for more consistent regional clean-up standards.

EPA concluded in the proposed rule that ALCOA should work with the EPA regional offices to decontaminate the equipment and receive approval for the sale of that equipment. EPA will not use its exemption authority to approve standards or procedures for decontaminating equipment contaminated with PCBs or to grant exemption for the distribution in commerce of such equipment. Contamination of materials and equipment from leaks, spills and other uncontrolled discharges of PCBs whose concentrations were originally 50 ppm is considered to be the improper disposal of PCBs. Therefore, the Agency's authority to require cleanup and establish cleanup standards is derived from the PCB disposal regulations. That is, before contaminated equipment or other contaminated materials can be distributed in commerce, the Agency requires cleanup of the PCB contamination to remedy the improper disposal of PCBs through spill, leaks or other uncontrolled discharges of PCBs.

During the comment period on the proposed rule and at the public meeting, ALCOA commented that while it uses other equipment contaminated with PCBs as a result of historical use in proximity to PCB-containing machinery such as hydraulic systems, the only equipment which has been designated for resale is a single forge press contaminated at low levels on the outer surface. ALCOA further commented that even if a national cleanup policy eliminated inconsistencies across the regions, ALCOA would still need an exemption to distribute in commerce equipment contaminated with PCBs because dealing with the regional offices can involve a lengthy period of review without any guarantee of approval.

EPA carefully considered the comments made by ALCOA in connection with its distribution in commerce petition as it applies to the forge press. EPA has determined that it is not appropriate for the Agency to establish a cleanup standard via the exemptions process. As regards a single forge press, ALCOA should not experience difficulty in coordinating activities with more than one regional office.

ALCOA indicated that denial of the petition to resell the forge press would result in the loss of $100,000, the resale value of the forge press. EPA estimates that the consequences of denial would be equal to the resale value plus the cost of disposing of the forge press. The Agency further believes that ALCOA can mitigate any potential losses by decontaminating the equipment to the satisfaction of the regional office and selling the forge press. Thus, it is likely that ALCOA will suffer no economic consequences as a result of this petition denial.

The Agency's denial of the petition to resell the forge press is not based on a determination that decontamination and resale would result in an unreasonable risk. If the forge press is decontaminated to an appropriate level, the resale of the press should not pose an unreasonable

risk, particularly when balanced against the cost of disposal and the loss of resources represented by such disposal. The Agency has determined, however, that it is not within the scope of EPA's authority to grant PCB exemptions to establish cleanup standards where a mechanism already exists for establishing cleanup standards (i.e., currently through the regions, and ultimately a nationwide policy when it becomes final). Upon decontamination in accordance with regional standards, equipment may be distributed in commerce.

3. Benefits and costs. As to the distribution in commerce exemption petition as a whole, ALCOA estimated the reasonably ascertainable costs of denying the petitions based on past sales of salvage equipment. ALCOA's petitions stated that the value of equipment sold for reuse in 1982–83 totalled $2.5 million. ALCOA estimated that the value of salvage equipment sold for reuse in the first 10 months of 1984 totalled $3.5 million. EPA cannot reasonably estimate the economic consequences to ALCOA of denying the petitions without information on the types of equipment involved, the quantity of equipment involved, and the proportion of ALCOA's business which would be derived from the sales of PCB and PCB-contaminated equipment during the exemption period. Given adequate information, EPA would calculate the economic costs of denial as the sales value of the equipment less the costs to ALCOA of processing the equipment and disposing of the PCB and PCB-contaminated fluids and other wastes. A reasonable estimate of the cost of denial would be further mitigated should the petitioner be able to decontaminate the equipment to the satisfaction of the appropriate EPA regional offices and obtain permission to sell the equipment.

Absent specific information on the types and quantities of equipment which would be distributed in commerce if this exemption were granted, EPA cannot find that no unreasonable risk will result from granting the exemption.

C. Research and Development

In the **Federal Register** of July 10, 1984 (49 FR 28193), EPA authorized indefinitely the use of PCBs in "small quantities for research and development." "Small quantities for research and development" is defined at 40 CFR 761.3 as "any quantity of PCBs (1) that is originally packaged in one or more hermetically sealed containers of a volume of no more than five (5.0) milliliters and (2) that is used only for purposes of scientific experimentation or analysis, or chemical research on, or analysis of, PCBs, but not for research or analysis for the development of a PCB product." EPA concluded that authorizing this use of PCBs does not present an unreasonable risk of injury to health or the environment, considering the effects on human health and the environment; the potential for exposure to PCBs; the benefits of using PCBs and the lack; and the economic impact of various regulatory options.

In the Final PCB Exemptions Rule (49 FR 28154) EPA determined that there are no substitutes for PCBs for the continuation of important health, environmental, and analytical research, and that substitutes for PCBs in such applications will not be developed in the future. In this regard, there is a unique need for exemptions to manufacture, process, distribute in commerce, and export PCBs in small quantities for research and development. EPA determined that the manufacture, processing, distribution in commerce, export, and use of PCBs in small quantities for research and development will not pose an unreasonable risk of injury to health or the environment because of the small quantities involved and the procedures typically used to minimize human and environmental exposure to PCBs.

Based upon these prior EPA conclusions and specific information submitted by petitioners, EPA proposed to grant three individual exemptions to manufacture PCBs in small quantities for research and development, two individual exemptions to export PCBs in small quantities for research and development, and a class exemption for processors and distributors of PCBs in small quantities for research and development. No comments were received during the exemption period. One new petition for exemption to manufacture PCBs in small quantities for research and development was accepted for consideration. In this final rule, the Agency is granting four petitions to manufacture PCBs in small quantities for research and development, granting two individual petitions for exemption to export PCBs in small quantities for research and development, and is granting a class exemption for all processors and distributors of PCBs in small quantities for research and development.

In general, the goal of section 6(e) is to phase out the manufacture, processing, distribution in commerce, and use of PCBs. EPA believes that this goal does not apply to critical health, environmental, and scientific research on PCBs. In fact, some PCBs will always be needed, if only for analytical standards, to ensure that the goal of TSCA section 6(e) is being met. In the Final PCB Exemptions Rule, EPA stated that the exemptions granted in that Rule for the manufacture, processing, distribution in commerce, and export of PCBs in small quantities for research and development would be automatically renewed at the end of each year unless the petitioner changes the quantity of PCBs or manner of manufacturing, processing, distributing in commerce, or exporting PCBs.

The proposed rule stated EPA's intent to continue this policy. This final rule reaffirms the continuation of this policy. EPA will automatically renew the manufacturing and export petitions which it proposes below to grant unless the petitioner notifies EPA of a significant change in the quantity of PCBs manufactured or exported or in the manner of manufacturing or exporting the PCBs. Each year, EPA will automatically renew the class exemption for processing and distributing PCBs in commerce in small quantities for research and development until such time as EPA receives information affecting EPA's conclusion that granting the exemption will not result in an unreasonable risk of injury to health or the environment. EPA reserves the authority to exclude any processor or distributor from the class exemption upon determining that maintaining its exemption will pose an unreasonable risk of injury to health or the environment. Any changes in the disposition of individual exemptions, the class exemption, or exemptions for individuals within the class exemption would be published in a notice of proposed rulemaking. The petitioner will be allowed to continue its activities until a final rule is promulgated.

1. Manufacture and export. EPA received three petitions for exemption to manufacture small quantities of PCBs for research and development and two petitions for exemption to export small quantities of PCBs for research and development. An additional petition for exemption to manufacture PCBs in small quantities for research and development was accepted for consideration. In this final rule, EPA is granting all four petitions for exemption to manufacture PCBs in small quantities for research and development and both petitions for exemption to process and distribute in commerce PCBs for research and development.

EPA proposed to grant the Midwest Research Institute (MRI), Kansas City, MO 64110 (ME–70.1), the Radian Corporation, Austin (Radian), TX 78766

(ME–81.2), and Wellington Science USA (Wellington), College Station, TX 77840 (ME–104.1), petitions for exemptions to manufacture PCBs in small quantities for research and development.

In the proposed exemptions rule, Pathfinder Laboratories, St. Louis, MO 63146 (now a division of Sigma Aldridge Corporation, St. Louis, MO 63178), was included in the proposed granting of a class exemption for all processors and distributors of PCBs in small quantities for research and development. After publication of the proposed rule, Pathfinder Laboratories commented that when Pathfinder originally filed its petition in September 1984, it had intended to petition for exemption to manufacture, as well as to process and distribute in commerce, PCBs in small quantities for research and development. EPA reviewed the record and found that the Pathfinder petition could be interpreted to have requested a manufacturing exemption, although subsequent communications were limited to the processing and distribution in commerce petitions. EPA determined that the petitioner had shown good cause for filing a later petition and accepted the manufacturing petition for consideration (ME–76.1).

MRI, Pathfinder, and Wellington Sciences will each manufacture less than 100 grams of PCBs per year. Radian Corporation will manufacture less than 500 grams in 1 year. EPA grants all four petitions for exemption to manufacture PCBs in small quantities for research and development based on the determinations discussed in Units V.C.1.a and b.

The Radian Corporation (PDE–182.1) and Supelco, Inc., Bellefonte, PA 16823 (PDE–41.2), petitioned for exemptions to export PCBs in small quantities for research and development. Radian will export less than 500 grams of PCBs in 1 year. Supelco will export less than 5 grams of PCBs in 1 year. EPA grants both petitions for exemption to export PCBs in small quantities for research and development for reasons discussed below.

In Unit V.A.5.b. of this preamble, EPA described the Agency's criteria for the statutory determination of no unreasonable risk for exemption petitions to export PCBs. EPA treats petitions for exemption to export PCBs more stringently than petitions for exemption to distribute PCBs in commerce within the United States because EPA will have no control over the distribution, use, and disposal of the PCBs once the PCBs have been exported. Those concerns are mitigated in the export of PCBs for research and development by the viscosity, quantity, and packaging of the PCBs as well as the careful handling of the PCBs by trained personnel.

a. Unreasonable risk finding. EPA concluded that granting exemptions to manufacture and export PCBs in small quantities for research and development would not present an unreasonable risk of injury to health or the environment. All of these petitioners want to manufacture or export less than 500 grams of PCBs. The PCBs are manufactured using laboratory practices that are designed to minimize human and environmental exposure to hazardous substances. The risk of exposure to PCBs during the storage and shipment of PCBs is small because the PCBs are packaged in hermetically sealed containers, and are properly marked with warning labels. The risk of exposure to humans and the environment in the ultimate use of these PCBs is minimized by the small quantities of PCBs used in each application, the viscosity of the PCBs, and the careful handling procedures typical of laboratory work. Finally, granting these exemptions will benefit society by allowing important health, environmental, and analytical research to continue.

b. Good faith efforts finding. EPA determined in the Final PCB Exemptions Rule that the good faith efforts finding is not relevant to petitions to manufacture or export PCBs in small quantities for research and development because there are no substitutes for PCBs in health and environmental research. Pure PCBs are needed for this research because commercial PCBs contain a mixture of isomers and contaminants which may adversely affect experimental results.

2. Processing and distribution in commerce. EPA received six petitions for exemptions to process and distribute in commerce PCBs in small quantities for research and development. In addition, EPA received comments on the need for a class exemption to process and distribute PCBs in small quantities for research and development.

EPA proposed to grant a class exemption for the processing and distribution in commerce of PCBs in small quantities for research and development with certain terms and conditions. No comments were received on the proposed class exemption. One company included in the class exemption did clarify its petition to indicate a change in the ownership of the company. In this final rule EPA is granting a class exemption to all processors and distributors of PCBs in small quantities for research and development under the terms and conditions proposed on August 29, 1985.

The class exemption includes all persons or business entities which process and distribute in commerce PCBs in accordance with the definition of "small quantities for research and development" as specified at 40 CFR 761.3. EPA places the following terms and conditions on the class exemption: (a) That all processors and distributors maintain records of their PCB activities for a period of 5 years; and (b) that any person or company that expects to process or distribute in commerce 100 grams (.22 lb) or more PCBs for research and development in 1 year report to EPA and identify the sites of PCB activities and the quantity of PCBs to be processed or distributed in commerce.

The following six companies which submitted individual petitions for exemption to process and distribute in commerce PCBs in small quantities for research and development are included in the class exemption: Alltech Applied Sciences (PDE–41.1); Midwest Research Institute (PDE–151.1); Pathfinder Laboratories (now a subsidiary of Sigma Aldridge; PDE–174.2); Radian Corporation (PDE–182.2); Supelco Incorporated (PDE–41–3); and Wellington Sciences USA (PDE–297.1). EPA reserves the right to exclude any individual from the class peitition for rulemaking.

EPA has determined that there is a unique need for exemptions to process and distribute in commerce PCBs in small quantities for research and development. EPA believes that this need can best be met by granting a class exemption to all processors and distributors of PCBs in small quantities for research and development. Based on information submitted in, and pertaining to, petitions for processing and distribution in commerce of PCBs in small quantities for research and development, EPA has concluded that all processing and distribution in commerce exemption petitions would be granted provided that the definition of "small quantities for research and development" is met.

Because of the nature of research and development activities, the absence of a class exemption causes special difficulties, and places substantial burdens on EPA as well as on processors and distributors. EPA has determined that petitions to process and distribute in commerce PCBs in small quantities for research and development which provide sufficient data on handling procedures would be granted by EPA. This class petition would eliminate the unnecessary use of

resources in filing, evaluating and acting on those petitions.

EPA is placing the reporting requirement on processors and distributors of 100 grams or more PCBs to ensure that unreasonable risks to health or the environment will not be posed by commerical processors and distributors handling large quantities of PCBs per year. However, EPA is not placing a reporting requirement on processors and distributors handling less than 100 grams per year because the Agency has concluded that the lack of a reporting requirement does not pose an unreasonable risk in situations such as those discussed below.

Many users of PCBs who wish to return analytical standards to the supplier because of over-shipment or the delivery of incorrect standards, must petition for exemption and wait for a minimum of 1 year due to the lengthy exemption process, or dispose of the PCBs. These standards, if returned, can be used by another company. EPA has also received comments indicating that if used standards could be returned to processors (repackaged in hermetically sealed containers of a volume of no more than 5 ml), many could be reprocessed under controlled conditions and reused. Thus, this class exemption will potentially reduce the need to manufacture and dispose of additional PCBs for use in research and development.

In addition, many users of PCBs in research and development are involved, in the course of their work, in activities technically classified as processing and distribution in commerce. These users are currently processing and distributing in commerce, without an exemption, under the assumption that these activities are functions of use and thus authorized as use.

a. Unreasonable risk finding. EPA has previously determined that the processing and distribution of PCBs in small quantities for research and development do not pose unreasonable risks of injury to health and the environment. Most of the processors and distributors included in this exemption would be handling less than 100 grams of PCBs per year. Commercial distributors of analytical standards for research and development who would process 100 grams or more of PCBs in 1 year would be required to report to EPA. The PCBs will be processed using laboratory standards designed to minimize human and environmental exposure to hazardous substances. They will be packaged and distributed in hermetically sealed containers in quantities no larger than 5 ml.

Granting the exemption will benefit society by allowing health, environmental, and analytical research to continue. Granting the exemption will encourage the recycling and reuse of PCBs in controlled laboratory settings and discourage additional manufacture and import of PCBs for research and development. Furthermore, substantial numbers of petitions for exemption which would otherwise be filed, processed, and ultimately granted, will be avoided by granting the class exemption. EPA has estimated the incremental costs of filing one exemption petition to be $17,400. The incremental cost of EPA of processing an exemption petition is estimated to be $7,700.

b. Good faith efforts finding. EPA has determined that the good faith efforts finding is not relevant here, because there are no substitutes for PCBs in health and environmental research. Pure PCBs are needed for this research because commercial PCBs contain a mixture of isomers and contaminants which may adversely affect experimental results.

VI. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and therefore subject to the requirement that a regulatory impact analysis be prepared. EPA has determined that this final rule is not a "major rule" as that term is defined in section 1(b) of the Executive Order because (a) the annual effect on the economy will be an order of magnitude less than $100 million; (b) it will not cause any noticeable increase in costs or prices for any sector of the economy or for any geographic region; and (c) it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets.

Although this final rule is not a major rule, EPA has assessed the economic impact of the rule using guidance in the Executive Order to the extent possible. This final rule was submitted to the Office of Management and Budget (OMB) for review prior to publication, as required by the Executive Order.

VII. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (the Act), 5 U.S.C. 603, requires EPA to prepare and make available for comment an initial regulatory flexibility analysis in connection with any rulemaking for which EPA must issue a general notice of proposed rulemaking. The initial regulatory flexibility analysis must describe the effect of a rule on small business entities.

Section 605(b) of the Act, however, provides that section 603 of the Act "shall not apply to any proposed or final rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA is denying no exemption petitions submitted by small businesses. Therefore, in accordance with section 605(b) of the Act and the authority delegated to me to act on petitions submitted under TSCA section 6(e)(3)(B), I certify that this rule will not have a significant impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, authorizes the Director of OMB to review certain information collection requests by Federal agencies. EPA's original request to collect information for rulemaking on PCB exemption petitions was approved by OMB and was assigned OMB Control Number 2000–0466. EPA's subsequent requests to collect information for rulemakings on PCB exemption petitions, and for recordkeeping and reporting conditions to PCB exemptions granted by the Agency, have been approved under OMB Control Number 2070–0021.

IX. Official Rulemaking Record

EPA has established a public record for this proceeding (docket number OPTS–66008E) which, along with a complete index, is available for inspection in the OPTS Reading Room from 8:00 a.m. to 4:00 p.m. on working days in (Rm. E–107, 401 M St., SW., Washington, DC 20460). All of the information originally submitted in docket number OPTS–66001 (manufacturing exemptions) and OPTS–66002 (processing and distribution in commerce exemptions) was consolidated into docket number OPTS–66008. Information and comments submitted in response to the July 10, 1984 proposed rule-related notice (49 FR 28203) were filed in docket number OPTS–66008B.

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is issuing the following list of documents which constitutes the record of this rulemaking.

A. Previous Rulemaking Records

(1) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs)

Disposal and Marking Rule," Docket No. OPTS–68005, 43 FR 7150, February 17, 1978.

(2) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions Rule," 44 FR 31514, May 31, 1979.

(3) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Proposed Rulemaking for PCB Manufacturing, Exemptions," Docket No. OPTS–66001, 44 FR 31564, May 31, 1979.

(4) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment," Docket No. OPTS–62015, 47 FR 37342, August 25, 1982.

(5) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Closed and Controlled Waste Manufacturing Processes," Docket No. OPTS–62017, 47 FR 46980, October 21, 1982.

(6) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Amendment to Use Authorization for PCB Railroad Transformers," Docket No. OPTS–62020, 48 FR 124, January 3, 1983.

(7) "Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce Exceptions: Proposed Rule," Docket No. OPTS–66008, 48 FR 50486, November 1, 1983.

(8) "Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Response to Individual and Class Petitions for Exemptions," Docket No. OPTS–66008A, 49 FR 28154, July 10, 1984.

(9) "Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions, and Use Prohibitions; Exclusions, Exemptions, and Use Authorizations," Docket No. OPTS–62032A, 49 FR 28172, July 10, 1984.

(10) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions: Use in Microscopy and Research and Development," Docket No. OPTS–62031A, 49 FR 28193, July 10, 1984.

(11) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions: Response to Exemption Petitions; Proposed Rule," Docket No. OPTS–66008C, 50 FR 35182, August 29, 1985.

B. Federal Register Notices

(12) 43 FR 50905, November 1, 1978, USEPA, "Procedures for Rulemaking under Section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Polychlorinated Biphenyls (PCBs) Ban Exemption."

(13) 44 FR 108, January 2, 1979, USEPA, "Polychlorinated Biphenyls (PCBs); Policy for Implementation and Enforcement."

(14) 44 FR 31514, May 31, 1979, USEPA, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions."

(15) 44 FR 31558, May 31, 1979, USEPA, "Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Exemptions from the Polychlorinated Biphenyls (PCBs) Processing and Distribution in Commerce Prohibitions."

(16) 45 FR 14247, March 5, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Statement of Policy on All Future Exemption Petitions."

(17) 45 FR 29115, May 1, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Expiration of Open Border Policy for PCB Disposal."

(18) 47 FR 46980, October 21, 1982, USEPA, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Closed and Controlled Waste Manufacturing Processes."

(19) 49 FR 28154, July 10, 1984, USEPA, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Response to Individual and Class Petitions for Exemptions."

(20) 49 FR 28172, July 10, 1984, USEPA, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Exclusions, Exemptions, and Use Authorizations."

(21) 49 FR 28193, July 10, 1984, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions Use in Microscopy and Research and Development."

(22) 49 FR 28203, July 10, 1984, USEPA, "Polychlorinated Biphenyls (PCBs); Request for Additional Comments on Certain Individual and Class Petitions for Exemption."

(23) 50 FR 19170, July 17, 1985, USEPA, "Polychlorinated Biphenyls in Electrical Transformers, Final Rule."

(24) 50 FR 35201, August 29, 1986, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing Distribution in Commerce and Use Prohibitions; Response to Ward Transformer Company Petition; Notice of Final Action."

(25) 50 FR 35182, August 29, 1986, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, and Distribution in Commerce and Use Prohibitions; Response to Exemption Petitions; Proposed Rule."

C. Support Documents

(26) USEPA, OPTS, EED, "Response to Comments on the Proposed PCB Exemptions Rule" (June 1984).

(27) USEPA, OPTS, ETD, "PCB Exemption Petitions Economic Impact Analysis" (April 1984).

(28) USEPA, OPTS, ETD, "PCB Exemption Petitions Economic Impact Analysis" (May 1985).

(29) USEPA, OPTS, ETD, "Addendum to PCB Exemption Petitions Economic Analysis" (January 1986).

(30) USEPA, OPTS, HERD, "Response to Comments on the Health Effects of PCBs" (August 1982).

(31) USEPA, OTS, "Support Document/Voluntary Environmental Impact Statement and PCB Manufacturing, Processing, Distribution in Commerce, and Use in Ban Regulation: Economic Impact Analysis" (April 1979).

D. Other References

(32) Manufacturing Exemption Petitions and Related Communications in Docket No. OPTS–66001.

(33) Processing and Distribution in Commerce Exemption Petitions and Related Communications in Docket No. OPTS–66002.

(34) PCB Exemption Petitions, Additional Data and Related Communications in Docket No. OPTS–66008B.

(35) Comments and Telephone Communications on Exemption Petitions in Docket No. OPTS–66008C.

(36) Record of Public Meeting on the Proposed Exemptions Rule, November 6, 1985, in Docket No. OPTS–66008C.

List of Subjects in 40 CFR Part 761

Hazardous substances, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Environmental protection.

Dated: July 1, 1986.

Edwin F. Tinsworth,

Acting Director, Office of Toxic Substances.

Therefore 40 CFR Part 761 is amended as follows:

PART 761—[AMENDED]

1. The authority citation for Part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, and 2611.

2. In § 761.80, by adding paragraphs (f)(4), (5), (6) and (7), (m)(5) and (6), and (o), (p), (q) and (r), and revising paragraphs (g) and (n) to read as follows:

§ 761.80 Manufacturing, processing, and distribution in commerce exemptions.

* * * * *

(f) * * *

(4) Midwest Research Institute, Kansas City, MO 64110 (ME–70.1).

(5) Pathfinder Laboratories, St. Louis, MO 63146 (A division of Sigma Aldridge Corporation, St. Louis, MO, 63178) (ME–76).

(6) Radian Corp., Austin, TX 78766 (ME–81.2).

(7) Wellington Sciences USA, College Station, TX 77840 (ME–104.1).

(g) The Administrator grants a class exemption to all processors and distributors of PCBs in small quantities for research and development provided that the following conditions are met:

(1) All processors and distributors must maintain records of their PCB activities for a period of 5 years.

(2) Any person or company which expects to process or distribute in commerce 100 grams (.22 lb) or more PCBs in 1 year must report to EPA identifying the sites of PCB activities and the quantity of PCBs to be processed or distributed in commerce.

* * * * *

(m) * * *

(5) Supelco, Inc., Bellefonte, PA 16823–0048 (PDE–41.2).

(6) Radian Corp., Austin, TX 78766 (PDE–182.1).

(n) The 1-year exemption granted to petitioners in paragraphs (f), (g), and (m) of this section shall be renewed automatically unless a petitioner notifies EPA of any increase in the amount of PCBs to be manufactured, imported, or exported or any change in the manner of manufacture, import, or export of PCBs. EPA will consider the submission of such information to be a renewed petition for exemption. EPA will evaluate the information in the renewed exemption petition, issue a proposed rule for public comment, and issue either a final rule granting the exemption or a notice denying the exemption. Until EPA acts on the petition, the petitioner will be allowed to continue the activities for which it requests exemption.

(o) The 1-year class exemption granted to all processors and distributors of PCBs in small quantities for research and development in paragraph (g) of this section shall be renewed automatically unless information is submitted affecting EPA's conclusion that the class exemption, or the activities of any individual or company included in the exemption, will not pose an unreasonable risk of injury to health or the environment. EPA will evaluate the information, issue a proposed rule for public comment, and issue a final rule affecting the class exemption or individuals or companies included in the class exemption. Until EPA issues a final rule, individuals and companies included in the class exemption will be allowed to continue processing and distributing PCBs in small quantities for research and development.

(p) The Administrator grants the following petitioners an exemption for 1 year to import inadvertently generated PCBs at concentrations above those specified for "excluded manufacturing processes" at § 761.3:

(1) American Hoechst Corp., Somerville, NJ 08876 (ME–5).

(i) The exemption is limited to the pigment specified in the American Hoechst petition.

(ii) [Reserved]

(2) [Reserved]

(q) The Administrator grants the following petitioners, and their customers, an exemption for 1 year to process and distribute in commerce inadvertently generated PCBs at concentration above those specified for "excluded manufacturing processes" at § 761.3 provided that the conditions for each exemption are met:

(1) Aluminum Company of America, Pittsburgh, PA 15219 (PDE–13).

(i) The exemption is limited to the sale of 1,116,225 lbs of aluminum chloride for use in the production of pigments.

(ii) The Agency must be notified 30 days prior to delivery if the aluminum chloride is to be sold to a company other than Kemira, Incorporated of Savannah, Georgia.

(2) American Hoechst Corp., Somerville, NJ 08876 (PDE–13).

(i) The petitioner must notify customers that the product may contain PCBs over the 50 ppm maximum concentration level for inadvertently generated PCBs.

(ii) The exemption is limited to the pigment specified in the American Hoechst petition.

(3) Dainichiseika Color & Chemicals America, Inc., Clifton, NJ 07012 (PDE–58).

(i) The petitioners must notify customers that the product contains PCBs over the 50 ppm maximum concentration level for inadvertently generated PCBs.

(ii) The exemption is limited to the 62,400 lbs of phthalocyanine blue crude in Dainichiseika's inventory.

(r) The Administrator grants the following petitioners a 1-year exemption to distribute in commerce heat transfer and hydraulic systems containing less than 50 ppm PCBs, provided that the systems are drained prior to distribution in commerce.

(1) Aluminum Company of America, Pittsburgh, PA 15219.

(2) [Reserved]

[FR Doc. 86–17884 Filed 8–7–86; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[BERC–247–F]

Medicare Program; Payment to Health Maintenance Organizations and Competitive Medical Plans

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

ACTION: Final rule.

SUMMARY: This final rule makes several changes to the regulations that implement legislation regarding Medicare reimbursement for health care services provided by eligible health maintenance organizations and competitive medical plans. The changes involve rules governing supervision of clinical psychologists, continuing membership for non-residents, and administration of the benefit stabilization fund. We are also responding to the comments we received on the final rule with comment period published on January 10, 1985 (50 FR 1314).

EFFECTIVE DATE: These regulations are effective on September 8, 1986.

FOR FURTHER INFORMATION CONTACT:
Frank Emerson (Reimbursement), (301) 597–1807.
Rita McGrath (Coverage), (301) 594–8558.

SUPPLEMENTARY INFORMATION:

I. Background

On May 25, 1984, we published a proposed rule in the **Federal Register** (49 FR 22198) concerning Medicare payments to health maintenance organizations (HMOs) and competitive medical plans (CMPs). In that rule, we

solicited comments on proposed regulations implementing amendments to sections 1861 and 1876 of the Social Security Act (the Act). These amendments were enacted by section 114 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248).

On July 18, 1984, Congress enacted the Deficit Reduction Act of 1984 (Pub. L. 98–369). Sections 2322 and 2350 of Division B of that law further amended sections 1861 and 1876 of the Act and required implementing changes in regulations. We issued the necessary changes in our final rule concerning HMOs and CMPs published in the Federal Register on January 10, 1985 (50 FR 1314). Because the Pub. L. 98–369 changes were not contained in the May 25, 1984 proposed rule, we provided a 30-day period for public comment on these provisions. The final rule set forth all regulations concerning HMOs and CMPs in 42 CFR Part 417.

The Pub. L. 98–369 amendments to sections 1861 and 1876 of the Act provided for the following:

- Organizations with risk contracts can allow the services of clinical psychologists (as defined by the Secretary), and the services and supplies incident to their services, to be furnished without the direct personal supervision of a physician (section 1861(s)(2)(H)(ii) of the Act).
- With the Secretary's approval and for a period of less than five years, an organization with a risk contract may have a part of the value of the additional benefits it is required to provide withheld and reserved by the Secretary for subsequent annual contract periods. These funds can only be used to stabilize and prevent undue fluctuation in the additional benefits offered in those subsequent periods (section 1876(g)(5) of the Act).
- Organizations with risk contracts are permitted to elect to have direct reimbursement made by HCFA to skilled nursing facilities (SNFs) that furnish covered services to the organizations' Medicare enrollees (section 1876(g)(4)(A) of the Act).

The regulations sections affected by these amendments and revised in our January 10, 1985 final rule with comment period are as follows:

- Services by clinical psychologists in risk organizations—§ 417.416
- Establishment of benefit stabilization funds—§§ 417.401, 417.442, 417.592, 417.594, 417.596, and 417.597
- Direct payments to SNFs—§ 417.586

We stipulated in the January 10, 1985 final rule with comment period that we were providing the 30-day comment period only for the regulations that implemented the Pub. L. 98–369 changes. We further stated that, if changes to the regulations became necessary as a result of the public comments, we would issue another final rule and address those comments regarding the Pub. L. 98–369 amendments.

II. Discussion of Comments

We received comments from one psychological association, one health association, and one health plan on the regulations changes implementing the Pub. L 98–369 amendments. A discussion of the comments and our responses to them are provided below.

Benefit Stabilization Fund

Comment: One commenter believes that the annual savings limit of 15 percent for benefit stabilization funds and the cumulative savings limit of 25 percent for these funds are too restrictive (§ 417.596(c)). The commenter recommended limits of 50 and 100 percent respectively.

Response: We believe that the current limits provide a basis for reasonable stabilization of additional benefits from year to year. We have received no data, information, or analysis to indicate that higher limits are necessary. In addition, we are concerned that unduly high limits would tend to subvert the statutory intent (section 1876(g)(2) of the Act) that savings be used primarily to provide additional benefits to current enrollees during the contract period for which the savings are earned. Finally, it should be noted that § 417.596(c)(3) permits HCFA to approve a higher *annual* limit for the benefit stabilization fund if an organization demonstrates to our satisfaction that a higher amount is needed. We will continue to examine the limits (including the appropriateness of using savings as the basis for establishing the limits) and, if necessary, subsequently revise the regulations.

Comment: A commenter stated that benefit stabilization fund accounts should earn interest since the interest would benefit Medicare enrollees of the organizations.

Response: We believe that payment of interest would be inappropriate because the money in the benefit stabilization fund does not belong to the organization until the organization withdraws it. As we explained in our January 10, 1985 final rule with comment period (50 FR 1336), money that is withheld for the purpose of a benefit stabilization fund is reserved in the Medicare Trust Funds. The amounts credited to a stabilization fund represent the portion of an organization's monthly Medicare per capita payment that the organization wants deferred under the provisions of § 417.596. We do not consider this deferred portion to belong to the organization in the year of the per capita payment for several reasons. First, the organization does not actually receive it in the year of the per capita payment. When the actual payments are made in subsequent years, they will represent additional amounts to the per capita payments that the organization would normally receive. Thus, during the period when money is held in the benefit stabilization fund (and, therefore, not available to the organization), it is not an obligation of the Trust Funds. In addition, we believe the requirement in the law that money remaining in an organization's benefit stabilization fund account after four years must revert to the use of the Trust Funds indicates the law's intent that the money does not belong to the organization unless it is withdrawn by the organization.

Comment: One commenter suggested that two additional criteria be added to § 417.597(b) under which money from the benefit stabilization fund could be withdrawn. The commenter recommended that we (1) consider an HMO's or CMP's underestimate of the number of current nonrisk enrollees who select special supplemental benefits and (2) allow the money to be used for various broadly defined "other uses" as long as the uses are documented to HCFA's satisfaction. (Special supplemental benefits are provided at an organization's option and funded from the savings an organization achieves, as described in § 417.444(b). Current nonrisk enrollees are individuals who have been enrolled in the organization since the time that the organization was paid by Medicare on a reasonable cost basis. Although the organization now has a risk reimbursement contract with Medicare, it continues to be paid by Medicare for these enrollees on a cost basis. In addition, these individuals cannot be converted to risk status immediately because of the statutorily imposed requirements for phasing in their conversion (see § 417.446). An organization may wish to offer special supplemental benefits to this group of enrollees to afford them some of the advantages available to other enrollees in the same organization who are enrolled on a risk basis.)

Another commenter maintained that the criteria in § 417.597 are too restrictive.

Response: Generally, we believe that the criteria serve to implement the statute. We also believe that the situation that would result from the commenter's first concern is already

covered in § 417.597(b)(3). This section provides that it is acceptable to withdraw funds from the benefit stabilization fund if the—

1. Revenue requirements in the new contract are significantly higher than the requirements for the previous contract period;

2. Additional benefits being provided are the same as those in the previous contract period; and

3. ACR for the new contract period would result in an additional benefits package that is less in total value than that of the prior contract period, if a withdrawal is not made from the benefit stabilization fund.

On the other hand, broadly defined "other uses" of stabilization fund money would be inappropriate considering the purpose of the benefit stabilization fund. That is, the fund is to be used only to prevent excessive fluctuation of additional and special supplemental benefits that are provided by the organization to its Medicare enrollees in subsequent contract periods and excessive increases in enrollee premiums for these additional benefits (§ 417.596(a)).

Comment: One commenter believes that the time allowed for exchange of information between HCFA and an HMO or CMP prior to the start of a contract period is inadequate for benefit stabilization fund purposes. The information exchange concerns the organization's ACR and average per capita rate of payment. The commenter believes that additional time is needed for organizations to determine the appropriate amount of contributions or withdrawals, and to inform Medicare enrollees of changes in benefits or premiums.

Response: Benefit stabilization fund amounts are dependent upon the organization's average per capita rate of payment and ACR. These factors are used to establish limits on amounts that can be withheld in a fund and withdrawn from a fund, and are developed through the exchange of information between HCFA and the HMO or CMP according to certain time-frames.

An organization's request to have money withheld in a benefit stabilization fund or to withdraw money from a fund must be made when the organization notifies HCFA of its ACR and average per capita rates of payment in preparation for its next contract period (§§ 417.596(b) and 417.597(a)). The organization must provide this information to us not later than 45 days before the beginning of the contract period (§ 417.592(d)). In developing this information, the organization uses its per capita rate of payment for each class of Medicare enrollees. We make these rates available to each organization no later than 90 days before the beginning of the organization's contract period (§ 417.584(b)(2)).

We recognize that some organizations, especially those in their initial contract periods, may experience problems in this area. However, we believe that the time allowed is reasonable and of sufficient length for organizations that have already demonstrated their capacity to bear the risk of potential losses by meeting the eligibility requirements for a risk contract. Once new organizations gain more experience, they will be better able to cope with this timeframe.

Comment: One commenter suggested that amounts remaining in a benefit stabilization fund after the end of the four year availability period should be used for the benefit of enrollees and not revert to the Medicare Trust Funds (§ 417.597(e)(2)).

Response: The reversion to the Medicare Trust Funds of amounts remaining in a benefit stabilization fund after the end of the availability period is mandated by section 1876(g)(5) of the Act, as enacted by Pub. L. 98–369.

Definition of Clinical Psychologist

Comment: One commenter objected to the definition of clinical psychologist that we used in § 417.416(d)(2). We stated that a clinical psychologist is an individual who—

- Holds a doctoral degree in psychology from a program in clinical psychology that is approved by the American Psychological Association or an adjudged equivalent program, or has attained recognition of competency through the American Board of Examiners for Professional Psychology or through endorsement by the individual's State psychological association;
- Is licensed or certified at the independent practice level of psychology in the State in which he or she practices; and
- Possesses two years of supervised clinical experience at least one of which is postdegree.

The commenter suggested that we—

- Recognize psychologists who possess doctoral degrees in psychology (rather than specifically in clinical psychology) from any educational institution accredited by an organization recognized by the Council on Post-Secondary Accreditation;
- Recognize clinical psychologists who are listed in a national register of health service providers in psychology that the Secretary deems appropriate; and
- Delete the reference to an endorsement by an individual's State psychology association.

Response: We agree that doctoral degrees from educational institutions accredited by an organization recognized by the Council on Post-Secondary Accreditation should be recognized since that organization is an association of recognized accrediting bodies that adhere to a national set of standards. We also agree that the reference to an endorsement by the individual's State psychology association should be deleted because it is not the practice of State psychology associations to endorse the competency of individuals. Section 417.416(d)(2) is being revised accordingly. However, we believe that we must retain the requirement that these degrees be in the field of clinical psychology. Broadening this designation would be beyond the scope of the statute (section 1861(s)(2)(H)(ii) of the Act), which refers to services "by a clinical psychologist".

We do not believe that clinical psychologists who are listed in a national register of health service providers in psychology should be recognized because it would be too difficult, administratively, to determine which registries are "appropriate".

III. Other Changes

We are also revising §§ 417.448 and 417.460(a)(2)(iv). These changes clarify our policy concerning—

- Medicare's liability and an organization's liability for services received by enrollees who are permitted by their HMO or CMP to remain as members after they move out of the area serviced by the organization; and
- Liability for any emergency or urgently needed services received by enrollees.

As published in our January 10, 1985 final rule, the regulations do not specify that Medicare is not separately liable for payment for services provided to certain individuals enrolled in HMOs or CMPs who obtain emergency and urgently needed services (§ 417.448) or who permanently move out of the organization's area and continue their membership (§ 417.460(a)(2)(iv)). We are revising these provisions to clarify that Medicare's capitation payment to an organization discharges Medicare's financial responsibility, and to specify when an organization with a risk contract is and is not financially responsible for services not provided directly or arranged for by the organization. The organization must pay

for any emergency or urgently needed services (defined in § 417.401) an enrollee receives. Additionally, the HMO or CMP must pay for all benefits covered under the plan that are obtained by its enrollees who leave the organization's geographic area for more than 90 days and remain as members. However, the organization and the enrollee may mutually agree on certain restrictions not related to coverage of services, such as a requirement that the enrollee receive services at an affiliated plan, if the affiliated plan is available and accessible to the enrollee. We are also revising § 417.460(a)(2)(iv) to clarify that enrollees who leave their organization's geographic area and remain members must obtain care from their own organization whenever they return to their organization's geographic area (that is, that payment will not be made separately by Medicare and that the organization is only required to pay for services furnished by other entities or individuals in cases of emergency, when the enrollee is present in the geographic area).

Finally, we are making the following technical changes:

- We are correcting outdated cross-references in § 417.401.
- We are correcting a cross-reference in § 417.416(d)(1) by replacing the reference to § 481.2 with §491.2. 42 CFR Part 481 was redesignated as Part 491 on August 16, 1985 (50 FR 33034).
- In § 417.416(d)(2), we are clarifying our original intent that an organization must have a risk contract in effect before permitting the services of clinical psychologists to be furnished without the direct personal supervision of a physician.
- We are correcting the cross-references in §§ 417.239 (b) and (c) to §§ 405.626 (a) and (b) to read § 489.18(a)(1) and § 489.18(a)(2) respectively. These corrections are due to the redesignation of §§ 405.602 through 405.626 to a new Part 489 that was published in the **Federal Register** on April 4, 1980 (45 FR 22933).
- We are correcting the cross-references in § 417.554 by replacing the reference to the prospective payment regulations in §§ 405.470 through 405.477 with Part 412. We redesignated these regulations as the new Part 412 in the **Federal Register** (50 FR 12740) on March 29, 1985.

IV. Summary of Changes

The changes that we are making to the regulations published January 10, 1985 are summarized as follows:

- Section 417.401—We are correcting outdated cross-references.
- Section 417.416(d)(1)—We are making a technical correction to a cross-reference.
- Section 417.416(d)(2)—We are clarifying that an organization must have a risk contract in effect before permitting the services of clinical psychologists to be furnished without the direct personal supervision of a physician.
- Section 417.416(d)(2)(i)—We are revising the definition of clinical psychologist.
- Sections 417.448 and 417.460(a)(2)(iv)—We are revising §§ 417.448 and 417.460(a)(2)(iv) to specify that Medicare's capitation payment to an organization discharges Medicare's financial responsibility. We are also revising § 417.460(a)(2)(iv) to clarify an HMO's or CMP's obligations for furnishing services and reimbursing for services to enrollees who leave their organization's geographic area and then subsequently return.
- Sections 417.239 and 417.554—We are making a technical correction to the cross-references.
- Section 417.597(b)—We are adding another qualifying situation to the criteria we use to approve an organization's request for a withdrawal from its benefit stabilization fund.

V. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any major rule. A major rule is defined as any document that is likely to: (1) Have an annual effect on the economy of $100 million or more, (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions, or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The regulation changes we are making in this final rule will neither result in an annual economic impact of $100 million or more nor meet any other criterion of the Executive Order. We have determined that this final rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), we prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all HMOs and CMPs participating in Medicare as small entities.

Most clinical psychologists will have doctoral degrees from an appropriate institution or will meet the criteria described in § 417.416(d)(2)(ii) and (iii). Therefore, we expect this change to have no adverse impact on their employment. Further, the added flexibility may benefit some HMOs and CMPs.

We are revising §§ 417.448 and 417.460(a)(2)(iv) to clarify our original intent that HMOs and CMPs must pay for services under the conditions specified in these sections and that enrollees who leave their organizations' geographic areas and remain members must obtain care from their organizations whenever they return to their geographic areas.

Those clarifications have little impact. HMOs and CMPs will continue to receive their regular capitation payments. If an enrollee obtains emergency or urgently needed services or permanently moves out of the area of the organization and continues membership, he or she will still have covered services paid for under § 417.440.

We expect the impact of this change concerning withdrawal from a benefit stabilization fund to be minimal. If an organization's average of its per capita rates of payment is more than its ACR, the organization must provide its Medicare enrollees with additional benefits from the resultant savings. The organization may have withheld, in a benefit stabilization fund, a part of the value of the additional benefits.

HMOs and CMPs that are converting from cost to risk contracts can receive reimbursement for new enrollees. Under current regulations, for every two new enrollees, they can convert one current nonrisk enrollee to the new reimbursement system. Current nonrisk enrollees are enrollees of HMOs and CMPs that had a cost contract prior to February 1, 1985 and that have converted to a risk contract. These nonrisk enrollees are not automatically entitled to the additional benefits given to risk enrollees until conversion occurs, under the two for one rule. However, these nonrisk enrollees may, if the organization agrees, be given the option of enrolling in a plan for special supplemental benefits that, as stated earlier, is also funded from the savings described above. Therefore, if a large number of nonrisk enrollees elect this

option, there will be less money available per capita for additional benefits for risk enrollees. If the number of nonrisk enrollees electing to receive the special supplemental benefits is underestimated, the organization may need to withdraw funds from the benefit stabilization fund to pay for the special supplemental benefits. Under existing rules, there is no way to withdraw funds from the fund to pay these benefits.

This new rule provides an additional condition under which money can be withdrawn from the benefit stabilization fund. Thus, organizations will have more flexibility and could possibly avoid potentially adverse consequences. We expect organizations to estimate accurately the number of nonrisk enrollees electing special supplemental benefits. Therefore, we expect only a small percentage of those selecting the fund option to have to withdraw from the fund because they underestimated the number of current nonrisk Medicare enrollees.

Further, as of October 4, 1985, only two of 67 organizations that had signed risk contracts had elected the fund option. This represents approximately three percent of risk contracts signed through October 4, 1985. We consider this an indication that HMOs generally are not selecting the benefit stabilization fund option.

We have determined, and the Secretary certifies, that these final regulations will not result in a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

VI. Other Required Information

A. Waiver of Proposed Rulemaking for Certain Sections

As previously discussed, the revisions to §§ 417.448 and 417.460 merely clarify that (1) Medicare's capitation payment to an HMO or CMP discharges Medicare's financial responsibility and (2) enrollees who leave their organization's geographic area and remain members must obtain non-emergency care from their own organization whenever they return to their organization's geographic area (that is, the HMO or CMP is not generally liable for payment for non-emergency or non-urgent services furnished by others when the enrollee is within the HMO's or CMP's geographic area). Also, the changes to §§ 417.416(d)(1) and (d)(2), and 417.554 are merely technical corrections.

These actions do not change any policy and result in no additional burdens on beneficiaries or HMOs or CMPs. The applicable provisions were already implemented in our January 10, 1985 publication after previous public comment. Accordingly, we believe this constitutes good cause for waiving the proposed rulemaking procedure, since it would be both impractical and unnecessary in this case.

B. Paperwork Burden

Section 417.448(d)(2) of this final rule contains a collection of information requirement that is subject to Office of Management and Budget (OMB) review under section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This colection of information requirement is currently approved under OMB control number 0938-0406.

List of Subjects in 42 CFR Part 417

Administrative practice and procedures, Health Maintenance Organization (HMO), Medicare.

42 CFR Part 417 is amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for Part 417 continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1871, 1874, and 1876 of the Social Security Act as amended (42 U.S.C. 1302, 1395(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); section 114(c) of Pub. L. 97-248 (42 U.S.C. 1395mm note); and section 1301 of the Public Health Service Act (42 U.S.C. 300e).

§ 417.401 [Amended]

2. In § 417.401, the definitions for "Entity with an existing cost contract" and "Entity with an existing risksharing contract" are amended by replacing the references to "Subpart T of Part 405 of this chapter" with "Subpart B of this Part".

3. In § 417.416, paragraph (d) introductory text is republished and paragraphs (d)(1), (d)(2), and (d)(2)(i) are revised to read as follows:

§ 417.416 Qualifying conditions: Furnishing of services.

* * * * *

(d) *Exceptions to physician supervision.* The following services may be furnished without the direct personal supervision of a physician:

(1) The organization may permit the services of physician assistants and nurse practitioners (as defined in § 491.2 of this chapter), and the services and supplies incident to their services, to be furnished without the direct personal supervision of a physician. For purposes of this section, the definitions of physician assistants' and nurse practitioners' services and the services and supplies incident to their services for rural health clinics as specified in §§ 405.2414 and 405.2415 of this chapter are applicable.

(2) An organization that contracts on a risk basis may permit the services of clinical psychologists, and the services and supplies incident to their professional services, to be furnished without the direct personal supervision of a physician. For purposes of this section, a clinical psychologist is defined as an individual who—

(i) Holds a doctoral degree in psychology from a program in clinical psychology of an educational institution that is accredited by an organization recognized by the Council on Post-Secondary Accreditation;

* * * * *

4. Section 417.448 is revised to read as follows:

§ 417.448 Restriction on payments for services received by Medicare enrollees of risk organizations.

(a) *Basic Rule.* Except for emergency and urgently needed services as defined in § 417.401, risk organizations are not required to make payments to or on behalf of certain Medicare enrollees, for any services received by the enrollees that are not provided—

(1) Directly by the organization; or

(2) Through arrangements made by the organization.

(b) *Application.* The restriction on payments for services imposed by paragraph (a) of this section applies to services received by—

(1) New Medicare enrollees;

(2) Current nonrisk Medicare enrollees who convert to risk reimbursement; and

(3) Current nonrisk Medicare enrollees who elect special supplemental benefit plans.

(c) *End of Restriction.* The restriction on payments imposed by paragraph (a) of this section ends when a Medicare enrollee—

(1) Is disenrolled; or

(2) Permanently leaves the geographic area serviced by the risk organization and the organization and enrollee make arrangements for membership to continue as provided in § 417.460(a)(2)(iv).

(d) *Timing.* The effective dates for the end of the restriction on payments, as discussed in paragraph (c) of this section, are as follows:

(1) *Disenrollment*—As of the first day of the month in which termination of

enrollment is effective, as provided in § 417.460(b)(3).

(2) *Permanent move.*—As of the first day of the first month following the month in which the enrollee notifies the organization, as required in § 417.436(a)(4), that he or she has permanently moved out of the geographic area served by the risk organization.

5. In § 417.460, paragraph (a) introductory text is republished and paragraph (a)(2)(iv) is revised to read as follows:

§ 417.460 Disenrollment of beneficiaries and termination of payments to an organization.

(a) *Disenrollment of health insurance program beneficiaries.* An organization may not, orally or in writing, or by any action or inaction, request or encourage a Medicare enrollee to disenroll, except in the following circumstances:

* * * * *

(2) Enrollee moves out of the organization's geographic area—

(iv) *Exception.* An organization may retain a Medicare enrollee who permanently moves out of the organization's geographic area as a member, if the enrollee agrees. For purposes of this exception, the following provisions apply:

(A) A permanent move means an uninterrupted absence of more than 90 days from the organization's geographic area.

(B) The organization and the enrollee may mutually agree upon restrictions for obtaining services while the enrollee resides out of the organization's geographic area. However, restrictions may not be imposed on the scope of services described in § 417.440.

(C) If the enrollee returns to the organization's geographic area, the restrictions under § 417.448(a) prohibiting Medicare payment for services not provided or arranged for by the organization apply again immediately.

(D) Organizations that choose to exercise this exception must make the option available to all Medicare enrollees who permanently move out of the organization's geographic area. (However, organizations that are affiliated with other organizations may limit this option to enrollees who move to the geographic area served by the other organizations.)

* * * * *

6. Section 417.554 is revised to read as follows:

§ 417.554 Apportionment: Provider services furnished directly by the organization.

The Medicare share of the cost of covered services furnished to Medicare enrollees by providers that are owned or operated by the organization or are related to the organization by common ownership or control must be determined in accordance with the apportionment methods set forth in §§ 405.452, 405.453, 405.480, and Part 412 of this chapter.

7. Section 417.597 is amended by revising paragraph (b) to read as follows:

§ 417.597 Withdrawal from a benefit stabilization fund.

* * * * *

(b) *Criteria for HCFA approval.* HCFA will approve an organization's request for a withdrawal from its benefit stabilization fund for use during the next contract period only if—

(1) The organization's average of its per capita rates of payment for the next contract period is less than that of the previous contract period;

(2) The organization's ACR for the next contract period is significantly higher than that of the previous contract period;

(3) The organization's revenue requirements for the next contract period for providing the additional benefits it provided during the previous contract period is significantly higher than the requirements for that previous period and the ACR for the next contract period results in an additional benefits package that is less in total value than that of the previous contract period; or

(4) The organization underestimated the number of current nonrisk Medicare enrollees who enrolled in a plan for special supplemental benefits as described in section 417.444(b).

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare-Hospital Insurance Program, and No. 13.774, Medicare-Supplementary Medical Insurance Program)

Dated: May 19, 1986.

William L. Roper,

Administrator, Health Care, Financing Administration.

Approved: July 18, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-17897 Filed 8-7-86; 8:45 am]

BILLING CODE 4120-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815 and 1852

Acquisition Regulations; Technical Amendment

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: An inadvertent discrepancy between the Code of Federal Regulations and the NASA FAR Supplement is corrected. This document removes sections 1815.412, "Late proposals and modifications" and 1852.215-10, "Late submissions, modifications, and withdrawals of proposals".

EFFECTIVE DATE: December 18, 1984.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-2119.

SUPPLEMENTARY INFORMATION: The preamble of a final rule published at 50 FR 784 (January 7, 1985) stated that sections 1815.412 and 1852.215-10 were deleted. While the comparable sections (18-15.412 and 18-52.215-10) were removed from the NASA FAR Supplement, as of December 18, 1984, the necessary **Federal Register** amendatory language was inadvertently omitted. This technical amendment, therefore, brings the CFR and the regulations which have actually appeared in the NFS since December 18, 1984, into agreement.

List of Subjects in 48 CFR Parts 1815 and 1852

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Parts 1815 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1815—CONTRACTING BY NEGOTIATION

1815.412 [Removed]

2. Section 1815.412 is removed.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1852.2—Texts of Provisions and Clauses

1852.215-10 [Removed]

3. Section 1852.215-10 is removed.

[FR Doc. 86-17850 Filed 8-7-86; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 604 and 630

[Docket No. 60593-6093]

Atlantic Swordfish Fishery

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

ACTION: Final rule; technical amendment.

SUMMARY: NOAA issues this final rule to make effective two sections in the final rule implementing the Fishery Management Plan for the Atlantic Swordfish Fishery (FMP) and to amend a table specifying OMB Control Numbers for NOAA Information Collection Requirements (ICR). The Office of Management and Budget (OMB) has approved collection of information requirements for daily and trip records of persons permitted in this fishery. The intent is to make effective the two sections with these requirements.

EFFECTIVE DATE: Sections 630.5 (b) and (c) are effective August 7, 1986 through October 31, 1987.

FOR FURTHER INFORMATION CONTACT: William B. Jackson (Fishery Management Specialist), 202-673-5315.

SUPPLEMENTARY INFORMATION: On June 4, 1986 (51 FR 20297), NOAA published a final rule implementing portions of the FMP. The rule was issued prior to approval by OMB of the ICR in § 630.5 (b) and (c); these were not effective on June 29, 1986, when the rest of the rule was implemented. A notice was to be published in the **Federal Register** when NOAA received the OMB control number, making these sections effective.

Sections 630.5 (b) and (c) have been approved by OMB under OMB control number 0648-0016. OMB approved the information collection for these sections for use through October 31, 1987, "so that a year's worth of baseline data can be collected for this fishery". Additionally, OMB noted that NOAA will explore the possibility of instituting a statistical sample in order to reduce the burden on affected fishermen, should it resubmit this collection for clearance in the future. Therefore, NOAA makes these sections effective through October 31, 1987.

(16 U.S.C. 1801 *et seq.*)

Dated: August 5, 1986.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

NOAA amends 50 CFR Part 604 as set forth below:

PART 604—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 604 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

2. The table in § 604.1 is amended by removing "§ 630.5" and inserting "630.5(a)" in its place, and by adding the following entries in numerical order by section number:

§ 604.1 OMB control numbers assigned under the Paperwork Reduction Act.

* * * * *

50 CFR part or section where the information collection requirement is located	Current OMB control No. (all numbers begin 0648-)
* * * * *	
§ 630.5(a)	-0013
§ 630.5 (b) and (c)	-0016
* * * * *	

[FR Doc. 86-17924 Filed 8-7-86; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 153
Friday, August 8, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870, 871, 872 and 873

Federal Employees' Group Life Insurance; Underdeductions of Premiums

Correction

In FR Doc. 86–15882 beginning on page 25532 in the issue of Tuesday, July 15, 1986, make the following corrections:

1. On page 25532, second column, third paragraph, eighteenth line, "decreased" should have read "deceased".

2. In the third column, in amendatory instruction 2, third line, "underreduction" should have read "underdeduction".

3. In the third column, in § 870.103, the definition for "Underdeduction" contained several typographical errors and should have appeared as set forth below:

§ 870.103 [Corrected]

* * * * *

"Underdeduction" means a failure to withhold the required amount of life insurance deductions from an individual's pay, annuity, or compensation. This definition includes both nondeductions (when none of the required amount was withheld) and partial deductions (when only part of the required amount was withheld). Withholdings are not required while an individual is in a nonpay status; therefore, the nonpayment of premiums, in this instance, does not result in an underdeduction.

§ 872.401 [Corrected]

4. On page 25533, second column, in § 872.401(h), sixth line, insert "has" between "that" and "occurred".

§ 873.401 [Corrected]

5. On page 25533, in § 873.401(f), third column, first line, "waiver" should have read "waive".

BILLING CODE 1505-01-M

5 CFR Part 890

Federal Employees Health Benefits; Underdeductions of Premiums

Correction

In FR Doc. 86–15881 beginning on page 25533 in the issue of Tuesday, July 15, 1986, make the following corrections:

1. On page 25533, third column, in the **"SUMMARY"**, second line from the bottom, insert the word "after" in front of "determining".

2. In the same column, in the **"ADDRESS"** caption, second line, "Regional" should have read "Reginald". In the fourth line from the bottom, "undereduction" should have read "underdeduction".

3. On page 25534, first column, fifteenth line, "not later" should have read "no later". In the same column, second complete paragraph, in the ninth line, "pursing" should have read "pursuing" and in the twelfth line, "application" should have read "applicable". Also in the first column, last line, "amended" should have read "amend".

PART 890—[CORRECTED]

4. On page 25534, second column, in the authority citation, second line from the bottom, "89–615" should have read "98–615".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend regulations of the Immigration and Naturalization Service relating to temporary alien workers seeking classification under section 101(a)(15)(H) of the Immigration and Nationality Act, 8 U.S.C. 1101. This nonimmigrant category applies to an alien having a residence in a foreign country which he or she has no intention of abandoning, who is coming to the United States temporarily to perform services or labor or to receive training. The alien may be classified under section 101(a)(15)(H)(i) as an alien of distinguished merit and ability, or under section 101(a)(15)(H)(ii) as an alien who is coming to perform temporary services or labor, or under section 101(a)(15)(H)(iii) as an alien who is coming as a trainee. These classifications are assigned nonimmigrant visa symbols H–1, H–2, and H–3 respectively.

The Service published a proposal rule on May 21, 1986 at 51 FR 18591 which included changes concerning "H–1" nonimmigrants. Those changes have been incorporated in this proposed rule. They define temporariness and include the dual intent concept for both employer and the alien. There were no substantive changes to provisions for "H–2" or "H–3" nonimmigrants in the prior proposal.

The purpose of this proposed rule is to clarify Service requirements for classification, admission, and maintenance of status under this nonimmigrant category; to make the requirements easy for the public to understand and comply with; and to consolidate into regulation numerous policies that are embodied in precedent decisions, Operations Instructions, and other policy issuances.

The proposed rule would delineate the different filing requirements for certain types of petitions and specify which beneficiaries may be included on the various types of petitions. A main objective of the rule is to establish realistic standards for determining who qualifies as an alien of distinguished merit and ability for H–1 classification. In this respect, the rule would define profession and list the eligibility criteria for a number of the professions and a person who is preeminent in his or her field. The rule would also clarify the licensure requirement for H–1 classification.

The rule would make other technical amendments designed to promote consistency in adjudicating H petitions. Some requirements would be made more definitive, such as those relating to accompanying aliens, documentation of qualifications of aliens, restrictions on training programs, revocation of approved petitions, and limits on a

temporary stay in the United States. Other requirements for obtaining benefits, such as those for extension of visa petitions and validity periods of petitions, would be modified to better accommodate the business needs of employers.

The Service believes that these revisions would clarify policy as it related to the H nonimmigrant category for the public and the field; would facilitate the admission of exceptional, professional, and skilled workers needed by businesses and other organizations; would curb abuses; and would promote consistency in Service determinations.

DATE: Comments must be received on or before October 7, 1986.

ADDRESS: Please submit written comments in duplicate to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 Eye Street, NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT:

For substantive information: Flora T. Richardson, Immigration Examiner, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, DC 20536, Telephone: (202) 633–3946.

For general information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service; 425 Eye Street, NW., Washington, DC 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: Section 101(a)(15)(H) of the Immigration and Nationality Act was established in 1952 to include a new class of nonimmigrant aliens who would be coming to the United States to engage in employment. In this provision, Congress sought to grant the Attorney General sufficient authority to admit temporarily certain alien workers (industrial, agricultural, or other) for the purpose of alleviating labor shortages as they exist or may develop in certain areas or certain branches of American productive enterprises, particularly in periods of intensified production. This provision also enables foreign trainees to acquire knowledge of American industrial, agricultural, and business methods.

There are three visa symbols to distinguish the nonimmigrant classifications provided for under section 101(a)(15)(H). They are described as follows:

- "H–1" refers to an alien of distinguished merit and ability who is coming temporarily to the United States to perform services of an exceptional nature requiring such merit and ability. In the case of a graduate of a medical school coming to the United States to perform services as a member of the medical profession, the alien must be coming pursuant to an invitation from a public or nonpublic private educational research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency. Although the services to be performed may be temporary or permanent in nature, it must be established that the employment is only for a temporary period.

- "H–2" refers to an alien who is coming temporarily to the United States to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country, but the H–2 classification does not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession. The employer's need for the services or labor to be performed must be temporary in nature. This classification requires a temporary labor certification issued by the Secretary of Labor or the Governor of Guam or a notice that certification cannot be made prior to the filing of a petition with the service.

- "H–3" refers to an alien who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training. The alien may receive training from an employer in any field other than graduate medical training, such as agriculture, commerce, communication, finance, government, or the professions. This classification may not be used when all of the training will be at an academic or vocational institution.

The Service has responsibility for reviewing the services, labor or training and for determining whether the alien who is to perform them is eligible for classification under section 101(a)(15)(H). These proposed regulations set forth the procedures whereby the benefits under section 101(a)(15)(H) may be applied for, granted, denied, extended, revoked, or appealed.

This proposed rule, for the most part, simply states existing Service policy regarding the H classification in regulatory form. Wherever a change in policy is being proposed, or wherever Service policy is being clarified, it will be evident in the discussion of the substantive proposed amendments below:

Discussion of Proposed Amendments

1. Filing of Petitions

A petition to classify a worker under section 101(a)(15)(H) may be filed by a United States or foreign employer with the Service office which has jurisdiction over the area of intended employment. Such a petition generally involves one employer, one beneficiary, and employment in one location. The Service accommodates other types of petitions; however, due to the increasing complexities of the situations involved and the workload generated by these situations, it is necessary to specifically describe filing requirements for other types of petitions as follows:

(A) Services or training in more than one location. When the services or training will be performed in more than one location, the Service has previously allowed the petitioner to file the petition in any one of the locations where the services will be performed. This has created a situation where some petitioners "shop around" for the location where they are least likely to receive an unfavorable determination and generally where staff have the least experience in handling the particular type of application. In addition, the Service has difficulty in tracking such petitions when complaints arise, especially in the entertainment industry, because it cannot be determined in a timely manner just where the petition will be filed. For control purposes, the petitioner would be required to file the petition with the Service office which has jurisdiction over the area where the petitioner is located. If the petitioner is a foreign employer, the petition will be filed with the Service office which has jurisdiction over the area where the employment or training will begin.

(B) Agents as petitioners. In recognition of the fact that certain services involve workers who are traditionally self-employed or who use agents to arrange their employment with numerous employers, the Service would permit an established agent to file a petition as the employer. The agent, however, would be required to guarantee the terms of employment by contractual agreement with the beneficiary and specify the booked engagements for the period of time requested.

(C) Multiple beneficiaries on an H–1 petition. The H–1 classification requires separate documentation which shows that each individual qualifies as a professional or person of preeminence, except where the person is a member of a professional sports team or performing ensemble and the reputation of the team

or ensemble as a whole is evaluated for H–1 classification, or an accompanying alien to an individual, sports team, or performing ensemble of distinguished merit and ability.

In view of this, the rule would clarify that the filing of a separate petition for each H–1 beneficiary is required unless the alien is an accompanying alien or a member of a professional sports team, or a member of a performing ensemble in the entertainment industry.

(D) Unnamed beneficiaries. There are certain limited circumstances in which the Service will adjudicate H–2 petitions where the actual beneficiaries have not been identified. However, the exact number of workers needed must be reflected in the labor certification and the petition before each is approved. The situtations generally involve large numbers of workers in unskilled or journeyman occupations. In any case, the names of the beneficiaries must be provided to the American consulate or port of entry before the beneficiaries may obtain a visa or be admitted to the United States. To control the use of this type of petition, the Service proposes to limit H–2 petitions with unnamed beneficiaries to those involving seasonal agricultural and logging workers and those involving more than 25 construction-related workers where the workers will be applying for visas at the same consulate or applying for admission at the same port of entry.

(E) Substitution of beneficiaries. An approved H petition is generally limited to the named beneficiary(ies). This rule would clarify that substitution of beneficiaries may be made only in approved petitions involving unnamed beneficiaries and H–1 sports teams or performing ensembles such as hockey teams, orchestras, dance troupes, and theatrical groups. In all other cases, a new petition is required.

2. H–1 Petition for an Alien of Distinguished Merit and Ability

The rule would explain and clarify Service criteria for determining H–1 classification, including the licensing requirements, and define an accompanying alien and other terms used in this rule.

(A) Standards for H–1 classification. For an alien to be accorded H–1 classification, it must be established that the alien is of distinguished merit and ability and that the services to be performed require such merit and ability. Distinguished merit and ability may be established in one of two ways. First, aliens who are members of the professions within the meaning of section 101(a)(32) of the Act, 8 U.S.C. 1101(a)(32), are classifiable as aliens of distinguished merit and ability; *Matter of Essex Cryogenics Industries, Inc.*, 14 I&N Dec. 196 (Dep. Assoc. Comm. 1972), *Matter of General Atomic Company*, 17 I&N Dec. 532 (Com. 1980). Second, aliens who are prominent, reowned, or preeminent in their field of endeavor are classifiable as aliens of distinguished merit and ability, *Matter of Shaw*, 11 I&N Dec. 227 (D.D 1965).

The legislative history (House Report 91–851, U.S. Code Cong. and Ad. News 2751–2755 (1970) indicates that Congress expressed satisfaction with judicial and administrative interpretations of "distinguished merit and ability" and declare that this term "implies a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person so described is prominent or has a high level of education in his field of endeavor".

Heretofore, the Service has not consolidated into regulation the standards for determining who qualifies as a member of the professions or a person of preeminence in his or her field. The proposed rule would describe the current criteria for qualification based on case law, and would add two new categories of preeminence (one related to the performing arts and one related to business). It would also clarify and simplify the rules for determining when a person may be deemed a professional by virtue of education and experience. These changes are believed to be flexible enough to accommodate expanding labor market needs and changes.

(1) Criteria for a member of the professions. The term "profession" as defined in section 101(a)(32) of the Act includes but is not limited to architectcs, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries. This rule would consolidate into regulation the Service's criteria for determining what occupations other than those specified in the Act constitute "professions". The basic definition of "profession" was set forth in *Matter of Shin*, 11 I&N Dec. 686 (D.D 1966) and has been followed ever since:

> The term "profession" refers to a status which requires knowledge of an advanced type in a given field of science or learning gained by a prolonged course of specialized instruction and study.
>
> In addition to the foregoing, a guideline to what constitutes a 'profession' within the meaning of the Act is found in a characteristic common to each of the vocations named in the subsection under reference [sec. 101(a)(32)].
>
> That common denominator is the fact that all require specialized education that is normally attained through high education of a type for which at least a bachelor's degree can be obtained, or through equivalent specialized instruction and experience in lieu thereof. An example of the latter lies in the field of law wherein many members of that profession have obtained their knowledge through the medium of intensive work, instruction and study in that activity under the guidance of members of that profession.
>
> To summarize, the vacations included in the term "profession" in our modern, highly industrialized society are constantly expanding, consistent with the greater knowledge and specialized training that such a society demands. These could well include, in addition to various scientific fields, highly specialized activities in business administration, finance, journalism, and the like provided that the particular activity required at least a baccalaureate level of special knowledge, not merely skill. The mere acquisition of a degree or equivalent experience does not, of itself, qualify a person as a member of a "profession". The knowledge acquired must also be of [a] nature that is a realistic prerequisite to entry into the particular field of endeavor.

This rule would set forth the definition of "profession" and the standards for qualifying as a member of the professions. A "profession" means an occupation which requires theoretical and practical application of a body of specialized knowledge to fully perform the occupation in such fields of human endeavor as: architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, law, and theology. A profession requires completion of a specific course of education at an accredited college or university, culminating in a baccalaureate or higher degree in a specific professional field, and attainment of such degree or its equivalent is the minimum requirement for entry into the profession in the United States. There are two categories of persons who do not meet these requirements but are nevertheless regarded as professionals. The first category is persons who, after passage of normal professional tests and requirements, are granted full state licenses to practice the profession. This occurs rarely and mainly relates to persons who, after "reading the law" and passing the bar examination, are authorizd to practice law despite their lack of a legal degree. The second and more important category is persons who lack the requirement degree but, by virtue of a combination of academic training, experience and accomplishments, are in fact lawfully practicing at a professional level. (Persons who, because of lack of training or licensure, cannot qualify as professionals may, if they have achieved positions of responsibility and

significance, qualify as "preeminent". See discussion below.)

The definition of professional and the acceptance of full state licensure as the equivalent of the required degree represent long-standing policy. The Service has also long recognized that a combination of education, experience and accomplishment may result in training which is equivalent to the professional training which is normally gained through attainment of a professional degree. However, the proposed rule would specify the extent and type of education and experience required in order for a person to qualify as a professional. Adoption of such a rule would make it easier for the public to understand the criteria for qualification, and would simplify administration for the Service.

To qualify as a member of the professions, the alien is required to:

- Hold a United States baccalaureate or higher degree required by the profession from an accredited college or university, or
- Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the profession from an accredited college or university, or
- Hold an unrestricted state license which authorizes him or her to fully practice the profession and be engaged in that profession, or
- Have completed at least two years of college-level training in the profession, have demonstrated that he or she has for at least the past five years worked full-time in positions which normally require the services of a professional, and have attained certain professional achievements and recognition.

(2) Criteria for preeminence. The basic standard for preeminence is the possession of skills and recognition substantially above those ordinarily encountered, to the extent that a person so described is preeminent in his or her field of endeavor; *Matter of Shaw*, 11 I&N Dec. 277 (D.D. 1965). Although existing regulations set forth in detail the documentation which must be attached to a petition to establish preeminence, this rule would establish definitive standards for determining preeminence in two new categories. Preeminence could be established by an individual alien or by a team or ensemble consisting of a group of aliens. The alien(s) would be required to:

- Have sustained national or international acclaim and recognition as an individual or a team or ensemble; or
- Be a performing artist or a performing ensemble which is recognized by cultural organizations, critics, and other experts in the entertainment industry for excellence in developing, interpreting or representing a clearly identifiable and unique ethnic, cultural, musical, theatrical or other performing art; be coming to the United States for one period of 60 days or less in a year solely to perform at a cultural event to further the understanding of or development of that performing art form; and be sponsored a nonprofit educational, cultural, or governmental organization which has a history of promoting such international cultural activities and exchanges; or
- Have exceptional career achievement in business in executive, managerial, or highly technical positions as evidenced by certain factors described in this proposed rule.

The new criteria reflected in the last two standards would recognize certain unique performing artists or ensembles which previously have not qualified for H–1 classification but clearly possess qualifications which are exceptional in nature, and certain persons with exceptional career achievement in business. The Service does not believe that inclusion of such persons under the H–1 classification will have an adverse impact on the labor market nor would it diminish the stringent standards for distinguished merit and ability previously required for H–1 classification.

The rule would include in the H–1 distinguished merit and ability category, performing artists who are recognized exponents of unique forms of artistic expression which by their nature cannot receive the national or international acclaim which is possible in what might be termed the mainstream arts. Performing artists and ensembles in this subcategory must still be recognized for their excellence and significance in minor or narrow performing art forms by authorities in ethno-musicology, drama, dance, etc. For example, H–1 classification could be accorded to an experimental theater group recognized for excellence by the British Council and sought out by a nonprofit theater project in the United States which receives its funds from the National Endowment for the Arts and whose primary purpose is to promote cultural appreciation and understanding. Classification and admission of these performing artists would be limited to a specific cultural event and a short time period.

The rule would also rectify the situation whereby certain aliens with substantial amounts of work experience and significant achievements in business are employed in high-level positions requiring a broad range of responsibilities but cannot qualify for H–1 classification as professionals or persons of preeminence by current standards, while a recent college graduate in a profession, such as engineering, can qualify. The Service believes that such persons are beneficial to the American labor market and should qualify for H–1 classification.

(b) Licensure for H–1 classification. This rule would clarify the licensure requirement for H–1 classification. The Service has long held that an alien who is accorded H–1 classification must be able to engage in his profession immediately upon entering the United States; *Matter of St. Joseph's Hospital*, 14 I&N 202 (1972). It then follows that if a profession requires a state or local license for an individual to practice that profession, an alien seeking H–1 classification in that profession must have that license to be found qualified to enter the United States and immediately engage in the profession. A temporary license is acceptable if the alien is authorized to fully perform the duties of the profession under applicable state law.

There are two exceptions to the licensure requirement. First, where a State allows an individual to fully practice a profession under the supervision of licensed senior or supervisory personnel, H–1 classification may be accorded. Second, where a foreign professional nurse has passed the Commission on Graduates of Foreign Nursing Schools examination and met other prescribed requirements, H–1 classification may be accorded.

(c) Accompanying alien. For the past several years, the Service by regulation has permitted aliens who are essential to a performance to accompany alien entertainers of distinguished merit and ability to the United States under the same H–1 classification as the performer. This privilige includes only those highly skilled support staff who possess such unique qualifications, experience with the performer(s), and knowledge of the performance as to render success of the performance dependent upon their participation.

The Service has received numerous complaints from labor organizations regarding the application of this provision in the field. Aliens have been allowed to accompany all types of workers in the entertainment industry, including technical and craft personnel, although it could not be demonstrated that success of a performance depended on participation of the specific individuals.

This rule would authorize accompanying alien status only for highly skilled, essential support staff

who accompany professional sports teams and performing artists coming to the United States to perform before an audience.

2. H–2 Petition for Alien To Perform Temporary Services or Labor

(A) Labor certification. Every petition to classify an alien as an H–2 temporary nonimmigrant worker must have attached to it either a labor certification or a notice that such certification cannot be made, from the Secretary of Labor or the Governor of Guam. This rule would limit the term of a labor certification to one year. This provision would merely set forth in the regulations what is the actual practice of the Secretary of Labor and the Governor of Guam in issuing temporary labor certifications.

The rule sets forth Service requirements for countervailing evidence when the petitioner receives a notice that a certification cannot be made. The petitioner is required to address availability or nonavailability of U.S. workers, the prevailing wage rate, and each of the reasons why the Secretary of Labor or the Governor of Guam could not grant the labor certification.

Minor technical changes would be made to temporary labor certification procedures for the Territory of Guam to give the Governor authority to expedite the processing of applications in emergent situations and to clarify approval and reporting requirements. For normal processing of temporary labor certification applications, the employer must still place a job order with the Employment Service system for a period of 30 days. This rule would allow the Governor, at his discretion, to reduce this period by as much as 20 days for applications in the entertainment industry. This rule would also clarify that the Commissioner of Immigration and Naturalization must approve specific construction wage rates on Guam prior to implementation of new rates; specify the frequency of wage surveys; and require the Governor of Guam to furnish quarterly reports of labor certification workload and determinations.

(B) Evidence. The rule would specify the evidence that is required to accompany an H–2 petition. In particular, the petitioner would be required to provide documentation that the alien qualifies for the job offer as specified in the labor certification, except in petitions involving unnamed beneficiaries

3. H–3 Petition for an Alien Trainee

Restrictions on training programs. When an employee is not of distinguished merit and ability or the petitioner cannot obtain a temporary labor certification, the Service has observed that the H–3 classification is often requested to enable the alien to engage in actual employment under the guise of a training program. This rule would specify the restrictions on training programs which the Service considers in adjudicating H–3 petitions. A training program is inappropriate when it:

- Deals in generalities with no fixed schedule, objectives, or means of evaluation;
- Is incompatible with the nature of the petitioner's business or enterprise;
- Is on behalf of a beneficiary who appears to already possess substantial training and expertise in the proposed field;
- Is in a field in which it is unlikely that the knowledge or skills could be used in the beneficiary's native country;
- Does not establish that the training is purposeful and incidental to productive employment;
- Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;
- Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or
- Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

4. Other Technical Amendments

(A) Approval and validity of petitions. For the convenience of petitioners and beneficiaries, the Service would modify the approval period of an H petition. If the petition is approved before the date the petitioner indicates that the services or labor or training will begin, the approved petition would reflect the actual dates requested by the petitioner, not to exceed the limits specified by these regulations, and the date the petition is actually approved. In no case would the beginning date of the petition's period of approval be earlier than the date the petition is actually approved. In this way, the petitioner and beneficiary will not lose part of the approval period while they wait for the date services are expected to begin or for the alien to make preparations to come to the United States.

The validity period for which an H–3 petition may be authorized would be modified to reflect the purpose of the alien's temporary stay in the United States. Although current regulations provide for approval of training programs for the documented length of the training program, we now believe that an outer limit on a training program is necessary. A training program would be approved for the documented length of the training program not to exceed 18 months. The Service believes that this period of time is sufficient to satisfy the objectives of a training program and the intent of Congress. This period of time also coincides with the International Communication Agency's limit for exchange visitors who are business and industrial trainees.

(B) Extension of visa petition and extension of stay application procedures. Current regulations require the filing and approval of an abbreviated visa petition and an application for extension of stay in order to extend the beneficiary's stay in the United States. This procedure would be amended to require only the filing of an application for extension of stay by the beneficary, accompanied by a letter (or labor certification in H–2 cases) from the employer restating the terms and conditions of employment as specified in the original petition. No action would be taken with respect to the visa petition if the beneficiary's application for extension of stay were denied. Approval of the beneficiary's application for extension of stay would automatically extend the visa petition for the same period. This change in procedure would reduce workload in our Regional Adjudication Centers, where petition extensions constitute a significant portion of their workload. The procedure will also reduce the burden and cost to employers involved in this procedure.

(C) Limits on a temporary stay (temporariness). As with H–1 and L applicants in a prior proposed rulemaking, we believe that adoption of a generous but specific limit on a temporary stay in the United States in the H–3 category would curb abuses and best serve the interests of the Service and the affected public. Our current regulations already limit the stay of an H–2 beneficiary in the United States to three years. We propose to limit the stay of an H–3 beneficiary to 18 months. We believe that an eighteen-month period is sufficient to accomplish the purpose of entering the United States in the H–3 classification. Extension of stay in increments of six months would be granted in the H–3 classification as long as the total period of stay did not exceed 18 months. After an H–2 beneficiary has spent three years in the United States, and an H–3 beneficiary has spent 18 months in the United States, this rule would require that a new petition for the alien in the same

classification would not be approved unless the alien departed voluntarily and resided outside the United States for six months.

(D) Effect of obtaining a labor certification or filing a preference petition in the H–2 and H–3 classifications. The rule would specify that approval of a permanent labor certification or the filing of a preference petition for an H–2 or H–3 alien beneficiary in the same or a different job or training position with the same employer would be ground to deny a new petition or the alien's application for an extension of stay. This is because:

(1) H–2 classification. In the case of an H–2 beneficiary, the employer previously submitted satisfactory representations that the need for the skills or labor was temporary. If the employer's need has changed, the beneficiary no longer qualifies for H–2 classification in the same job. To avoid abuses of the H–2 classification, the Service would also not accept representations that the permanent services would be in a different job when the labor certification or preference petition is filed by the same employer.

(2) H–3 beneficiary. In the case of an H–3 beneficiary, the employer was required to demonstrate that the training position was to benefit the beneficiary in pursuing a career outside the United States. When that same employer obtains a labor certification or files a preference petition for the beneficiary, the Service would conclude that the purpose of the training was to recruit and train the alien to ultimately staff a position in the United States.

The Service believes that the proposed changes reflected in this proposed rule will benefit the public to the extent that they clarify requirements, curb abuses, and make the H category more useful to businesses and other organizations. They would make clear Service policy regarding admission, the alien's temporary stay in the United States, and requirements for petitioners and beneficiaries who seek approval or classification under the H nonimmigrant category.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities.

This rule not be a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, aliens, employment, student, and passports and visas.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations would be amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for Part 214 is revised to read as follows:

Authority: Secs. 101, 103, 212, 214, and 248, as amended; 8 U.S.C. 1101, 1103, 1182, 1184, and 1258.

2. Section 214.2 would be amended by revising paragraph (h) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) *Temporary employees*—(1) *Admission of temporary employees*—(i) *General.* Under section 101(a)(15)(H) of the Act, an alien having a residence in a foreign country which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services or labor for or to receive training from an employer, if petitioned for by that employer. Under this nonimmigrant category, the alien may be classified under section 101(a)(15)(H)(i) as an alien of distinguished merit and ability, or under section 101(a)(15)(H)(ii) as an alien who is coming to perform temporary services or labor, or under section 101(a)(15)(H)(iii) as an alien who is coming as a trainee. These classifications are commonly called H–1, H–2, and H–3 respectively. The employer must file a petition with the Service for review of the services or training and for a determination of the alien's eligibility for classification as a temporary employee or trainee, before the alien may apply for a visa or seek admission to the United States. These regulations set forth the standards and procedures whereby these classifications may be applied for and granted, denied, extended, revoked, or appealed.

(ii) *Description of Classifications.* (A) "H–1" refers to an alien who is of distinguished merit and ability and who is coming temporarily to the United States to perform services of an exceptional nature requiring such merit and ability. In the case of a graduate of a medical school coming to the United States to perform services as a member of the medical profession, the alien must be coming pursuant to an invitation from a public or nonprofit private educational research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency. Although the services to be performed may be temporary or permanent in nature, it must be established that the employment is only for a temporary period.

(B) "H–2" refers to an alien who is coming temporarily to the United States to perform temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in this country. This classification does not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession. The employer's need for the services or labor to be performed must be temporary in nature. This classification requires a temporary labor certification issued by the Secretary of Labor or the Governor of Guam or a notice from one of them that certification cannot be made prior to the filing of a petition with the Service.

(C) "H–3" refers to an alien who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training. The alien may receive training from an employer in any field other than graduate medical education, such as agriculture, commerce, communication, finance, government, or the professions. This classification may not be used when all of the training will be at an academic or vocational institution.

(2) *Petitions*—(i) *Filing of petitions.*—(A) *Services or training in one location.* An employer seeking to classify an alien as an H–1, H–2, or H–3 temporary employee shall file a petition in duplicate on Form I–120H with the Service office which has jurisdiction over the area where the alien will perform services or receive training. The employer may be a United States or foreign employer.

(B) *Services or training in more than one location.* A petition which requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with the Service office which has jurisdiction over the area where the petitioner is located. If the petitioner is a foreign employer, the petition shall be filed with the Service office which has jurisdiction over the area where the employment will begin.

(C) *Services or training for more than one employer.* If the beneficiary will perform services for or receive training from more than one employer, each

employer must file a separate petition with the Service office which has jurisdiction over the area where the alien will perform services or receive training. The alien may work part-time for multiple employers provided each has an approved petition for the alien.

(D) *Change in employment or training.* If the alien is in the United States and decides to change employers, the new employer must file a new petition on Form I-129H. If the alien is accorded the same H classification, an extension of stay is not required until the alien's previously authorized stay is about to expire. If the new petition is accompanied by an application for extension of stay on Form I-539 and the new petition is approved, the extension of stay may be granted for the validity of the approved petition.

(E) *Amended petition.* The petitioner shall file an amended petition with the Service office where the original petition was filed to reflect any changes in the terms and conditions of employment and any changes which affect the beneficiary's eligibility under section 101(a)(15)(H) of the Act.

(F) *Agents as petitioners.* In occupations where workers traditionally are self-employed or use agents to arrange their employment, an established agent may file the petition as the employer. The agent must have a contract with the alien wherein the agent guarantees the salary and other terms of employment and specifies the booked engagements for the period of time requested. The contract between the agent and the alien must be signed and dated by the agent and the alien.

(ii) *Multiple beneficiaries*—(A) *H-1 petitions.* More than one beneficiary may be included in an H-1 petition if they are members of a professional sports team, or they are performing artists with an ensemble of distinguished merit and ability coming to the United States to perform services in the entertainment industry, or they are accompanying aliens, as defined in paragraph (h)(3)(i)(B)(*4*), for a performing artist or ensemble. The petition shall include the name and title of each beneficiary. They must also be applying for visas at the same consulate or applying for admission at the same port of entry.

(B) *H-2 and H-3 petitions.* More than one beneficiary may be included in an H-2 or H-3 petition if the beneficiaries will be performing the same service or receiving the same training in the same geographical area. They must also be applying for visas at the same consulate or applying for admission at the same port of entry.

(iii) *Unnamed beneficiaries.* Every I-129H petition must include the names of beneficiaries and other required information when filed, except H-2 petitions for seasonal agricultural or logging workers and H-2 petitions involving more than 25 skilled construction-related workers. Such H-2 petitions will be handled as follows:

(A) *Beneficiaries without visas.* For those beneficiaries who are not required to obtain nonimmigrant visas, names must be submitted to the designated port of entry as soon as such information is available. When it is impractical to submit the required information, the port shall be advised of the number expected to arrive at such port so that no more persons are admitted than the number for which the petition is approved.

(B) *Beneficiaries with visas.* For those beneficiaries who require visas, the petition may be approved and forwarded to the specified consular post with the remarks block endorsed: "Information relating to individual beneficiaries will be forthcoming from petitioner." The petitioner shall furnish the required information to the consular post as soon as such information is available.

(iv) *Substitution of beneficiaries.* Substitution of beneficiaries may be made only in approved petitions involving unnamed beneficiaries or H-1 sports teams or performing ensembles, such as hockey teams, orchestras, dance troupes, and casts for theatrical productions. To request a substitution, the petitioner shall notify the consular office at which the alien will apply for a visa or the port of entry where the alien will apply for admission.

(3) *Petition for alien of distinguished merit and ability (H-1)*—(i)—*Standards for H-1 classification.* H-1 classification may be granted to an individual in his own capacity, based on a petition filed on behalf of that individual, or in his capacity as a member of a group, based on a petition filed on behalf of the group, or to an accompanying alien as defined in paragraph (h)(3)(i)(B)(*4*), and included in the same petition for an individual or group of distinguished merit and ability.

(A) *Types of H-1 classification: (1) H-1 classification in individual capacity.* H-1 classification may be granted to an alien who is of distinguished merit and ability. An alien of distinguished merit and ability is one who is a member of the professions or who is preeminent in his or her field and who is coming to the United States to perform services which require a professional or person of preeminence.

(*2*) *H-1 classification as a member of a group.* A group of distinguished merit and ability is a professional sports team or a performing ensemble which is preeminent in its field and is coming to the United States to perform services which require a group of preeminence. A person who is a member of a group of distinguished merit and ability may be granted H-1 classification based on that relationship, but may not perform services separate and apart from the group unless he or she is granted H-1 classification in an individual capacity.

(*3*) *H-1 classification as an accompanying alien.* A person who is an accompanyng alien, as defined in paragaph (h)(3)(i)(B)(*4*), to an individual or group of distinguished merit and ability may be granted H-1 classification based on that relationship. The H-1 classification derived from the individual or group of distinguished merit and ability does not entitle an accompanying alien to individual H-1 classification when the alien will perform services separate and apart from the individual or group of distinguished merit and ability.

(B) *Definitions:*

(*1*) "Profession" means an occupation which requires theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation in such fields of human endeavor as: architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, law, theology, and the arts. A profession requires completion of a specific course of education at an accredited college or university, culminating in a baccalaureate or higher degree in a specific occupational specialty, where attainment of such degree or its equivalent is the minimum requirement for entry into the profession in the United States. There are two categories of persons who do not meet these requirements but are nevertheless regarded as professionals. They are persons who, after passage of normal professional tests and requirements, are granted full state licenses to practice the profession and persons who lack the required degree but, by virtue of a combination of academic training, experience, and accomplishments are in fact lawfully practicing at a professional level.

(*2*) "Preeminence" means exceptional ability in a field evidenced by a degree of skill and/or recognition substantially above that ordinarily encountered.

(*3*) "Performing ensemble" means a group of persons established as one united entity to provide some form of entertainment before an audience and the reputation of the team or ensemble as a whole is considered in determining

whether it is of distinguished merit and ability.

(4) "Accompanying alien" means a support person such as a manager, trainer, producer, musical accompanist, and other highly skilled, essential person determined by the district director to be necessary for the successful performance of an H–1 individual, sports team, or ensemble performing before an audience. Such alien must possess unique qualifications, experience with the performer(s), and critical knowledge of the performance so as to render success of the performance dependent upon his or her participation.

(5) "Recognized authority" means a person who is an expert or an organization which has expertise in a particular field, possesses special skills or knowledge in that field, and is acknowledged by the Service as an accepted source of information.

(C) *Criteria for a member of the professions.* To qualify as a member of the professions, the alien must:

(1) Hold a United States baccalaureate or higher degree required by the profession from an accredited college or university, or

(2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the profession from an accredited college or university, or

(3) Hold an unrestricted state license which authorizes him or her to fully practice the profession and be engaged in that profession in the state of intended employment, or

(4) Have completed at least two years of college-level training in the profession, have demonstrated that he or she has for at least the past five years worked full-time in positions which normally require the services of a professional, and have attained professional achievements and recognition. The experience must include substantially all of the theoretical and practical application of specialized knowledge required at the professional level of the occupation, and the alien may establish that he or she has professional achievements and recognition by submitting at least two different types of documentation such as:

(*i*) Recognition of achievements by experts or recognized authorities in the professional field;

(*ii*) Membership in associations in the professional field which require outstanding achievements of their members;

(iii) Published material in professional publications by the alien or about the alien's work in the professional field;

(iv) Work experience in the profession for a well-known and prestigious organization or firm; or

(v) Acceptance into a graduate-level program in the profession at an accredited college or university in the United States.

(D) *Criteria for preeminence.* Preeminence in a field may be established by an individual alien or by a team or ensemble consisting of a group of aliens. The reputation of the team or ensemble, not the qualifications or accomplishments of individual members, shall be evaluated for H–1 classification. The alien(s) must:

(1) Have sustained national or international acclaim and recognition as an individual or team or ensemble; or

(2) Be a performing artist who, or a performing ensemble which is recognized by organizations, critics, and other experts in the entertainment industry for excellence in developing, interpreting, or representing a clearly identifiable and unique ethnic, cultural, musical, theatrical or other performing art; be coming to the United States for a period of 60 days or less in a year expressly for a cultural event to further the understanding of or development of that performing art form; and be sponsored by a nonprofit educational, cultural, or governmental organization which has a history of promoting such international cultural activities and exchanges; or

(3) Have exceptional career achievement in business in executive, managerial, or highly technical positions evidenced by at least three significant factors such as:

(i) Managerial responsibility for a large corporation or other large organization;

(ii) At least 15 years of progressively responsible experience culminating in a top level executive, managerial, or technical position that requires a broad range of responsibilities;

(iii) A salary in excess of $100,000 per year;

(iv) Responsibility for at least 500 employees;

(v) Original development of a system or product which has major significance to the industry in which the alien is employed; or

(vi) Recognition for achievements and significant contributions to an industry or field by experts in that industry or field.

(E) *Licensure for H–1 classification—(1) General.* If a profession requires a state or local license for an individual to fully perform the duties at the professional level, an alien (except a professional nurse) seeking H–1 classification in that profession must have that license to be found qualified to enter the United States and immediately engage in employment in the profession.

(2) Temporary licensure. If a temporary license is available and the alien is allowed to perform the duties of the profession without a permanent license, the district director shall examine the nature and degree of performance of the duties, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the profession, H–1 classification may be granted.

(3) Professional duties without licensure. In certain professions which generally require licensure, a state may allow an individual to fully practice the profession under the supervision of licensed senior or supervisory personnel in that profession. In such cases, the district director shall also examine the nature and degree of the performance of duties. If an analysis of the facts demonstrates that the alien under supervision could fully perform the duties of the profession, H–1 classification may be granted.

(4) Professional nurses. In lieu of licensure, professional nurses shall provide the evidence required in paragraph (h)(3)(v).

(5) Limitation on approval of petition. In any profession, including professional nursing, where licensure is required, the H–1 petition may only be approved for a period of one year unless the alien already has a permanent license to practice the profession. An alien who is accorded H–1 classification without the permanent license may not be granted an extension of stay after the one year or accorded a new H–1 classification unless he or she has obtained a permanent license in the state of intended employment.

(iii) *General documentary requirements for H–1 classification.* An H–1 petition filed on Form I–129H shall be accompanied by:

(A) Documentation, certifications, affidavits, degrees, diplomas, writings, reviews, or any other evidence sufficient to establish that the beneficiary is a person of distinguished merit and ability as described in paragraphs (h)(3)(i)(B) and (C) and that the services the beneficiary is to perform require a person of such merit and ability. The evidence shall conform to the following:

(*1*) School records, diplomas, and similar documentation submitted must reflect periods of attendance, courses of study, and similar pertinent data and be

executed by the person in charge of the records of the educational or other institution, firm, or establishment where education or training was acquired;

(2) Affidavits submitted by present or former employers or recognized experts certifying to the expertise and exceptional ability of the beneficiary shall describe the beneficiary's experience and ability, and must set forth the expertise of the affiant and the manner in which the affiant acquired such information.

(B) Copies of any written contracts between the petitioner and beneficiary, or a summary of the terms of the oral contract or agreement under which the beneficiary will be employed, if there is no written contract, shall be submitted.

(iii) *H–1 petitions in the entertainment industry*—(A) *Evidence.* The H–1 petition for an alien or ensemble in the entertainment industry claiming preeminence shall establish that preeminence by furnishing documentation, such as the following, that the alien or ensemble:

(1) Has performed and will perform as a star or featured entertainer in a major production, as evidenced by playbills, critical reviews, advertisements, publicity releases, advertisements by the petitioner, and contracts;

(2) Has been the recipient of national, international, or other significant awards for performances;

(3) Has achieved national or international acclaim, as evidenced by reviews in major newspapers, trade journals, and magazines;

(4) Has appeared and will appear in theaters, concert halls, night clubs, and other establishments which have a distinguished reputation;

(5) Has performed in repertory companies, ballet groups, orchestras, or other productions which have a distinguished reputation;

(6) Has extensive commercial successes, as evidenced by such indicia as box office grosses and record sales reported in trade journals and other publications;

(7) Has received recognition from organizations, recognized critics, or other experts in the field in which the alien is engaged; and

(8) Has commanded and now commands a high salary and other remuneration for performances, as evidenced by contracts.

(B) *Adjudication of petition*—(1) *Procedure.* (i) In determining whether an alien in the entertainment industry is of distinguished merit and ability and whether the services require a person of such merit and ability, the district director shall consider, but shall not be limited to, evidence described in paragraph (h)(3)(iii)(A) and, where he/she deems necessary, may require further evidence on any of those or other appropriate factors.

(*ii*) The district director may decide not to require documentation of any of the factors in paragraph (h)(3)(iii)(A) if the alien or ensemble is of such distinguished merit and ability that the name or reputation standing by itself would be sufficient to establish without any question that the alien or ensemble is coming to the United States to perform services which require such merit and ability.

(*iii*) The district director shall approve or deny the petition based on the information in the record when he or she has no doubt about H–1 eligibility or ineligibility. In all other cases, before making a decision, the district director shall consult unions, other organizations, or recognized critics or experts in the appropriate entertainment field regarding the qualifications of the alien and the nature of the services to be performed.

(2) *Advisory opinions.* An advisory opinion shall include a detailed written recitation of the facts and data considered in rendering the opinion, except that it may be furnished orally by an appropriate official, subject to later confirmation in writing, when requested in a case deemed by the district director to be of an emergent nature; shall be signed by a duly authorized and responsible official of the union or other organization consulted, and shall be submitted to the district director on or before the date fixed by him, which shall not exceed 15 days from the date on which the opinion was requested. Advisory opinions shall be nonbinding upon the Service.

(*C*) *Accompanying alien.* An accompanying alien may be given the same H–1 classification as the performer(s) with the notation "Accompanying Alien", if included in the same or a separate petition. The petitioner must establish that an accompanying alien possesses such unique qualifications, experience with the performer(s), and critical knowledge of the performance as to render success of the performance dependent upon his or her participation.

(iv) *H–1 petitions for physicians*—(A) *Beneficiary requirements.* An H–1 petition for a physician shall be accompanied by evidence that the physician:

(1) Has a license to practice medicine in the state of intended employment if the physician will perform any direct patient care and

(2) Has a full and unrestricted license to practice medicine in a foreign state, or

(3) Has graduated from a medical school in the United States or in a foreign state.

(B) *H–1 classification for alien graduates of foreign medical schools*—(1) *Petitioner requirements.* If the alien graduated from a medical school in a foreign state, the petitioner must establish that:

(*i*) The alien physician is coming to the United States primarily to teach or conduct research, or both, at or for a public or nonprofit private educational or research institution or agency at the invitation of that institution or agency, and

(*ii*) No patient care activities will be performed, except those that are incidental to the physician's teaching or research.

(2) A physician who graduated from a medical school in a foreign state and who is of national or international renown in the field of medicine is exempt from the requirements in paragraph (h)(3)(iv)(B)(1).

(C) *H–1 classification for alien graduates of United States medical schools.* An alien who graduated from a medical school in the United States and who is in all respects qualified for nonimmigrant classification under section 101(a)(15)(H)(i) of the Act is eligible for that classification in order to participate in a medical residency in the United States and to perform any other services as a member of this medical profession, including services primarily involving direct patient care.

(v) *H–1 petitions for professional nurses*—(A) *Beneficiary requirements.* An H–1 petition for a professional nurse shall be accompanied by evidence that the nurse:

(1) Has obtained a full and unrestricted license to practice professional nursing in the country where the beneficiary obtained nursing education, or has obtained his or her nursing education in the United States or Canada, and

(2) Has passed the examination given by the Commission on Graduates of Foreign Nursing Schools, or has obtained a full and unrestricted license to practice professional nursing in the state of intended employment.

(B) *Petitioner requirements.* The petitioner must provide a statement certifying that the beneficiary is fully qualified and eligible under the laws governing the place of intended employment to engage in the practice of professional nursing immediately upon admission to the United States, and that

under those laws, the petitioner is authorized to employ the beneficiary to perform services as a professional nurse. If the laws governing the place where the services will be performed place any limitations on the services to be rendered by the beneficiary, the statement shall contain details as to the limitations. The district director shall consider any limitations in determining whether the services which the beneficiary would perform are those of a professional nurse.

(4) *Petition for alien to perform temporary services or labor (H–2)*—(i) *General.* An H–2 temporary worker shall be coming temporarily to the United States to perform temporary services or labor, if unemployed persons capable of performing such services or labor cannot be found in this country. The test for determining "temporary services or labor" for H–2 classification is whether the need of the employer for the duties to be performed is temporary. It is the nature of the need, not the nature of the duties, that is controlling.

(ii) *Procedures.* (A) Prior to filing a petition with the district director to classify an alien as an H–2 worker, the employer shall apply for a temporary labor certification with the Secretary of Labor for all areas of the United States, except the Territory of Guam. Authority to issue temporary labor certifications for Guam has been delegated to the Governor of Guam. The labor certification shall be advice to the district director on whether or not unemployed persons capable of performing the temporary services or labor are available in the United States and whether or not the wages and working conditions are prevailing for the area of intended employment.

(B) The Secretary of Labor and the Governor of Guam shall establish procedures consistent with these regulations for administering the temporary labor certification process.

(C) After obtaining a determination from the Secretary of Labor or the Governor of Guam, as appropriate, the employer shall file a petition on Form I–129H, accompanied by the labor certification determination and supporting documents, with the district director having jurisdiction over the area of intended employment.

(iii) *Labor certifications, except Guam*—(A) *Secretary of Labor's determination.* An H–2 petition for temporary employment in the United States, except for temporary employment on Guam, shall be accompanied by a labor certification determination that is either:

(*1*) A certification from the Secretary of Labor stating that qualified persons in the United States are not available and that the employment of a nonimmigrant alien will not adversely affect wages and working conditions of workers in the United States similarly employed; or

(*2*) A notice detailing the reasons why such certification cannot be made.

(B) *Validity of the labor certification.* The Secretary of Labor may issue a temporary labor certification for a period up to one year.

(C) *U.S. Virgin Islands.* Temporary labor certifications filed under section 101(a)(15)(H)(ii) of the Act for employment in the United States Virgin Islands may be approved only for entertainers or athletes for periods not to exceed 45 days.

(D) *Attachment to petition.* The employer may file a petition accompanied by either one of the Secretary of Labor's determinations with the district director. If the employer received a notice from the Secretary of Labor or the Secretary's designee that certification cannot be made, the employer shall present countervailing evidence that qualified persons in the United States are not available and that the employment policies of the Department of Labor have been observed. All such evidence submitted will be considered in adjudicating the petition.

(E) *Countervailing evidence.* The countervailing evidence presented by the petitioner shall be in writing and shall address availability of U.S. workers, the prevailing wage rate, and each of the reasons why the Secretary of Labor could not make the required certification. The petitioner may also provide other appropriate information in support of the petition. The district director, at his discretion, may require additional supporting evidence.

(iv) *Labor certification for Guam*—(A) *Governor of Guam's determination.* An H–2 petition for temporary employment on Guam shall be accompanied by a labor certification determination that is either:

(*1*) A certification from the Governor of Guam stating that qualified residents in the United States are not available to perform the required services and that the employment of a nonimmigrant alien will not adversely affect the wages and working conditions of United States resident workers who are similarly employed on Guam; or

(*2*) A notice detailing the reasons why such certification cannot be made.

(B) *Validity of the labor certification.* The Governor of Guam or his designee may issue a temporary labor certification for a period up to one year.

(C) *Attachments to petition.* The employer may file a petition accompanied by either one of these determinations. If the employer receives a notice from the Governor of Guam or the Governor's designee that certification cannot be made, the employer shall present countervailing evidence that qualified persons in the United States are not available and that the employment policies of the Government of Guam have been observed. All such evidence submitted will be considered in adjudicating the petition.

(d) *Countervailing evidence.* The countervailing evidence presented by the petitioner shall be in writing and shall address availability of U.S. workers, the prevailing wage rate, and each of the reasons why the Governor of Guam could not make the required certification. The petitioner may also provide any other appropriate information in support of the petition. The district director, at his discretion, may require additional supporting evidence.

(E) *Criteria for Guam labor certifications.* The Governor of Guam shall establish systematic methods for determining the prevailing wage rates and working conditions for individual occupations on Guam and for making determinations as to availability of qualified United States residents.

(1) Prevailing wages and working conditions. The system to determine wages and working conditions must provide for consideration of wage rates and emloyment conditions for occupations in both the private and public sections, in Guam and/or in the United States (as defined in section 101(a)(38) of the Act), and may not consider wages and working conditions outside of the United States. If the systems will include utilization of advisory opinions and consultations, they must be provided by officially sanctioned groups which reflect a balance of the interests of the private and public sectors, government, unions and management.

(2) Availability of United States workers. The system for determining availability of qualified United States workers must require the prospective employer to:

(i) Advertise the availability of the position for a minimum of three consecutive days in the newspaper of largest daily circulation on Guam;

(ii) Place a job offer with an appropriate agency of the Territorial Government which operates as a job referral service at least 30 days in advance of the need for the services to commence, except that for applications in the entertainment industry, the 30-day

period may be reduced by the Governor by not more than 20 days;

(iii) Conduct appropriate recruitment in other areas of the United States and its territories if sufficient qualified United States construction workers are not available on Guam to fill a job. The Governor may require a job order to be placed more than 30 days in advance of need to accommodate such recruitment;

(iv) Report to the appropriate agency or Governor's designee the names of all United States resident workers who applied for the position, indicating those hired or the job-related reasons for not hiring;

(v) Offer all special considerations to all United States resident workers that the employer provides to nonimmigrant alien workers, such as the payment of transportation expenses;

(vi) Meet the prevailing wage rates and working conditions determined under the wages and working conditions system by the Governor or his designee; and

(vii) Agree to meet all Federal and Territorial requirements relating to employment, such as nondiscrimination, occupational safety, and minimum wage requirements.

(F) *Approval and publication of employment systems on Guam—(1) Systems.* The Commissioner of Immigration and Naturalization must approve the system to determine prevailing wages and working conditions and the system to determine availability of United States resident workers and any future modifications of the systems prior to implementation. If the Commissioner, in consultation with the Secretary of Labor, finds that the systems or modified systems meet the requirements of this subsection, the Commissioner shall publish them in the **Federal Register** and the Governor shall publish them as a public record in Guam.

(2) Approval of construction wage rates. The Commissioner must approve specific wage data and rates used for construction occupations on Guam prior to implementation of new rates. The Governor shall submit new wage survey data and proposed rates to the Commissioner for approval at least eight weeks before his authority to use existing rates expires. Surveys shall be conducted at least every two years, unless the Commissioner prescribes a lesser period.

(G) *Reporting.* The Governor shall provide the Commissioner statistical data on temporary labor certification workload and determinations. This information shall be submitted quarterly no later than 30 days after the quarter ends.

(H) *Invalidation of temporary labor certification issued by the Governor of Guam—(1) General.* A temporary labor certification issued by the Governor of Guam or the Governor's designee may be invalidated by a district director if it is determined by the district director or a court of law that the certification request involved fraud or willful misrepresentation. A temporary labor certification may also be invalidated if the district director determines that the certification was improvidently issued.

(2) Notice of intent to invalidate. If the district director intends to invalidate a temporary labor certification, a notice of intent shall be served upon the employer, detailing the reasons for the intended invalidation. The employer shall have 20 days in which to file a written response in rebuttal of the notice of intent. The district director shall consider all evidence submitted upon rebuttal in reaching a decision.

(3) Appeal of invalidation. An applicant employer may appeal the invalidation of a temporary labor certification in accordance with Part 103 of this chapter.

(v) *Evidence for H-2 petitions.* An H-2 petition filed on Form I-129H shall be accompanied by:

(A) *Labor certification or notice.* A temporary labor certification or a notice that certification cannot be made, issued by the Secretary of Labor or the Governor of Guam, as appropriate;

(B) *Countervailing evidence.* Evidence to rebut the Secretary of Labor's or the Governor of Guam's notice that certification cannot be made, if appropriate;

(C) *Alien's qualifications.* Documentation that the alien qualifies for the job offer as specified in the application for labor certification, except in petitions involving unnamed beneficiaries; and

(D) *Statement of need.* A statement describing in detail the situation or conditions which make it necessary to bring the alien to the United States and whether the need is temporary, seasonal, or permanent. If the need is temporary or seasonal, the statement shall indicate whether the situation or conditions are expected to be recurrent.

(5) *Petition for alien trainee (H-3)*—(i) *General.* The H-3 trainee is a nonimmigrant who seeks to enter the United States at the invitation of an organization or individual for the purpose of receiving instruction in any field of endeavor, such as agriculture, commerce, communication, finance, government, transportation, or the professions, as well as training in a purely industrial establishment. This category shall not apply to physicians, who are statutorily ineligible for H-3 classification to receive any type of graduate medical education or training.

(A) *Externs.* A hospital approved by the American Medical Association or the American Osteopathic Association for either an internship or residence program may petition to classify as an H-3 trainee a medical student attending a medical school abroad, if the alien will engage in employment as an extern during his/her medical school vacation.

(B) *Nurses.* A petitioner may seek H-3 classification for a nurse who is not H-1 if it can be established that there is a genuine need for the nurse to receive a brief period of training that is unavailable in the alien's native country and such training is designed to benefit the nurse and the overseas employer upon the nurse's return to the country of origin, if:

(1) The beneficiary has obtained a full and unrestricted license to practice professional nursing in the country where the beneficiary obtained nursing education, or such education was obtained in the United States or Canada; and

(2) The petitioner provides a statement certifying that the beneficiary is fully qualified under the laws governing the place where the training will be received to engage in such training, and that under those laws the petitioner is authorized to give the beneficiary the desired training.

(ii) *Evidence*—(A) *Conditions.* The petitioner is required to demonstrate that:

(1) The proposed training is not available in the alien's own country;

(2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a specific job outside the United States to which the beneficiary will return.

(B) *Description of training program.* Each petition for a trainee must include a statement which:

(1) Describes the kind of training to be given;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training without supervision;

(4) Describes the position or duties for which this training will prepare the alien; and

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States.

(C) *Other factors.* The source of any remuneration received by the trainee and whether or not any benefit will accrue to the petitioner are immaterial to the petition.

(iii) *Restrictions.* A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who appears to already possess substantial training and expertise in the proposed field;

(D) Is in a field in which it is unlikely that the knowledge or skills could be used in the beneficiary's native country;

(E) Is repetitious of the beneficiary's present knowledge; and will be incidental to productive employment;

(F) Will result in productive employment beyond that which is incidental to and necessary to the training.

(G) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(H) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(I) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

(6) *Certification of documents by attorneys.* A copy of a document submitted in support of a visa petition filed pursuant to section 214(c) of the Act and § 214.2(h) of this part may be accepted without the original, if the copy bears a certification by an attorney in accordance with § 204.2(j) of this chapter. However, the original document shall be submitted if requested by the district director.

(7) *Approval and validity of petition*—(i) *General.* The district director shall consider all the evidence submitted and such other evidence as he may independently require to assist his adjudication. The district director shall notify the petitioner on Form I–171C of the approval of a petition filed on Form I–129H. The approval shall be as follows:

(A) Form I–171C shall include the beneficiary(ies) name(s) and classification and the petition's period of validity. A petition for more than one beneficiary may be approved in whole or in part. Form I–171C shall cover only those beneficiaries approved for classification under section 101(a)(15)(H) of the Act.

(B) The petition may not be approved earlier than six months before the date of actual need for the beneficiary's services or training.

(C) If the petition is approved before the date the petitioner indicates that the services or labor or training will begin, the approved petition's validity period shall reflect the actual dates requested by the petitioner, not to exceed the limits specified in paragraph (h)(7)(ii) of this section, and the date the petition was approved. In no case shall the beginning date of the petition's period of approval be earlier than the date the petition was approved.

(D) If the period of services or training requested by the petitioner exceeds the limit specified in paragraph (h)(7)(ii) of this section, the petition shall be approved only up to the limit specified in that subparagraph.

(ii) *H–1 petition.* An approved petition for an alien classified under section 101(a)(15)(H)(i) of the Act is valid for the period of established need for the beneficiary's temporary services, but not to exceed three years.

(iii) *H–2 petition*—(A) *Labor certification attached.* If a certification by the Secretary of Labor or the Governor of Guam is attached to a petition to accord an alien a classification under section 101(a)(15)(H)(ii) of the Act, the approval of the petition is valid to the date to which the certification is valid, not to exceed one year.

(B) *Notice that certification cannot be made attached*—(1) *Countervailing evidence.* If the petitioner submits a notice from the Secretary of Labor or the Governor of Guam that certification cannot be made, the petitioner shall be informed that he/she may submit countervailing evidence to the district director as specified in paragraphs (h)(iii)(E) and (h)(iv)(D), if he/she has not already done so.

(2) *Approval.* In any case where the district director decides not to deny the petition and believes that approval of the H–2 petition is warranted despite the issuance of a notice by the Secretary of Labor or the Governor of Guam that certification cannot be made, the decison shall be certified to the Commissioner pursuant to 8 CFR 103.4. In emergent situations, the certification may be presented telephonically to the Chief of the Administrative Appeals Unit, Central Office. If approved, the petition is valid for the period of established need not to exced one year. There is no appeal from a decision which has been certified to the Commissioner.

(iv) *H–3 petition.* An approved petition for an alien classified under section 101(a)(15)(H)(iii) of the Act is valid for the documented length of the approved training program, not to exceed 18 months.

(v) *Spouse and dependents.* The spouse and minor children of the beneficiary are entitled to nonimmigrant H classification if accompanying or following to join the beneficiary in the United States. Neither the spouse nor a child of the beneficiary may accept employment unless he or she is the beneficiary of an approved petition filed in his or her behalf and has been granted a nonimmigrant classification authorizing his or her employment.

(8) *Denial of petition*—(i) *Multiple beneficiaries.* A petition for multiple beneficiaries may be denied in whole or in part.

(ii) *Notice of intent to deny.* When an adverse decision is proposed on the basis of evidence not submitted by the petitioner, the district director shall notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 20 days from the date of the notice in which to do so. All relevant rebutal material will be considered in making a final decision.

(iii) *Notice of denial.* The petitioner shall be notified of Form I–292 of the decision, the reasons for the denial, and the right to appeal the denial under section 103 of this chapter.

(9) *Revocation of approval of petition*—(i) *General.* The petitioner shall immediately notify the Service of any changes in the employment of a beneficiary which would affect eligibility under section 101(a)(15)(H) and these regulations.

(ii) *Automatic revocation.* The approval of any peition is automatically revoked if the petitioner goes out of business or files a written withdrawal of the petition.

(iii) *Revocation on notice*–(A) *Grounds for revocation.* The district director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he/she finds that:

(1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition or if the beneficiary is no longer receiving training as specified in the petition; or

(2) The statement of facts contained in the petition was not true and correct; or

(3) The petitioner omitted material facts; or

(4) The petitioner violated requirements of section 101(a)(15)(H) of the Act and these regulations; or

(5) The approval of the petition was incorrectly granted.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 20 days of receipt of the notice. The district director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised Form I–171C shall be sent to the petitioner with the revocation notice.

(10) *Appeal of a denial or a revocation of a petition*—(i) *Denial.* A petition denied in whole or in part may be appealed under Part 103 of this chapter.

(ii) *Revocations.* A petition that has been revoked on notice in whole or in part may be appealed under Part 103 of this chapter. Automatic revocations may not be appealed.

(11) *Admission*—(i) *General.* A beneficiary may apply for admission to the United States only during the validity period of the petition. The authorized period of the beneficiary's admission shall not exceed the validity of the petition.

(ii) *H–1 limitation on admission.* An alien who has spent five or, in certain extraordinary circumstances, six years in the United States under section 101(a)(15)(H)(i) of the Act may not change status to or be readmitted to the United States under another H or L nonimmigrant visa classification unless the alien has resided and been physically present outside the United States for the immediate prior year. In view of this restriction, a new petition shall not be approved for an alien who has spent five (or six, if applicable) years is the United States under section 101(a)(15)(H)(i) unless the alien has resided and been physically present outside the United States for the immediate prior year. The petitioner shall provide information about the alien's employment, place of residence, and the dates and purpose of any trips to the United States for the previous year.

(iii) *H–2 and H–3 limitation on admission.* An alien who has spent three years in the United States under section 101(a)(15)(H)(ii) or 18 months under section 101(a)(15)(H)((iii) of the Act may not change status to or be readmitted to the United States under the H or L visa classification unless the alien has resided and been physically present outside the United States for the immediate prior six months. In views of this restriction, a new petition shall not be approved for an alien who has spent three years in the United States under section 101(a)(15)(H)(ii) or 18 months under section 101(a)(15)(H)(iii) unless the alien has resided and been physically present outside the United States for the immediate prior six months. The petitioner shall provide information about the alien's employment, place of residence, and the dates and purpose of any trips to the United States for the previous six months.

(iv) *Exception.* The limitations in paragraphs (h)(11) (ii) and (iii) of this section shall not apply to aliens whose authorized periods of stay in the United States are short, infrequent, and based on new petitions, such as entertainers.

(12) *Extension of visa petition validity.* A visa petition under section 101(a)(15)(H) shall be automatically extended, without the filing of Form I–129H, if the district director extends the stay of the alien beneficiary(ies) in accordance with paragraph (h)(13) of this section. A new Form I–171C shall be issued to the petitioner at the same time that the beneficiary is notified that his or her extension of stay application has been approved. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. No action shall be taken on the visa petition if the alien's application for extension of stay is denied.

(13) *Extension of stay*—(i) *Procedure*—(A) *H–1 and H–3 beneficiaries.* If maintaining status, the beneficiary of an H–1 or H–3 petition may apply for an extension of stay by submitting an application for extension of stay, a copy of Form I–171C, and a letter from the petitioner which describes the beneficiary's current duties, hours of work, and salary; indicates whether the terms and conditions of the original petition have changed, gives the reasons for the extension, and specifies the new dates of employment or training requested.

(B) *H–2 beneficiaries.* the petitioner must obtain a new labor certification or a notice that certification cannot be made in order for the H–2 beneficiary to apply for an extension of stay. If maintaining status, the H–2 beneficiary may apply for an extension of stay by submitting an application for extension of stay, a copy of the original petition approval notice, Form I–171C, and the new labor certification or notice with countervailing evidence.

(C) *Multiple beneficiaries.* An application for an extension of stay on behalf of multiple beneficiaries covered by the same original petition must be filed by each individual alien, except that in the case of an extension of stay for an ensemble or professional sports team performing as a group, only one application for extension of stay is required with an attached list of beneficiaries.

(ii) *Extension periods*—(A) *H–1 extension of stay.* An extension of stay may be authorized for a period of up to two years for a beneficiary of an H–1 petition. The alien's total period of stay may not exceed five years, except in extraordinary circumstances. Beyond five years an extension of stay, not to exceed one year, may be granted under extraordinary circumstances. Extraordinary circumstances shall exist when the district director finds that termination of the alien's services will impose extreme hardship on the petitioner's business operation or that the alien's service are required in the national welfare, safety or security interests of the United States. No further extensions may be granted. If the district director decides that approval of the one-year extension is warranted because of extraordinary circumstances, the decision shall be certified to the Administrative Appeals Unit before service on the alien.

(B) *H–2 extension of stay.* An extension of stay may be authorized for the validity of the labor certification not to exceed one year for a beneficiary of an H–2 petition. The alien's total period of stay as an H–2 worker may not exceed three years, except that in the Virgin Islands, the alien's total period of stay may not exceed 45 days.

(C) *H–3 extension of stay.* An extension of stay may be authorized for a period of up to six months of the beneficiary of an H–3 petition. The alien's total period of stay as an H–3 trainee, however, may not exceed 18 months.

(iii) *Denial of extension of stay.* If an H beneficiary's request for extension of stay is denied, the alien shall be notified of the reasons for the denial. There is no appeal from the denial of an alien's application for an extension of stay.

(14) *Effect of approval of a permanent labor certification of filing of a preference petition on H classification*—(i) *H–1 classification*—(A) *Petitioner.* The approval of a permanent labor certification or the filing of a preference petition for an alien is not by itself a ground to deny an H–1 petition or a request to extend an H–1 petition if the district director, in his judgment,

determines that certain conditions are met.

(*1*) The dates of employment must be within the limit for which an H–1 petition may be authorized or extended, and

(*2*) The petitioner must establish that temporary classification is not being requested for the principal purpose of enabling the employee to enter the United States permanently in advance of the availability of a visa number.

(B) *Beneficiary.* The approval of a labor certification or the filing of a preference petition is not by itself ground to deny an alien's application for admission, change of status, or extension of stay if the district director, in his judgment, determines that certain conditions are met.

(*1*) The alien must demonstrate that he/she has not abandoned residence abroad, and

(*2*) The alien must establish that he or she intends to enter and remain in the United States only in accordance with any authorized stay and to return abroad voluntarily at or before termination of that authorization.

(ii) *H–2 and H–3 classification.* The approval of a permanent labor certification or the filing of a preference petition for an alien in the same or a different job or training position and for the same petitioner shall be a ground to deny the alien's request for extension of stay.

(15) *Effect of strike.* (i) A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(H) of the Act shall be denied if the Secretary of Labor certifies to the Commissioner of Immigration and Naturalization that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and at the place the beneficiary is to be employed or trained and that the employment or training of the beneficiary would adversely affect the wages and working conditions of U.S. citizen or lawful resident workers.

(ii) If a petition has been approved, but the beneficiary has not yet entered the United States to take up the approved employment or training, and the Secretary of Labor certifies to the Commissioner of Immigration and Naturalization that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and at the place the beneficiary is to be employed or trained, and that the employment or training of the beneficiary would adversely affect the wages and working conditions of U.S. citizens or lawful permanent resident workers, the approval of the petition is automatically suspended and the application for admission on the basis of the petition shall be denied.

(iii) If a petition has been approved, the beneficiary has entered the United States to take up the employment or training, the beneficiary is not an "employee" as defined in the National Labor Relations Act ("NLRA") [29 U.S.C. 152(3)], and the Secretary of Labor certifies to the Commissioner of Immigration and Naturalization that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and place of employment or training, and that the employment or training of the beneficiary would adversely affect the wages and working conditions of U.S. citizens or lawful permanent resident workers, the approval of the petition is automatically suspended.

(iv) If a petition has been approved, the beneficiary has entered the United States to take up employment, and the beneficiary is an "employee" within the definition of the NLRA, the existence of a strike in the occupation at the place of employment shall result in suspension of the beneficiary's authorization to work, unless the employer establishes to the satisfaction of the Secretary of Labor, who in turn certifies to the Commissioner of Immigration and Naturalization, that less than 30 percent of the work force in the occupation at the place of employment are U.S. citizens or lawful permanent resident workers, provided that the Secretary of Labor also certifies that the strike has been authorized by a majority of such U.S. citizen or lawful permanent resident workers who voted, or a majority of such workers are participating in the strike.

(v) As used in this section, "place of employment" means any place where the employer or a joint employer does business.

(6) *Use of Form I–171C.* The Service shall notify the petitioner on Form I–171C whenever a visa petition or extension of a visa petition is approved under the H classification. The petitioner may furnish an original Form I–171C to any one of the beneficiaries who desires to depart from and return to the United States within the period for which the visa petition is valid. Additional original forms may be requested from the Service. The petitioner may not duplicate the original form received from the Service, except where the alien is applying for an extension of stay.

(i) *Application for a new or revalidated visa.* A beneficiary who is required to present a visa for admission and whose visa will have expired before the date of his or her intended return may use Form I–171C, as stated on the form, to apply for a new or revalidated visa.

(ii) *Application for readmission to the United States.* If the beneficiary is exempt from the visa requirement, the beneficiary may present the original Form I–171C at the United States port of entry upon return to be considered for readmission until the expiration date of the validity of the visa petition as shown on Form I–171C.

* * * * *

Dated: July 25, 1986.

Richard E. Norton,

Associate Commissioner, Examinations Immigration and Naturalization Service.

[FR Doc. 86–17938 Filed 8–7–86; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Reg. E; Docket No. R–0578]

Electronic Fund Transfers; Service-Provider Periodic Statements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*), implemented by Regulation E, establishes the legal framework for providing electronic fund transfer (EFT) services to consumers. It requires financial institutions to make initial disclosures concerning the EFT services they offer and provide periodic account statements; limits consumer liability for unauthorized EFTs; and requires institutions promptly to investigate and resolve consumers' claims of EFT errors, for example.

Regulation E establishes specific requirements for service-providing institutions, such as retailers, that offer EFT services by issuing to consumers debit cards or other devices for accessing checking or other deposit accounts. It requires these service providers to comply with almost all the requirements of the act and regulation, including sending consumers periodic statements showing the EFTs made with the access device.

Some service providers have asked the Board to amend the regulation. They express concern that, because of the costs involved, the periodic statement requirement impedes the growth of EFT systems that use the automated clearing house system to clear point-of-sale and automated-teller-machine transactions, and that the costs exceed consumer benefits presently derived from the

periodic statements. The Board believes that the requirement for periodic statements from service providers may well pose a barrier to the development and widespread use of these POS/ACH systems, thereby limiting new EFT services to consumers. In addition, the Board believes that consumer protections can be ensured by other means.

The Board proposes to amend Regulation E to (1) eliminate the periodic statement requirement for service providers, (2) require instead that service providers furnish the necessary information to the financial institutions holding the consumers' accounts for inclusion on their periodic statements, and (3) make other changes to ensure consumer protections and clarify the responsibilities of service providers and account-holding institutions.

DATES: Comments must be received on or before October 10, 1986.

ADDRESSES: Comments may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to the guard station at the courtyard entrance to the Eccles Building (Attention: Mail Services), on 20th Street between Constitution Avenue and C Street NW., Washington, DC between 8:45 a.m. and 5:15 p.m. weekdays. All material submitted should refer to Docket No. R–0578.

FOR FURTHER INFORMATION CONTACT: Gerald P. Hurst (Senior Attorney) or John C. Wood (Senior Attorney), Division of Consumer and Community Affairs, Board of Governor of the Federal Reserve System, Washington, DC 20551, (202) 452–3667. Regarding the regulatory analysis, contact: Frederick J. Schroeder (Economist), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–2584. For Telecommunications Device for the Deaf (TDD) users, contact: Earnestine Hill or Dorothea Thompson at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

(1) Background

The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*), implemented by Regulation E (12 CFR Part 205), establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer (EFT) services and of financial institutions that offer such services. The act applies to all types of EFT services provided to consumers, including debits and credits to consumers' accounts through the automated clearing house system, automated teller machine transactions, and point-of-sale debit card transactions.

Although the act is directed principally at financial institutions that hold consumers' accounts, the statute also provides for other providers of EFT services to be covered by the act and implementing regulation. Provisions in the Board's Regulation E carry out this statutory directive. The regulation makes clear that its coverage applies not only to the traditional financial institution but also to "any person who issues an access device and agrees with a consumer to provide electronic fund transfer services" (section 205.2(i)). Such persons may contract with consumers, for example, to provide them with ATM or POS transaction capability, telephone bill payment, or home banking services. In some cases the service-providing institution will, for example, issue both a debit card and personal identification number (PIN) to the consumer for initiating transfers. In other cases, the service provider may allow the consumer to use a card issued by the consumer's account-holding institution or by some other entity.

Section 205.14 of Regulation E requires that service providers comply with all requirements of the act and regulation that relate to the service or to EFTs made by the consumer under the service. This includes compliance with the initial and periodic disclosure requirements, the limitations on consumer liability, and the error resolution procedures. The account-holding institution, on the other hand, currently has no responsibilities under the regulation with respect to EFTs initiated through the service provider, except to cooperate with the service provider's investigation and resolution of errors.

In the past year, the Board has received numerous inquiries (from representatives of both account-holding financial institutions and current and prospective service providers) about the specific responsibilities of service providers under Regulation E. Much of the interest results from changes taking place in EFT services—specifically, the growing interest in using the automated clearing house system (ACH) to process ATM and POS transactions. In fact, the National Automated Clearing House Association (NACHA) has amended its rules to facilitate use of the ACH for processing POS and ATM transactions, and has specifically requested that the Board amend Regulation E to make it consistent with the NACHA rules.

Those NACHA amendments—scheduled to take effect in early 1987—require account-holding financial institutions participating in the ACH to identify POS/ACH transactions on their periodic statements in accordance with Regulation E. To facilitate compliance with this provision, the revised NACHA rules will also require institutions initiating the transfers to include in the ACH messages the information needed by account-holding institutions to comply with Regulation E.

Use of the ACH to process POS and ATM transactions enables persons wishing to provide EFT services to consumers to do so without entering into a specific agreement with each account-holding institution on which they may be collecting funds. If a service provider does not have direct access to the ACH for clearing transactions, it can contract with a financial institution to process the transactions on its behalf.

(2) Periodic Statement Requirement

The inquiries received by the Board about the responsibilities of service providers have focused primarily on periodic statement requirements. Regulation E requires that periodic statements be sent to consumers at least monthly if EFTs occurred on their accounts, and at least quarterly if no transfers occurred.

Some industry representatives have expressed concern that requiring a periodic statement from service providers is hampering the development of POS/ACH services. They favor eliminating the requirement. They say that the associated costs are high, that the information on the service-provider's statement duplicates that given by the account-holding institution, and that getting two statements can even be confusing to the consumer.

Other institutions have complained that service providers are not giving periodic statements, and oppose elimination of the requirement. They argue that eliminating the service-provider statement will result in a reduction of consumer protection, will give a competitive advantage to service providers, and will mean increased costs for account-holding institutions.

The Board on several occasions has exercised its rulemaking authority under the EFTA in response to concerns that compliance costs related to a particular regulatory provision exceeded the benefits accruing from it; that the regulation resulted in high compliance costs for small institutions; and that a regulatory requirement might inhibit evolving services. The possible elimination of the periodic statement requirement involves some of the same types of considerations. In particular, it involves the weighing of the costs and benefits of a regulatory requirement and

of the effect that the requirement might have on the development of an EFT service.

(3) The Cost of the Service-Provider Periodic Statement

The cost to service providers of furnishing a periodic statement for POS/ACH transactions appears to represent a potential obstacle to widespread development of POS/ACH systems. Industry representatives estimate the cost to a company that is currently preparing periodic statements—for example, for credit card accounts—at approximately 30 cents per statement. For service providers that do not currently issue periodic statements, such as grocery stores, they say the costs would be even higher—an estimated 50 to 75 cents per statement, assuming a large statement volume. (The figure is the per-statement cost only, not including the start-up costs.) These companies would contract with a third party, such as a bank or credit card processor, to prepare the periodic statements.

One advantage of the POS/ACH approach is that it provides a means of offering consumers EFT services at a low cost. However, some claim that the cost advantage of the POS/ACH approach disappears if the service provider, such as the retailer, is required to furnish a periodic statement.

(4) The Need for the Service-Provider Statement

The parties that favor eliminating the periodic statement requirement have suggeted that consumers are, or could be, confused by receiving two statements. The periodic statement sent by the service provider likely will cover a different time period than the one issued by the accout holder. As a result, some transactions will probably not match those listed on the statement from the account-holding financial institution. The information also will be different. For example, the transaction date on the service provider's statement will be the date the consumer made the transaction, while the date on the account-holding institution's statement will be the date the transaction is posted to the consumer's account. However, whether consumers would be confused by these discrepancies is unclear. Most consumers are probably familiar with statement cycles and may understand, for example, that a transaction made on a specific date may not show up on their statement for the month in which it was made.

Those requesting elimination of the statement requirement also claim that the periodic statement given by the service provider furnishes no additional information or protection to the consumer. Although this may be true in some cases, the Board believes that eliminating the periodic statement requirement for service providers—without making other changes to the regulation to provide this information to consumers—could result in some consumers not receiving important information that is currently required by Regulation E. For example, the statement from the account-holding financial institution may lack a full description of the EFTs, such as the terminal location or the name of the party to or from whom funds were transferred, information that currently is required only on the statement from the service provider. Other information not duplicated on the account-holding institution's statement is the service provider's telephone number and address (to be used by the consumer to inquire about EFTs or allege an error).

(5) Feasibility and Effect of Regulatory Changes

The Board is proposing to require account-holding financial institutions to provide the transaction identification information on their periodic statements. Representatives of account-holding institutions suggest that eliminating the service provider periodic statement and requiring account-holding institutions to comply with the transaction identification requirements will increase their periodic statement and customer service costs. They believe that these higher costs will result from operational changes and from increased inquiries and requests for resolution of errors.

The Board believes it is unclear whether the proposed changes would result in substantial costs for account-holding institutions. Many account-holding institutions currently provide periodic statements that identify consumers' POS/ACH transactions in accordance with Regulation E. In addition, the Board believes that most financial institutions are capable of providing descriptive transaction information for POS/ACH transactions on or with periodic statements at small additional costs. (The regulation allows institutions to comply with the transaction identification requirements by providing the information on documents accompanying the periodic statement; thus, institutions may be able to comply with the proposed change without making major operational changes. See footnote 4 to § 205.9(b)(1).)

An increase in POS/ACH transactions activity could of course lead to an account-holding institution's receiving increased customer service inquiries. The Board believes, however, that eliminating the service provider statement requirement, and requiring the account-holding institution to furnish the transaction identification information on its statement, should not, by itself, result in significantly increased inquiries and costs. Regardless of whether the consumer receives a periodic statement from the service provider, because the transactions appear on the statement from the account-holding institution (if only as debits), some consumers will probably direct questions to the account-holding institution in any case.

Moreover, under the existing regulation the account-holding institution is not responsible for resolution of any alleged errors related to these POS/ACH transactions. This has been and would continue to be the responsibility of the service provider. In fact, under the proposal the service provider would remain subject to all of the regulatory requirements except that of providing a separate periodic statement. In addition, the account-holding financial institution would continue to have very limited responsibilities with respect to the transfers resulting from the POS/ACH transactions. The clarification of these points (and suggested changes to the regulation relative to disclosures by the service provider) should address the concerns regarding increased inquiries to account-holding institutions. These clarifications should also avoid any loss of consumer protection.

The Board is concerned about the possibility that the effects of these changes on some account-holding institutions may be substantial, and is also sensitive to the claim by some institutions that the proposed changes may result in a competitive advantage for service providers. Furthermore, some of the institutions that would be affected are small financial institutions. Many of them are currently exempt from compliance with Regulation E because of an exemption for institutions with assets of less than $25 million, applicable to preauthorized EFTs such as payroll deposits and monthly payments of insurance premiums. The Board believes that undue burdens should not be placed on these institutions.

The Board would like comment specifically on the following:

- The nature and the amount of the costs that would be imposed on account-holding institutions by the proposed changes.
- The reasons for the belief that the proposed changes would result in a

competitive advantage for service providers.

- The possible effects of the proposed changes on small institutions that are currently exempt from Regulation E.
- The costs that are, or would be, incurred by service providers to provide periodic statements to consumers.
- The possible effects of the Board's eliminating the periodic statement requirement (as well as the possible effects of the Board's failing to take such action) on account-holding institutions, service providers, and consumers.

(6) Discussion of Proposed Changes

Based on the foregoing, the Board proposes to make the following specific changes to Regulation E:

1. Eliminate the periodic statement requirement for service providers, on the condition that they furnish the transaction information to the account-holding financial institution in a form that will allow the latter to include it on or with the periodic statement given to the consumer.

The costs associated with the furnishing of periodic statements by service providers appear to exceed the benefit to consumer resulting from the requirement. In many cases the information is duplicative of information appearing on the statement already provided by the account-holding institution. Other changes recommended below should ensure that the elimination of this requirement will not result in a significant loss of consumer protections.

2. Require the account-holding institution to furnish the transaction identification information to the consumer on or with its own periodic statement.

The effect of this proposed change on most account-holding institutions should not be substantial. Many account-holding institutions currently provide statements that identify POS/ACH transactions in conformity with Regulation E requirements. Moreover, the changes to the NACHA rules scheduled to take effect in early 1987 would require certain other institutions to do so. Also, the regulation allows institutions to provide the information on documents accompanying periodic statements, which means that major operational changes may not be necessary. However, because of concern about the effects the proposed changes might have on some account-holding institutions—in particular small financial institutions—the Board specifically requests comment, as noted above, about the costs they would incur if the proposed changes are adopted.

3. Require the service provider to furnish the consumer with the address and telephone number to be used for inquiries by—

(a) Printing the information on receipts furnished with each transaction, or

(b) Providing the consumer with a quarterly notice of this information.

It is important for the consumer to have the address and telephone number of the service provider. This proposed change would ensure that consumers receive this information on an ongoing basis, even though the service provider would no longer be providing the information on a periodic statement. The service provider would have the option of choosing one method or the other.

4. Modify the initial disclosure requirements applicable to service providers to require that they disclose to the consumers at the time they issue the access device—

(a) That because no periodic statements will be issued summarizing transactions made with the access device, the consumer should retain all receipts to verify the accuracy of statements furnished by the account-holding institution,

(b) That the consumer should report the loss or theft of the access device to the service provider immediately (and if the card used as the access device was issued by the account-holding institution or another entity, that the consumer should notify both the service provider and the card issuer), and

(c) That all inquiries relating to transactions initiated through the service provider by use of the card must be made to the service provider.

These disclosures are necessary to ensure that the consumer knows which institution to contact with respect to questions about transactions made through the service provider, and to minimize the number of inquiries that will be directed to the account-holding institution.

5. Extend the time allowed to the consumer for notifying the service provider of the loss or theft of an access device and for error allegations in those cases when notice is delayed due to the consumer's having notified the account-holding institution, or another party, in error.

Situations involving EFT services by persons other than the account-holding institution inevitably result in some consumer confusion about who should be notified regarding an error or loss or theft of an access device. Currently, the regulation provides for an extension of the time period available to the consumer for alleging errors in such cases. The proposed change would provide for similar extensions of time for notification of loss or theft of an access device.

In accordance with section 3507 of the Paperwork Reduction Act of 1980 and 5 CFR 1320.13, the proposed revisions to Regulation E that pertain to third party disclosures will be submitted as appropriate to the Board for review (under authority delegated to the Board by Office of Management and Budget) after consideration of the comments received during the 60-day comment period.

(7) Regulatory Analysis

The proposed amendments would change the way in which documentation is provided to consumers by requiring that account-holding institutions provide all the required information. A consumer would receive all the required periodic statement documentation directly from the financial institution holding the account from which the funds were debited. Service providers would be required to furnish to account-holding institutions all the transaction information necessary for proper documentation. Furthermore, service providers would be required to inform consumers of the telephone number and address they should use to report errors or lost or stolen debit cards.

Consumers would receive no less information under the proposed amendments than under the present rule. Moreover, some consumer confusion could be reduced as duplicative disclosures are eliminated.[1] If the proposal is adopted, account-holding institutions may incur increased costs from having to include additional information in periodic statements. The amendments are not expected to lead to a significant increase in the number of periodic statements that account holding instititions deliver to consumers, however, because most institutions already provide periodic statements for transaction accounts.

The cost burden of providing the additional information is not likely to be great for account-holding institutions as a group. Most point-of-sale (POS) transactions involve accounts at financial institutions that already are able to comply with the periodic statement requirements of the act and regulation. The economic burden for

[1] Disclosures and other consumer rights in EFT do not appear to be a problem for consumers. Available evidence suggests that consumers are satisfied with their EFT accounts. The number of account errors and unauthorized transfers is negligible both in absolute terms and relative to the volume of EFT transactions occurring in the payments system.

each institution would depend on its ability to disclose the required information on or with periodic statements, and some institutions would have to devote additional resources to data processing and perhaps to error resolution. The aggregate economic burden on account-holding institutions is thought to be negligible.

For service-providing institutions (such as supermarkets, gasoline retailers, and other merchants) that issue debit cards but do not hold consumer accounts, the cost savings would be substantial. This is so because the amendments would make the clearing of POS transactions through the automated clearing house (ACH) more attractive. The greatest economic benefit of the proposed amendments would arise in the future as the volume of POS transactions increases. It is likely that more institution (i.e., retailers) would be able to justify allowing consumers to make POS transactions if the amendments are adopted, and that more access devices would be issued to consumers. It is also believed that adoption of the amendments would have a salutary effect on the evolution of the payments system by reducing the average system-wide compliance cost per POS transaction.

There are obvious cost advantages to retailers in choosing the ACH method of clearing. It has been estimated that clearing a POS transaction indirectly through the ACH system costs about 20 cents at the margin, including the costs of fraud and float. Clearing a POS transaction directly (on-line) from a consumer account costs a retailer about 50 cents at the margin.

This economic advantage is reduced by Regulation E if the retailer has to provide periodic statements to its card holders. Estimates of the cost of producing a periodic statement vary from a minimum of about 30 cents at the margin to a maximum of about 75 cents at the margin, although the average cost per transaction will depend on the number of transactions a consumr makes per month with the retailer. Assuming that the consumer makes only one transaction per month, the retailer's total cost for that consumer would be at least 50 cents: 20 cents to clear, and 30 cents for the statement. Even if the consumer makes several transactions per month , the cost advantage of ACH clearing to the retailer is partly offset by periodic statement costs, and is less than it would be if the proposed amendments were adopted.

The Board has long advocated the use of the nation's automated clearing house network as a cost-saving alternative to paper check transactions. Point-of sale transactions cleared through the ACH system are functionally no different from paper checks and have the potential to generate cost savings by displacing paper checks. To the extent that the proposed amendments reduce the cost to merchants of offering electronic point-of-sale transactions, these transactions could displace payments by paper checks at point of sale and thereby reduce the overall costs to society of operating the payments system.

Significant progress toward standardization of electronic debit and credit items has been made. In early 1987, new NACHA rules will require all financial institutions that participate in the ACH to identify point-of-sale transactions in accordance with the requirements of Regulation E. This development ensures that electronic items originated through the ACH include all information required for account-holding institutions to make periodic statement disclosures in compliance with Regulation E.

There is no indication that small financial institutions as a group would be unduly disadvantaged by the proposed amendments. Many small institutions, because they already participate in ACH direct deposit programs or automated teller machine networks, currently are able to comply with the periodic statement requirements of the act and regulation. It is possible, however, that certain small institutions could face substantially greater compliance costs as a result of the proposed amendments. Currently, pre-authorized transfers to or from a small institution (one with assets of $25 million or less) are exempt from the periodic statement requirements of the act and regulation. The proposed amendments would place some additional compliance burden on these exempt institutions by requiring that they send complying periodic statements to consumers who have POS debit transactions posted to their accounts. For certain small institutions, this burden could be substantial if the method of producing periodic statements had to be fundamentally changed.

A couple of factors would appear to mitigate this concern. First, any POS debit item received over the ACH system by a small financial institution would contain all the necessary information needed to post the item to the consumer's account. Second, small institutions not currently able to disclose the required information with their periodic statements likely can get assistance at reasonable cost from their correspondent banks or from service bureaus that specialize in data processing applications for small financial institutions. The Board solicits data on the cost to financial institutions, both large and small, of complying with the proposed amendments to the regulation.

In summary, with the proposed amendments the payments system as a whole is likely to realize significant cost savings as electronic point-of-sale transactions increase in volume and relative importance. Consumers are likely to benefit from lower transaction costs and increased efficiency in the payment system as the volume of electronic point-of-sale transactions increses. Moreover, with the proposed amendments, there would be no loss of consumer protections ensured by the act.

List of Subjects in 12 CFR Part 205

Banks, banking, Consumer protection, Electronic fund transfers, Federal Reserve System, Penalties.

(8) Regulatory Text.

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows, while language that would be removed is set off with brackets.

Pursuant to the authority granted in section 904 of the Electronic Fund Transfer Act, 15 U.S.C 1693b, the Board proposes to amend Regulation E, 12 CFR Part 205, as follows:

PART 205—[AMENDED]

1. The authority citation for Part 205 continues to read as follows:

Authority: Pub. L. 95–630, 92 Stat. 3730 (15 U.S.C. 1693b).

2. Section 205.14 is amended by revising paragraph (a)(2) and the portion of paragraph (b) beginning with the last phrase of the introductory text to read as follows:

§ 205.14 Services offered by financial institutions not holding consumer's account.

(a) * * *

(2) ►(i)◄ Sections 205.7, 205.8, and 205.9 shall require the service-providing institution to provide those disclosures and documentation that are within its knowledge and the purview of its relationship with the consumer.

►(ii) the service-providing institution need not furnish a periodic statement to the consumer under § 205.9(b), but shall instead

(A) Provide the transaction information to the account-holding financial institution, identifying each

transaction in accordance with § 205.9(b)(1);

(B) Furnish the consumer with the address and telephone number to be used for inquiries and for reporting the loss or theft of the access device or unauthorized transfers appearing on periodic statement by:

(*1*) Printing the information on receipts furnished with each transaction, or

(*2*) Providing the consumer with a quarterly notice of this information;

(C) Disclose to the consumer at the time of issuing an access device

(*1*) That it will not be furnishing periodic statements summarizing transactions, and that the consumer should retain all receipts to verify the accuracy of the statement received from the account-holding financial institution,

(*2*) That the consumer should notify the service-providing institution at once of the loss or theft of the access device, and, if the access device is a card issued by another institution, that the consumer should notify the card-issuing institution as well, and

(*3*) That all inquiries relating to transaction with the service-providing institution must be made to the service-provider; and

(D) Extend by a reasonable time the time periods within which notice must be received concerning loss or theft of an access device or of unauthorized transfers appearing on a periodic statement, or concerning an error, if a delay in notifying the service-providing institution was due to the fact that the consumer initially notified or attempted to notify the account-holding institution.◄

* * * * *

(b) * * *

except that the account-holding institution shall comply with►:◄ [section 205.11 by—]

►(1) Section 205.9(b), by including on its periodic statement the information required by paragraph (b)(1) for each transaction from the service-providing institution debited or credited to the account during the cycle,◄

[(1)]►(2) Section 205.11 by (i)◄ Promptly providing, upon the request of service-providing institution, information or copies of documents required for the purpose of investigating alleged errors or furnishing copies of documents to the consumer; and

[(2)]►(ii)◄ Honoring debits to the account in accordance with section 205.11(f)(2).

►(3) An account-holding institution has no liability for failure to provide the information required by paragraph (b)(1) of this section if the failure is due to its not having received from the service providing institution the information necessary for compliance.◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 4, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-17862 Filed 8-7-86; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 852 3075]

GCS Electronics, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Costa Mesa, Calif. electronics company from making unsubstantiated claims about the capabilities of its portable "Mark II Executive Phone."

DATE: Comments will be received until October 7, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/B-407, C. Lee Peeler, Washington, DC 20580. (202) 376-8617.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with an accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Mobile telephones, Trade practices.

In the Matter of GCS Electronics, Inc., a corporation and Gene Comfort, individually and as an officer of said corporation.

[File No. 852 3075]

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of GCS Electronics, Inc., a corporation, and Gene Comfort, individually and as an officer of said corporation, and it now appearing that GCS Electronics, Inc., a corporation, and Gene Comfort, individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between GCS Electronics, Inc., by its duly authorized officer, and Gene Comfort, individually and as an officer of said corporation, and counsel for the Federal Trade Commission that:

1. Proposed respondent, GCS Electronics Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 3200 Park Center Drive, 7th Floor, in the City of Costa Mesa, State of California.

Proposed respondent Gene Comfort is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation. His office and place of business is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is provisionally accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this

agreement and so notify respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definition

"Range-related claim" means any general or specific, oral or written representation that, directly or by implication, describes or refers to the distance over which a radiotelephone communications device will receive and transmit signals that are of commercially useable quality.

I

It is ordered that respondents GCS Electronics, Inc., a corporation, its successors and assigns, and its officers, and Gene Comfort, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any mobile telephone or other radiotelephone communications device in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing in any manner, directly or by implication, any performance characteristic of any such device unless at the time of such representation, respondents possess and rely upon a reasonable basis for such representation, consisting of competent and reliable evidence which substantiates such representation.

B. Making any range-related claim about any such device which uses the phrase "up to" or words of similar import unless the maximum level of performance can be achieved by an appreciable number of consumers; and further, in any instances where consumers could not reasonably foresee the major factors or conditions affecting the maximum level of performance, cease and desist from failing to disclose clearly and prominently the class of consumers who can achieve the maximum level of performance.

C. Misrepresenting in any manner, directly or by implication, the range or coverage of any such device.

D. Misrepresenting in any manner, directly or by implication, the ability of any such device to transmit and receive messages simultaneously.

II

It is further ordered that for three years from the date that the representations to which they pertain are last disseminated, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any claim or representation covered by this Order; and

B. All test reports, studies, surveys or other materials in their possession or control that contradict, qualify or call into question such representation or the basis upon which respondents relied for such representation.

III

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations under this Order.

IV

It is further ordered that the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of five (5) years from the date of service of this Order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any obligation arising under this Order.

V

It is further ordered that respondents shall, within sixty (60) days after service of this Order upon them, file with the Commission a written report setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from GCS Electronics, Inc., and its President, Gene Comfort.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns advertising for a portable mobile telephone called the Mark II Executive Phone. GCS

Electronics, Inc., is a California corporation based in Costa Mesa, California, that manufactures, distributes and sells the Mark II Executive Phone. Gene Comfort is President of GCS Electronics, Inc.

The Commission's complaint in this matter charges GCS and Gene Comfort with disseminating advertisements containing false and misleading representations concerning the Mark II Executive Phone. The complaint alleges that the respondents represented that the Mark II would provide an up to 50-mile range over which users can make and receive calls and would allow the user to speak and listen simultaneously. In fact, the complaint charges, these claims are false or misleading because few, if any, users can achieve a 50-mile range and users must push a button to talk and release the button to listen. According to the complaint, respondents also represented that they possessed a reasonable basis for these claims when, in fact, they did not have such a reasonable basis.

The consent order contains provisions designed to remedy the advertising violations charged and to prevent GCS Electronics, Inc. and Gene Comfort from engaging in similar acts and practices in the future.

Part I.A. of the order requires the respondents to cease and desist, in connection with the advertising, sale or distribution of any mobile telephone or other radiotelephone communications device, from representing any performance characteristic of any such device unless respondents possess and rely upon a reasonable basis for such representation at the time that it is made.

Part I.B. of the order prohibits any range-related claim about any such device which uses the phrase "up to" or words of similar import unless the maximum level of performance can be achieved by an appreciable number of consumers. In those instances where consumers could not foresee the major factors or conditions affecting the maximum level of performance, respondents must disclose clearly and prominently the class of consumers who can achieve the maximum level.

Part I.C. and I.D. of the order prohibits respondents for misrepresenting the range or coverage of any radiotelephone communications device, or the ability of any such device to transmit and receive messages simultaneously.

Parts II. through V. of the order are standard order provisions requiring respondents to retain substantiation for any claims covered by any provision of the order, to notify the Commission of any change in Mr. Comfort's employment, and to report to the Commission on respondents' compliance with the terms of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 86-17877 Filed 8-7-86; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 231 and 241

[Release Nos. 33-6654, 34-23489; File No. S7-19-86]

Proposed Revisions to Industry Guide Disclosures by Bank Holding Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to Industry Guides.

SUMMARY: The Commission today authorized publication, for comment, of proposed amendments to the Industry Guides for Statistical Disclosure by Bank Holding Companies, regarding disclosures of outstandings to borrowers in certain foreign countries experiencing liquidity problems that are expected to have a material impact on timely repayment of principal or interest, and certain restructurings of outstandings to those countries. Industry Guides serve as expressions of the policies and practices of the Division of Corporation Finance. They are of assistance to issuers, their counsel and others preparing registration statements and reports, as well as to the Commission's staff.

DATE: Comments must be received on or before September 30, 1986.

ADDRESS: Five copies of comment letters should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-19-86. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Wayne G. Pentrack or Edmund Coulson, Office of the Chief Accountant (202-272-2130), or Howard P. Hodges, Jr., Division of Corporation Finance (202-272-2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Commission today authorized publication, for comment, of proposed amendments to the Industry Guides for Statistical Disclosure by Bank Holding Companies ("Guide 3") regarding disclosure of outstandings [1] to borrowers in certain foreign countries experiencing liquidity problems that are expected to have a material impact on timely repayment of principal or interest, and certain restructurings of outstandings to those countries. The proposed amendments are intended to enable users of bank holding company ("BHC") financial reports ("users") to better assess BHCs' exposures to certain foreign countries and the impact of significant restructurings of those exposures. The proposed amendments are based largely on views of the Commission staff previously expressed in interpretive letters regarding disclosures of significant foreign debt restructurings.

II. Background

The Division of Corporation Finance ("the Division") notes that, for some time, exposure of U.S. BHCs to countries experiencing economic difficulties has concerned the financial community. Further, the Division notes widely-held expectations that the foreign debt situation will continue to be problematic, and that foreign debt restructurings may continue to occur, for the forseeable future.

III. Discussion of Existing Disclosure Guidance and Proposed Amendments

A. Countries Experiencing Liquidity Problems

Where current conditions in a foreign country give rise to liquidity problems [2]

[1] Outstandings to a foreign country (or "cross-border out-standings") include loans, accrued interest, acceptances, interest-bearing deposits or investments, and other monetary assets which are denominated in U.S. dollars or other non-local currency.

[2] It is important to distinguish liquidity problems from credit problems in countries that are currently unable to fully service their debts. Unlike credit problems, liquidity problems (i.e., current inability to raise sufficient amounts of U.S. currency to meet principal or interest repayment obligations to U.S. banks) do not necessarily affect the assessment of whether loans will ultimately be uncollectible. The amendments being proposed today do not affect current guidance regarding disclosure of loans beset by credit problems.

that are expected to have a material impact on timely repayment of principal or interest, Item III.C.3. of Guide 3 in its present form calls for "disclosure of the nature and impact of such developments".

The proposed amendments are intended to elicit uniform disclosure of information the Division believes may be important to users regarding outstandings to these countries. In addition to the discussion of the "nature and impact" of developments currently called for, the amended guidance would call for an analysis of changes in aggregate outstandings to the countries that would include new outstandings, repayments of principal and interest, the amount of interest income recorded on outstandings to the countries, and other significant changes. The tabular analysis of changes in outstandings is intended to provide users with a concise picture of whether and, if so, how, a BHC's exposure to the countries has increased or decreased on a net basis.

Letters issued by the Commission staff regarding disclosures to be made in connection with certain major foreign debt restructurings (see discussion in section III.B.) called for, among other disclosures, information with respect to aggregate outstandings to the countries involved such as the amounts of new outstandings repayments of principal and interest, and interest income recorded. The Division believes that these types of disclosures may be important with regard to each country experiencing liquidity problems that are expected to have a material impact on timely debt servicing, and perhaps should be disclosed irrespective of whether restructurings of those countries' debts occur within any given reporting period.

The Division is seeking comment on these proposed disclosures, both as to content and format, and the possibility of alternative or additional disclosures to help users evaluate BHCs' exposures to borrowers in countries that are experiencing liquidity problems.

B. Restructurings of Outstandings to Countries Experiencing Liquidity Problems

Presently, Staff Accounting Bulletin ("SAB") No. 49A calls for discussions of restructuring negotiations, a "general description" of restructuring agreements, the impact on maturities of existing loans and unpaid interest, and commitments to extend additional loans or to maintain deposits in the debtor country. Since the issuance of SAB 49A, however, the staff has issued interpretive letters in response to requests from banking industry representatives, expressing its views that certain additional and more specific disclosures would be expected regarding restructurings of significant amounts of Brazilian, Mexican Argentine and Venezuelan public and/or private sector debt.

Specifically, the banking industry representatives requested the staff's views as to whether the restructurings should be reported as "troubled debt restructurings" in accordance with Statement of Financial Accounting Standards No. 15 ("FAS 15"),[3] and what disclosure would be expected in filings with the Commission. The staff reviewed the terms of each restructuring and concluded that determination of whether the restructurings met the definition of "troubled" under FAS 15[4] was the responsibility of each affected registrant. The staff did, however, express its views in letters to the industry representatives concerning what disclosures would be expected in filings with the Commission irrespective of whether FAS 15 were deemed to be applicable.

The proposed amendments would codify disclosure guidance regarding significant restructurings of outstandings to countries that are experiencing liquidity problems, largely along the lines of the guidance set forth in the staff's letters. The proposed disclosures are intended to enable users to better assess the impact of significant foreign debt restructurings by prescribing:

(a) A concise tabular presentation of pre- and Post-restructuring maturities and interest rates on the restructured outstandings;

(b) A description of commitments arising in connection with the restructurings; and (c) The amounts of outstandings that have been removed or are expected to be removed from nonaccrual status as a result of the restructurings.

Item III.C.1. of Guide 3 in its present form calls for reporting of aggregate amounts of what are commonly referred to as "problem" or "nonperforming" loans, which include, among other categories, loans that are troubled debt restructurings ("TDRs") as defined in FAS 15. There are practical difficulties in determining whether a major foreign debt restructuring is in fact a TDR, and what disclosures should be made if it is a TDR.[5]

The proposed disclosure guidance would apply regardless of whether a foreign debt restructuring were deemed a TDR, and would call for disclosures that are intended to better enable users to assess the financial statement impact of restructurings than would the disclosures required by FAS 15 with respect to a TDR. The proposed guidance is intended to enable users to assess for themselves whether restructured foreign outstanding should be considered "problem loans" and, on that basis, the proposed amendments would provide that any foreign debt restructuring that is disclosed pursuant to the new guidance and which occurred for reasons unrelated to concerns as to ultimate collectibiltiy need not be reported as a troubled debt restructuring pursuant to Item III.C.1. of Guide 3.

The Division is seeking comment on these proposals for separate disclosure of signficant foreign debt restructurings, both as to the content and format, and the possibility of alternative or additional disclosures to help users assess the impact of such restructurings.

IV. Applicability of Proposed Disclosure Guidance

Guide 3 in its present form calls for identification of individual countries and disclosure of aggregate amounts of outstandings,thereto, individually, only if such amounts exceed one percent of a registrant's total assets. The proposed amendments would not change this. The analysis of changes in aggregate outstandings to countries experiencing liquidity problems would be called for only where aggregate outstandings to such a country exceed one percent of total assets. The disclosures regarding foreign debt restructurings would be called for only if aggregate outstandings to a country exceed one percent of total assets and a material portion of those outstandings is restructured either during or subsequent to the most recent fiscal year, or if a registrant expects on the basis of tentative agreements that a material portion will be restructured.

The Division is seeking comments on these proposed disclosure thresholds, which are consistent with existing

[3] Statement of Financial Accounting Standards No. 15: *Accounting by Debtors and Creditors for Troubled Debt Restructurings* (Stamford, CT: Financial Accounting Standards Board, 1977).

[4] FAS 15 states that a troubled debt restructuring occurs if a creditor, for economic or legal reasons related to a debtor's financial difficulties, grants a concession to the debtor that it would not otherwise consider.

[5] For example, it may be difficult to assess whether the post-restructuring interest rate is below market rates for similar loans, because there may be no sources of significant amounts of new loans to the country, other than the lenders participating in the restructuring. FAS 15 calls for disclosures regarding TDRs that are effected through modifications of terms (e.g., interest rates and/or maturities) only if the post-restructuring interest rates are below market rates.

disclosure guidance, and possibilities for alternative thresholds.

While the proposed disclosure guidance regarding outstandings to countries with liquidity problems and regarding restructurings are discussed separately throughout this Release, there may of course be cases where both types of disclosures would be called for with respect to one or more particular countries in any given reporting period. In such cases, it would seem appropriate that registrants attempt to present the disclosures in a manner that would facilitate user understanding—e.g., to the extent practicable, the disclousers should be presented together rather than in different sections of filings.

V. Request for Comment

The Division invites written comments from users and preparers of BHC financial reports and other interested parties on any or all aspects of the proposed amendments. However, the Division is particularly interested in receiving comments regarding:

(a) Expected benefits (quantified, to the extent practicable), and usefulness of each proposed item of disclosure or any suggested alternative disclosures;

(b) The cost (quantified, to the extent practicable) to preparers of BHC financial reports of providing the proposed disclosures or any suggested alternative disclosures;

(c) Means for presentation of the proposed disclosures or any suggested alternative disclosures in a focused, meaningful and understandable format;

(d) Alternatives to the proposed determination of when the proposed disclosures or any suggested alternative disclosures should be provided; and

(e) Whether the proposed amendments would have an adverse impact on competition.

List of Subjects in 17 CFR Parts 231 and 241

Accounting, Reporting and recordkeeping requirements, securities.

In accordance with the foregoing, it is proposed to amend the Industry Guides and 17 CFR Chapter II as follows:

SECURITIES ACT INDUSTRY GUIDES

1. By amending the Securities Act Industry Guide 3 [Statistical Disclosure by Bank Holding Companies] by revising Instruction (4) to Item III.C.1., and revising Instruction (6) to Item III.C.3., to read as follows:

Guide 3—Statistical Disclosure by Bank Holding Companies

* * * * *

III. Loan Portfolio

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C. Risk Elements

* * * * *

1. Nonaccrual, past due and restructured loans.

* * * * *

Instructions.

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(4) No loans shall be excluded from the amounts presented, except that loans to foreign borrowers which are restructured for reasons other than concerns as to ultimate collectibility and which are included in amounts disclosed pursuant to Instruction (6)(d) to Item III.C.3 need not be included in amounts reported pursuant to Item III.C.1.(c). Supplemental disclosures may be made to facilitate understanding of the aggregate amounts reported. These disclosures may include, for example, information as to the nature of the loans, any guarantees, the extent of collateral, or amounts in process of collection.

* * * * *

3. Foreign Outstandings.

* * * * *

Instructions.

* * * * *

(6) Where current conditions in a foreign country give rise to liquidity problems which are expected to have a material impact on the timely repayment of interest or principal on the country's private or public sector debt, furnish:

(a) A description of the nature and impact of such developments.

(b) An analysis of the changes in aggregate outstandings to private and public sector borrowers in each such country (except that a country need not be included if aggregate outstandings to all borrowers in the country at the end of the most recent reported period do not exceed 1% of total assets), for the most recent reported period, in the following format:

	Country A		Country B	
	Private sector	Public sector	Private sector	Public sector
Aggregate outstandings at (beginning of period)	$X	$X	$X	$X
Additional outstandings	X	X	X	X
Interest accrued	X	X	X	X
Collection of:				
Principal	X	X	X	X
Accrued interest	X	X	X	X
Other changes (describe if significant)	X	X	X	X
Aggregate outstandings at (end of period)	X	X	X	X

(c) The amounts reported as interest income and the amounts of interest collected during the most recent reported period on the outstandings disclosed pursuant to subpart (b) of this Instruction, if, because all or a portion of the outstandings were on a nonaccrual basis, such amounts are not approximately equal to the amounts disclosed pursuant to subpart (b) on the lines entitled "Interest accrued" and "Collections of accrued interest" respectively.

(d) The following information, if a material portion of the outstandings to any country that is identified pursuant to subpart (b) of this Instruction is restructured during or subsequent to the most recent fiscal year or if the registrant expects on the basis of tentative agreements that such amounts of outstandings will be restructured (explaining that the information is subject to change, if applicable):

(i) Information describing the pre- and post-restructuring repayment terms of the outstandings restructured or to be restructured, including at a minimum the following (in tabular format such as the following):

	Country A	Country B
Amount restructured	$X	$X
Weighted average year of maturity (including any grace periods):		
Pre-restructuring	19XX	19XX
Post-restructuring	19YY	19YY
Weighted average interest rate:		
Pre-restructuring (percent)	X	X
Post-restructuring (percent)	Y	Y

(ii) A description of commitments (e.g., new money provisions; agreements to re-lend, or to maintain on deposit, repayments of principal or interest within the country) arising or expected to arise in connection with the restructuring(s).

(iii) The amount of outstandings, separately as to each country, that has been removed or is expected to be removed from nonaccrual status as a result of the restructuring(s).

* * * * *

PART 231—INTERPRETIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

2. By amending Part 231 by adding this Release to the list of interpretive releases set forth thereunder.

EXCHANGE ACT INDUSTRY GUIDES

3. By conforming Exchange Act Industry Guide 3 [Statistical Disclosure by Bank Holding Companies] to Securities Industry Guide 3, amended as proposed herein.

PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

4. By amending Part 241 by adding this Release to the list of interpretive releases set forth thereunder.

July 31, 1986.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-17925 Filed 8-7-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Agriculture; Adverse Effect Wage Rates for Idaho and Oregon; Reopening of Comment Period

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This document reopens the comment period on a proposed rule to amend the regulations for the certification for temporary employment of nonimmigrant aliens in agriculture in the United States to add the States of Idaho and Oregon to the list of States for which adverse effect wage rates (AEWRs) are computed and published annually.

DATE: The public is invited to submit written comments on the proposed rule on or before September 8, 1986.

ADDRESS: Sent written comments to: Assistant Secretary of Labor, Employment and Training Administration, Room 8100—Patrick Henry Building, 601 D Street NW., Washington, DC 20213, Attention: Mr. Robert A. Schaerfl, Director, United States Employment Service.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Telephone: (202) 376-6228.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 8, 1986, at 51 FR 11942, the Employment and Training Administration (ETA) published a notice of proposed rulemaking to amend its regulations at 20 CFR 655.207(b)(2) to add the States of Idaho and Oregon to the list of States for which the Director, U.S. Employment Service, must compute and publish annually adverse effect wage rates (AEWRs) for the temporary employment of aliens in agricultural occupations. An AEWR is a minimum wage rate which DOL has determined must be offered and paid by the employers proposing to employ nonimmigrant alien agricultural workers (so-called "H-2 workers") in the United States. The AEWRs for Idaho and Oregon will be established and set to prevent the employment of these aliens from having an adverse effect on the wages of similarly employed United States workers.

The public was invited to submit written comments on the proposed rule to ETA on or before May 8, 1986. Many individuals submitting comments on the proposed rule requested an extension of the comment period, primarily because they believed the complexity of the rule required more time for examination of the issues involved. They requested an extension of time to allow the public to submit additional information which they believe DOL should consider before a final decision is reached on the rulemaking.

DOL has determined, therefore, to grant the above-referenced requests, and, in this one instance in this rulemaking, to reopen the comment period for an additional 30 days after the publication of this notice in the **Federal Register.**

Accordingly, the comment period on the proposed rule published in FR Doc. 86-7736 at 51 FR 11942 on April 8, 1986, is hereby reopened for a period concluding on the date set forth above in the "DATE" section.

Signed at Washington, DC, this 30th day of July, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86-17901 Filed 8-7-86; 8:45 am]

BILLING CODE 4510-30-M

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Agriculture: Adjustments to Piece Rates; Reopening of Comment Period

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This document reopens the comment period on a proposed rule to amend the regulations for the certification for temporary employment of nonimmigrant aliens in agriculture in the United States. The proposed rule would amend the procedures for adjustment of piece rates employers offer and pay to United States and alien agricultural workers.

DATE: The public is invited to submit written comments on the proposed rule on or before September 8, 1986.

ADDRESS: Send written comments to: Assistant Secretary of Labor, Employment and Training Administraton, Room 8100—Patrick Henry Building, 601 D Street NW., Washington, DC 20213, Attention: Mr. Robert A. Schaerfl, Director, U.S. Employment Service.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Telephone: (202) 376-6228.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 5, 1986, at 51 FR 20516, the Employment and Training Administration (ETA) published a notice of proposed rulemaking to amend its regulations at 20 CFR Part 655 for the certification for temporary employment of nonimmigrant aliens in agriculture in the United States. The proposed rule would amend the procedures for adjustment of piece rates which H-2 employers must offer and pay to their agricultural workers. The rule would require each piece rate to be no less than the prevailing piece rate for the crop activity in the area of employment. It would also discontinue the requirement that piece rates be designed to procduce average hourly earnings at least equal to the adverse effect wage rate (AEWR), and would make provision for justifiable productivity increases.

The public was invited to submit written comments on the proposed rule to ETA on or before July 7, 1986. Several commenters submitting comments on the proposed rule requested an extension of the comment period, primarily because they believed the complexity of the rule required more time for analysis. They requested an extension of time to allow the public to submit additional information which they believe DOL should consider before a final decision is reached on the rulemaking.

DOL has determined, therefore, to grant the above-referenced requests, and, in this one instance in this rulemaking, to reopen the comment period for an additional 30 days after the publication of this notice in the **Federal Register.**

Accordingly, the comment period on the proposed rule published in FR Doc. 86-12611 at 51 FR 20516 on June 5, 1986, is hereby reopened for a period concluding on the date set forth above in the **"DATE"** section.

Signed at Washington, DC, this 30th day of July, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86-17902 Filed 8-7-86; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Public Comment Period and Opportunity for Public Hearing on Proposed Modifications to the Maryland Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and hearing on the substantive adequacy of certain program amendments submitted by the State of Maryland as modifications to its permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Maryland submission contains revisions to the Code of Maryland Regulations (COMAR) at 08.13.09.07 concerning coal exploration activities and revisions to Section 7-507 of the Annotated Code of Maryland with regard to the State obtaining written consent of landowners for access across certain private property not otherwise accessible from a public road to inspect open-pit mining or prospecting operations. These amendments are intended to satisfy the requirements of 30 CFR 920.16(a-d) as set forth in the November 18, 1985 **Federal Register** (50 FR 47379-47386). Also, Maryland has submitted for approval statutory revisions concerning notification by the operator of any changes in officers, directors, principal owners or resident agents of any coal mining operations, and authorization of any financial institution or Federal credit union in the State to issue a certificate of deposit in lieu of a corporate surety as security for a performance bond.

This notice sets forth the times and locations that the Maryland program and proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing.

DATES: Written comments must be received on or before 4:00 p.m. on September 8, 1986 to be considered. A public hearing on the proposal will be held upon request from 7:00 p.m. to 9:00 p.m. August 28, 1986 at the Maryland Bureau of Mines listed below under **"ADDRESSES"**. Any person interested in making an oral or written presentation at the hearing should contact Mr. James C. Blankenship, Jr., at the OSMRE Charleston Field Office by the close of business on or before the fifth day prior to the hearing. If no one contacts Mr. Blankenship to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Blankenship, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, Attention: Maryland Administrative Record, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

The public hearing will be held upon request at: Maryland Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532.

See **"SUPPLEMENTARY INFORMATION"** for addresses where copies of the Maryland program, the amendments and the administrative record on the Maryland program are available. Each requester may receive, free of charge, one single copy of the proposed program amendments by contacting the OSMRE Charleston Field Office listed above.

FOR FURTHER INFORMATION CONTACT: James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION: Copies of the proposed modifications, the Maryland program, and the administrative record on the Maryland program are available for public review and copying at the OSMRE offices and the Office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement
Charleston Field Office
603 Morris Street
Charleston, West Virginia 25301
Telephone: (304) 347-7158

Office of Surface Mining Reclamation and Enforcement
Administrative Record
1100 "L" Street, NW.
Washington, DC 20240
Telephone: (202) 343-4855

Maryland Bureau of Mines
69 Hill Street
Frostburg, Maryland 21532
Telephone: (301) 689-4136

In addition, copies of the proposed amendments are available for inspection and copying during regular business hours at the following location:

Office of Surface Mining Reclamation and Enforcement
Morgantown Area Office
75 High Street, Room 229
Morgantown, West Virginia 26505
Telephone: (304) 291-4004

I. Background on the Maryland Program

On March 3, 1980, OSMRE received a proposed regulatory program from the State of Maryland. This proposed program was conditionally approved by the Secretary of the Interior on December 1, 1980 (45 FR 79430-79451). On February 18, 1982, following submission of program amendments to satisfy the conditions of approval, the Maryland program was fully approved by the Secretary (47 FR 7214-7217).

On January 13, August 7, October 10, November 9, 1984, and June 5, 1985, the State of Maryland submitted proposed statutory and regulatory modifications to its approved permanent regulatory program. On November 18, 1985, the Director of OSMRE approved, with certain exceptions, the aforementioned amendments submitted by the State.

II. Submission of Program Amendments

As required, on December 23, 1985, and January 14, 1986, the State of Maryland submitted statutory and regulatory revisions to its permanent regulatory program (Administrative Record Nos. MD 331 and 332). The proposed amendments are intended to satisfy all the requirements of 30 CFR 920.16 (a), (c) and (d). The existing required amendments provide that:

(a) Maryland's program at COMAR 08.13.09.07 does not provide that coal exploration activities on lands designated be approved by the regulatory authority as required by 30 CFR 772.12;

(b) Maryland's program at COMAR 08.13.09.07G(5)(a) does not prohibit the disturbance of habitats of unusually high value and critical habitats of endangered or threatened species during coal exploration activities as required by 30 CFR 815.15(a);

(c) The State program at COMAR 08.13.09.07G(5)(k) does not require the use of sediment control structures during coal exploration activities as provided by 30 CFR 815.15(i); and

(d) The Maryland program at section 7–507(c)(1) of Title 7 of the Annotated Code of Maryland does not provide for right of entry in accordance with section 517 of SMCRA and 30 CFR 840.12.

In addition to the proposed statutory provisions regarding right of entry, the December 23, 1985 submission also contained statutory revisions concerning notification by the operator of any change in control or ownership of the operation, replacement of water supplies, and restoration of offsite damage due to mining (Administrative Record No. MD 331).

On January 25, 1986, Maryland submitted proposed legislation which would authorize any financial institution in the State to issue a certificate of deposit in lieu of a corporate surety for a revegetation bond (Administrative Record No. MD 330).

On February 21, 1986, OSMRE acknowledged receipt of the amendments and requested that Maryland reconsider the submissions. Because some of the proposed legislation was expected to be amended prior to adoption and one bill was not likely to be approved by the Maryland General Assembly, OSMRE requested that only the right to entry legislation be considered with the proposed coal exploration regulations (Administrative Record No. MD 333).

On March 18, 1986, Maryland concurred with OSMRE's request of February 21, 1986, and withdrew all proposed legislation except that concerning right of entry (Administrative Record No. MD 334).

On May 15, 1986, Maryland submitted to OSMRE revised House Bill 540 as adopted by the General Assembly and signed by the Governor on May 13, 1986. House Bill 540, which was initially submitted to OSMRE on December 23, 1985, was amended by the General Assembly and contains provisions regarding right of entry and notification by the operator of changes in officers, directors, principal owners or resident agents of the operation. Senate Bill 256, which was initially submitted to OSMRE on January 24, 1986, provides for the issuance of a certificate of deposit in lieu of a corporate surety. It also passed the General Assembly with amendments and was signed by the Governor on May 13, 1985. Proposed legislation that was submitted earlier concerning restoration of offsite damage due to mining and replacement of water supplies failed to pass the General Assembly (Administrative Record No. MD 336).

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comments from the public on the adequacy of the proposed statutory and regulatory revisions to Maryland's permanent regulatory program. Specifically, OSMRE is soliciting comments on Maryland's proposed revision to its coal exploration regulations which were submitted on January 17, 1986, and the State's statutory revision on May 15, 1986, regarding right of entry, notification of changes to officers, directors, principal owners or resident agents of coal mining operations, and authorization of any financial institution or Federal credit union in the State to issue a certificate of deposit in lieu of a corporate surety as security for a performance bond. Due to the nature of the amendments, a thirty-day comment period has been provided and a public hearing will be held upon request to receive comments on the proposed amendments.

III. Procedural Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that pursuant to the section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for action directly related to approval or conditional approval of a State regulatory program. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review of OMB.

The Department of the Interior has determined that this rule would 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.*). This rule would not impose any new requirements; rather it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 920

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 4, 1986.

Carl C. Close,

Acting Deputy Director, Operations and Technical Services.

[FR Doc. 86–17875 Filed 8–7–86; 8:45 am]

BILLING CODE 4310–05–M

Office of the Surface Mining and Reclamation and Enforcement

30 CFR Part 920

Public Comment Period and Opportunity for Public Hearing on Proposed Modifications to the Maryland Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and hearing on the substantive adequacy of amendments submitted by the State of Maryland as modifications to its permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments contain both emergency regulations and proposed permanent program regulations for permitting and regulating previously unpermitted coal preparation plants in the State. The revisions are intended to satisfy the requirements of OSMRE's interim-final rule of July 10, 1985, regarding coal preparation plants.

This notice sets forth the times and locations that the Maryland program and amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if requested.

DATES: Written comments relating to the proposed amendments must be received on or before 4:00 p.m. on September 8, 1986 to be considered. A public hearing on the proposal will be held upon request from 7:00 p.m. to 9:00 p.m. on August 28, 1986. Any person interested in making an oral or written presentation at the hearing should contact Mr. James C. Blankenship, Jr., at the OSMRE Charleston Field Office by the close of business on or before the fifth day prior to the hearing. If no one has contacted Mr. Blankenship to express an interest in participating in the hearing by that date, the hearing will

not be held. If only one person has so contacted Mr. Blankenship, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, Attention: Maryland Administrative Record, 603 Morris Street, Charleston, West Virginia 25301. The public hearing will be held at the Maryland Bureau of Mines, 69 Hill Street, Frostburg, Maryland.

FOR FURTHER INFORMATION CONTACT: James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301. Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION: Copies of the proposed modifications, the Maryland program, and the administrative record on the Maryland program are available for public review and copying at the OSMRE offices and the Office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge, one single copy of the proposed program amendments by contacting the OSMRE Charleston Field Office listed above.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301. Telephone: (304) 347–7158

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street NW., Room 5315, Washington, DC 20240. Telephone: (202) 343–5492

Maryland Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532. Telephone: (301) 689–4136

In addition, copies of the proposed amendments are available for inspection and copying during regular business hours at the following location: Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, Morgantown, West Virginia 26505. Telephone: (304) 291–4004.

I. Background on the Maryland Program

On March 3, 1980, OSMRE received a proposed regulatory program from the State of Maryland. This proposed program was conditionally approved by the Secretary of the Interior on December 1, 1980 (45 FR 79430–79451). On February 18, 1982, following submission of program amendments to satisfy the conditions of approval, the Maryland program was fully approved by the Secretary (47 FR 7214–7217). Subsequent actions concerning the Maryland program which led to further required amendments are discussed at 50 FR 47379–47386 (November 18, 1985) and are contained in 30 CFR 920.16.

II. Submission of Program Amendments

On March 18, 1986, Maryland submitted to OSMRE proposed emergency and permanent program regulations concerning coal processing plants, support facilities and related definitions (Administrative Record No. MD 334).

On April 23, 1986, Maryland resubmitted its emergency regulations regarding coal preparation plants (Administrative Record No. MD 335). The regulations are the same as the draft emergency regulations which were submitted on March 18, 1986, except for COMAR 08.13.09.01B.(14) and 08.13.09.03G. According to Maryland, the changes to the regulations are in format only and the intent of the regulations has not changed. The emergency regulations were approved by Maryland's Administrative, Executive and Legislative Review Committee and took effect on March 25, 1986. The revisions are intended to satisfy OSMRE's interim final rule of July 10, 1985, and bring additional coal preparation plants and other off-site facilities under the State's permanent program regulations (50 FR 28186–28190). This action is being taken as a result of, and in compliance with, the District Court for the District of Columbia's July 6, 1984, ruling in *In Re: Permanent Surface Mining Regulation Litigation II, Civil Action No. 79–1144.* The Court ruled that the Secretary's definitions for coal preparation plant and support facilities improperly narrowed the regulatory scope of SMCRA. The Court held that processing facilities which in any way leach, chemically process, or physically process coal should be regulated as coal preparation plants, even if they do not separate coal from its impurities. The proposed Maryland amendment is intended to bring these facilities under the jurisdiction of the Maryland program in accordance with the Court's decision. Maryland proposes to amend its definition of coal preparation plant at COMAR 08.13.09.01B, revise its permitting requirements at COMAR 08.13.09.03, and amend its special performance standards for coal preparation plants at COMAR 08.13.09.28.

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comments from the public on the adequacy of the proposed revisions to Maryland's permanent regulatory program. Due to the nature of the amendments, a thirty-day comment period has been provided and a public hearing will be held upon request to receive comments on the proposed amendments.

III. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that pursuant to the section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB. The Department of the Interior has determined that this rule would 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.).

This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects In 30 CFR Part 920

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 4, 1986.

Carl C. Close,

Acting Deputy Director, Operations and Technical Services Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 86–17873 Filed 8–7–86; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300149; FRL-3062-3]

Tolerance for Ethylene Dibromide on Mangoes Proposed Extension of Expiration Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed extension of rule.

SUMMARY: This notice proposes that the tolerance for residues of ethylane dibromide (EDB) *per se* of .03 ppm (30 ppb) in the edible pulp of mangoes that have been fumigated after harvest with the insecticide ethylene dibromide (EDB) in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U.S. Department of Agriculture be extended from its expiration date of September 30, 1986 for an additional year to September 30, 1987. The comment period on this action had been expedited pursuant to Article 2.6.1, related to notification of urgent problems of health, safety, and environmental protection, under the Agreement on Technical Barriers to Trade (Standards Code).

DATE: Comments, identified by the document control number [OPP-300149], must be received on or before September 8, 1986. Any comments submitted in a language other than English must be accompanied by an English translation.

ADDRESSES:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice 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, Linda K. Vlier, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 1006, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-7760).

SUPPLEMENTARY INFORMATION: EPA issued a rule, published in the **Federal Register** of February 14, 1986 (51 FR 5682), which established a tolerance of 30 ppb (.03 ppm) in 40 CFR 180.397 for residues of the insecticide ethylene dibromide (EDB) in the edible pulp of the raw agricultural commodity mangoes resulting from the fumigation of this commodity after harvest in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U.S. Department of Agriculture. That rule expires on September 30, 1986. In the **Federal Register** notice establishing this rule, the Agency noted that a one-year renewal would be considered if by September, 1986 the U.S. Department of Agriculture (USDA) and the exporting countries have substantially moved toward completion of the basic research required to establish alternative fruit fly disinfestation protocols, and data indicate that implementation of non-EDB fruit fly disinfestation techniques by the 1987/1988 season is probable. The Agency has received information from the USDA and the North American Mango Importer's Association (NAMIA) indicating that the USDA, in cooperation with Haiti and Mexico (the principal countries exporting mangoes to the United States), has substantially completed research required to establish the hot water treatment as an alternative fruit fly disinfestation method and that final approval and implementation of this hot water treatment is probable by the 1987/1988 harvest season.

A detailed progress report, dated June 18, 1986, on the research conducted by the Agricultural Research Service, USDA provides a schedule for the projected completion of the laboratory tests and confirmatory tests for the fruit fly species of concern for Haiti and Mexico. For Haiti, two fruit fly species, the Caribbean and the West Indian, are of concern on one mango variety, the Francis mango. The laboratory tests have been completed on the Caribbean fruit fly, and confirmatory tests were 25 percent complete as of June 18, with a projected completion date of September 1986. At a water temperature of 115°F, the projected immersion time is 56 minutes to reach quarantine security (with upper and lower confidence limits of 76.9 and 45.9 minutes). These immersion times are well below the time (2½ hours) at which phytotoxicity is first encountered under simulated commercial conditions. Laboratory tests for the West Indian fruit fly have been initiated and completion is anticipated in September 1986. The confirmatory tests for this species have a likely completion date of December 1986 (or March 1987 if unforeseen contingencies arise).

There are four varieties of Mexican mangoes, namely Hadens, Kent, Keitt, and Tommy Atkins, and two species of fruit flies, the Mexican fruit fly and the West Indian fruit fly, which are of quarantine concern. Laboratory tests have been initiated for the Hadens and Tommy Atkins varieties with an expected completion date of September 1986; the confirmatory tests are scheduled for completion by December 1986. Efficacy tests have been completed for the Hadens variety at the 115°F immersion temperature. No phytotoxic effects were noted after immersion at 115°F up to 2 hours; the quarantine security dosage is in the range of 68.4 minutes. Tests have not het been initiated for the West Indian fruit fly, but the completion of the testing is anticipated to occur as early as January 1987. The USDA anticipates completion of laboratory testing of the Kent and Keitt mango varieties by September 1986, and the confirmatory tests by December 1986. EPA has been assured by USDA that all laboratory tests will be completed this season, and that confirmatory testing will be completed, at the latest, by August 1987. Extensive efforts to accelerate the necessary research and assure approval of the hot water treatment at the earliest feasible date have been detailed in the June 18, Agricultural Research Service Progress Report.

Based on test results to date, USDA has furthermore assured EPA that sufficient research has been completed to demonstrate that the hot water immersion techique at 115°F will be effective in achieving quarantine control without causing phytotoxicity to the mangoes. USDA has also noted that this method has the additional benefit of decay control.

The documents supporting this proposal are available at the address identified above. The Agency has evaluated the risks resulting from the extension of this tolerance rule, and has

concluded that the risk is acceptable for this one-year period. The reasons for this conclusion have been discussed at length in the previous rulemaking documents for this tolerance rule, published in the Federal Register of August 10, 1984 (49 FR 32088); January 17, 1985 (50 FR 2547); November 27, 1985 (50 Fr 48799); and February 14, 1986 (51 FR 5682). In light of the considerations discussed above, the Agency believes that the criteria for a 1-year extension of the tolerance rule in 40 CFR 180.397 for residues of 30 ppb (.03 ppm) EBD *per se* in the edible pulp of mangoes fumigated in accordance with USDA Programs have been satisfied, and accordingly proposes the extension of this rule until September 30, 1987. The Agency will not be receptive to any extension of this rule beyond September 30, 1987.

The nature of the residue is adequately understood. An adequate analytical method, using a gas chromatograph equipped with an electron device capable of measuring residue levels of EDB *per se*, is available for enforcement purposes. Based on the information considered above and in the referenced documents, the extension of this tolerance until September 30, 1987 will protect the public health. Therefore, it is proposed that the tolerance be extended 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 EDB may request that this rulemaking proposal to extend the tolerance for EDB *per se* in the edible pulp of mangoes be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act. Requests must bear the notation indicating the document control number and must be submitted to the mailing address provided above.

Interested persons are invited to submit written comments on the proposed regulation to extend the tolerance for EDB *per se* in the edible pulp of mangoes. Comments must bear a notation indicating the document control number. Three copies of the comments should be submitted to facilitate the work of the Agency and of other interested in reviewing the comments. Any comments submitted in a language other than English must be accompanied by an English translation. The Agency will not address comments not submitted in English. All written comments filed pursuant to this notice will be available for public inspection in the Program Management and Support Division at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The record in support of the tolerance rule for EDB on mangoes issued on February 14, 1986, and this extension will also be available for public inspection at the above address.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*), 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).

Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (Sec. 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346(a)(e))).

List of Subjects in 40 CFR Part 180

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

Dated: August 4, 1986.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

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

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

2. Section 180.397(c) is revised to read as follows:

§ 180.397 Ethylene dibromide; tolerances for residues.

* * * * *

(c) Tolerances are established for residues of ethylene dibromide *per se* in or on the following raw agricultural commodities resulting from use of ethylene dibromide as a fumigant after harvest in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U.S. Department of Agriculture.

Commodities	Parts per million	Expiration date
Mangoes	.03	Sept. 30, 1987.

[FR Doc. 86-17885 Filed 8-7-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[SW-8-FRL-3062-5]

Colorado; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of Colorado for a program revision for the hazardous components of radioactive mixed wastes and public comment period.

SUMMARY: Colorado has applied for final authorization of a revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Colorado's revision application and has made a decision, subject to public review and comment and submission of additional information by the State of Colorado that Colorado's hazardous waste program revision for the hazardous components of radioactive mixed wastes satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Colorado's hazardous waste program revision for the hazardous components of radioactive mixed wastes. Colorado's application for a program revision is available for public review and comment.

DATE: Comments on Colorado's program revision application must be received by the close of business on September 8, 1986.

ADDRESSES: Copies of Colorado's program revision application are available from 8:30 A.M. to 4:30 P.M. Monday through Friday at the following addresses for inspection and copying: Waste Management Division, Colorado Department of Health, 4210 East 11th Avenue, Denver, Colorado 80220; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460, Phone: 202/382-5926; U.S. EPA Region VIII, Library, One Denver Place, Suite 215, 999 18th Street, Denver, Colorado 80202-2413, Phone: 303/293-1444, Dolores Eddy, Librarian. Written comments should be sent to Charles Brinkman, One Denver Place, Suite 1300, 999 18th Street, Denver, Colorado 80202-2413, Phone: 303/293-1794.

FOR FURTHER INFORMATION CONTACT: Charles Brinkman, One Denver Place,

Suite 1300, 999 18th Street, Denver, Colorado 80202–2413, Phone: 303/293–1794.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–266 and 124 and 270. On July 3, 1986, EPA published a **Federal Register** Notice pursuant to 40 CFR 271.9 which requires States to have authority to regulate the hazardous components of radioactive mixed wastes in order to maintain authorization to administer the State's hazardous waste program pursuant to Subtitle C of RCRA.

B. Colorado

Colorado received final authorization for its hazardous waste program on November 2, 1984. On July 17, 1986, Colorado submitted a program revision application for additional program approval for the hazardous components of radioactive mixed wastes. Today, Colorado is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(4).

EPA has reviewed Colorado's application and has made a tentative determination that Colorado's program revision will satisfy all the requirements necessary for final authorization if Colorado adds certain information to its Program Description. Specifically:

(1) The revised Program Description submitted on July 23, 1986, does not address in adequate detail the State agency staffing and funding to carry out the hazardous components of radioactive mixed wastes program. No information was provided regarding the number of staff available in the Radiation Division to carry out the hazardous components of radioactive mixed wastes activities and their professional backgrounds; and

(2) The State did not provide numerical estimates in the revised Program Description, based on available data, of the radioactive mixed wastes handlers within the State.

EPA's tentative determination to authorize the State is based on Colorado's commitment to provide the proposed revisions in the application before EPA's final decision. Colorado intends to provide these revisions by August 15, 1986. Because the Colorado Department of Health has a certified health physicist on the Hazardous Waste Division staff and additionally has been conducting a radiation program for the past 15 years, EPA does not foresee the State not being able to submit adequate documentation. Consequently, EPA intends to grant Colorado final authorization for this program revision. The public may submit written comments on EPA's decision up until September 7, 1986. Copies of Colorado's application for the program revision and EPA's comments are available for inspection and copying at the locations indicated in the **"ADDRESSES"** section of this notice.

Approval of Colorado's program revision for the hazardous components of radioactive mixed wastes shall become effective when the Regional Administrator's final approval is published in the **Federal Register.** If adverse comment pertaining to Colorado's program revision discussed in this notice is received, EPA will publish either (1) a notice of disapproval or (2) a final determination approving the revision, which would include appropriate response to any comments.

The Colorado program revision for which this authorization modification decision is proposed allows Colorado to regulate the hazardous components of radioactive mixed wastes—those wastes that contain hazardous wastes subject to RCRA and radioactive wastes subject to the Atomic Energy Act (AEA).

Colorado has not requested hazardous waste program responsibility on Indian lands. The Environmental Protection Agency retains all hazard waste authority under RCRA which applies to Indian lands in Colorado.

Compliance with Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Colorado's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administration practice and procedures, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 31, 1986.

John G. Welles,

Regional Administrator.

[FR Doc. 86–17975 Filed 8–7–86; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. HM–183B; Notice No. 86–6]

Rear Bumpers on Cargo Tank Truck

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The RSPA and the Bureau of Motor Carrier Safety (BMCS) are proposing to provide a period of 36 months to allow rear bumpers to be installed on cargo tank trucks (power units), commonly called bobtails, being operated in combination with cargo tank full trailers. Cargo tank trucks operated separately must be equipped with a rear bumper as required by 49 CFR 178.340–(b).

This action is being taken to provide a reasonable time frame which would allow operators of cargo tank trucks operated in combination with cargo tank full trailers to modify their units by adding the required rear bumper. It has been brought to the attention of the RSPA and the BMCS that there are approximately 3500 units operating primarily in the western States which do not comply with the required rear bumper specifications. Strict enforcement of the rear bumper requirement would necessitate removal of all affected units from operations, thus seriously affecting the ability of the industry to accomplish gasoline and fuel oil deliveries.

DATES: Comments must be received by September 22, 1986.

ADDRESSES: Address comments to the Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should identify the docket and notice number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addresses stamped post card. The Dockets Branch is located in Room 8426 of the Nassif Builing, 400 7th Street SW Washington, DC. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Joseph J. Fulnecky (202) 755–1011, Office hours are 7:45 a.m. to 4:15 p.m., Bureau of Motor Carrier Safety, Federal Highway Administration, U.S. Department of Transportation, Washington, DC 20590

or

James K. O'Steen (202) 755–4906, Office hours are 8:00 a.m. to 4:30 p.m., Office of Hazardous Materials Transportation, Research and Special Programs Administration.

SUPPLEMENTARY INFORMATION: Section 178.340–8(b) has been in effect since December, 1967 and similar bumper requirements have been in effect since the early 1940's for previously manufactured specification cargo tanks. This section requires that all cargo tanks must be protected by the use of rear bumpers. However, a large number of cargo tank trucks (commonly called bob-tails) used in combination with cargo tank full trailers have been manufactured without rear bumpers. The number of units manufactured without rear bumpers is estimated to be approximately 3500. These combination units are used primarily for the transportation of gasoline, fuel oil and other petroleum distillate products.

As a result of accidents and incidents involving the transportation of hazardous materials in cargo tanks, increased emphasis has been placed on cargo tank compliance for the past few years. This increased emphasis, combined with research efforts evaluating the integrity of all specification cargo tanks and increased adoption and enforcement of the Hazardous Materials Regulations (HMR's) by individual States, has resulted in disclosure of violations of the HMR's with respect to cargo tank operation and manufacture. One area specifically indentified was the lack of rear bumpers on cargo tank trucks operated in and out of combination with cargo tank full trailers.

In March, 1983, the California Highway Patrol (CHP) requested an interpretation regarding the rear bumper requirements for a three-axle cargo tank truck towing a towing a two-axle cargo tank trailer. A letter of interpretation was issued by the BMCS, in coordination with the RSPA, to the CHP in April, 1983, which stated:

> Section 178.340–8(b) specifically requires that "every" cargo tank be provided with a rear bumper. In the example sited two cargo tanks are present, the cargo tank attached to the towing unit and the cargo tank attached to the trailer. Therefore, both cargo tanks must be equipped with rear bumpers as required by this section.

Similar letters of interpretation were issued to carriers and manufacturers during 1983. Subsequently, the CHP issued a directive stating that no enforcement actions would be taken regarding the absence of rear bumpers due to petitions for rulemaking filed with the RSPA by industry representatives requesting relaxation of the rear bumper requirements for "doubles" and a pending rulemaking action regarding cargo tanks by the DOT. However, in December 1983 the CHP Cargo Tank Advisory Committee, comprised of the CHP, State Fire Marshal, proprietary carriers, for-hire carriers, petroleum companies, tank manufacturers and DOT, was advised that the present requirement for rear bumpers on all cargo tanks was in effect and enforceable by the BMCS whether or not the CHP withheld enforcement.

The RSPA and BMCS published a joint rulemaking regarding manufacture, testing and in-use requirements for cargo tanks (HM–183, 183A) on September 17, 1985. In this NPRM, the petitions for rule change requesting that rear end tank protection be required only on the rearmost unit of a "double" cargo tank motor vehicle configuration were denied stating:

> . . . The petitioners argued that the present requirement adds cost and weight to the cargo tank configuration with no safety benefits. We do not agree. We believe that the forward unit of a "double" is vulnerable to rear-end tank damage particularly in turning maneuvers. This vulnerability increases in proportion to the length of the draw bar between the cargo tank units. The forward unit of a "double" is at times operated without the protection afforded by the rear units. Operation of such a forward unit, whether with a full load or with only residual lading presents an unacceptable risk. . . .

As part of the administrative proceedings on Docket HM–183, 183A, two public hearings and two public meetings were conducted. At the public hearing in Burlingame, California, held in December, 1985, the DOT again stated that rear bumpers are required on all cargo tanks and that those without rear bumpers are in violation of the regulations. It remains our opinion that rear bumpers are required on all cargo tank motor vehicles. These rear bumpers provide protection to the tank and associated piping in the event of a rear-end collision.

Several enforcement cases involving the lack of a rear bumper on cargo tanks were initiated in 1985. Subsequent to the NPRM and enforcement cases, representatives of the affected industry requested a meeting with the RSPA and BMCS. These representatives indicated that if immediate compliance was required, the economic impact of removing all cargo tanks that are not in compliance would be harmful to the economy. Additionally, it was stated that such an action would also serve to threaten public safety in that enough petroleum products might not be delivered to support public or private transportation as well as emergency response units. It was also stated that the lack of enforcement of this requirement for more than 40 years fostered the belief by manufacturers and cargo tank operators that such cargo tanks complied with the regulations.

We do not concur with the argument that lack of enforcement indicated acceptance of cargo tanks manufactured without rear bumpers. It is our opinion that the regulation requiring rear bumpers is quite clear and that cargo tanks manufactured without the rear bumpers are in violation of the regulations. Additionally, the Federal Motor Carrier Safety Regulations (FMCSR's) (49 CFR Parts 350 through 399) require rear end protection on each motor vehicle. Therefore, the rear bumper is used to comply not only with the HMR's, but also, with the FMCSR's.

However, we do acknowledge that strict enforcement of the rear bumper requirement could cause hardship both for motor carriers and the public in general. Because of the potential hardship, we are proposing to allow a 36 month time period for cargo tank operators to bring their units into compliance. By allowing this time period, little, if any, interruption of petroleum product delivery should occur. This proposal would also allow motor carriers the ability to bring into compliance portions of their fleets on a periodic basis, thus eliminating the potential for removing all non-complying units at a single time.

It should be noted, however, that the proposed 36 month compliance period applies only to those units that are operated in "double" combinations. If a cargo tank truck is operated without the cargo tank full trailer attached, a rear bumper is mandatory. Operation of the cargo tank truck without a rear bumper would be a violation of the regulations and would be subject to enforcement and penalty actions.

Alternative

Industry representatives have indicated that they know of no incidents that have occurred due to a lack of a rear bumper on the cargo tank truck. Additionally, the Truck Trailer Manufacturers Association has requested a grandfathering of existing cargo tank trucks from the rear bumper requirements and suggested a modification to the regulations which would require such cargo tank trucks to be operated only in combination when no bumper is present.

In order to fully assess the requirement for a rear bumper on these combination units, we are requesting information regarding accident history and other pertinent comments regarding the need for a rear bumper. Additionally, OHMT and BMCS are requesting that interested persons submit constructive comments, together with supporting data, for or against the rules proposed in this notice. The submission of general comments without supporting data or documentation will not assist OHMT and BMCS in the development of a final rule. OHMT and BMCS are particularly interested in receiving constructive comments in the following areas:

(1) What would be the incremental costs of requiring a rear bumper to be installed on presently non-complying units?

(2) Presently, a cargo tank manufacturer is required to certify that the cargo tank is manufactured in accordance with all applicable requirements. The manufacturer of the cargo tank may not know if the cargo tank truck is to be operated in combination with a cargo tank full trailer. What method of certification would be necessary for the cargo tank manufacturer to assure that the cargo tank truck complies only when operated in combination with a cargo tank full trailer?

(3) What marking should be required to be displayed on the cargo tank truck to indicate that a bumper is required when it is not being operated in combination?

(4) Should a existing cargo tank truck be grandfathered, while newly manufactured cargo tanks be required to be equipped with a rear bumper?

(5) Does tow bar length have any effect on safety, particularly in cornering maneuvers where the cargo tank truck could be struck from the rear?

(6) How would compliance with the bumper strength requirements be met when a temporary bumper is installed on the cargo tank truck when not operated in combination with a cargo tank full trailer? What is the likelihood that the temporary bumper may or may not be installed properly?

(2) How frequently are cargo tank trucks, without rear bumpers, operated not in combination with a full trailer?

Administrative Notice

Based on limited information available concerning the size and nature of entities likely to be affected, I certifiy that this regulation, if promulgated, will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Also, in view of the type of changes, RSPA has further determined that this rulemaking (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) will not affect not-for-profit enterprises, or small governmental jurisdicitons; and (4) does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A draft regulatory evaluation is available for review in the Docket.

List of Subjects in 49 CFR Part 173

Shippers—General requirements for shipments and packagings.

In consideration of the foregoing, 49 CFR Part 173 would be amended as follows:

PART 173—SHIPPERS-GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for Part 173 would continue to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53, unless otherwise noted.

2. In § 173.33, paragraph (a)(2) would be added as follows:

§ 173.33 Qualification, maintenance and use of cargo tanks.

(a) * * *

(2) Notwithstanding the requirement of paragraph (b) of this section, the requirement for rear bumpers as specified for specification MC 300, 301, 302, 305, and 306 (section 178.340–8) cargo tanks, does not apply to a cargo tank truck (power unit), manufactured prior to (publication of the Final Rule) and used to transport gasoline and other petroleum distillate products, operated in combination with a cargo tank full trailer until (36 months after publication of the Final Rule). However, this exception does not apply when a cargo tank truck (power unit) is operated without cargo tank full trailer.

* * * * *

Issued in Washington, DC on Aug. 1, 1986 under the authority delegated in 49 CFR Part 1, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 86–17881 Filed 8–7–86; 8:45 am]

BILLING CODE 4910–60–M

Federal Highway Administration

49 CFR Part 385

[BMCS Docket No. MC–123; Notice No. 86–10]

Safety Fitness Determination

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The FHWA issued a notice of proposed rulemaking which was published in the **Federal Register** June 25, (51 FR 23088) with the comment period closing on August 11. An extension of the closing date has been requested in which the petitioner believes there are a number of critical issues raised that cannot be fully evaluated within the time currently provided. The closing date is therefore being extended to September 12.

DATE: Comments must be received on or before September 12, 1986.

ADDRESS: All comments should refer to the docket number which appears at the top of this document and must be submitted (preferably in triplicate) to Room 3404, Bureau of Motor Carrier Safety, Federal Highway Administration, Department of Transporttion, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety (202) 366–2983; or Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are

from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA received a petition from the American Trucking Associations requesting a 45-day extension of the comment period. The ATA believes there are a number of critical issues raised which cannot be fully evaluated within the currently provided time. This request has merit and therefore the comment period is being extended to September 12, 1986.

List of Subjects in 49 CFR Part 385

Highways and roads, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: August 5, 1986.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety.

[FR Doc. 86-17943 Filed 8-7-86; 8:45 am]

BILLING CODE 4910-22-M

Notices

Federal Register
Vol. 51, No. 153
Friday, August 8, 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

Soil Conservation Service

Rabun County Road Backslopes Critical Area Treatment Measure, Georgia; Finding of No Significant Impacts

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impacts.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650): the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Rabun County Road Backslopes Critical Area Treatment Measure, Rabun County, Georgia.

FOR FURTHER INFORMATION CONTACT: B.C. Graham, State Conservationist, Soil Conservation Service, Federal Building, Box 13, 355 East Hancock Avenue, Athens, Georgia 30601; telephone: 404–546–2273.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, B.C. Graham, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The measure concerns a plan for the treatment of critically eroding roadbank areas. The planned works as described in the Finding of No Significant Impact consists of the establishment of erosion control vegetation on 31.5 acres.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency, Federal, State, and local agencies, and interested parties. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. B.C. Graham. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: August 1, 1986.

B.C. Graham,

State Conservationist.

[FR Doc. 86–17843 Filed 8–7–86; 8:45 am]

BILLING CODE 3410–16–M

Forest Service

Delegation of Authority To Issue and Terminate Certain Easements; Regional Forester, Northern Region

AGENCY: Forest Service, USDA.

ACTION: Notice; Delegation of authority.

SUMMARY: The Regional Forester of the Northern Region of the Forest Service has delegated to the Forest Supervisor of the Gallatin National Forest, Montana, the authority to execute, and, with consent of grantees, to terminate the following easements executed pursuant to the National Forest Roads and Trails Act of 1964 (78 Stat 1089; 16 U.S.C. 533): cost-share, noncost-share, forest road, and private road easements. This delegation has been made and issued as a Regional Supplement to Forest Service Manual Chapter 2730—Road and Trail Rights-of-Way Grants, pusuant to the delegations of authority to the Chief of the Forest Service at 7 CFR 2.60, the redelegation of authority from the Chief to Regional Foresters dated August 11, 1984 (49 FR 34283), and Chief's direction on issuing delegations set forth in Forest Service manual Chapter 1230—Delegations of Authority.

EFFECTIVE DATE: This delegation became effective August 1, 1986 and shall remain in effect through December 31, 1988, unless terminated sooner.

George M. Fleming,

Acting Regional Forester.

August 1,1986.

[FR Doc. 86–17842 Filed 8–7–86; 8:45am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

California Advisory Committee Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a community forum of the California Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 6:00 pm on August 15, 1986, at the Saddleback Inn, Portola Room, 1660 East First Street, Santa Ana, California. The purpose of the community forum is to learn of civil rights concerns and issues in Orange County.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Maxwell Greenberg or Philip Montez, Director of the Western Regional Office at (213)894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five, (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 24, 1986.

Donald A. Deppe,

Program Specialist for Regional Programs.

[FR Doc. 86–17858 Filed 8–7–86; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 27-86]

Foreign-Trade Zone 50;—Long Beach, CA; Application for Subzone Todd Pacific Shipyards, Los Angeles

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Harbor Commissioners of the City of Long Beach, grantee of FTZ 50, requesting special-purpose subzone status for the shipyard of Todd Pacific Shipyards Corporation (Todd) in Los Angeles, California, within the Los Angeles/Long 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 July 20.

The shipyard covers 109 acres at the head of the San Pedro Channel in the Port of Los Angeles, Pacific Avenue and Front Streets, Los Angeles. The facility is used for the construction and repair of commercial and military vessels, employing 1700 persons. A significant proportion of future contracts are expected to be with foreign countries. Foreign components to be used include steel construction materials for hull and superstructure, piping, tubing, fittings, cable, anchors, valves, engines, pumps, gears, motors, winches, and navigation and communication equipment.

Zone procedures will help Todd reduce costs on its current orders and compete internationally for new contracts. Most of the imported components are subject to significant duties while the finished products, as oceangoing vessels, are duty-free.

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; John H. Heinrich, District Director, U.S. Customs Service, Pacific Region, 300 South Ferry St., Terminal Island, San Pedro, CA 90731; and Colonel Dennis F. Butler, District Engineer, U.S. Army Engineer District Los Angeles, P.O. Box 2711, Los Angeles, CA 90053.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 18, 1986.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 11777 San Vincente Blvd., Rm. 800, Los Angeles, CA 90049

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th & Pennsylvania NW., Washington, DC 20230

Dated: August 4, 1986.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 86-17908 Filed 8-7-86; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[(A-580-601) and (C-580-602) the Republic of Korea and (A-583-603) and (C-583-604) Taiwan]

Postponement of Final Antidumping Duty Determinations and Postponement of the Deadline for Final Countervailing Duty Determinations; Certain Stainless Steel Cooking Ware From the Republic of Korea and Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The final antidumping duty determinations involving certain stainless steel cooking ware from the Republic of Korea (Korea) and Taiwan are being postponed until not later than November 19, 1986, as permitted in section 735(a)(2) of the Tariff Act of 1930, as amended (the Act).

Pursuant to section 705 (a)(1) of the Act, as amended by section 606 of the Trade and Tariff Act of 1984, the deadline for the final countervailing duty determinations on certain stainless steel cooking ware from Korea and Taiwan is also extended until November 19, 1986, to coincide with the revised date of the final antidumping duty determinations.

EFFECTIVE DATE: August 8, 1986.

FOR FURTHER INFORMATION CONTACT: Rick Herring (Korea) (202) 377-0167 or Jack Davies (Taiwan) 377-1785. Written inquiries should be addressed to the Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, Attn: Room B-099.

SUPPLEMENTARY INFORMATION: On January 21, 1986, we received antidumping duty and countervailing duty petitions filed in proper form by the Fair Trade Committee of the Cookware Manufacturers Association. The Department found that the petitions contained sufficient grounds on which to initiate investigations, and on February 1, 1986, the Department initiated countervailing duty investigations on certain stainless steel cooking ware from Korea and Taiwan (51 FR 6019, 6020: February 19, 1986) and antidumping duty investigations on certain stainless steel cooking ware from Korea and Taiwan (51 FR 6018, 6019: February 19, 1986).

On April 16, 1986, we issued preliminary negative countervailing duty determinations on Korea and Taiwan (51 FR 15520, 15523: April 24, 1986). These notices stated that we expected to issue our final determinations by June 30, 1986.

On April 23, 1986, petitioners requested, and the Department subsequently granted, pursuant to section 705(a)(1) of the Act, a postponement of the deadline for the final countervailing duty determinations in the investigations of the subject merchandise from Korean and Taiwan to coincide with the final determinations in the antidumping duty investigations (51 FR 16882: May 7, 1986).

On June 30, 1986, the Department preliminarily determined that certain stainless steel cooking ware from Korea and Taiwan, are being, or are likely to be, sold in the United States at less than fair value (51 FR 24563, 24566: July 7, 1986). These notices stated that we would issue our final determinations by September 15, 1986.

On July 1, 1986, counsel for four of the five respondents in the antidumping duty investigation of certain stainless cooking ware from Korea requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination in accordance with section 735(a)(2)(A) of the Act. On July 15, 1986, counsel for two of the three respondents from Taiwan filed a similar request. The respondents in both investigations are qualified to make this request because they are exporters who account for a significant proportion of exports to the United States of the merchandise under investigation. If qualified exporters properly request a postponement after an affirmative preliminary antidumping duty determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, the period for the final determinations in these cases is hereby

extended. We intend to issue the final determinations no later than November 19, 1986.

Since, pursuant to section 705(a)(1) of the Act, the Department has postponed the deadline for the final countervailing duty determinations in the investigations of the subject merchandise from Korea and Taiwan to coincide with the final determinations in the antidumping duty investigations, the final countervailing duty determinations are also extended until November 19, 1986.

The U.S. International Trade Commission is being advised of the postponements in accordance with sections 735(d) and 705(d) of the Act.

The public hearing in the countervailing duty investigation regarding Taiwan, originally scheduled for August 6, has been rescheduled to 10:00 a.m. on August 15 in Room 3708. Pre-hearing briefs will be due by August 8. The public hearing in the antidumping duty investigation regarding Taiwan, originally scheduled for August 22, has been postponed until 10:00 a.m. on October 10 in Room 3708. Pre-hearing briefs will be due by October 3.

The public hearing in the antidumping duty investigation regarding Korea, originally scheduled for August 19, has been postpond until September 19. The time and room have not changed. Pre-hearing briefs will be due on September 12.

In accordance with 19 CFR 353.46, written views will be considered if received not less than 30 days before the final determinations or, if a hearing is held, within seven days after the hearing transcript is available.

This notice is published pursuant to sections 735(d) and 705(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-17909 Filed 8-7-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-001]

Leather Wearing Apparel From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On April 8, 1986, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Mexico. The review covers the period July 1, 1983 through June 30, 1984 and nine programs.

We gave interested parties an opportunity to comment on the preliminary results. After reviewing all of the comments received, we have determined the bounty or grant to be zero for three firms and 11.75 percent *ad valorem* for all other firms.

EFFECTIVE DATE: August 8, 1986.

FOR FURTHER INFORMATION CONTACT: Stephen Nyschot or Bernard Carreau, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 11964) the preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Mexico (46 FR 21357). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Mexican leather wearing apparel. Such merchandise is currently classifiable under items 791.620, 791.7640 and 791.7660 of the Tariff Schedules of the United States Annotated. These products include leather coats and jackets for men, boys, women, girls and infants, and other leather apparel products including leather vests, pants and shorts. Also included are outer leather shells and parts and pieces of leather wearing apparel.

The review covers the period July 1, 1983 through June 30, 1984 and nine programs: (1) CEDI; (2) FOMEX; (3) CEPROFI; (4) FOGAIN; (5) FONEI; (6) state tax incentives; (7) import duty reductions and exemptions; (8) NDP preferential discounts; and (9) Article 94 of the Banking Law.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from the Mexican government.

Comment 1: The Mexican government states that its response covered companies which account for almost 85 percent of the imports, a percentage recognized by United States law as "sufficiently all." Therefore, the Department should not have considered the response to be deficient. Further, the Department's alleged difficulty in determining the actual level of exports during the period of review is "rendered invalid" by the existence of the Department's Bureau of the Census IM-146 import statistics, which have been used in other cases as a good estimate of the value and volume of imports. Since the case involves very small firms that are spread along the Mexican-U.S. border, the Mexican government contends that there are many exports not accurately quantified by Mexican Customs and that the U.S. import statistics are a better estimate.

Department's Position: The term "substantially all" is defined as no less than 85 percent of imports in § 355.31(c) of the Commerce Regulations and in the Senate Finance Committee and House Ways and Means Commitee reports on the Trade Agreements Act of 1979 (S. Rep. No. 96-249, at 54; H. Rep. No. 96-317, at 54). The regulations and the reports refer to the phrase in section 704 of the Tariff Act regarding the percentage of imports that must be covered by an agreement forming the basis of the suspension of an investigation. The phrase does not control orders or administrative review of orders. Furthermore, as noted in the preliminary results of this review, ". . . any weighted-average countervailing duty rate for firms not certified to have a zero rate would have been based on imports of only one firm which accounted for less than 1.5 percent of total imports and approximately 5 percent of the imports subject to the weighted-average rate."

We only use IM-146 statistics as approximations; they cannot correspond exactly with Mexican export figures because of differences in product coverage and in the methods of compilation. Although one of our concerns is with the total percentage covered by the response, we are also concerned with the possibility that the response is skewed toward exporters who did not receive benefits. That information is not available from the IM-146 statistics. We cannot be sure the response covers an adequate number of exporters unless we know the relative size of exporters not covered in our sample.

Comment 2: The Mexican government argues that the Department's statement that the universe of exporters is well over 50 may overestimate the real number of exporters. The Mexican government has found that companies which were exporting during "the first period of investigation" are no longer exporting and furthermore, some of them no longer even exist.

Department's Postion: The Mexican government has not stated how many leather wearing apparel exporters it believes there are. It has not demonstrated the inaccuracy of our figure but merely surmised a smaller number. Because we do not know exactly what the number of exporters (or potential exporters) was during the review period, we must rely on the best information available, the number of exporters in the past.

Comment 3: The Mexican government denies the Department's assertion about the position of the Mexican government—that, if a firm chooses not to reply, that firm need not be included in the data for the review. Rather, the Mexican government's position is that if one or more companies do not provide their individual company information, the Mexican government is powerless to provide the missing data. Mexican law requires confidential treatment for all banking, tax, and other specific information from private companies unless those companies consent to the release of that information. Even if the government could release such confidential data, information based only on government agency files would not give an accurate view of the companies' benefits. Relevant differences between company and official information can only be explained by the company (e.g., actual dates of receipt of the benefits, amounts allocated to the product under investigation, amounts corresponding to exports to the United States, etc.). Furthermore, no Mexican government agency keeps sales and production figures for individual Mexican companies.

Department's Position: We agree that it may not be possible to calculate an accurate beenfit using only information from Mexican government files. However, that information would at least point out which leather wearing apparel firms have received benefits. Without the government information, we cannot determine which firms should be investigated more thoroughly.

While the Mexican government maintains that confidentiality requirements prevent it from releasing information to us concerning non-responding firms, it has not provided any alternative method by which we can be satisfied that the information in the questionnaire response accurately reflects the benefits provided to leather wearing apparel exporters. We are particularly concerned that firms receiving substantial benefits would be more likely not to provide information to the Mexican government, resulting in a questionnaire response that includes only firms receiving few or not benefits.

Comment 4: The Mexican government argues that, even if the Department decides to base its final results of administrative review on the "best information available," it should use information from the same case and not from other cases, where products, companies and circumstances are essentially different. For example, CEPROFI benefits for leather wearing apparel have ranged from 0.54 percent to 1.06 percent in the past, so it is not fair to use in this review a rate from another case of 4.25 percent for CEPROFI.

Department's Postition: Benefits vary over time within the same industry as well as between industries. Confining ourselves to previous rates established in the same case would encourage firms not to respond unless the response would lower the existing rate.

Comment 5: Aside from the Department's never having found FONEI benefits to have been given to leather wearing apparel firms in the past, the Mexican government argues that it is unfair to use a rate of 7.02 percent, since that rate comes from a preliminary determination (47 FR 56377, December 16, 1982) which the Department changed to 0.17 percent in its final determination (48 FR 8834, March 2, 1983).

Department's Position: The determinations cited by the Mexican government are from the Department's investigation of certain iron-metal construction castings from Mexico. However, the 7.02 percent rate that we used in the preliminary results of review in this case was from the final countervailing duty determination on portland hydraulic cement and cement clinker from Mexico (48 FR 43063, September 21, 1983).

The cement investigation covered calendar year 1982 rather than our current review period. Our objective was to use the best available information of a contemporaneous period, and consequently we now determine the FONEI rate should be 1.25 percent *ad valorem* based on the final determination on lime from Mexico (49 FR 35672, September 11, 1984), which covered calendar year 1983.

Comment 6: In the case of suspension agreements, if signatory companies account for "substantially all" imports of the merchandise under investigation, the Department can accept the agreement. In practice, small exporters not party to the agreement receive the same treatment and benefits from the suspension of investigation as do large exporters provided that the small exporters do not account for more than 15 percent of total imports. The Mexican government argues that, similarly, the small exporters of leather wearing apparel should receive the same treatment that the Department is giving to the large exporters in this review, i.e., zeor rates.

Department's Position: The procedures for suspension agreements do not apply to countervailing duty orders or section 751 reviews of orders. Furthermore, there is no basis whatsoever for giving zero rates to small exporters merely because the firms that qualify for zero rates are large exporters.

Comment 7: Under the terms of the "Understanding between the United States and Mexico" signed on April 23, 1985, preferences and benefits given by the Mexican government have been substantially reduced, decreasing the level of any potential benefit to the recipients. In this context, the Mexican government believes that the Department should establish a zero rate of cash deposit for all firms.

Department's Position: The Mexican government has not provided specific information on how its reductions have affected the benefits in this case. Furthermore, total benefits depend on the extent to which firms decide to take advantage of available benefits. A higher participation rate, even at lower benefit rates, could result in an increase in the weighted-average benefits received. We do not believe there is any reason to set a deposit rate at zero simply because of a reduction in the maximum benefit available.

Final Results of the Review

After considering all of the comments received, we determine the total bounty or grant during the period of review to be zero for the firms of Elegance de Baja California, S.A., Karen Internacional, S.A. de C.V., and Manufacturas Industriales de Nogales, S.A., and 11.75 percent *ad valorem* for all other firms.

The Department will instruct the Customs Service not to assess countervailing duties on shipment of this merchandise from the three zero-rate firms, and to assess countervailing duties of 11.75 percent of the f.o.b. invoice price on shipments from all other firms, exporter on or after July 1, 1983 and on or before June 30, 1984.

The Department will instruct the Customs Service not to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from the three zero-rate firms, and to collect a cash deposit of 11.75 percent of the f.o.b. invoice price

on shipments from all other firms, entered, or withdrawn from warehouse, for consumption or or after the date of publication of this notice. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Furthermore, the Department has determined not to revoke the countervailing duty order with respect to Elegance de Baja California, S.A. Karen Internacional, S.A. de C.V., and Manufacturas Industriales de Nogales. S.A. As we noted in the preliminary results of this review, our decision not to revoke in the previous review is now before the United States Court of International Trade.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (50 FR 32556, August 13, 1985).

Dated: August 4, 1985.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-17910 Filed 8-7-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-052]

Non-Rubber Footwear From Argentina; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on non-rubber footwear from Argentina. The review covers the period January 1, 1983 through December 31, 1983 and three programs.

As a result of the review, the Department has preliminarily determined the total bounty or grant for the period of review to be 0.02 percent *ad valorem*, a rate we consider *de minimis*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 8, 1986.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Sylvia Chadwick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 39889) the final results of its last administrative review of the countervailing duty order on non-rubber footwear from Argentina (44 FR 3474, January 17, 1979). We began this review of the order under our old regulations. On October 15, 1985, after the promulgation of our new regulations, the petitioner requested in accordance with § 355.10 of the Commerce Regulations that we complete the administrative review of the order. We published the new initiation on November 27, 1985 (50 FR 48825). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Argentine footwear described in Part 1A of Schedule 7 of the Tariff Schedules of the United States Annotated, excluding items 700.5100 through 700.5400, 700.5700 through 700.7100, and 700.9000.

The review covers the period January 1, 1983 through December 31, 1983 and three programs: (1) The reembolso, a cash rebate of taxes; (2) pre-export financing; and (3) post-export financing.

Analysis of Programs

(1) Reembolso

The reembolso is a cash rebate of taxes, paid upon exportation of merchandise as a percentage of the f.o.b. invoice price. Although the Government of Argentina rebates upon exportation ostensibly all indirect taxes borne by the exported product, the Tariff Act and the Commerce Regulations allow the rebate of only the following: (1) Indirect taxes borne by inputs that are physically incorporated in the exported product (*see* Annex 1.1 of Part 355 of the Commerce Regulations); and (2) indirect taxes levied at the final stage (*see* Annex 1.2 of Part 355 of the Commerce Regulations). If the tax rebate upon export exceeds the total amount of allowable indirect taxes described above, the Department considers the difference to be an overrebate of indirect taxes and, therefore, a bounty or grant.

To calculate the benefit on non-rubber footwear, we allowed the rebate of indirect taxes on raw materials, which constitute the bulk of the taxes. In addition, we allowed the rebate of final stage indirect taxes. We disallowed the rebates of taxes on labor, on "indirect expenditures" such as administrative expenses, and on other items not physically incorporated.

During the period of review, the reembolso rate for non-rubber footwear was 5 percent (Resolution 8, July 5, 1982). The Argentine government based its reembolso rate for 1983 on a 1981 government study of the tax incidence on non-rubber footwear. Based on our analysis of the total tax incidence, we have found that indirect taxes on physically incorporated inputs and final stage indirect taxes on non-rubber footwear amount to 14.91 percent *ad valorem*. Therefore, we preliminarily find no overrebate of indirect taxes for the period of review.

(2) Pre-export Financing

The preferential financing program makes pre-export loans, in pesos indexed to U.S. dollars, available to exporters at an interest rate of one percent. Such funds are available for a period of up to 180 days, and are to be repaid no later than 60 days after the export date. The funds are provided by the Central Bank of Argentina and disbursed by private commercial banks to individual borrowers.

In 1983, the Central Bank limited potential loan amounts for exporters on non-rubber footwear to 60 percent of the contracted f.o.b. price. However, because exporters of non-rubber footwear from Argentina did not use this program during 1983, we preliminarily determine that the preferential pre-export program did not confer a benefit during the review period.

(3) Post-export Financing

The Central Bank makes post-export financing available to exporters through Circular OPRAC 1-9. The Central Bank limits loans under OPRAC 1-9 to 30 percent of the peso equivalent of the foreign currency used in the export transaction. The length of the loan is limited to 180 days, and interest must be paid quarterly. The interest rate charged is the *tasa regulada* (see below). Exporters of non-rubber footwear received four OPRAC 1-9 loans in 1983.

To determine if loans under OPRAC 1-9 to non-rubber footwear exporters constitute a bounty or grant, we compared the rate of interest charged on those loans with a national average commercial rate. We used as our benchmark the weighted average of various forms of comparable short-term borrowings available from Argentine banks during the period of review.

During 1983, the Central Bank required commercial banks to make ordinary short-term loans at an interest rate which is set monthly, the *tasa*

regulada. In addition, from January through July, commercial banks were allowed to lend a portion of their deposits at an unregulated rate, the *tasa libre.* During the months of August and September 1983, at the direction of the Central Bank, all short-term bank lending was at the *tasa regulada.* In October 1983, acceptance lending at an unregulated rate became available. Banks brought cash-rich and cash-poor companies together and, acting as an intermediary, endorsed loan agreements between the firms.

While lending at the *tasa regulada* rate made up about 80 percent of bank lending during 1983, the rate alone does not adequately represent the national average commercial rate for comparable alternative short-term borrowing. Because the amount of lending which could occur at the *tasa regulada* was restricted by the Central Bank, it is likely that a firm could not fulfill all of its short-term export financing requirements at the *tasa regulada.* We consider the most likely secondary sources of borrowing to be the *tasa libre* and acceptance rate lending. (*See* the final affirmative countervailing duty determination and countervailing duty order on oil country tubular goods from Argentina (49 FR 46564, November 27, 1984).)

We have therefore calculated a weighted-average effective benchmark rate for 180-day loans which includes the *tasa regulada* during all of 1983, the *tasa libre* during January through July 1983, and the acceptance rate from October through December 1983. This rate best represents the national average rate for comparable alternative short-term borrowing. Comparing the benchmark rate with the effective rate for the four OPRAC 1–9 loans with interest payments during the review period (there were no 1982 OPRAC 1–9 loans with interest payments in 1983), we preliminarily determine the bounty or grant from this program to be 0.02 percent *ad valorem.*

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 0.02 percent *ad valorem* for the period of review. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis.*

The Department therefore intends to instruct the Customs Service not to assess countervailing duties on shipments of this merchandise exported on or after January 1, 1983 and on or before December 31, 1983.

Further, the Department intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of non-rubber footwear from Argentina entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 55 days after the date of publication or the last workday preceding. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (50 FR 32556, August 13, 1985).

Dated: July 26, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary Import Administration.

[FR Doc. 86–17911 Filed 8–7–86; 8:45 am]

BILLING CODE 3510–DS–M

[C–479–503]

Certain Welded Carbon Steel Pipe and Tube Products From Yugoslavia; Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Orders

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of changed circumstances administrative review and revocation of countervailing duty orders.

SUMMARY: On May 29, 1986, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty orders on certain welded carbon steel pipe and tube products from Yugoslavia and announced its tentative determination to revoke the orders. The review covers the period from October 16, 1985.

We gave interested parties an opportunity to comment. We received no comments. We determine that domestic interested parties are no longer interested in continuation of the orders, and we are revoking the orders. In accordance with the petitioners' notification, the revocation will apply to welded carbon steel pipe and tube products entered, or withdrawn from warehouse, for consumption on or after October 16, 1985.

EFFECTIVE DATE: October 16, 1985.

FOR FURTHER INFORMATION CONTACT: John Miller of Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 29, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 19376) the preliminary results of its changed circumstances administrative review of the countervailing duty orders on certain welded carbon steel pipe and tube products from Yugoslavia (50 FR 41546, December 31, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Yugoslavian welded carbon steel pipe and tube products of the following description: (1) Welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness, currently classifiable under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the Tariff Schedules of the United States Annotated (TSUSA), commonly referred to in the industry as standard pipe or structural tubing, produced to various ASTM specifications, most notably A–120, A–53 or A–153; and (2) welded carbon steel line pipe with an outside diameter of 0.375 inch or more but not over 16 inches, and with a wall thickness of not less than 0.65 inch, currently classifiable under items 610.3208 and 610.3209 of the TSUSA, produced to various API specifications for line pipe, most notably API–5L or API–5LX. The review covers the period from October 16, 1985.

Final Results of Review and Revocation

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received no comments. As a result of our review, we determine that domestic interested parties are no longer interested in continuation of the countervailing duty orders on certain welded carbon steel pipe and tube products from Yugoslavia and that the orders should be revoked on this basis.

Therefore, we are revoking the orders on certain welded carbon steel pipe and tube products from Yugoslavia effective October 16, 1985. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 16, 1985 without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries.

This administrative review, revocation, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: August 4, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-17912 Filed 8-7-86; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Review of High-Grade, Cold-Rolled, Grain-Oriented Silicon Steel ("High-Tech" Silicon Steel) Used in the Manufacture of Power Transformers and Distribution Transformers; Request for Comments

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products with respect to "high-tech" silicon steel.

EFFECTIVE DATE: Comments must be submitted no later than ten days after publication of this notice.

ADDRESS: Please send all comments to: Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, 14th and Constitution Ave., NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Room 3099, 202/377-3833, Office of Agreements Compliance, Import Administration, 14th and Constitution Ave., NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the United States of America for a particular category or sub-category (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such category or sub-category. . ."

We have received a short supply request for "high-tech" silicon steel meeting the following specifications:

Distribution Transformers

High permeability, grain-oriented, silicon steel, with a thickness of .009" Core loss (energy consumed): One hundred percent of materials to be .40 watts loss per pound maximum, at 15 kilogauss induction and 60 cycles per second, concurrently measuring .56 watts loss per pound maximum, at 17 kilogauss induction, 60 cycles per second. Fifty percent of the material to be .38 watts loss per pound maximum at 15 kilogauss induction and 60 cycles per second, concurrently measuring .53 watts loss per pound maximum, at 17 kilogauss induction, 60 cycles per second. All core loss is measured by using standard Epstein testing procedures.

Power Transformers

High permeability, grain-oriented, silicon steel, with a thickness of .009" or less. Core loss (energy consumed): One hundred percent of this material to be .53 watts loss per pound maximum, at 17 kilogauss induction at 60 cycles per second. Fifty percent of the material to be .49 watts loss per pound maximum, at 17 kilogauss induction and 60 cycles per second. All core loss is measured using standard full-sheet testing procedures.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days after publication of this notice. Comments should focus on the economic factors involved in granting or denying this request. Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly label the business proprietary portion of the submission and also include a submission without business proprietary information which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-3099 at the above address.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

August 4, 1986.

[FR Doc. 86-17913 Filed 8-7-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Pennsylvania; Consolidated Decision of Applications for Duty-Free Entry of Electron Microscopes

Correction

In FR Doc. 86-16404, beginning on page 26286, in the issue of Tuesday, July 22, 1986, make the following correction:

On page 26286, third column, second paragraph, fourth line, "Model JEM-400EX" should read "Model JEM-4000EX".

Billing Code 1505-01-M

Notice of Applications for Duty-Free Entry of Scientific Instruments; Albany Medical School

Correction

In FR Doc. 86-16400, beginning on page 26287, in the issue of Tuesday, July 22, 1986, make the following correction:

On page 26288, second column, first paragraph, fourth line, before "NY" insert "Albany".

BILLING CODE 1505-01-M

Patent and Trademark Office

Public Advisory Committee for Trademark Affairs; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee meeting:

The Public Advisory Committee for Trademark Affairs will meet from 9:30 a.m. until 5:00 p.m. on September 4, 1986, at the U.S. Patent and Trademark Office in Room 11C24 of Building 3, Crystal Plaza, located at 2021 Jefferson Davis Highway, Arlington, Virginia.

The agenda for the meeting is as follows:

(1) Status of Trademark Examining Operation Activities

(2) Operations of the Trademark Trial and Appeal Board

(3) Post-Registration Activities

(4) Quality of the Registration Process

(5) Financial Reports

(6) Automation Activities

The meeting will be open to public observation; approximately twelve (12) seats will be available for the public on a first-come first-served basis.

If time permits, oral comments by the public of three (3) minutes on each topic within the above agenda will be allowed. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed.

Copies of the minutes will be available upon request.

For further information, contact Ellen J. Seeherman, Office of the Assistant Commissioner for Trademarks, Room CP3–11C17, Patent and Trademark Office, Washington, DC 20231. Telephone: 703–557–7464.

Dated: August 4, 1986.

Approved:

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 86–17876 Filed 8–7–86; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Withdrawal of Calls on Categories 349 (Cotton Brassieres) and 670 pt. (Man-Made Fiber Luggage) From Hong Kong

August 1, 1986.

On October 24, 1985 and July 3, 1986 notices were published in the **Federal Register** (50 FR 43265 and 51 FR 24428), annnouncing that on September 27, 1985 and May 30, 1986 the Government of the United States had requested the Government of Hong Kong to enter into consultations concerning exports to the United States of textile products in Categories 670 pt. and 349, respectively, produced or manufactured in Hong Kong. The purpose of this notice is to announce that the United States Government has concluded that there is no need to establish limits for cotton and man-made fiber textile products in these categories at this time.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–17904 Filed 8–7–86; 8:45 am]

BILLING CODE 3510–DR–M

Amending the Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in the Philippines

August 3, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 11, 1986. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

A CITA directive dated December 20, 1985 (50 FR 52830) established limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. In consultations held in June 1986, the Governments of the United States and the Republic of the Philippines agreed to amend their Bilateral Cotton, Wool and Man-Made Fiber Texile Agreement of November 24, 1982, as amended, to increase the designated consultation level for Category 363 from 2,763,348 numbers to 3,763,348 numbers for the period which began on January 1, 1986 and extends through December 31, 1986. In the letter which follows this notice, the Chairman of CITA directs the Commissioner of Customs to increase the designated consultation level for Category 363 to the agreed level.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 5, 1986.

August 3, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 20, 1985, which directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Effective on August 11, 1986, the directive of December 20, 1985 is hereby further amended to increase the level for Category 363 to 3,763,348 numbers.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–17905 Filed 8–7–86; 8:45 am]

BILLING CODE 3510–DR–M

Requesting Public Comment on Bilateral Textile Consultations With the Government of Hong Kong to Review Trade in Category 611

August 3, 1986.

On July 17, 1986, the Government of the United States requested consultations with the Government of Hong Kong with respect to man-made fiber fabric, wholly of spun yarns of non-cellulosic fibers in Category 611. This request was made on the basis of the agreement, effected by exchange of notes dated June 23, 1982, as amended, between the Governments of the United States and Hong Kong relating to trade in cotton, wool and man-made fiber textiles and textile products.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations between the two governments, the United States may request the Government of Hong Kong to limit exports in Category 611, produced or manufactured in Hong Kong and exported to the United States during 1986. The United States reserves the right to control imports at the established limit.

Anyone wishing to comment or provide data or information regarding the treatment of Category 611 under the agreement with Hong Kong, or on any other aspect thereof, or to comment on

domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreement considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 5, 1986.

FR Doc. 86-17906 Filed 8-7-86; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations With the Government of India on Category 369pt. (Shop Towels)

August 5, 1986.

On June 30, 1986, the Government of the United States requested consultations with the Government of India with respect to Category 369pt. (shop towels in TSUSA number 366.2840). This request was made on the basis of the bilateral agreement of December 21, 1982, as amended, between the Governments of the United States and India relating to trade in cotton, wool and man-made fiber textiles and textile products. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

The purpose of this notice is to advise that, pending agreement on a mutually satisfactory solution concerning this category, the Government of the United States has decided to control imports during the ninety-day consultation period which began on June 30, 1986 and extends through September 27, 1986 at a level of 128,610 pounds. If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may establish a prorated specific limit of 223,494 pounds for Category 369pt. for the entry and withdrawal from warehouse for consumption of textile products, produced or manufactured in India and exported during the period beginning on June 30, 1986 and extending through December 31, 1986.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry of imports of cotton textile products in Category 369pt., produced or manufactured in India and exported during the ninety-day period which began on June 30, 1986 and extends through September 27, 1986 in excess of the established limit. In the event the limit established for the ninety-day period is exceeded, such excess amounts, if allowed to enter, may be charged to the level established during the subsequent restraint period.

A summary market statement for this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 369pt. under the agreement with India, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

August 5, 1986.

India—Market Statement

Category 369 Part—Cotton Shop Towels

June 1986.

Summary and Conclusions

U.S. imports of Category 369 PT—cotton shop towels—from India were 464,423 pounds (509,760 dozen) during the year ending Apil 1986. In the first four months of 1986 alone, India exported 321,686 pounds (360,416 dozen) cotton shop towels. This is 38 times the amount imported a year ago and 119 percent above the calendar year 1985 level. India is the third largest major supplier of cotton shop towels during the first four months of 1986. The sharp and substantial increase of low-valued imports of cotton shop towels from India is disrupting in U.S. market.

U.S. Market

The U.S. cotton shop towel market is adversely affected by imports. The U.S. producer's share of the market for domestically produced and imported cotton shop towels in 1985 was 49 percent compared with 59 percent in 1981. The U.S. market for shop towels was disrupted by imports in 1985. The market continues to be disrupted by imports in 1986 and India's position as a major supplier of these towels makes it a major contributor to the market disruption.

U.S. Production

U.S. production of cotton shop towels declined 22 percent from 162 million units in 1981 to 126 million units in the 1982 recession year. Production regained some of the loss in 1983 and 1984, reaching a level of 138 million units in 1984, up 10 percent over the 1982 recession level, but 15 percent below the 1981 level and lower than any level on record prior to 1982. Production in 1985 was 131 million units, down 5 percent from 1984.

U.S. Imports

U.S. imports of Category 369 Pt., after remaining relatively flat at 94 million units during 1982 and 1983 due in part to the soft domestic market and the antidumping and countervailing duty actions initiated by the United States with specific major suppliers, increased substantially in 1984. Imports in 1984 soared to a record high of 158 million units. Although imports in 1985 were down, due to the imposition of limits on two major suppliers, import penetration continues at the same high rate as in 1984.

Import Penetration

The ratio of imports to domestic production increased from 69 percent in 1982 to 106 percent in 1985.

Import Value

Imports from India are entered under TSUSA No. 366.2840—cotton shop towels, not ornamented not jacguard-figured. The duty-

paid landed value of these imports from India are below the U.S. producer price for comparable towels.

August 5, 1986

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 11, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 369pt. (only TSUSA number 366.2840), produced or manufactured in India and exported during the ninety-day period which began on June 30, 1986 and extends through September 27, 1986, in excess of 128,610 pounds.[1]

Textile products in Category 369pt. which have been exported to the United States prior to June 30, 1986 shall not be subject to this directive.

Textile products in Category 369pt., which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-17907 Filed 8-7-86; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after June 29, 1986.

DEPARTMENT OF DEFENSE

Department of the Army

Department of the Army Performance Review Boards

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of additional members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: August 1, 1986.

FOR FURTHER INFORMATION CONTACT: Carol D. Smith, Chief, Senior Executive Service Office, Directorate of Civilian Personnel, Headquarters, Department of the Army, the Pentagon, Washington, DC 20310-0300, (202) 697-2204.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5 U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by the supervisor and make recommendations to the appointing authority or rating official relative to the performance of the senior executives. Publication of this notice amends previous notice to account for additions to the membership of those boards previously published.

The additional members of the Performance Review Board for the U.S. Army Materiel Command are:

1. Brigadier General Edward R. Baldwin, Jr., Deputy Commanding General for Research and Development, U.S. Army Communications Electronics Command.

2. Brigadier General Richard D. Beltson, Deputy Command General, Armament and Munitions, U.S. Army Armament, Munitions and Chemical Command.

3. Brigadier General Harry D. Walker, Commander, U.S. Army Security Affairs Command.

4. Brigadier General Michael J. Pepe, Deputy Chief of Staff for Procurement, Headquarters, U.S. Army Materiel Command.

5. Brigadier General Billy J. Stalcup, Deputy Chief of Staff for Supply, Maintenance and Transportation, Headquarters, U.S. Army Materiel Command.

6. Brigadier General Donald R. Williamson, Deputy Chief of Staff for Readiness, Headquarters, U.S. Army Materiel Command.

Karen K. Robinson,

Personnel Staffing and Employee Relations Specialist, Senior Executive Service Office.

[FR Doc. 86-17863 Filed 8-7-86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Energy Information Administration

Changes to DOE Energy Information Reporting and Record-keeping Requirements

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of changes to the inventory of energy information reporting and record-keeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notice to respondents and other interested parties of changes to the inventory of current information collections as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96-511), for which EIA is responsible. DOE management and procurement assistance collections, which are the responsibility of the Office of Management and Administration, are no longer included in these notices.

During the third quarter of fiscal year 1986 (April 1, 1986 through June 30, 1986), changes were made to the October 1, 1985, inventory of DOE information collections, which was published in the **Federal Register**, 50 FR 50938 (December 13, 1985). Changes made during the first two quarters were published in the **Federal Register**, 51 FR 5756 (February 18, 1986), and 51 FR 17514 (May 13, 1986), respectively. The third quarter changes are listed below, and include new information collections approved by the Office of Management and Budget (OMB), collections extended, reinstated, discontinued or allowed to expire, and changes to continuing information collections. For each new requirement, requirement extension, or requirement reinstatement, the current DOE control or form number, the title, the OMB control number, and the OMB approval expiration date are listed by the DOE sponsoring office. For the list of discontinued requirements, the discontinued date is shown instead of the expiration date. If applicable, the appropriate Code of Federal Regulations citation is also listed. For revised information collections, a brief summary of the type of revision is noted.

Information collections not utilizing structured forms are designated by an asterisk (*) placed to the right of the control or form number.

FOR FURTHER INFORMATION CONTACT: Jay Casselberry, EI–73, Energy Information Administration, Mail Stop 1H–023, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 252–2171.

Information on the availability of single, blank information copies of those collections utilizing structured forms may be obtained by contacting the National Energy Information Center, EI–22, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (202) 252–8800.

Issued in Washington, DC, August 5, 1986.

Dr. H. A. Merklein,

Administrator, Energy Information Administration.

NEW DOE ENERGY INFORMATION COLLECTIONS APPROVED BY OMB

DOE No.	Title	OMB control No.	Expiration date	CFR citation
	Energy Information Administration			
EIA-846(F)	Manufacturing Energy Consumption Survey	19050169	3/31/89	
	Federal Energy Regulatory Commission			
FERC-589	Hydropower Relicensing Study Questionnaire	190201145	9/30/86	

DOE ENERGY INFORMATION COLLECTIONS EXTENDED

DOE No.	Title	OMB control No.	Expiration date	CFR citation
	Civilian Radioactive Waste Management			
NWPA-830R [1]	Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste—	19010260	03/31/89	10 CFR 961
NWPA-830R-A-F [1]	Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste—Annual Report.	19010260	03/31/89	10 CFR 961
NWPA-830R-G	Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste—Quarterly Report—Standard Remittance Advice—Annex A.	19010260	03/31/89	10 CFR 961
	Conservation and Renewable Energy			
CE-189C	Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials Utilization—Corporate Reporting Form.	19040044	09/30/86	10 CFR 445.21,.22,.26
CE-189P	Industrial Energy Conservation Program for Energy Efficiency Imporovement and Recovered Materials Utilization—Plant Reporting Form.	19040044	09/30/86	10 CFR 445.21,.22,.26
CE-189S	Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials utilization—Sponsor Reporting Form.	19040044	09/30/86	10 CFR 445.21,.22,.22,.26
	Federal Energy Regulatory Commission			
FERC-521 [1]	Payments for Benefits from Headwater Improvements	19020087	06/30/89	18 CFR 11.26–11.31, 13.1
FERC-525 [1]	Financial Audit	19020092	03/31/89	18 CFR 101, 201
FERC-561 [1]	Report of Interlocking Directorates	19020099	04/30/89	18 CFR 46.6
FERC-576 [1]	Report On Service Interruptions on Pipeline Systems	19020004	03/31/89	10 CFR 260.9
FERC-577 [1]	Environmental Impact Statement (Pipeline Certificates)	19020128	09/30/86	18 CFR 157.14, 2.80, 2.82
	International Affairs and Energy Emergencies			
IE-417R [1]	Power System Emergency Report	19010288	08/31/86	10 CFR 205.350–.355

[1] Does not utilize a structured form.

REINSTATED DOE ENERGY INFORMATION COLLECTIONS

DOE No.	Title	OMB control No.	Expiration date	CFR citation
	Energy Information Administration			
EIA-97	Boiler Order Report	19050167	03/31/87	
	Fossil Energy			
FE-748	Enhanced Oil Recovery Annual Report	19050135	03/31/89	

DOE ENERGY INFORMATION COLLECTIONS DISCONTINUED OR ALLOWED TO EXPIRE

DOE No.	Title	OMB control No.	Discontinued date	CFR citation
	Energy Information Administration			
EIA-846	Manufacturing Energy Consumption Survey (Pilot Test)	19050166	04/30/86	
EIA-870	Natural Gas Compression Costs Survey	19050170	05/31/86	

CHANGES IN CONTINUING DOE ENERGY INFORMATION COLLECTIONS

DOE numbers as previously listed	Changes
Energy Information Administration	
EIA-1, 3, 4, 5, 6, 7A, and 20	Expiration date for OMB approval has been revised to 3/31/87 for all six forms.
Federal Energy Regulatory Commission	
FERC-520 [1]	Revisions to the reporting requirements.
FERC-555 [1]	Revisions to the reporting requirements.

[1] Does not utilize a structured form.

[FR Doc. 86-17940 Filed 8-7-86; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF85-334-001, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Babcock-Ultra Power West Enfield, et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Babcock-Ultra Power West Enfield

[Docket No. QF85-334-001]

August 1, 1986.

On July 15, 1986, Babcock-Ultra Power West Enfield (Applicant), of 16485 Von Karman Avenue, Irvine, California, 92714, submitted for filing an application for recertification of a facility as a qualifying small power facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The purpose of this application is to inform the Commission of a change in ownership and financing for the above facility, located near West Enfield, in Penobscot County, Maine. In the newly reorganized joint venture, Ultra Power 4 incorporated (renamed Santa Rita West Enfield, Inc.) (SRWE) which owned a thirty-three percent (33%) interest in Babcock-Ultra Power West Enfield, was sold to Santa Rita Energy, Inc., a Delaware corporation, which is a wholly-owned subsidiary of Rincon Investing Company, an Arizona corporation, which is a wholly-owned subsidiary of Tucson Resources, Inc., a Delaware corporation, which is a wholly-owned subsidiary of the Tucson Electric Power Company, a publicly-held Arizona corporation.

2. Babcock-Ultra Power West Enfield

[Docket No. QF85-335-001]

On July 15, 1986, Babcock-Ultra Power Jonesboro (Applicant), of 16485 Von Karman Avenue, Irvine, California, 92714, submitted for filing an application for recertification of a facility as a qualifying small power facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The purpose of this application is to inform the Commission of a change in ownership and financing for the above facility, located near Jonesboro in Washington County, Maine. In the newly reorganized joint venture, Ultra Power 4 incorporated (renamed Santa Rita Jonesboro, Inc.) (SRJ) which owned a thirty-three percent (33%) interest in Babcock-Ultra Power Jonesboro, was sold to Santa Rita Energy, Inc., a Delaware corporation, which is a wholly-owned subsidiary of Rincon Investing Company, an Arizona corporation, which is a wholly-owned subsidiary of Tucson Resources, Inc., a Delaware corporation, which is a wholly-owned subsidiary of the Tucson Electric Power Company, a publicly-held Arizona corporation.

3. Colmac Energy, Inc.

[Docket No. QF86-856-000]

August 4, 1986.

On July 23, 1986, Colmac Energy, Inc. (Applicant), of 640 State Street, P.O. Box 250, El Centro, California 92244, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Riverside County, California. The facility will consist of a fluidized bed combustion steam generator and a steam turbine generator. The electric power production capacity will be 49.9 megawatts. The primary energy source will be biomass in the form of waste wood. Natural gas will be used for start-up and such use will not exceed two percent of the total energy input to the facility in any calender year.

4. Connecticut Resources Recovery Authority

[Docket No. QF86-933-000]

August 4, 1986.

On July 22, 1986, Connecticut Resources Recovery Authority (Applicant), of 179 Allyn Street, Hartford, Connecticut 06103, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Wallingford, Connecticut. The facility will consist of controlled excess air, multi-chambered, mass-burning furnaces, waste heat steam generators and a steam turbine generator. The net electric power production capacity will be 9.8 megawatts. The primary energy source will be biomass in the form of municipal solid waste. No. 2 fuel oil, will be used for start-ups, emergencies and flame stabilization.

5. E.I. du Pont de Nemours & Company

[Docket No. QF86-912-000]

August 4, 1986.

On July 22, 1986, E.I. du Pont de Nemours & Company (Applicant), of 1007 Market Street, Wilmington, Delaware 19898, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Beaumont Works in Nederland, Texas. The facility will consist of a combustion turbine-generator, and a heat recovery steam generator (HRSG). The steam from the HRSG will be used for process application at the du Pont facility. The electric power production capacity of the facility will be 12.0 MW. The primary energy source will be natual gas. The installation of the facility is anticipated to commence in the first quarter of 1988.

6. E.I. du Pont de Nemours & Company

[Docket No. QF86-923-000]

August 4, 1986.

On July 22, 1986, E.I. du Pont de Nemours & Company (Applicant), of 1007 Market Street, Wilmington, Delaware 19898, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Beaumont Works in Nederland, Texas. The facility will consist of a combustion turbine-

generator. Thermal energy recovered from the turbine will be used as preheated combustion air for a natural gas-fired process furnace. The electric power production capacity of the facility will be 21.8 MW. The primary energy source will be natual gas. The installation of the facility is expected to commence in the first quarter of 1987.

7. First Energy Associates

[Docket No. QF86-926-001]

August 4, 1986.

On July 17, 1986, First Energy Associates (Applicant), of 71 Spit Brook Road, Nashua, New Hampshire 03060, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of th Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The combined-cycle cogeneration facility will be located in St. Albans, Vermont. The facility will consist of a combustion turbine generating unit, a waste heat recovery steam generator, and an extraction steam turbine generating unit. Extraction steam and chilled water produced by the facility will be sold to the St. Albans Creamery for process heating and post-pasteurization product cooling and refrigeration. The net electric power production capacity of the facility will be 39.81 MW. The primary energy source will be natural gas. The installation of the facility will begin in April, 1987.

8. IPT Patterson Cogeneration, Inc.

[Docket No. QF86-401-001]

August 4, 1986.

On July 18, 1986, IPT Patterson Cogeneration, Inc. (Applicant), of 2800 West Bayshore Road, Palo Alto, California 94303, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Patterson, California and will consist of a combustion turbine generator and a heat recovery steam generator (HRSG). Steam recovered from HRSG will be used to blanch vegetables prior to freezing. The maximum net electric power production capacity of the facility will be 5900 kW. The primary energy source will be natural gas.

9. Pittsburgh Alternative Power Corporation

[Docket No. QF86-934-000]

August 4, 1986.

On July 24, 1986, Pittsburgh Alternative Power Corporation (Applicant), of 11 Broadway, Suite 1701, New York, New York 10004, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The toppingcycle cogeneration facility will be located on Grand Avenue on Neville Island, Allegheny County, Pennsylvania. The facility will consist of two fluidized bed combustion boilers, one extraction/condensing steam turbine generator, and related auxiliary equipment. Applicant states that the primary energy source of the facility will be waste in the form of bituminous coal refuse. The useful thermal output of the facility will be used by several industrial plants for chemical processing. The net electric power production capacity of the facility will be 100 megawatts.

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. 86-17864 Filed 8-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-1-21-024]

Columbia Gas Transmission Corp.; Compliance Filing

August 4, 1986.

Take notice that on June 27, 1986, Columbia Gas Transmission Corporation (Columbia) tendered for filing a report setting forth it sactual commodity gas costs on a unit of sales basis for twelve months, ended March 31, 1986, in accordance with Article II and the procedures set forth in Appendix B of the April 4, 1985, Stipulation and Agreement (Stipulation) in Docket Nos. TA82-1-21-001, *et al.*, which was approved by the Commission's Order dated June 14, 1985, as modified by Order dated June 25, 1985.

Columbia states that because its commodity gas costs are higher than "the benchmark" rate for the subject period, no adjustment to Columbia's commodity rate effective September 1, 1986 will be made.

Columbia has sent copies of this filing to all parties to this proceeding.

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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1985)). All such motions or protests should be filed on or before August 11, 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. 86-17932 Filed 8-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-80-001]

Jupiter Energy Corp.; Compliance Filing

August 4, 1986.

Take notice that on July 29, 1986, Jupiter Energy Corporation (Jupiter) tendered for filing First Revised Sheet Nos. 4, 5, and 6 to its FERC Gas Tariff, Original Volume No. 1. Jupiter states these sheets are in compliance with Ordering Paragraph (C) of the Commission's order issued in Docket No. RP86-80-000 on June 20, 1986.

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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214,

385.211 (1985)). All such motions or protests should be filed on or before August 11, 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. 86-17933 Filed 8-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-58-000, 001, 002, 003]

Texas Gas Pipe Line Corp.; Amended Tariff Filing

August 4, 1986.

Take notice that on June 25, 1986, Texas Gas Pipe Line Corporation (Texas Gas) tendered for filing Sixteenth Revised Sheet No. 4a to its FERC Gas Tariff, Second Revised Volume No. 1. Texas Gas states that Sixteenth Revised Sheet No. 4a reflects a net decrease of 143.22 cents per Mcf at 14.65 psia in the commodity charge of its Rate Schedules G-1 and G-2. The proposed effective date of the sheet is June 1, 1986. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until July 18, 1986. On June 26, 1986 and July 16, 1986, Texas Gas filed amendments to its original filing to make minor corrections.

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 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 August 11, 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. 86-17934 Filed 8-7-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3058-5]

Availability of Environmental Impact Statements

Correction

In FR Doc. 86-17403 appearing on page 27597 in the issue of Friday, August 1, 1986, make the following correction in the second column under **Amended Notices** in the first line:

The EIS No. should read "750360".

BILLING CODE 1505-01-M

[ER-FRL-3061-3]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed July 28, 1986 through August 1, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860303, Final, NOA, VA, Commonwealth of Virginia Coastal Resources Management Program, Due: September 8, 1986, Contact: Joseph Uravitch, (202) 673-5138.

EIS No. 860304, Final, AFS, AR, Ozark-St. Francis National Forests, Land and Resource Management Plan, Due: September 8, 1986, Contact: James Crouch, (501) 968-2354.

EIS No. 860305, Draft, COE, VT, Missisquoi River Flood Control Plan, Richmond Village, Franklin County, Due: September 22, 1986, Contact: Karen Gustina, (212) 264-4662.

EIS No. 860306, Draft, AFS, AZ, Kaibab National Forest, Land and Resource Management Plan, Coconino, Yavapai, and Mohave Counties, Due: November 7, 1986, Contact: L.A. Lindquist, (602) 635-2681.

EIS No. 860307, Final, AFS, NM, AZ, Coronado National Forest, Land and Resource Management Plan, Wilderness Suitability, Due: September 8, 1986, Contact: R.B. Tippeconnic, (602) 629-6805.

Amended Notices

EIS No. 750360, Draft, FHW, LA, Eden Isles Interchange Construction, I-10 Access Point, St. Tammany Parish, Published FR 8-1-86 — Incorrect status.

EIS No. 860220, DRevised, UAF, AZ, Sells Military Operations Area/Air Traffic Control Assigned Airspace Supersonic Flight Operations Overlying Tohono O'odham Indian Reservation and Organ Pipe Cactus National Monument, Continuation, Pima County, Due: October 10, 1986, Published FR 6-13-86—Review period extended.

EIS No. 860258, Draft, BIA, AZ, San Xavier/Tucson Planned Community Development, Lease Approval, Due: September 7, 1986, Published FR 7-11-86—Review period extended.

Dated: August 5, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86-17921 Filed 8-7-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3061-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 21, 1986 through July 25, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D1-AFS-L61148-WA, Rating EC2, Okanogan Nat'l Forest, Land and Resource Mgmt. Plan, WA. SUMMARY: EPA has environmental concerns because the process for managing forest activities is not clear enough to assure us that adverse environmental effects, particularly to water quality and fisheries, will be prevented. The draft EIS maintains that there are no substantial differences among the alternatives in terms of water quality and fishery impacts. However, there are insufficient data in the draft EIS to document this.

ERP No. D-ASC-D99169-00, Rating EC2, United States Acreage Adjustment Programs for Agricultural Commodities, Reducing Production Surplus Corps, U.S. SUMMARY: EPA feels that the acreage adjustment programs have the potential to contribute significantly to the reduction of nonpoint source pollution impacts on the waters of the U.S. However, EPA is concerned that the draft EIS is unclear as to how the programs are to be implemented. The connection between the programs as described in the draft EIS and the rules that carry them out must be more clearly described.

ERP No. D–COE–F36100–MI, Rating EC2, Ecorse Creek Drainage Basin Flood Protection Plan, Construction, Operation and Maintenance, MI. SUMMARY: EPA's review resulted in concerns regarding ground and surface water impacts. More information was requested regarding geology, hydrology, and sediment contamination. EPA recommended implementation of oil skimmers and aeration devices.

ERP No. D–FHW–K40155–CA, Rating EO2, CA–71 Improvements, Holt Ave. Interchange Near CA–10 to CA–91, Right-of-Way Acquisition, CA SUMMARY: EPA expressed objections to the project because of: (1) Potentially adverse impacts to air quality in an area with serious existing air pollution problems, (2) lack of adequate information to evaluate noise impacts, and (3) inadequate information on air and noise mitigation measures. EPA requested that FHWA prepare a revised draft EIS to address these issues or, alternatively, the opportunity to comment on these chapters of the final EIS before it is filed.

ERP No. D–IBR–J31018–UT, Rating EC2, Uinta Basin Unit, Construction and Operation, Colorado River Water Quality Improvement Program, UT. SUMMARY: EPA identified concerns with the proposed alternatives and suggested an additional alternative, selective land retirement, be considered in detail. EPA indicated the wetland analysis, "saved" water analysis, salinity source analysis, and cumulative impact assessment be expanded to adequately document project related effects.

Final EISs

ERP No. F–AFS–J65142–UT, Fishlake Nat'l Forest, Land and Resource Mgmt. Plan, UT. SUMMARY: Though noting positive revisions over the draft EIS, EPA's review still had concerns regarding methods and requirements for protection of water quality standards, including antidegradation requirements. Other concerns relating to cumulative impact assessment processes and methodologies, aquatic life/habitat protection goals and monitoring, lack of rangeland condition information and improvement goals, lack of additional disclosure of impacts by alternative, water quality monitoring, goals for only slight improvement in riparian habitat, and inter-agency coordination also need to be further addressed. EPA requested a written response to help resolve the concerns.

ERP No. F–AFS–J82005–MT, Lewis and Clark Nat'l Forest, 1986–1990 Noxious Weed Control Programs, MT. SUMMARY: EPA reviewed the final EIS and our previous concerns were addressed in a satisfactory fashion.

ERP No. F–BLM–K65102–NV, Elko Resource Area, Resource Mgmt. Plan and Wilderness Designation Study, N. Fork, Buckhorn and Tuscarora Planning Units, NV. SUMMARY: EPA expressed an ongoing concern about the lack of information on herbicides uses and impacts, and requested that the Record of Decision indicate that the method of vegetation manipulation (herbicide use and/or controlled burning) be deferred until herbicides analyses are reviewed by EPA and other interested parties.

ERP No. F–COE–K36034–TT, Susupe-Chalan Kanoa Area Flood Control Study, Saipan, TT. SUMMARY: EPA expressed environmental concerns with respect to potential adverse impacts to water quality and recommended coordination with the Commonwealth of the Northern Mariana Islands Division of Environmental Quality to assure compliance with water quality standards.

ERP No. F–UMT–K54015–CA, San Diego East Urban Corridor Transportation Improvement, CA. SUMMARY: The final EIS addressed EPA's prior concerns.

Regulations

ERP No. R–GSA–A99171–00, 41 CFR Part 101–20, Smoking Regulations (51 FR 18805). SUMMARY: EPA supports the Regulation, which is similar to the EPA's proposed regulations; both require the designation of smoking areas and recognize that passive smoking is also a health hazard. Clarification was request on a number of terms and it was recommended that formal procedures be established for the implementation and enforcement of the policy.

Dated: August 5, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86–17922 Filed 8–7–86; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3061–5 Docket No. 560]

Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); Strychnine: Notice of Hearing to Reconsider Registration Cancellation

AGENCY: Environmental Protection Agency.

ACTION: Scheduling public hearing in this proceeding to reconsider the March, 1972, cancellation of registration of strychnine for controlling skunks to suppress rabies.

SUMMARY: Notice is hereby given, pursuant to 40 CFR 164.8, that a public hearing is hereby scheduled to convene in EPA Headquarters, Room 2409, 401 "M" Street, SW., Washington, DC 20460, on Tuesday, October 7, 1986, beginning at 10 a.m., in a proceeding commenced by Notice of Hearing of the Administrator of the U.S. EPA on June 13, 1986, 51 FR 21617. As announced by said Notice of the Administrator, said hearing will be held to reconsider the cancellation (March, 1972) of registration of strychnine for controlling skunks to suppress rabies in areas where rabid animals have been found, for the reason that the Agency has found that substantial new evidence may exist which warrants such reconsideration (51 FR 21621, citing 40 CFR 164.131).

The Administrator's said Notice required that any person wishing to participate in this proceeding should file, by July 14, 1986, written response to the Administrator's Statement of Issues (51 FR 21622) which should state the respective position and interest of each such person.

The following have made such filing, pursuant to the provisions of 40 CFR 164.24:

State of Wyoming (through its Department of Agriculture);

State of South Dakota (on behalf of its Department of Game, Fish and Parks);

State of Montana (through its Department of Livestock);

Dodie Teigen, Capitol Star Route, Capitol, MT 59324, and

U.S. Department of Agriculture, Washington, DC.

At said hearing, the Order of Proceeding and Burden of Proof shall be that provided by 40 CFR 164.80. The need for field hearing sessions at locations other than Washington, DC, will be considered on a showing of good cause by the parties.

A prehearing conference has not been and will not be scheduled herein for the reason that I find it would delay rather than expedite these proceedings.

For further information concerning other details of these proceedings, interested persons are referred to the docket of this proceeding on file with Ms. Bessie Hammiel, Hearing Clerk (A–110), Room 3708, U.S. Environmental Protection Agency, Waterside Mall, 401 "M" St., SW., Washington, DC 20460.

Dated: July 25, 1986.

Marvin E. Jones,

Administrative Law Judge.

[FR Doc. 86–17888 Filed 8–7–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Citicorp; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration or resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 1, 1986.

A. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary of the Board) 20th and Constitution Avenue, NW., Washington, DC 20551:

1. *Citicorp*, New York, New York; Bankers Trust New York Corporation, New York, New York; The Chase Manhattan Corporation, New York, New York; Chemical New York Corporation, New York, New York; Irving Bank Corporation, New York, New York; The Hong Kong and Shanghai Banking Corporation, Hong Kong; HSBC Holdings B.V., Amsterdam, The Netherlands; Kellett, N.V., Curacao, Netherlands Antilles; Marine Midland Banks, Incorporated, Buffalo, New York; Manufacturers Hanover Corporation, New York, New York; J.P. Morgan & Co., Incorporated, New York, New York; and Midland Bank PLC, London, England; to acquire Liberty Brokerage, Inc., New York, New York, and thereby engage in providing securities brokerage services consisting of buying and selling U.S. Government securities solely as agent for the account of its customers, primarily institutions that have been designated by the Federal Reserve Bank of New York as primary dealers or that are in the process of applying for such designation, but not including underwriting and dealing or investment advice or research services pursuant to § 225.25(b)(15) of the Board's Regulation Y. Comments on these applications should be sent to the Federal Reserve Bnak of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045.

BankAmerica Corporation, San Francisco, California and First Interstate Bancorp, Los Angeles, California, have also applies to acquire Liberty Brokerage, Inc., New York, New York. Comments on these applications should be sent to the Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105.

Continental Illinois Corporation, Chicago, Illinois, and First Chicago Corporation, Chicago, Illinois, have also applied to acquire Liberty Brokerage Inc., New York, New York. Comments on these applications should be sent to the Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690.

Board of Governors of the Federal Reserve System, August 4, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-17859 Filed 8-7-86; 8:45 am]

BILLING CODE 6210-01-M

CoresStates Financial Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) 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, or to engage in such an activity. Unless otherwise noted, these 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 outweight 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 August 29, 1986.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *CoreStates Financial Corp.*, Philadephia, Pennsylvania; to acquire 100 percent of the voting shares of New Jersey National Corporation, Ewing Township, New Jersey, and thereby indirectly acquire New Jersey National Bank, Trenton, New Jersey.

Applicant has also applied to acquire New Jersey National Leasing Company, Ewing Township, New Jersey, and thereby engage, under certain conditions, as an agent, broker, or advisor in leasing personal property, equipment and real property, and to make or acquire loans or other

extensions of credit pursuant to § 225.25(b) (1) and (5) of the Board's Regulation Y; Bancorp's International Trading Company, Somerset, New Jersey, and thereby engage in activities related to international trade, and to operate principally for the purposes of exporting goods and services produced in the United States or for purposes of facilitating the exportation of goods and services produced in the United States by unaffiliated persons by providing export trade services pursuant to section 4(c)(14) of the Bank Holding Company Act; and Underwood Mortgage & Title Company, Ewing Township, New Jersey, and thereby engage in the mortgage servicing business, originating, placing and servicing mortgages pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 4, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-17860 Filed 8-7-86; 8:45 am]

BILLING CODE 6210-01-M

Liberty National Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 29, 1986.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Liberty National Bancorp,* Inc., Louisville, Kentucky; to acquire the successor by merger of Corydon State Bancorp, Corydon, Indiana, and thereby indirectly acquire The Corydon State Bank, Corydon, Indiana.

In connection with this application, CSB Bancshares, Inc., Louisville, Kentucky, has applied to become a bank holding company by merging with Corydon State Bancorp, Corydon, Indiana.

Board of Governors of the Federal Reserve System, August 4, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-17861 Filed 8-7-86; 8:45 am]

BILLING CODE 6210-01-M

Suffield Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 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 comments 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 September 3, 1986.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Suffield Financial Corporation,* Suffield, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of Suffield Savings Bank, Suffield, Connecticut.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *United Bankers, Inc.,* Waco, Texas; to acquire 100 percent of the voting shares of First National Bank, Sherman, Texas.

Board of Governors of the Federal Reserve System, August 5, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-17936 Filed 8-7-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 1, 1986.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of packages)

National Institutes of Health

Subject: Scientific and Technical Competency Form—New
Respondents: Individuals or households; Federal Agencies or employees
Subject: Obligated Service for Mental Health Traineeships—Extension—(0930-0074)
Respondents: Individuals or households; Non-profit institutions

Office of Assistant Secretary for Health

Subject: 1987 National Health Interview Survey—Revision—(0937-0021)
Respondents: Individuals or households
OMB Desk Officer: Bruce Artim

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package)
Subject: Office of Child Support Enforcement, Financial/Statistical Report—Extension—(0960-0410)
Respondents: State or local governments
Subject: Report of Continuing Disability Interview—Revision—(0960-0072)
Respondents: Individuals or households
Subject: Request for Waiver and Recovery Questionnaire—Revision—(0960-0037)
Respondents: Individuals or households

Subject: Quarterly Application for Grant Award—Revision—(0960–0239)
Respondents: State or local governments
Subject: Quarterly Report of Collections—Extension—(0960–0238)
Respondents: State or local governments
Subject: Semi-Annual Budget Estimates—Extension—(0960–0226)
Respondents: State or local governments
OMB Desk Officer: Fay S. Iudicello

Office of Human Development Services

(Call Reports Clearance Officer on 202–472–4415 for copies of package)
Subject: Survey of Indian Child Welfare and Implementation of the Indian Child Welfare Act and Section 428 of the Adoption Assistance and Child Welfare Act of 1980—New—
Respondents: State or local governments; Non-profit institutions; Small businesses or organizations
OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503

ATTN: (name of OMB Desk Officer)

Dated: August 4, 1986.

Barbara S. Wamsley,

Acting Deputy Assistant Secretary for Management, Analysis and Systems.

[FR Doc. 86–17923 Filed 8–7–86; 8:45 am]

BILLING CODE 4150–04–M

Centers for Disease Control

New Approaches for Tuberculosis Preventive Therapy; Meeting

The Division of Tuberculosis Control, Center for Prevention Services (CPS), Centers for Disease Control (CDC), Atlanta, Georgia, will convene a meeting to discuss current practices in tuberculosis preventive therapy, the role of existing and newly developed drugs in short-course preventive therapy for tuberculosis, and a protocol for a clinical trial of new short-course preventive therapy regimens.

The meeting will be open to the public for observation and participation, limited only by the space available.

Date: September 8–10, 1986.

Time: 8:00 a.m.–5:00 p.m.

Place: Hotel Tower Place, 3340 Peachtree Road, NE., Atlanta, Georgia 30020.

Additional information may be obtained from: Richard J. O'Brien, M.D., Chief, Clinical Research Branch, Division of Tuberculosis Control, CPS, CDC, 1600 Clifton Road, NE., Atlanta, GA 30333, Telephones: FTS: 236–2523, Commercial: 404/329–2523.

Dated: August 1, 1986.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 86–17866 Filed 8–7–86; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision and Update of Notices of Systems of Records

This notice updates and revises the information which the Department of the Interior has published describing systems of records maintained which are subject to the requirements of section 3 of the Privacy Act of 1974, as amended, 5 U.S.C. 552a. Except as noted below, all changes being published are editorial in nature, and reflect organization changes and other minor administrative revisions which have occurred since the previous publication of the material in the **Federal Register**. The changes are a result of a review conducted pursuant to the provisions of paragraph 3, Appendix I to Office of Management and Budget Circular Number A–130. The Circular requires, among other things, the periodic review of Privacy Act systems of records notices and publication in the **Federal Register** of any required changes or amendments. The revised notices are published in their entirety below.

The systems of records notices being revised and the dates of their previous publication in the **Federal Register** are:

1. Privacy Act Files—Interior, Office of the Secretary-57 (47 FR 27979, June 28, 1982).

2. Administrative Operations Records on Employees, Department System—Interior, Office of the Secretary-58 (49 FR 8681, March 8, 1984).

3. Biography File—Interior, Office of the Secretary-65 (46 FR 12147, February 12, 1981).

4. Freedom of Information Appeal Files—Interior, Office of the Secretary–69 (47 FR 27980, June 28, 1982).

5. Freedom of Information Request Files System—Interior, Office of the Secretary–71 (46 FR 12147, February 12, 1981).

In all five notices, the retention and disposal statements are amended to conform to guidelines issued by the Assistant Archivist for Records Administration, National Archives and Records Administration, in his memorandum dated June 11, 1985, to Agency Records Officers. The existing routine disclosure statements for litigation purposes in OS–57, OS–58, OS–69, and OS–71 are revised to incorporate the clarification on such disclosures prescribed by the Office of Management and Budget in its supplementary guidelines dated May 24, 1985, for implementing the Privacy Act.

New compatible routine disclosure statements are added to two notices. In OS–65, a statement regarding disclosures to the Department of Justice for litigation purposes has been added. The existing routine use in OS–71 concerning disclosures to Federal agencies having a subject matter interest in an FOIA request or appeal is expanded to include State and local agencies, and a routine disclosure to congressional offices is added.

The system location portion of the notice for OS–57 is corrected to add an additional statement describing records maintained in offices of systems managers and other officials authorized to receive access and amendment requests from individuals. A corresponding correction has been made to the statement describing categories of individuals. Also, the statement concerning the primary uses of the records is amended to add program administration and reporting purposes.

The description of individuals covered by system notice, OS–69, is revised to remove redundant material, and the categories of records statement is clarified. The notice also is amended to reflect the maintenance of certain information on a microcomputer for appeal tracking purposes.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. Therefore, written comments on these proposed changes can be addressed to the Department Privacy Act Officer, Office of the Secretary (PIR), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, D.C. 20240. Comments received on or before September 8, 1986, will be considered. The notices shall be effective as proposed without further notice at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: July 31, 1986.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources Management.

INTERIOR/OS-57

SYSTEM NAME:

Privacy Act Files—Interior, Office of the Secretary—57.

SYSTEM LOCATION:

(1) Office of Information Resources Management, Division of Directives and Regulatory Mgt., U.S. Department of the Interior, 18th and C Streets, NW., Washington, D.C.20240. (2) Offices of Privacy Act Officers of each bureau of the Department. (See Appendix for addresses of bureau headquarters offices.) (3) Offices of Systems Managers and other officials authorized to recieve requests for notification and access and petitions for amendments. (See pertinent system notices for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who have submitted requests for notification, access or amendment of their records maintained as systems of records under the Privacy Act. (2) Individuals who have filed Privacy Act appeals with Assistant Secretary—Policy, Budget, and Administration under the department's regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests, appeals, decesions and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

The primary uses of the records are for action on requests and appeals of Privacy Act matters and to gather program administration information for management and reporting purposes. Disclosures outside the Department of the Interior may be made (1) to other Federal agencies having a subject matter interest in a request or an appeal or a decision thereon; (2) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevent or necessary to the litigation and is compatible with the purpose for which the records were complied; (3) of information indicating a violation or potential violation of a statute, regulation, rule,order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form.

RETRIEVABILITY:

By individual name.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule No. 14, Items 25 and 26.

SYSTEM MANAGER(S) AND ADDRESS:

(1) For records in the Office of Information Resources Mgt:,Chief, Division of Directives and Regulatory Mgt., U.S. Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240. (2) For other records: Bureau Privacy Act Officers or System Managers. [See Appendix for addresses of bureau headquarters offices or pertinent systems of records notices for System Manager addresses.

NOTIFICATION PROCEDURE:

Contact the pertinent System Manager. A written, signed request stating that the requester seeks information concerning records pertaining to him/her is required. See 43 CFR 2.60.

RECORDS ACCESS PROCEDURES:

A request for access should be addressed to any office or offices to which the requester has submitted a request for access or an appeal. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the appropriate System Manager and must meet the content requirements of 43 CFR 2.71

RECORDS SOURCE CATEGORIES:

Individuals on whom records are kept, Department employees who act on requests and appeals received from individuals.

INTERIOR/OS-58

SYSTEM NAME:

Administrative Operations Records on Employees, Department System—Interior, Office of the Secretar–58.

SYSTEM LOCATION:

All Departmental bureaus and offices including regional and field facilities thereof.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and former employees of the Department of the Interior, and independent agencies and commissions for which the Department provides administrative support.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records involving administrative and operational relationships between the employee and the office in which the employee works, which include: Workload and productivity records for scheduling purposes; travel activity and budgets; accident and safety records, property accountability; studies and special projects; committee and detail assignments; locator indexes, parking space assignments, mailing lists, and similar records. Records that identify employees and their organization, location, position title, occupational series and grade, office telephone number, functional or organizational titles assigned for program management purposes, home address and telephone number, and other related data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 3101, 5105–5115, 5501–5516, 5701–5709, 31 U.S.C. 66a, 240–243, 40 U.S.C. 483(b), 43 U.S.C. 1467, 44 U.S.C. 3101, Executive Order No. 11807.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are administrative in nature and reflect the employee's relationship to the activities and functions of the office. They are also used to prepare and maintain data bases, directories, and listings showing organizational and functional position assignments; staffing tables; listings for budget, organizational, space, administrative services, and training planning purposes; and the preparation of employee telephone directories. Disclosures outside the Department of

the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to other Federal agencies for related program management purposes; (5) to the public in the form of agency telephone directories.

POLICY AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper in file folders or card files in file cabinets, word processing media, microfiche, or computer files.

RETRIEVABILITY:

By name or control number assigned to employee.

SAFEGUARDS:

In accordance with the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Retained until completion of work project or activity to which the record pertains, or until separation of the employee, at which time the record is disposed of in accordance with appropriate records schedules. Depending on the subject matter of the records, various disposal schedules may apply to the records in this system. In addition to pertinent bureau schedules, certain General Records Schedules (GRS) may typically apply as follows: GRS 2, item 12; GRS 6, item 5; GRS 11, items 1,3,4; GRS 13, item 5; GRS 16, item 12; GRS 18, items 13,17; GRS 20, item 29; GRS 23, items 1,2,5.

SYSTEM MANAGER(S) AND ADDRESS:

For the records located in the office in which the individual is (or was) employed, the appropriate personnel or administrative officer. For records related to special listings or directories of employees related to organizational, functional, or program assignments, the office maintaining the listing or directory.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the pertinent personnel office of the organization or office in which the individual is (or was) employed, or the office maintaining the listing or directory containing information about the individual. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records should be addressed to the pertinent personnel office of the facility at which he/she is (or was) employed, or the office maintaining the listing or directory containing information about the individual. See 43 CFR 2.61 for submission requirements.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the appropriate System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies, or is obtained through internal office procedures with which the individual is involved. Other sources are official agency records or documents designating employees to serve in special functional or organizational assignments.

INTERIOR/OS-0965

SYSTEM NAME:

Biography File—Interior, Office of the Secretary—0965.

SYSTEM LOCATION:

(1) Office of Public Affairs, Research Office, U.S. Department of the Interior, 18th and C Streets, NW., Washington D.C. 20240. (2) Bureau public information offices in the Bureau of Indian Affairs, the Bureau of Reclamation, the U.S. Geological Survey, the National Park Service, the U.S. Fish and Wildlife Service, Bureau of Land Management (BLM), Bureau of Mines, Office of Surface Mining (OSM), and the Minerals Management Service. (See System Manager paragraph for addresses.).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officials of the Department of the Interior, including the Secretary, Assistant Secretaries, heads of Bureaus and Offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records are biographical sketches, notes, resume, and news releases generally containing the individual's name, place and date of birth, education, military service, work experience, publications, membership in professional or scientific societies, marital status plus occasional newspaper clippings about the individual and in some cases a photograph of the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Statutes 5 USC 301, 3101, 43 USC 1467, 44 USC 3101, 30, USC 1, 3, 5–097.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to maintain biographic information on key officials of the Department. Disclosures outside the Department of the Interior may be made (1) to the news media and public for public information purposes; (2) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:
STORAGE—Biographies are in press release form, maintained in file folders.

RETRIEVABILITY

Alphabetized by name.

SAFEGUARDS

Maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL

Maintained and destroyed in accordance with General Records Schedule No. 14, item 6.

SYSTEM MANAGER(S) AND ADDRESS:

(Unless otherwise noted, the address for all managers is U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240. (1) For the Office of Public Affairs. (2) For the Bureau of Indian Affairs: Director, Public Information Staff, Bureau of Indian Affairs. (3) For the Bureau of Reclamation: Director, Office of Public Affairs, Bureau of Reclamation. (4) For the Geological Survey: Public Affairs Officer, U.S. Geological Survey, the National Center, Reston, Virginia 22092. (5) For BLM: Chief, Office of Public Affairs (130), Bureau of Land Management. (6) For the National Park Service: Chief, Office of Public Affairs, National Park Service. (7) For the Fish and Wildlife Service: Assistant Director—Public Affairs, U.S. Fish and Wildlife Service. (8) For the Bureau of Mines: Chief, Office of Technical Information, Bureau of Mines, 2401 E Street, N.W., Washington, D.C. 20241. (9) For OSM: Chief, Public Affairs Staff, Office of Surface Mining. (10) For MMS: Chief, Office of Minerals Management Information, Minerals Management Service.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager. A written and signed request stating that the requester seeks information concerning records pertaining to him is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

Same as the above. The request must be in writing, signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the appropriate System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Data furnished by the individual, newspaper clippings, and published materials.

INTERIOR/OS-69

SYSTEM NAME:

Freedom of Information Appeal Files—Interior, Office of the Secretary—69.

SYSTEM LOCATION:

(1) Office of Information Resources Management, Division of Directives and Regulatory Mgt., U.S. Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240, (2) Office of Public Affairs, U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who have filed appeals under Department of the Interior Freedom of Information appeal procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

Appeal, Recommendations of the Office of the Solicitor and other Departmental Officials, final decisions on appeals, extension of time, initial decisions issued by bureaus and offices, related records, and records to track the processing of appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) to support review and decision-making for Freedom of Information appeals, (b) for preparation of annual report to the Congress. Disclosures outside the Department of the Interior may be made (1) to other Federal agencies having a subject matter interest in an appeal or bureau or office decision: (2) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) of information indicating a violation or potenital violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license, (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file folders. Appeal tracking information is maintained on magnetic media for use in a micro-computer.

RETRIEVABILITY:

Manual records are indexed by appeal number. A cross-reference list permits retrieval of records by appellant's name.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are destroyed four years after final determination by agency, or three years after final adjudication by courts, in accordance with General Records Schedule No. 14, item 17.

SYSTEM MANAGER(S) AND ADDRESS:

Freedom of Information Appeals Officer, Office of Information Resources Management, Division of Directives and Regulatory Mgt. U.S. Department of the Interior, Washington, D.C. 20240.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the System Manager. A written, signed request stating that the requester seeks information concerning records pertaining to him/her is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Officials of bureaus and offices of the Department, appellants.

Interior/OS-71

SYSTEM NAME:

Freedom of Information Request Files System—Interior, Office of the Secretary—71.

SYSTEM LOCATION:

All facilities of the Department of the Interior which have received requests under the Freedom of Information Act seeking access to or copies of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted Freedom of Information requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests, responses, related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to administer Freedom of Information requests. Disclosures outside the Department of the Interior may be made (1) to other Federal, State, and local agencies having a subject matter interest in a request or an appeal or a decision thereon; (2) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICY AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, and on computer magnetic media.

RETRIEVABILITY:

Retrieved by name of person making request.

SAFEGUARDS:

Maintained with the minimum safeguards prescribed in 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with General Records Schedule No. 14, items 16 and 18.

SYSTEM MANAGER(S) AND ADDRESS:

For the office or bureau for which each is responsible, the head of each office making up the Office of the Secretary, each other Departmental office and each bureau. (See Appendix for addresses of office and bureau headquarters offices.)

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records in the system shall be addressed to each facility to which an individual has submitted a Freedom of Information request. See 43 CFR 2.60 for submission requirements.

RECORD ACCESS PROCEDURES:

A request for access shall be addressed to each facility to which the requester has submitted a Freedom of Information request. See 43 CFR 2.63 for submission requirements.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Requesters, internally generated documents, and employees processing the requests.

[FR Doc. 86-17869 Filed 8-7-86; 8:45 am]
BILLING CODE 4310-10-M

Bureau of Land Management

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395-7340.

Title: Coal Exploration and Mining Operations Reporting (43 CFR Part 3480).

Abstract: Lessees, licensees, and/or operators involved in operations for the discovery, testing, development, mining or processing of Federal coal shall conform to the provisions of applicable regulations, the terms and conditions of the lease, license or permit, the requirements or approved exploration and/or mining plans, and orders and instructions issued by the authorized officer pursuant to 43 CFR Part 3480. This information is required to ensure orderly and efficient development, mining, preparation and handling operations for Federal coal through compliance with the 43 CFR Part 3480 regulations.

The information is being collected to permit the authorized officer to determine whether proposed and existing exploration and mining operations for Federal coal are in compliance with the applciable statutory and regulatory requirements.

The information required in the exploration plan is contained in 43 CFR Part 3482 and states "the operator/lessee shall submit five copies of exploration plans to the authorized officer. Exploration plans shall be consistent with and responsive to the requirements of the Federal lease or license for the protection of recoverable coal reserves and other resources and for the reclamation of the surface of the lands affected by the operations." The information required in the resource recovery and protection plan is contained in 43 CFR Part 3482. This information is needed to show that the proposed operation meets the requirements of the Mineral Leasing Act of 1920, as amended, development, production, resource recovery and protection, diligent development, continued operation, maximum economic recovery, and the rules of 43 CFR Part 3480 for the Life of the mine. Normally this information is received on "an occasion" basis and does not require formal or routine reporting. Further requirements are given in this part for mining operations maps. These maps are required to be furnished to the authorized officer annually or as otherwise needed.

The information collection requirement contained at § 3482.1, 3482.2, 3482.3, 3483.3, 3483.4, 3484.1, 3485.1, 3485.2, 3486.3 and 3487.1 of this title have been approved by OMB under 44 U.S.C. 3507 and assigned clearance number 1004-0143.

The information may be collected from some operators/lessees/lcensees to either provide data so that proposed operations may be approved or to enable the monitoring of compliance with approvals already granted. The information will be used to grant approval to begin or alter operations or to allow operations to continue. The obligation to respond is required to obtain the benefit under the Federal lease.

Frequency: On occasion, and annually
Description of Respondents Coal lessees, licensees and operators
Annual Reponses: 1,422
Annual Burden Hours: 30,998
Bureau Clearance Officer: Rebecca Daugherty (202) 653–8853

Dated: June 17, 1986.

John E. Latz,

Assistant Director, Energy & Mineral Resources.

[FR Doc. 86–17870 Filed 8–7–86; 8:45 am]

BILLING CODE 4310–84–M

[U–60019]

Utah; Invitation to Participate In Coal Exploration Program; Utah Power and Light Co.

Utah Power & Light Company is inviting all qualified parties to participate in the drilling of an exploration drill hole located on unleased federal coal on East Mountain, 13 miles west of Huntington, Utah. The drill hole is situated west of Federal coal lease U–06039 in Emergy County, Utah. The area is further described as follows:

T. 16 S., R. 7 E., SLM, Utah
Sec. 30, lot 2.
Containing 22.85 acres

Any party electing to participate in this drill hole must send written notice of such election to the Bureau of Land Management, 324 South State Street, Room 400, Salt Lake City, Utah 84111–2303; and to D. W. Jense, Utah Power & Light Company, P.O. Box 899, Salt Lake City, UT 84110. Such written notice must be received within 30 days after the publication of this notice in the Federal Register.

Any party wishing to participate in this drill hole must be qualified to hold a lease under the provisions of 43 CFR 3472.1 and must share all cost on a pro rate basis. A copy of the exploration plan, as submitted by Utah Power & Light Company is available for public review during normal business hours in the same BLM office as mentioned above under Serial Number U–06019.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86–17867 Filed 8–7–86; 8:45 am]

BILLING CODE 4310–DQ–M

Environmental Statements; Proposal Concerning 17 Coal Lease Readjustments In Wilderness Study Areas

AGENCY: Bureau of Land Management, Cedar City District, Cedar City, Utah, Interior.

ACTION: Notice of availability of a Draft Environmental Assessment.

SUMMARY: The Bureau of Land Management, Cedar City District is proposing to adjust the following coal leases U–24427, U–096476, U–096477, U–098786, U–0103108, U–0101140, U–0101141, U–0103131, U–0103132, U–0103133, U–098783, U–098784, U–098785, U–098787, U–0115791, U–0115793 and U–0130988. Each of these leases have been evaluated and additional stipulations are proposed for the leases to increase the level of environmental protection and other considerations.

The Wilderness study areas involved are Carcass Canyon (076), Burning Hills (079), 50-Mile Mountain (080) Death Ridge (078) and Wahweap (248).

A Draft Environmental Assessment has been prepared on this proposal and is now available for public review and comment. Comments should be submitted by September 10, 1986.

ADDRESS: To obtain a copy of these documents or to obtain additional information on the proposal, contact Dave Everett, Environmental Specialist at the Bureau of Land Management, Cedar City District Office, 1579 North Main, P.O. Box 724, Cedar City, Utah 84720 or telephone at 801–586–2401.

Dated: August 1, 1986.

Morgan S. Jensen,

District Manager.

[FR Doc. 86–17844 Filed 8–7–86; 8:45 am]

BILLING CODE 4310–DQ–M

[ID–010–06–4351–02]

Boise District, Idaho Advisory Council Meeting

AGENCY: Bureau of Land Management, Boise District Office, Interior.

ACTION: Boise District, Idaho, Advisory Council Meeting.

SUMMARY: In accordance with Pub. L. 92–463, the Federal Advisory Committee Act, and Pub. L. 94–579, the Federal Land Policy and Management Act, notice is hereby given that the Boise District Advisory Council will meet on August 27 and 28, 1986, from 8:00 a.m. to 4:00 p.m. the first day and from 8:00 a.m. to 12:00 p.m. the second day.

SUPPLEMENTARY INFORMATION: The meeting will begin at 8:00 a.m. each day in the lower conference room at the Bureau of Land Management, Boise District Office, at 3948 Development Avenue in Boise, Idaho. The main agenda item is a discussion of the Riparian Management Pilot Project. The first day will consist primarily of a field tour of sites and will leave the District Office at 9:00 a.m. A public comment period is scheduled from 10:00 a.m. to 11:00 a.m. on the second day, August 28.

FOR FURTHER INFORMATION CONTACT: Boise District, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705, phone (208) 334–1582. Minutes of the meeting will be available for public inspection at the District Office.

July 30, 1986.

J. David Brunner,

District Manager.

FR Doc. 86–17845 Filed 8–7–86; 8:45 am]

BILLING CODE 4310–GG–M

[WY–920–06–4990–14; W–92013]

Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–92013 for lands in Goshen County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16–⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–92013 effective October 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86–17846 Filed 8–7–86; 8:45 am]

BILLING CODE 4310–22–M

[NV–930–06–4212–11; N–43025]

Realty Action; Lease/Purchase for Recreation and Public Purposes, Clark County, NV

The following described public land within the City of Mesquite, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43

U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice is the **Federal Register.**

Mount Diablo Meridian, Nevada

T. 13 S., R. 71E.,
Sec. 9, lots 1 and 11, NE¼NW¼, SW¼ NW¼, N½SE¼NW¼, SW¼SE¼NW¼, SE¼N½SE¼NW¼, SW¼SE¼SE¼ NW¼, W½E½, NE¼SW¼, W½NE¼ SW¼, NW¼SW¼.

This parcel of land contains approximately 248 acres. The City of Mesquite intends to use the land for golf course purposes. Initially, the lands will be leased without an option to purchase pending the resolution of conflicting mining claims. Once these claims have been abandoned or relinquished, an option to purchase will be included in the lease. However, until such time, the holder of said claims may exercise his rights under applicable laws. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1980, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for the City of Mesquite.

2. Those rights for the existing road to the city landfill which have been granted under R.S. 2477.

3. Certain mining claims filed pursuant to the mining laws of the United States, 30 U.S.C. et. seq. A lease will be made subject to those claims and to any and all rights that the holders thereof may have pursuant to the laws of the United States and the State of Nevada. The rights of the holder of said mining claims include the right to continue to prospect for, mine, and remove locatable minerals on the lands and, upon compliance with the applicable laws of the United States and the State of Nevada, to fee title to the lands, if a valid discovery was made prior to the classification of the lands. If the claims are abandoned or relinquished, the land would not be open to further location.

4. Those rights for communication site purposes which have been granted to Clark County School District, its successors or assigns, by Permit No. N-3886 under the Act of March 4, 1911, 36 Stat. 1253, 43 USC 961.

5. Those rights for communication site purposes which have been granted to KNPR Radio, its successors or assigns, by Permit No. N-41365 under the Act of October 21, 1976, 90 Stat. 2776, 43 USC 1716.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register,** the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

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, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register.**

Dated: July 28, 1986.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 86-17847 Filed 8-7-86; 8:45 am]

BILLING CODE 4310-HC-M

[ID-010-06-4333-12]

Recareation Management Restrictions; Washington County, ID

AGENCY: Bureau of Land Management Interior.

ACTION: Notice of Camping Order for Washington County and Steck Campground.

SUMMARY: Pursuant to 43 CFR 8365.1-2 and 1-6, the following acts are prohibited on Bureau of Land Management lands or facilities within Washington County (including Steck Campground):

a. Camping longer than the period of time permitted by the authorized officer; or

b. Leaving personal property unattended longer than 10 days (72 hours at Steck Campground) unless authorized.

The authorized camping period limit will be 14 consecutive days in any 28 day period.

The purpose of the limitation is to protect public lands from undue and sustained impacts and, in the case of Steck Campground, to promote the best use by the most number of people.

Violation of the prohibited acts is punishable by fines of $30 and $15, respectively.

DATE: This action is effective August 8, 1986.

FOR FURTHER INFORMATION CONTACT: George Farrow or Dick Geier at the BLM, Boise District Office, (208) 334-1582.

Richard A. Geier,

Cascade Area Manager.

July 31, 1986.

[FR Doc. 86-17848 Filed 8-7-86; 8:45 am]

BILLING CODE 4310-GG-M

Bureau of Indian Affairs

Availability of a Final Environmental Impact Statement (FEIS) on the Proposed Ojo Line Extension—345 kV Overhead Transmission Line and Substation Project

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Final Environmental Impact Statement (FEIS) on the proposed Ojo Line Extension—345 kV Overhead Transmission Line and Substation is available for public review. The proposed action consists of 45-47 miles of 345 kV overhead transmission line from a new substation in the Coyote, New Mexico area, through the Jemez Mountains to a new substation in the Los Alamos Area, and then continuing to Public Service Company of New Mexico's (PNM) existing Norton Switching Station. One other alignment through the Jemez Mountains, two 45-50 mile alignments from PNM's existing Ojo Switching Station to the Norton Station, and a 345 kV line from the Norton Station to a new substation in the Los Alamos area are also discussed along with the no action alternative.

DATE: September 8, 1986.

ADDRESS: Comments should be addressed to Mr. Sidney L. Mills, Area Director, Albuquerque Area Office, P.O. Box 8327, Albuquerque, New Mexico 87198.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Allan, Area Environmental Protection Specialist, Albuquerque Area Office, Bureau of Indian Affairs, P.O. Box 8327, Albuquerque, New Mexico 87198, telephone (505) 766–3374. Individuals wishing copies of this FEIS should contact the above named individual.

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs (BIA), Department of the Interior, has prepared a FEIS on its proposal to grant in conjunction with the Bureau of Land Management (BLM), the U.S. Forest Service (USFS), and U.S. Department of Energy (DOE), rights-of-way and approvals for said rights-of-way to PNM for the purpose of constructing a 345 kV overhead transmission line and associated substation in north-central New Mexico.

This project has been designed to satisfy two needs: (1) PNM and Plains Electric Generation and Transmission Cooperative, Inc.'s transmission requirements and system reliability needs for north-central New Mexico, and (2) the transmission needs of the Los Alamos Service Area.

The project will result in increased electrical system reliability in an area of increasing electrical demand, and adverse impacts to the visual and biotic resources of the Jemez Mountains.

The principal alternatives under consideration that were analyzed and evaluated during planning are: (1) The Coyote-Los Alamos-Norton alernative (W–1 or W–2 Route. W–2 being the proposed action), consisting of a new line from the proposed Coyote Station to be located at an undetermined point roughly eight to 13 miles west of Abiquiu along the existing San Juan-Ojo 345 kV line. The line continues south over the Jemez Mountains (Santa Fe National Forest) into Los Alamos, and then into the Norton Switching Station; (2) the Ojo-Norton-Los Alamos Alternative (E–1 or E–2 Route), a new line from Ojo Switching Station (roughly eight miles northwest of Espanola, near Medanales, in the area of confluence of the Rio Chama and Rio Ojo Caliente) south to Norton Switching Station (approximately 6.5 miles southeast of White Rock, and 10 miles northwest of Santa Fe), and then northwest approximately 17 miles into Los Alamos; and (3) the no action alternative.

Dated: August 4, 1986.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 86–17893 Filed 8–7–86; 8:45 am]

BILLING CODE 4310–02–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer and to the Office of Management and Budget Interior Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Restrictions of Financial Interests of State Employees, 30 CFR Part 705.

Abstract: Respondents supply information on employment and financial interests. The information is used to determine if respondents are in compliance with section 517(g) of the Surface Mining Control and Reclamation Act of 1977 which places an absolute prohibition on having a direct or indirect financial interest in underground or surface coal mining operations.

Bureau Form Number: OSMRE–23

Frequency: Entrance on duty and annually

Description of Respondents: Any State regulatory authority employee or member of advisory boards and commissioners established in accordance with State law or regulation to represent multiple interests who performs any function or duty under the Act is required to file a statement of employment and financial interests.

Annual Responses: 1,989

Annual Burden Hours: 660

Bureau Clearance Officer: Darlene Boyd, 202–343–5447

Dated: June 26, 1986.

Carson W. Culp, Jr.,

Assistant Director, Budget and Administration.

[FR Doc. 86–17868 Filed 8–7–86; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30871]

Chicago and North Western Transportation Co.—Trackage Rights—Burlington Northern Railroad Co.; Exemption

Burlington Northern Railroad Company (BN) has agreed to grant overhead trackage rights to Chicago and North Western Transportation Company (CNW) (1) between milepost 9.3 at Minneapolis Junction and milepost 21.1 at Coon Creek, and (2) between milepost 136.9 at Coon Creek and milepost 71.9 at Hinckley, a total distance of 76.8 miles in Minnesota. The trackage rights were effective on July 18, 1986.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: July 28, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86–17880 Filed 8–7–86; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–43 (Sub-142)]

Illinois Central Gulf Railroad Company—Abandonment in Jackson and Williamson Counties, IL; Findings

The Commission has issued a certificate authorizing the Illinois Central Gulf Railroad Company to abandon its 15.79-mile rail line (a) between Carbondale (milepost 0.9) and Herrin (milepost 12.57) and (b) between Herrin (milepost 94.0) and milepost 89.88 north of Herrin in Jackson and Williamson Counties, IL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1127.

Noreta R. McGee,

Secretary.

[FR Doc. 86-17879 Filed 8-7-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Air Act; Phelps Dodge Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Order in *United States* v. *Phelps Dodge Corporation*, Civil Action No. 86-424, was lodged on July 29, 1986, with the United States District Court for the District of Arizona. Defendant Phelps Dodge owns and operates a primary copper smelter in Douglas, Arizona. The proposed Consent Order requires the defendant to bring the facility into compliance with the federally enforceable Arizona State Implementation Plan (Arizona SIP). The facility is in violation of the limitations established by the Arizona SIP for the control of emissions of particulate matter (PM) and sulfur dioxide (SO_2). The Consent Order requires the defendant to bring the facility into full compliance with these limitations by January 15, 1987, by means of closure. The Consent Decree also requires defendant to 1) reduce emissions of SO_2 and PM in the interim, 2) pay stipulated penalties for violations of the National Ambient Air Quality Standard for SO_2, 3) pay stipulated penalties for short-term SO_2 concentrations at specified levels, and 4) pay a $400,000 penalty for past violations of the Arizona SIP provision governing PM.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Phelps Dodge Corporation*, D.J. reference # 90-5-2-1-871.

The proposed Consent Order may be examined at the Office of the United States Attorney for the District of Arizona, Suite 310, 120 West Broadway, Tucson, Arizona, 85701; the Region IX office of the Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, 10th and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $20.60 payable to the Treasurer of the United States for a copy including all appendices, or in the amount of $3.80 for a copy of the body of the proposed Consent Order only.

F. Henry Habicht II,

Assistant Attorney General Land and Natural Resources Division.

FR Doc. 86-17849 Filed 8-7-86; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Maurice L. Kaye, D.O.; Denial of Application for Registration

Correction

In FR Doc. 86-17022 beginning on page 27268 in the issue of Wednesday, July 30, 1986, make the following correction:

On page 27269, in the second column, sixth line, "Schedule VI" should read "Schedule IV".

BILLING CODE 1505-01-M

Office of Juvenile Justice and Delinquency Prevention

Program Announcement: Families of Missing Children; Psychological Consequences and Promising Interventions

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of a solicitation for applications to conduct a research program on the psychological consequences of missing and sexually exploited children.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to section 406(a)(4) (A) and (B) of the Missing Children's Assistant Act, Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, announces a new OJJDP initiative entitled, "Families of Missing Children: Psychological Consequences and Promising Interventions." The primary goal of this research is to increase our knowledge of and develop effective treatment alternatives for the psychological consequences of families with missing and sexually exploited children.

OJJDP's National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) invites public agencies and nonprofit private organizations, or combinations thereof, to submit competitive grant applications to design and conduct a study of the psychological consequences of families with missing and sexually exploited children. One research agency will be selected to conduct the study at three to five sites. Each site must have an established and fully operational missing children's program.

It is anticipated that this initiative will entail three years of funding and program activity at a total cost of $1,250,000. Up to $250,000 has been allocated for the first year of the initiative. Only one project will be funded.

The deadline for submission of applications is November 15, 1986. Notification of intent to apply is required by September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Catherine P. Sanders, Research and Program Development Division, NIJJDP, 633 Indiana Avenue NW., Room 782, Washington, DC 20531, Telephone (202) 724-5929.

SUPPLEMENTARY INFORMATION: Request for Proposals—Families of Missing Children: Psychological Consequences and Promising Interventions.

Table of Contents

I. Introduction and Background

This solicitation to conduct research on families with missing children is issued by the Research and Program Development Division (R&PDD) of the Office of Juvenile Justice and

Delinquency Prevention (OJJDP). The solicitation addresses the Missing Childern's Assistance Act which authorizes the OJJDP to "make grants to and enter into contracts with public agencies or nonprofit private organizations, or combinations thereof, for research, demonstration projects, or service programs designed to increase knowledge of and develop effective treatment pertaining to the psychological consequences of: (1) The abduction of a child, both during the period of disappearance and after the child is recovered, and (2) the sexual exploitation of a missing child." (Title IV, Section 406(a)(4) (A) and (B)).

Pursuant to section 403(l) (A) and (B) of the Missing Children Assistance Act, the term "missing child" means any individual less than 18 years of age whose whereabouts are unknown to such individuals' legal custodian if: (1) The circumstances surrounding such individual's disappearances indicate that such individual may possibly have been removed by another from control of such individual's legal custodian without such custodian's consent; or (2) the circumstances of the case strongly indicate that such individual is likely to be abused or sexually exploited.

The Office of Juvenile Justice and Delinquency Prevention hereby invites applications for a program of research on Families of Missing Children: Psychological Consequences and Promising Interventions. To understand the program's goal, objectives, and strategy, it is necessary to examine the scope of the problem.

Concern for the number of reported cases of missing children, (e.g., family abductions, nonfamily abductions, runaways and throwaways), has raised the public's demand for increased knowledge and development of effective treatment for the adverse psychological consequences of abduction and sexual exploitation. The subject is a complex one to address because very little empirical research has been conducted in the area. Even where data are available, the task of interpretation is difficult given the multiple levels of victimization and differences according to age and sex of the missing and sexually exploited child. Reviews of the literature on this topic suggest that missing, sexually exploited children and their families can be psychologically scarred and suffer emotional distress for life.

A variety of issues needs to be studied to determine how the experience of missing children affects, over time, the lives of victimized children and their families. These issues range from the time of first report of missing and to whom reported; to the types and amount of support/treatment services that are available to families of missing children; to the kinds of long-term follow-up services available; to the kinds of psychological and physical care available to families of recovered and non-recovered children. Limited documentation is currently available regarding the actual operations of local missing children's programs and their delivery of promising interventions.

A significant percentage of missing children are missing as a result of family or parental abductions, commonly called "snatchings."(*1*) The motivation behind child snatching may range from a genuine concern for the child, to revenge directed against the legal guardian. However, the child is almost always the victim. These children may be used as psychological weapons against the custodial parent or relative.

Little is known about the specific psychological effects of sexual abuse in conjunction with a parental kidnapping. Data are available on the effects of parental kidnapping itself, but the data make no special reference to the situation of sexually abused, kidnapped children. It is believed that not many of these children are sexually abused. If sexual abuse did occur, we would expect these children to experience many of the same effects as other sexual abuse victims with the added burden of coping with the impact of potental abduction.(*2*) Agopian, in a 1984 study, provided data on the effects of parental kidnapping by itself.(*3*) Common reactions among all victims were fear, worrying and agony. Reactions among the children depended on the age of the child, the length of abduction, and the treatment experienced while suppressed. Short-term abductees experienced nightmares, fear of strangers and fear of a second abduction. Long-term abductees tended to develop an affection for and identification with the abducting parent. Other symptoms included secrecy, frequent lying, and difficulty interacting with other children. Younger children experience a particular difficultly after their abductions because many do not remember the custodial parent upon return.(*4*) More research is needed with larger samples to reveal other similarities and dissimilarities in reactions to this form of abduction, and to identify responses that can alleviate these symptoms.

The group of missing children who are the object of the most public concern are those abducted by nonfamily persons or strangers. Virtually nothing is known about the impact of sexual exploitation among stranger abducted children. It is assumed by the public and by many authorities that stranger abductions occur primarily for purposes of sexual abuse;(*5*) or are committed by emotionally disturbed individuals, pedophiles, serial murderers, or those who want to sell abducted children on the black market.(*6*) However, these assumptions have not been empirically substantiated.

In a series of research products, Terr(*7*) chronicled the short- and long-term effects of stranger abductions on a group of school aged kidnapped victims. Terr's research, which was conducted over a four year period, uncovered symptoms characteristic of a post traumatic stress syndrome. The trauma experienced by these children was purely psychological with no concomitant serious physical injury to the children. All children showed some post traumatic stress with many symptoms still present four years after the kidnapping. From this research, it would seem that stranger abduction alone produces long-lasing effects on its victims. Children sexually abused during such abductions undoubtedlys suffer these kinds of effects as well.

Perhaps the kind of situation experienced by sexually expolited, stranger abducted children is best approximated by the experiece of children involved in extrafamilial sex rings. Few investigations have focused on the impact of involvement in sex rings and pornography on children. Burgess et al., (1984)(*8*) in a study of 62 child and adolescent vicitims involved in sex rings and pornography, reported the children displayed the same symptoms of post traumatic stress response. These responses included reexperiencing the events through intrusive thoughts and flashbacks; diminished responsiveness to others and the environment; lack of trust in people; withdrawal, acting out, periods of autonomic arousal, especially hyperalertness; and internal tension such as somatic compliants, bed-wetting and general malaise.

Research needs to be done to determine whether sexual abuse was part of the motivation for the abduction, whether any sexual acts were carried out in the course of the abduction and the psychological effects of different abduction experiences.

The bulk of research attention in the area of sexual exploitation and missing children has been on the runaway youth. Throwaway/push-out children have typically been seen as a sub-type of runaway children and will be treated as such for the purpose of this study. Findings from previous research indicate

that runaway suffer numerous harms while away from home including prostitution, involvement in pornography, coercive sexual abuse, robbery, burglary, drug use and general victimization such as assult. Of these, prostitution is the main type of sexual exploitation involving runaways.(*9*)

Browne and Finkelhor,(*10*) in a 1985 review article chronicled the short- and long-term effects of female child sexual victimization. According to these authors, initial effects included fear, anxiety, depression, anger, hostility, aggression and sexually inappropriate behavior. Long-term effects included depression and self-destructive behavior, anxiety, feelings of isolation and stigma, poor self esteem, difficulty, in trusting others, a tendency toward revictimization, substance abuse and sexual maladjustment. The Brown and Finkelhor profile of the more seriously victimized female is almost synonymous with the profile of the juvenile female prostitute. Without much specific knowledge, we can only speculate on how these traumatic events impact, over time, the subsequent lives of runaway children.

The U.S. Congress took important steps to address this problem by passing the Missing Children Act in 1982 (Pub. L. 97–292, 96 Stat. 1259, 28 U.S.C. sections 1 note, 534) and, in 1984, the Missing Children's Assistance Act, Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. In June 1984, the National Center for Missing and Exploited Children (NCMEC) was established as part of the Federal government's commitment to the issue of missing children. The NCMEC serves as a clearinghouse of information and assistance concerning missing children and the criminal and sexual exploitation of children.

To further support the Federal government's role in addressing the Missing Children issue, the Attorney General appointed nine members to a statutory Advisory Board on missing children. One of the purposes of the Board is to clarify the issue of missing and exploited children and recommend concrete action to alleviate the associated problems. This research program is specifically designed to inform and implement the Advisory Board's recommendations.

II. Program Goal and Objectives

A. Program goal

To increase our knowledge of and develop effective treatment alternatives pertaining to the psychological consequences for the parents, the missing child, and for other siblings during the period of disappearance and after the child is recovered; including the consequences of any abuse or sexual exploitation a missing child may have experienced.

B. Major Objectives

1. To describe the dynamics and psychological consequences of abduction of a child for both the family and the child.
2. To determine high risk factors for sexual exploitation among missing children.
3. To determine what factors in the missing experience seem to make a difference in terms of ameliorating short and long-term consequences.
4. To identify and document promising treatment alternatives for families of missing children.

III. Research Strategy

The target population for this research includes all categories of missing children, which encompass parental abductions, stranger abductions, runaways, and throwaways/pushouts. The research program is designed to identify effective treatment strategies for ameliorating the adverse psychological consequences of abduction and sexual exploitation.

One award will be made to a research agency to conduct the study at three to five sites. Applicant organizations will apply directly for the grant award and may choose to provide limited support through contracts to the sites to cover on-site costs critical for conducting the research. This would include costs for the research psychologist, training and travel for key field staff and volunteers, and other costs associated with data collection. No funds are to be used to supplement existing services.

Each participating site must be an operational missing children's program (List of Missing Children's Programs available upon request) which has instituted a sufficient case flow, a referral mechanism, and intervention services. Sufficient caseflow should be defined in terms of the proposed research questions, and should determine, in part, the analysis plan. The program will require a collaborative effort at each site between the researcher and the missing children's program. The researcher, in conjunction with the sites, must document that the program has established continuing contact with clients so that the psychological consequences can be assessed throughout the missing child experience.

The applicant must secure cooperation and provide written verification from the program sites that each is willing and ready to participate in the study. There are no restrictions on missing children's programs agreeing to collaborate with more than one research organization during this application process, as only one applicant will be selected to conduct this study. Because a principal focus of this research initiative is to provide for intensive assessment of parental and nonfamily abductions it is necessary to carefully select study sites which operate in jurisdictions with sufficient prevalence of this phenomenon to answer the research questions.

Each site must employ a full time research psychologist with psychometric, counseling, and crisis intervention skills to assess the psychological characteristics of the families at various stages. The psychologists must assist the research organization in developing and refining the research design and data collection instruments, sensitizing the design to individual sites, and documenting the services provided to the study sample. The research psychologists would also train and supervise those program staff/volunteers involved in data collection. These planning activities should take place during the first six to nine months of the study.

Data collection should begin with the first contact made by the parents/guardians to the center. At this point, the police may have already been contacted, and the initial search for the child may have begun. The missing children's program immediately begins to assist the parents with whatever services are needed at this time. These might include: notification of proper authorities and the national, state and local missing children's networks; assistance with media/public service announcements; assistance with law enforcement interviews; and development of a strategy for reducing stress to the family. Retrospective data from the pre-missing period should also be collected during this period. This inquiry should focus on both positive and negative family experiences prior to the child becoming missing.

During the period of nonrecovery, the study should document the level and nature of psychological services provided to both parents and siblings and the manner in which the services were provided. During the period when the child is recovered, data should be gathered on the mental health and medical services provided to the family. For those recovered children who must enter the judicial system, data should be gathered on the program's services to

lessen the continued stress to the child and family.

Throughout the course of program contacts, the research psychologists and trained staff/volunteers will document the various interventions and assess psychological consequences for the child and family. The researcher should attempt to adopt a core set of measures across sites to allow for comparisons and the development of a larger aggregate data base. Issues that might be examined include:

1. What did the child experience while missing? In the case of abduction, how did the abductor successfully manipulate the child's continued separation from his/her family? Was the child abused or sexually exploited?

2. What are the psychological consequences for the abducted child, and how do they affect the child's ability to return home to his/her family?

3. How does the recovered child and family cope with judicial system involvement, and reintegration into the school church and community?

4. What capabilities does a family need to cope with a long-term missing child, the recovery of a missing child, the determination of death, nonrecovery of the child, or the disclosure of the sexual exploitation?

5. Are there specific support services needed by the family at critical stages during the time the child is missing and after recovery?

6. What are the psychological consequences of those children and families who receive varying levels and types of intervention?

7. Were family life stress indicators (e.g., alcohol or drug abuse, unemployment, separation or divorce) present, and did these increase the child's vulnerability for becoming missing?

Given the sensitive and traumatic nature of the problem being investigated, the study population should have access to appropriate services. Therefore, the primary sample should be exclusively comprised of those families who make contact with or are referred to the missing children's program. (It is recognized that families of known pushouts and throwaways are less likely to contact a center for help). Applicants are encouraged to explore the possibility of establishing appropriate comparison or control groups to define more clearly the psychological consquences and treatment needs of the missing children and their families.

IV. Major Responsibilities of the Successful Applicant

The research organization in conjunction with the targeted sites selected to conduct this research project will be responsible for all aspects of the project design, implementation, and product development.

A. Activities and Functions—Year I

The initial award will support the first year of project activities. These will include the following:

1. Conduct of planning activities.
2. Completion of a refined and detailed research design.
3. Development of a comprehensive workplan for the implementation of refined design.
4. Selection of or development and pretesting of data collection instruments.
5. Ensuring full access to all study data sources.
6. Development of a detailed plan for confidentiality of data.
7. Initiation of study sample and production of baseline data on client characteristics and services provided.
8. Documentation of each center's services for the purpose of constructing client-based instruments.
9. Provision of technical assistance and training for data collection.

B. Activities and Functions—Year II

1. Continue implementation of the research design.
2. Preliminary analysis of data and provision of feedback to program sites.
3. Ongoing assessment of the validity and reliability of measurement techniques and instruments.
4. Communication of findings through the production of interim reports and issue papers.
5. Coordination and data sharing among sites involved in the program.

C. Activities and Functions—Year III

1. Follow-up data collection on psychological impact of the total experience.
2. Conduct of data analysis and interpretation of results.
3. Continued coordination and data sharing among sites involved in this program.
4. Communication of findings through the production of issues papers (e.g., policies and practices necessary for future research and program development), final reports, technical assistance and training manuals. Emphasis should be placed on developing products suitable for widespread publication and dissemination.

The researcher should plan to produce documents which clearly convey significant findings and practical applications for policymakers, practitioners, and other researchers throughout the study period.

V. Eligibility Criteria

Eligible applicants include public or private nonprofit research organizations or combinations thereof. The applicant must have prior experience in the design, conduct and implementation of research, and in the development, maintenance and analysis of data bases involving assessment of psychological functioning.

Applicants may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the primary applicant and any co-applicants are designated as such. The applicant and any co-applicants must have the management and financial capability to effectively implement a project of this size and scope. Applicants who fail to demonstrate that they have the capability to manage this program will be ineligible for funding consideration.

VI. Dollar Amount and Duration

Up to $250,000 has been allocated for the initial 12-month award to one organization competitively selected under this initiative. It is anticipated that this initiative will entail three years of research activities (i.e., a three year project period). The initial award will provide support for year I activities. Up to $500,000 will be allocated for each of the second and third 12-month budget periods.

Funding of each noncompeting continuation grant, i.e., each of the two additional 12 month budget periods, within the approved three year project period may be withheld for justifiable reasons. They include: (1) There is no continued need for further research; (2) the grantee is delinquent in submitting required reports; (3) adequate grantor agency funds are not available to support the project; (4) the grantee has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of the award; (5) a grantee's management practices have failed to provide adequate stewardship of grantor agency funds; (6) outstanding audit exceptions have not been cleared; and (7) any other reason which would indicate that continued funding would not be in the best interests of the Government.

VII. Minimum Program Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget and a budget narrative. The program narrative shall not exceed 75 double-spaced pages in length.

In submitting joint applications, the relationships among the parties must be set forth in the application. As a general rule, research organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered as co-applicants. Those research organizations which are primarily procuring services or products from another organization would not be considered as co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant.

In addition to the requirements specified in the instructions for preparation of Standard Form 424, the following information must be included in the application:

A. A review of the literature relevant to the psychological consequences of missing and sexually exploited children. Discuss promising approaches for improvement of national policies and practices.

B. A problem statement which clearly documents the nature and extent of the problems of families with missing and exploited children in the selected jurisdictions. Provide a brief description of the services and treatment alternatives provided by each program.

1. Identify the criteria utilized in the selection of study sites and provide data to justify those selections. Discuss each program's readiness and willingness to participate in the study.

2. Discuss the current process for providing services and treatment for the adverse psychological consequences of abduction and sexual exploitation in each of the targeted sites.

3. Provide statistics regarding actual number of cases handled annually by each missing children's program. Specify the number of cases utilizing the following categories: family abductions, nonfamily abductions, runaways, and sexually abused.

C. A succinct statement of your understanding of the goal and objectives of the program of research on Families of Missing Children: Psychological Consequences and Promising Interventions.

D. A complete discussion of the proposed research design and methodology including:

1. Delineation of the theoretical framework developed to specifically guide the identification and assessment of problems among the programs' client populations.

2. Presentation of your specific study's goals and objectives.

3. Description of the key research questions to be investigated.

4. Description of the proposed sample. Include a discussion of the expected refusal and attrition rates, and justification that the proposed sample size is adequate for the research questions to be addressed. Provide a discussion of plans to establish and maintain contact with the subjects so that the psychological consequences can be assessed throughout the missing child experience. Consider the feasibility of establishing appropriate comparison/control groups.

5. Description of key variables to be assessed, and the plans for development and pretesting of instruments.

6. Discussion of plans for data collection and statistical analysis.

7. Specification of data sources and inclusion of letters from cognizant agencies verifying data access.

8. A Privacy Certificate describing procedures to be followed to assure confidentiality of data in accordance with funding agency regulations, copies of which are available upon request.

9. Written verification from authorized officials, of all parties involved in this program (e.g., missing children's program, protective service, law enforcement), of their commitment to collaborate in the research program planning, and implementation. The missing children's program should verify that they understand the type of data they will be asked to provide.

E. A detailed workplan for Year I activities which includes identification of major milestones, designation of organizational responsibilites, and a schedule for completion of tasks and products. The nature and utility of products should be discussed. Also, include a preliminary workplan for completion of Year II and Year III activities.

F. A description of the project management structure which includes proposed staffing plans, brief position descriptions which delineate roles and responsibilities, description of relevant staff experience and expertise, and resumes of key project staff (include as an appendix to the application). The project director must devote a minimum of fifty percent (50%) of his/her time to this effort.

G. An organizational capability statement which describes relevant organizational experience and demonstrates that the applicant has the substantive and financial capability to effectively administer the research project.

H. A detailed budget for Year I program activities. The budget should also include funds for a three person advisory board to meet twice for two days during the first year.

I. An estimated budget of annual costs for conducting Year II and III activities through the conclusion of the project period.

J. If it is determined to be necessary for the research organization to provide financial support from the grant award to another organization to cover costs critical for research program implementation, the application must include: a statement of work for the proposed contract; and the procedures to be followed for competitive selection *or* a justification for noncompetitive award for these support services where a single contractor has the capability to provide specified services.

K. The applicant and collaborating missing children's centers must indicate a willingness to host an on-site visit by OJJDP staff and/or Peer Review Panel members to verify information provided in the application.

VIII. Selection Procedures and Criteria

All applications received in response to this solicitation will be reviewed in terms of their potential contribution to the state-of-the-art, the rigor and feasibility of the research design, and their innovativeness in responding to key issues in the implementation of the study. Applications will be evaluated by an external peer review panel according to the OJJDP Competition and Peer Review Policy, 29 CFR Part 34, Subpart B. Site visits may be conducted by peer review panelists and/or OJJDP staff to verify information provided by the applicant ranked as best qualified for further consideration.

Specifically, applications will be rated according to the following criteria and weights:

A. The problem to be addressed is clearly stated including evidence of knowledge of related literature and justification for site selection (refer to Section VII A, B)	15
B. An understanding of the goal and objectives of this research program is clearly articulated, including an assessment of the degree to which the proposed project would further these objectives (refer to Section VII, C, D. 2)	10
C. The research design and methodology is sound and contains program elements directly linked to the achievement of project objectives (refer to Section VII D)	35
D. The workplan is adequate, clear and feasible and will support the development of useful products (refer to Section VII E)	10
E. The project management structure is adequate to successfully conduct the project (refer to Section VII F)	15
F. Organizational capability is demonstrated at a level sufficient to successfully support the project (refer to Section VII G)	5
G. Budget costs are reasonable, complete and appropriate in comparison to the activities proposed to be undertaken (refer to Section VII, H, I, J)	10

The application receiving the highest total score on the above criteria will be recommended for funding consideration to the Administrator, OJJDP. In addition to the scores based upon the above weighted criteria, the final selection process will also include consideration of diversity of the study population and sensitivity to measurement issues to be studied. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary reviews, will assist the Administrator's consideration of competing applications and selection of the application for funding. The final award decision will be made by the OJJDP Administrator. Pursuant to section 406 (b) and (c), in considering grant applications under this title, the Administrator shall give priority to applicants who have demonstrated or demonstrate ability in: locating missing children or locating and reuniting missing children with their legal custodians; providing other services to missing children or their families; or conducting research relating to missing children; and which utilize volunteer assistance in providing services to missing children and their families. The Administrator shall give first priority to applicants qualifying with demonstrated ability in locating and reuniting children with their legal custodians and providing other services to missing children or their families.

Furthermore, in order to receive assistance under this title for a fiscal year, applicants shall give assurance that they will expend, to the greatest extent practicable, for such fiscal year an amount of funds (without regard to any funds received under any Federal law) that is not less than the amount of funds they received in the preceding fiscal year from State, local, and private sources.

IX. Procedures and Deadlines for Submission of Applications

A. Applicants which plan to respond to this announcement are requested to submit written notification of their intent to apply to NIJJDP/OJJDP by September 30, 1986. Such notification should specify: the name of the applicant organization, mailing address, telephone number, and primary contact person.

B. Applicants must submit the original signed application and three copies to NIJJDP/OJJDP. The necessary forms for applications (Standard Form 424) will be provided upon request.

C. The deadline for submission of applications is *November 15, 1986.* All applications must be postmarked by the U.S. Postal Service or hand delivered on or before November 15, 1986. Hand delivered applications must be taken to the NIJJDP/OJJDP between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

D. The mailing address for all correspondence (e.g., applications, notification of intent to apply, requests for forms) related to this program announcement is as follows: Catherine P. Sanders, NIJJDP/OJJDP, U.S. Department of Justice, 633 Indiana Avenue NW., Room 782, Washington, DC 20531.

X. Civil Rights Compliance

A. All recipients of OJJDP assistance must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 32, Subparts, C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, natural origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (CRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request, timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s) such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any grant award.

XI. Footnotes

(*1*) "Child Sexual Abuse and Exploitation and the Particular Vulnerability of Runaway and Abducted Children—Kentucky's Response to a Growing National Tragedy," *Final Report of the Kentucky Task Force on Exploited and Missing Children,* (September, 1983).

(*2*) G.T. Hotaling and D. Finkelhor, *The Sexual Exploitation of Missing Children: A Research Review,* U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (Washington, DC, October, 1985).

(*3*) M. Agopian, "The Impact on Children of Abduction by Parents," Child Welfare, 63(6): 511–519, (1984).

(*4*) G.T. Hotaling and D. Finkelhor, *The Sexual Exploitation of Missing Children: A Research Review,* U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (Washington, DC, October, 1985).

(*5*) Ibid.

(*6*) U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *America's Missing and Exploited Children: Their Safety and Their Future,* report prepared by the Attorney General's Advisory Board on Missing Children, (Washington, DC, March, 1986).

(*7*) L. Terr, "Children of Chowchilla: A Study of Psychic Trauma," (1979); "Psychic Trauma in Children: Observations Following the Chowchilla School-bus Kidnapping," *American Journal of Psychiatry,* 138(1), pp. 144–19, (1981); "Chowchilla Revisited: The Effects of Psychic Trauma Four Years After a Schoolbus Kidnapping," *American Journal of Psychiatry,* 140(12), pp. 1543–1550, (1983); and "Time Sense Following Psychic Trauma: A Clinical Study of Ten Adults and Twenty

Children," *American Journal of Orthopsychiatry* 53(2); pp. 244–260, (1983).

(8) A.W. Burgess, C.R. Hartman, et al., "The Impact of Child Pornography and Sex Rings on Child Victims and Their Families," In A.W. Burgess, (Ed.) *Child Pornography and Sex Rings*, Lexington, MA: Lexington Books, (1984).

(9) G.T. Hotaling and D. Finkelhor, *The Sexual Exploitation of Missing Children: A Research Review*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (Washington, DC, October, 1985).

(10) A. Browne and D. Finkelhor, *The Impart of Child Sexual Abuse: A Review of the Research*, Psychological Bulletin (in press), 1986.

Verne L. Speirs,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 86–17937 Filed 8–7–86; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture: 1986 Adverse Effect Wage Rates; Correction

AGENCY: Employment Service, Employment and Training Administration, Labor.

ACTION: Notice of adverse effect wage rates for 1986; correction.

SUMMARY: This notice corrects the notice of 1986 adverse effect wage rates published by the U.S. Employment Service in the **Federal Register** at 51 FR 25409 on July 14, 1986 (FR Doc. 86–15722). In the third sentence of the third full paragraph in the first column on page 25410, the words "last year's" are corrected to read "the 1981". All other language in the notice remains unchanged.

Signed in Washington, DC, this 5th day of August, 1986.

Robert A. Schaerfl,

Director, U.S. Employment Service.

[FR Doc. 86–17903 Filed 8–7–86; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed n 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW, Room S–3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number (s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT86–1 (Jan. 3, 1986) ..... pp. 67–68
District of Columbia:
DC86–1 (Jan. 3, 1986) ..... p. 80 pp. 87–88
Pennsylvania:
PA86–4 (Jan. 3, 1986) ..... pp. 821–827, pp. 827a–827b
Pennsylvania:
PA86–5 (Jan. 3, 1986) ..... p. 830
Pennsylvania:
PA86–10 (Jan. 3, 1986) ..... p. 880
Pennsylvania:
PA86–12 (Jan. 3, 1986) ..... pp. 887–888
Pennsylvania:
PA86–14 (Jan. 3, 1986) ..... p. 894
Virginia:
VA86–5 (Jan. 3, 1986) ..... p. 1065

Volume II

Iowa:
IA86–1 (Jan. 3, 1986) ..... pp. 24, 26
Iowa:
IA86–2 (Jan. 3, 1986) ..... pp. 29, 31
Iowa:
IA86–3 (Jan. 3, 1986) ..... p. 35
Illinois:
IL86–5 (Jan. 3, 1986) ..... pp. 116, 119
Illinois:
IL86–8 (Jan. 3, 1986) ..... p. 131
Illinois:
IL86–11 (Jan. 3, 1986) ..... p. 146
Kansas:
KS86–8 (Jan. 3, 1986) ..... pp. 335–337

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed At Washington, DC, this 1st Day of August 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-17666 Filed 8-7-86; 8:45 am]

BILLING CODE 4510-27-M

LEGAL SERVICES CORPORATION

Grant Awards for Expansion and Development of Law School Civil Clinical Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant awards.

SUMMARY: The Legal Services Corporation (LSC) announces the award of grants for the expansion and development of Law School Civil Clinical programs to assist LSC-eligible clients with their civil legal cases. Pursuant to the Corporation's announcement of funding availability in Volume 51, No. 110, page 20901 of the **Federal Register** of June 9, 1986, a total of $618,532.00 will be awarded to the following 15 schools:

Name of school	Amount
Brooklyn Law School, Brooklyn, New York	$50,000.00
Capital University, Columbus, Ohio	13,250.00
Gonzaga University, Spokane, Washington	50,000.00
Lewis and Clark College, Northwestern School of Law, Portland, Oregon	25,300.00
Southern Methodist University, Dallas, Texas	50,000.00
Stanford University, Stanford, California	50,000.00
State University of New York at Buffalo, Buffalo, New York	48,945.00
Thomas M. Cooley Law School, Lansing, Michigan	32,385.00
University of Chicago, Chicago, Illinois	50,000.00
University of North Dakota, Grand Forks, North Dakota	29,880.00
University of Notre Dame, Notre Dame, Indiana	49,172.00
University of the Pacific, McGeorge School of Law, Sacramento, California	50,000.00
University of Utah, Salt Lake City, Utah	45,400.00
Valparaiso University, Valparaiso, Indiana	24,200.00
Yeshiva University Benjamin N. Cardozo School of Law, New York, New York	50,000.00

Each grant will be for a term of twelve (12) months for each grantee. In order to stimulate the training and recruitment of skilled law students, all grants will be awarded pursuant to sections 1006(a)(1)(B) and 1006(a)(3)(A) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to section 1007(f) of this Act, with a request for comments and recommendations for a period of thirty (30) days from date of publication of this notice. Grant awards will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period.

DATE: All comments and recommendations must be received by the Program Development and Substantive Support Division of the Legal Services Corporation within thirty (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Charles T. Moses, III, Legal Services Corporation, Program Development and Substantive Support Division, 400 Virginia Avenue SW., Washington, DC 20024-2751, (202) 863-1837.

SUPPLEMENTARY INFORMATION: The purpose of this program is to increase the pool of high caliber, well-trained students who would be interested in working for local legal services offices, and in improving and augmenting existing LSC grantees' current level of service delivery. These clinics will encourage future lawyers to become interested in the provision of legal services to poor persons, acting either as legal aid attorneys or through pro bono or reduced fee efforts as members of the private bar. By helping to develop law school clinics, the Corporation would thereby also educate and sensitize law students to the problems of poor persons. Through this program, a "recruitment bank" of experienced attorneys would develop for placement in legal services offices throughout the nation upon graduation. Another goal of the project is to increase the cooperation between established law schools and all segments of the legal community.

This grant is designed to provide monetary assistance for expansion and development of law school clinical programs which address the civil legal needs of low-income persons. This expansion could include increasing the number of supervising attorneys and participating students, developing new areas of clinical coverage, providing legal services to LSC-eligible clients who are not otherwise receiving legal assistance, developing projects which provide services to underserved segments of the population.

James H. Wentzel,

President, Legal Services Corporation.

[FR Doc. 86-17696 Filed 8-7-86; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities Under OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9421

OMB Desk Officer: Carlos Tellez, (202) 395-7340

Title: Survey of Applicants for NSF Research Grants

Affected Public: Individuals

Number of Responses: 14,000 responses; total of 7,000 hours.

Abstract: NSF decisions to support or decline proposed research projects

are based in part on advice of expert reviewers. Survey would gather views of classes of applicants (e.g., women, new researchers, from smaller institutions, etc.) about their interaction with NSF and some related management/funding issues. Only prior survey, ten years ago, led to important changes in review process.

Dated: August 4, 1986.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 86-17855 Filed 8-7-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Ocean Sciences Research; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Ocean Sciences Research.

Date and time: August 23-29, 1986, 8:30 a.m.-6:00 p.m.

Place: Rooms 523, 628, 1242, and 1243, National Science Foundation, 1800 G St., NW., Washington, DC 20550.

Type of meeting: Closed.

Contact person: Dr. Michael R. Reeve, Acting Head, Ocean Sciences Research Section, Room 611, National Science Foundation, Washington, DC 20550, telephone (202) 357-7924.

Purpose of meeting: To provide advice and recommendations concerning support for research in Oceanography.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information: financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 55b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

August 4, 1986.

[FR Doc. 86-17856 Filed 8-7-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Application for Licenses to Export and Import Nuclear Facilities or Materials; Correction

In **Federal Register** Docket 86-16768 appearing on page 26783 in the issue of Friday, July 25, 1986, make the following correction to the table "NRC Export Applications". In the fourth column "Material in Kilograms"; Total isotope reading "'245.773" should have read "205.773."

Dated in Bethesda, Maryland, this 1st day of August 1986.

For the Nuclear Regulatory Commission.

John Philips,

Acting Director, Division of Rules and Records, Office of Administration.

[FR Doc. 86-17914 Filed 8-7-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Nuclear Plant Chemistry; Meeting

The ACRS Subcommittee on Nuclear Plant Chemistry will hold a meeting on August 26, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, August 26, 1986-8:30 a.m. until the conclusion of business

The Subcommittee will discuss various topics relevant to plant chemistry, i.e., NaOH in containment spray, suppression pool scrubbing, H2 water chemistry, etc.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statement will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and question may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this subject.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634-1414) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 5, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-17916 Filed 8-7-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on August 27, 1986, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, August 27, 1986—8:30 A.M. until the conclusion of business

The Subcommittee will continue its review of the RES-proposed revision to the ECCS Rule (10 CFR 50.46 and Appendix K).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 5, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-17915 Filed 8-7-86; 8:45 am]

BILLING CODE 7590-01-M

Availability of Draft Generic Technical Position on Items and Activities in the High-Level Waste Geologic Repository Program Subject to 10 CFR Part 60 Quality Assurance Requirements

Correction

In FR Doc. 86-17276 appearing on page 27477 in the issue of Thursday, July 31, 1986, make the following corrections:

1. In the second column, fourth line from the bottom, "the" should read "The".

2. In the third column, fifth line from the top, insert "rule" at the end of the line.

BILLING CODE 1505-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

August 4, 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 stocks:

Harley Davidson, Inc.
Common Stock, $0.01 Par Value (File No. 7-9107)

Robert Halmi, Inc.
Common Stock, $0.01 Par Value (File No. 7-9108)

Collin Foods, Inc.
Warrants (File No. 7-9109)

American Express Company
Warrants (File No. 7-9110)

Scandinavi Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7-9111)

FGIC Corporation
Common Stock, $1.00 Par Value (File No. 7-9112)

Bernard Chaus, Inc.
Common Stock, $0.01 Par Value (File No. 7-9113)

Decision/Capital Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-9114)

Toll Brother, Inc.
Common Stock, $.01 Par Value (File No. 7-9115)

Hannaford Brothers, Company
Common Stock, $0.75 Par Value (File No. 7-9116)

Pennwalt Corporation
$2.50 Cumulative Convertible Preferred Stock,
$0.01 Par Value (File No. 7-9117)

Pennwalt Corporation
$1.60 Cumulative Convertible, 2nd Preferred Stock,
Par Value $1.00 (File No. 7-9118)

Stone Containers Corporation
$3.50 Cumulative Convertible, Exchangeable Preferred Stock, No Par Value (File No. 7-9119)

Safeway Stores Incorporated
Common Stock Rights (File No. 7-9120)

Snyder Oil Partners (Delaware)
Units of Limited Partnership Interest (File No. 7-9121)

Marantz Company, Inc. (Delaware)
Common Stock, $1.00 Par Value (File No. 7-9122)

ACI Holding, Inc.
Common Stock, $1.00 Par Value (File No. 7-9123)

ACI Holding, Inc.
$1.20 Convertible, Exchangeable, Preferred Stock,
$1.00 Par Value (File No. 7-9124)

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 August 23, 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.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-17928 Filed 8-7-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23488; File No. SR-NSCC-86-07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Accelerated Approval to a Proposed Rule Change

On June 4, 1986, The National Securities Clearing Corporation ("NSCC") submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") concerning the Automated Customer Account Transfer Service ("ACATS"). NSCC requested accelerated approval of the proposal. The Commission published notice of the proposal in the **Federal Register** on July 11, 1986, to solicit public comment.[1] No comment letters were received. This Order approves the proposal on an accelerated basis.

I. Description of the Proposal

The proposed rule change would modify NSCC Rule 50 [2] to alter NSCC's

[1] Securities Exchange Act Release No. 23401 (July 7, 1986), 51 FR 25280 (July 11, 1986).

[2] The Commission approved NSCC Rule 50 in Securities Exchange Act Release No. 22461 (September 30, 1985), 50 FR 41274 (October 9, 1985) (File No. SR-NCSS-85-07). NSCC Rule 50 imposes on NSCC members specific, uniform transfer procedures that for the first time automate the customer account transfer process. Generally, the Rule provides that an NSCC member of whom a customer's securities account is to be transferred ("Receiving Member") may initiate the transfer by filing with NSCC a Transfer Initiation Request ("TIR"). NSCC makes the TIR available to the NSCC member who carries the customer account ("Carrying Member"). Within time frames established by the appropriate Designated Examining Authority ("DEA") (*e.g.*, the New York Stock Exchange, Inc. ("NYSE")), the Delivering Member must accept or reject the request by forwarding the appropriate form to NSCC. NSCC then forwards this information to the Receiving Member who must accept, request an adjustment to, or reject the account transfer, again within the time frame established by the DEA. If the Receiving Member accepts (*i.e.*, validates) the transfer instructions, or does nothing, NSCC will enter all items in that account into its automated accounting

Continued

guarantee of ACATS deliveries in certain circummstances. Section 10 of Rule 50 provides that when a Receiving Member accepts a customer account transfer, NSCC enters all continuous net settlement ("CNS")-eligible items [3] in that account into its CNS accounting operation as of the third business day after trade date ("T+3"), unless the Receiving Member notifies NSCC otherwise. Normally, once the positions are netted, NSCC becomes the *contra* party representing the opposite side and, in effect, guarantees the other side's performance.

NSCC's proposal would adjust NSCC's CNS settlement guarantee for ACATS transfers to eliminate NSCC's guarantee to ACATS Receiving Members if the Delivering Member fails-to-deliver and fails to pay any portion of its money settlement obligation to NSCC on settlement day (T+5). Thus, the proposal would authorize NSCC, if it so determines, to eliminate the member's open CNS ACAT deliver obligations from the CNS accounting operation and reverse related credits of the Receiving Member.[4] If NSCC so determines, the ACATS item is exited from NSCC and the parties to the transaction must settle the transaction, it at all, outside NSCC.[5] NSCC will continue to guarantee settlement of ACATS CNS-processed transfers, but only if the Delivering Member: (1) Satisfies its ACATS-related CNS securities delivery obligations on settlement day; or (2) pays its money settlement obligation due NSCC on settlement day, including marks-to-the-market due NSCC with respect to CNS ACATS fails.

II. NSCC's Rationale for the Proposal

NSCC believes the proposal is consistent with the purposes and requirements of section 17A of the Act because it would enable NSCC to safeguard securities and funds within its custody or control or for which it is responsible. NSCC states in its filing that, because Rule 50 affords ACATS CNS items the same guarantees as other CNS items, NSCC is exposed to considerable financial risk. Because ACATS items enter the CNS system at no value, when the position is marked on T+5, NSCC, as the guarantor and *contra* party, becomes liable to the Receiving Member for the entire value of the position if the Delivering Member fails to pay the "full value" mark. [6]

NSCC also believes that there is good cause for approving the proposed rule change on an accelerated basis. The NYSE and the national Association of Securities Dealers ("NASD") recently have mandated use of ACATS[7] and NSCC's risk has increased along with increased use of the service. NSCC believes that acceptance of this risk is no longer permissible.

III. Discussion

The Commission believes that the proposed rule change is consistent with section 17A of the Act and, therefore, is approving the proposed rule change. As discussed below, the Commission agrees with NSCC that the proposal will enable NSCC to safeguard securities and funds within its custody or control or for which it is responsible by eliminating the risk posed by guaranteeing all ACATS-CNS settlement obligations.

As discussed in Securities Exchange Act Release No. 23401,[8] the Commission acknowledges the critical differences between processing regular-way and ACATS CNS items. Unlike ordinary CNS items which enter CNS at contract value, ACATS CNS items enter CNS unvalued, reflecting their true nature as "free" transfers. To enable CNS use for ACATS, however, ACATS items need to be valued. Therefore, ACATS items like all CNS items, are marked-to-the-market on the morning of settlement day, *i.e.*, T+5. The ACATS items thus are marked to their full value as of the prior day's closing price. On the morning of settlement day, the Delivering Member's CNS projection report shows a short securities position and its CNS accounting summary shows a cash debit for the "full value" mark. Conversely, the Receiving Member's projection report shows a long securities position and the summary shows a cash credit for the mark. If the Delivering Member fulfills his ACATS delivery obligation on T+5, the Delivering Member's short position is cancelled and the money debit for the mark is offset by a credit. At the same time, the Receiving Member's long position is offset and the money credit is debited, wiping out the mark. The result is a "free" transfer of securities; no money is paid by either the Delivering or Receiving Member.

The Commission recognizes that under NSCC Rule 50 in its current form, NSCC may be at risk for the full market value of the ACATS position. If the

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systems. Settlement of ACATS items generally occurs two business days later. *See also* NYSE Rule 412, approved by the Commission in Securities Exchange Act Release No. 22663 (November 26, 1985), 50 FR 49638 (December 3, 1985); and Securities Exchange Act Release No. 22941 (February 24, 1986), 51 FR 7170 (February 28, 1986) and Securities Exchange Act Release No 22948 (January 25, 1986), 51 FR 7870 (March 6, 1986), approving similar rules of the National Association of Securities Dealers, Inc. ("NASD") and the Municipal Securities Rulemaking Board ("MSRB").

[3] NSCC's CNS system summarizes and nets together each member's daily transactions in each issue with any previous open positions to create a single net long or short position.

[4] To eliminate the ACATS delivery obligation for CNS and to reverse related debits and credits, NSCC must unwind the neeting process. NSCC's CNS system now tracks separately every ACATS item and the identities of the original Receiving and Delivering Members throughout the settlement process, even if the netting process causes one or both to "net out." ACATS CNS reversals will work like this: Broker A, the Receiving Member, has requested Broker B, the Delivering Member, via ACATS, to deliver 100 shares of IMB. Assuming no problems, that transfer flows into CNS as of T+3. The obligations are netted. On the morning of T+5, settlement day, Broker B has a total CNS IBM delivery obligation to NSCC for 200 shares, 100 relating to the ACATS item and 100 relating to other CNS activity. Broker B, however, fails-to-deliver 100 shares; the other 100 shares are allocated by NSCC for delivery to Broker C. Broker B also fails to pay to NSCC its mark-to-the-market on the failed delivery (or any portion of its net money settlement payment obligation for that day).

In the meantime, the CNS system allocates 100 shares of IBM for delivery to Broker A, the Receiving Member. NSCC, in this situtation, can take following action. First, the 100 share delivery from Broker B to Broker C, a "regular-way" CNS delivery, will be guaranteed by NSCC. Second, NSCC will identify all ACATS Receiving Members that were due to receive IBM from Broker B, the Delivering Member, before the netting occurred. NSCC will discover Broker A. NSCC also will see that Broker A was allocated 100 shares of IBM. Third, NSCC will reverse that CNS delivery to Broker A and reallocate it to another NSCC Member with a net long CNS IBM position. Broker A and Broker B can settle this customer transfer item outside NSCC. Moreover, all preliminary CNS money debits and credits relating to the ACATS item are reversed by NSCC.

[5] NSCC does not guarantee account transfers relating to non-CNS eligible items and CNS items that are specified to be delivered ex-CNS. For those items, NSCC produces automated customer account receive and deliver orders. These receive and deliver orders contain customer account information and direct the appropriate NSCC members to settle the transaction. On settlement day, NSCC credits and debits the appropriate members' settlement accounts for the value of the items indicated on the receive and deliver orders, but actual delivery and money settlement are the responsibility of the Receiving and Delivering Members.

[6] "Regular-way" CNS transactions are entered into the system at their contract value and NSCC collects marks-to-the-market on fails-to-deliver equal to the difference between the fail's contract value and market price as of the market close on the previous business day. Thus, regular-way CNS marks necessarily are for much smaller amounts than CNS ACATS-related "full value" marks. Moreover,l because ordinary CNS deliveries are for value, NSCC can expect a CNS receiver to pay NSCC for delivered securities. This payment from the receiver, together with the mark-to-the market payment from the deliverer respecting the fail, in all likelihood should offset almost all of NSCC's market risks.

[7] *See* Securities Exchange Act Release Nos. 22663 (November 26, 1985), 50 FR 49638 (December 3, 1985) and 22941 (February 24, 1986), 51 FR 7170 (February 28, 1986).

[8] (July 7, 1986), 51 FR 25280 (July 11, 1986).

Delivering Member fails-to-deliver but pays the "full value" mark, NSCC still will be able to perform its obligations to the *contra* party by buying-in or borrowing the securities. On the other hand, if the Delivering Member fails to deliver and fails to pay the "full value" mark, NSCC, as the *contra* party and guarantor, still must deliver the securities to the Receiving Member. Yet, because the Delivering Member has failed to pay the mark, NSCC has received no funds to cover NSCC's payment obligation on T+5 and the delivery obligation associated with the ACATS CNS item. Moreover, even if NSCC bought-in or borrowed securities for delivery to the Receiving Member, NSCC could not expect to be paid by the Receiving Member; the accounting entries just would "wash."

In light of NSCC's financial risk, the Commission agrees with NSCC that it is appropriate to adjust its CNS settlement guarantee for ACATS Receiving Members if the Delivering Member fails-to-deliver and fails to pay any portion of the entire money settlement obligation on settlement day. The Commission recognizes the important function ACATS serves in promoting the prompt and accurate transfer of customer accounts and believes that NSCC, and consequently its clearing community, should not be exposed to increased finanacial risk from its ACATS-related activity. Furthermore, to the extent an ACATS transfer is not processed because of a Delivering Member's default on settlement date, customers of the defaulting member who had sought the ACATS transfer would continue to be protected up to the amount of coverage provided under the Securities Investor Protection Act of 1970.[9]

Finally, the Commission finds good cause to approve the proposal on an accelerated basis. When the ACATS service was first offered, participation was limited and the risks to NSCC were limited. The NYSE and the NASD, however, recently have mandated use of ACATS. Due to the increased risk posed by increased use of the service, the Commission has determined that it is appropriate to approve the proposed rule change before the thirtieth day after notice of the filing appeared in the **Federal Register**.

On the basis of the foregoing, the Commission finds that NSCC's proposed rule change is consistent with the Act and, in particular, with section 17A of the Act.

Accordingly, It Is Therefore Ordered, under section 19(b)(2) of the Act, that the proposal (File No. SR–NSCC–86–07) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: July 31, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–17926 Filed 8–7–86; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78aaa–78111.

[Release No. 34–23492; File No. SR–OCC–86–16]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Proposed Rule Change Establishing Procedures for Filing, Revoking or Modifying Exercise Notices After the 7:00 P.M. Deadline

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that on July 31, 1986, the Options Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would permit OCC, in its discretion, to allow Clearing Members to file, revoke, or modify exercise notices after the 7:00 P.M. deadline prescribed in OCC's Rules for the purpose of correcting bona fide errors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC Rule 801(a) sets a deadline of 7:00 P.M. (Central Time) for the filing of exercise notices. Exercise notices filed prior to 7:00 P.M. may be revoked or modified until that time for the purpose of correcting bona fide errors on the part of the Clearning Member or a customer.

On a number of occasions, Clearing Members have failed to discover material errors until after the 7:00 P.M. deadline. Such errors may take the form of mistakes in notices submitted (*e.g.*, wrong series, account type, sub-account, or quantity) or omissions (*e.g.*, failure to file an exercise notice in response to a timely exercise instruction from a customer). Inability to correct such errors can cause substantial losses. Clearing Members have therefore requested that OCC examine the feasibility of permitting exceptions to the 7:00 P.M. deadline.

The 7:00 P.M. deadline was imposed for operational reasons. OCC's nightly processing begins at approximately 8:30 P.M., and the time between 7:00 P.M. and 8:30 P.M. is needed to edit Clearing Member imput. However, OCC does have the capacity to accept a limited amount of additional input, including corrections of input previously submitted, during the editing process. As long as the additional input remains limited in amount, acceptance would not appreciably extend nightly processing time.

Acceptance of additional exercise input becomes more difficult once nightly processing begins, and grows increasingly difficult as the night progresses, because operations previously performed would have to be redone to take the new input into account. A point would eventually be reached where the acceptance of new exercise input would threaten OCC's ability to complete its processing on a timely basis. That point will vary in time from night to night, depending on such factors as the volume of data being processed, the presence or absence of operational problems, etc.

For these reasons, OCC has concluded that the present 7:00 P.M. deadline must be retained, but that OCC should have the ability to make exceptions in cases where it can safety do so, provided that safeguards are established to ensure that such exceptions are an infrequent occurrence.

Proposed Rule 801(e) would authorize specified senior officers of OCC, in their discretion, to permit late filings of exercise notices and late revocations or modifications of exercise notices previously filed (referred to collectively herein as "late filings"), solely for the purpose of correcting bona fide errors on the part of Clearing Members or their customers, subject to certain conditions.

The first condition relates to timing. The late filing would have to be submitted at a time early enough, in the judgment of the officer making the decision, to allow OCC to complete its nightly processing on a reasonably timely basis notwithstanding any resulting delay. As practical matter, late filing submitted before 8:30 P.M. would ordinarily satisfy this condition, because they could be processed together with timely filings. Filing submitted after 8:30 P.M. would have a more disruptive effect on the processing cycle, and would be evaluated on a case-by-case basis, but with a view towards accepting them if possible where the alternative might be a substantial loss for a Clearing Member or its customer.

The second condition is payment of a sizeable late charge. The purpose of this requirement is threefold. First, it would create an incentive for Clearing Members and their customers [1] to exercise care in connection with exercise instructions, so as to minimize the number of mistake requiring late filings. Second, it would tend to ensure that the late filing procedure would be used only in cases involving substantial loss potential, and therefore warranting the interruption of OCC's normal processing cycle. Third, it would compensate OCC for the cost of developing the special systems needed to accommodate late filings and the additional processing time involved.

The third condition is that the Clearing Member deliver to OCC and to each affected Exchange, within two business days after submitting a late filing, a memorandum describing the error that give rise to the filing. The purpose of this requirement is to facilitate verification that late filings are in fact attributable to bona fide errors.

Finally, submission of late filings would be deemed a violation of the procedures of OCC, and would be subject to disciplinary action in appropriate cases.

The proposed rule change is consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934 (the "Act") because it would further the public interest by adopting a more flexible system for correction of exercise notices, thereby reducing the potential for losses to Clearing Members caused by errors or omissions in exercise activity.

B. Self-Regulatory Organization's Statment on Burden on Competition

OCC does not believes that the filing will have any impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was prompted by concerns expressed by Clearing Members. However, formal comments were not requested or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 1, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-17927 Filed 8-7-86; 8:45 am]

BILLING CODE 8010-01-M

[1] OCC assumes that Clearing Members would pass on late charges to their customers in cases where it was the customer's error that necessitated the late filing.

[Release No. 35-24156-A; 31-816]

Energy Investments, Inc.; Supplemental Notice of Application Requesting an Order Pursuant to Section 2(a)(3) Declaring it not To Be an "Electric Utility Company"

August 1, 1986.

Energy Investments, Inc. ("Energy"), 10700 East 350 Highway, Kansas City, Missouri 64138, has filed an application with this Commission pursuant to section 2(a)(3) of the Public Utility Holding Company Act of 1935 ("Act") requesting an order declaring that it will not become an "electric utility company" within the meaning of section 2(a)(3) of the Act as a result of transactions set forth in the application which were summarized in a notice issued by the Commission on July 24, 1986 (HCAR No. 24156).

That notice incorrectly referenced the S.E.C. file number as "38-816" rather than the correct, above-referenced number of "31-816". The July 24, 1986 notice also did not include the address of Energy as stated above.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by August 18, 1986 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicant at the adddress specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-17929 Filed 8-7-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7603]

Issuer Delisting; Application To Withdraw From Listing and Registration; Hannaford Bros. Co. (Common Stock, $.75 Par Value)

August 4, 1986.

Hannaford Bros. Co. has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's common stock was listed and began trading on the New York Stock Excange, Inc. ("NYSE") on July 18, 1986.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before August 25, 1986, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-17930 Filed 8-7-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending—Aug. 1, 1986

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44198—R-1—R-4

Parties: Members of International Air Transport Association.
Date Filed: July 25, 1986.
Subject: North/Central Pacific Cargo Rates.
Proposed Effective Date: October 1, 1986.

Docket No. 44216—R-1—R-7

Parties: Members of International Air Transport Association.
Date Filed: August 1, 1986.
Subject: South Atlantic Cargo Rates.
Proposed Effective Date: October 1, 1986.

Docket No. 44217

Parties: Members of International Air Transport Association.
Date Filed: August 1, 1986.
Subject: Passenger Fare Adjustment-Lebanon.
Proposed Effective Date: August 21, 1986.

Docket No. 44218—R-1 & R-2

Parties: Members of International Air Transport Association.
Date Filed: August 1, 1986.
Subject: Commodity Rates—Auckland-US.
Proposed Effective Date: July 27, 1986.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-17941 Filed 8-7-86; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 1, 1986

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44205

Date Filed: July 29, 1986.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 26, 1986.
Description: Application of Compagnie National Air France, pursuant to section 402 of the Act and Subpart Q of the Regulations, requests renewal of its foreign air carrier permit to serve Anchorage, Alaska on a stopover basis.

Docket No. 44214

Date Filed: July 30, 1986.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 28, 1986.
Description: Application of Pan Am Shuttle, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity to engage in interstate and overseas air transportation, and requests that it be found fit to engage in such transportation.

Docket No. 44208

Date Filed: July 30, 1986.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: August 27, 1986.
Description: Application of Amerijet International, Inc. pursuant to section 401(d)(1)(3) of the Act and Subpart Q of the Regulations, requests authority to engage in foreign air transportation of persons, property and mail:

Between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, on the one hand, and, on the other:

(a) Any point in Canada;

(b) Any point in Mexico;

(c) Any point in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Trinidad, Aruba, the Leeward and Winward Islands, and any other foreign place located in the Gulf of Mexico or Caribbean Sea;

(d) Any point in Central or South America;

(e) Any point in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east via a transpacific routing; and

(f) Any point in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-17942 Filed 8-7-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement: Prince George's County, MD; MD Route 5

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an enviromental impact statement is being prepared for the proposed widening and interchange improvements on Maryland Route 5 from U.S. 301 Interstate Route I-95.

FOR FURTHER INFORMATION CONTACT: Mr. Edward A. Terry, Jr., Field Operations Engineers, Federal Highway Administration, The Rotunda, Suite 220, 711 W. 40th Street, Baltimore, Maryland 21211, telephone 301/962-4010, and/or Mr. Louis Eg, Deputy Director, Project Development Division, Maryland State Highway Administration, 707 North Calvert Street, Room 310, Baltimore, Maryland 21202, telephone 301/659-1130.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland State Highway Administration, is preparing an environmental impact statement to develop an acceptable alternate to widen a 10 mile portion of MD 5 to 6 through-lanes.

Interchange improvements would be included to address safety/capacity problems. At-grade inrtersections would be replaced with interchanges where feasible.

In addition to the No-Build, two Build alternates are under consideration. Alternate 2 proposes the reconstruction of MD 5 as an access-controlled freeway. One lane in each direction would be added in the median and signalized intersections would be eliminated. New interchanges would be constructed at Accokeek & Relocated Brandywine Roads, Surratts Road, Coventry Way, and Maryland Route 337 (Allentown Road). The interchange with I-95 would be reconstructed to include directional ramps from northbound Maryland Route 5 to westbound I-95, and from westbound I-95 to southbound Maryland Route 5. A new interchange at Maryland Route 223 is programmed as a separate project to be constructed beginning in 1989. Bridges overpassing Maryland Route 5 are proposed at Maryland Route 373 and Burch Hill Road. Maryland Route 5 would overpass Deerpond Lane. Manchester Drive, Schultz Road-Malcolm Road, and Moore Road intersections would be eliminated.

Alternate 3 proposes the reconstruction of Maryland Route 5 as an access-controlled freeway. One lane in each direction would be added in the median and traffic signals eliminated. Interchanges would be provided at the same locations as in Alternate 2 and at Burch Hill Road Extended. A bridge overpassing Maryland Route 5 is proposed at Medford Avenue Extended. The Moore Road, Earnshaw Road, and Manchester Drive intersectins would be eliminated. Right turn movements would be permitted to and from Schultz Road, to and from Deerpond Lane, from southbound MD 5 to Old Branch Avenue, and from Old Alexandria Ferry Road to northbound MD 5.

An alternates public meeting has been held. A public hearing will be held after circulation of the DEIS. A public notice will give the time and place of the public hearing, and individual notices will be sent to those agencies, groups, and individuals on the mailing list. The Draft EIS will be available for public and agency review and comment prior to the public hearing. To ensure that the full range of issues related to this proposal are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

(Catalog of Federal Domestic Assistance Program Number 20.025, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program.)

Fred J. Hempel,

Assistant Division Administrator, Baltimore, Maryland.

[FR Doc. 86-17753 Filed 8-7-86; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. T84-01; Notice 10]

Evaluation Plan for the Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of its Evaluation Plan for the Theft Prevention Standard. The plan provides the methodology by which the agency proposes to evaluate the effectiveness of the Theft Prevention Standard developed by NHTSA as required under Title VI—Theft Prevention of the Motor Vehicle Information and Cost Savings Act. The plan was developed in response to the Congressional requiremnt that the Secretary submit a comprehensive report not later than five years after promulgation of the Theft Prevention Standard as well as Executive Order 12291 which provides for Government-wide review of existing major Federal Regulations. The agency seeks public review and comment on this evaluation plan.

DATE: Comments must be reaceived no later than September 22, 1986.

ADDRESSES: Interested persons may obtain a copy of the evaluation plan free of charge by sending a self-addressed mailing label to Ms. Glorious Harris (NAD-51), National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. All comments should refer to the docket and notice number of this notice and be submitted to Docket Section, Room 5109, Nassif Buiding, 400 Seventh St., SW, Washington, DC 20590. [Docket hours, 8:00 a.m.-4:00 p.m., Monday through Friday].

FOR FURTHER INFORMATION CONTACT: Mr. Frank G. Ephraim, Direactor, Office of Standards Evaluation, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: With the passage of the Motor Vehicle Theft Law Enforcement Act of 1984, Congress amended the Motor Vehicle Information and Cost Savings Act by the creation of Title VI—Theft Prevention.

The new Title VI mandates a comprehensive program of vehicle theft countermeasures including:

- Inscribing or affixing identification numbers onto certain major original equipment and replacement parts for passenger car lines with high theft rates,
- Broadening Federal criminal penalties for motor vehicle theft,
- Imposing new criminal sanctions against tampering with identification markings, and
- Imposing tighter controls on the import and export of motor vehicles.

Under Title VI, the National Highway Traffic Safety Administration (NHTSA) is charged with:

- Selecting the parts to be marked with the appropriate identification mumbers,

• Establishing the criteria for the selection of high theft lines and making the selections,

• Establishing the performance criteria for inscribing or affixing the appropriate identification numbers to the specified original equipment and replacement parts for the passenger car lines selected, and

• Specifying the manner and form for compliance certification and who will be authorized to certify compliance.

Congress has also mandated that the Secretary shall submit a report not later than five years after promulgation of the standard required by Title VI. Included in the report shall be the following in accordance with paragraphs (2) and (3) of subsection 614 (b):

A. Methods and procedures used by public and private entities for collecting, compiling and disseminating information concerning the theft and recovery of passenger cars, trucks, multipurpose vehicles, and motorcycles.

B. Number of motor vehicles stolen and recovered annually.

C. Extent to which vehicles stolen are dismantled or exported.

D. Description of the market for stolen parts.

E. Costs to manufacturers and consumers, and the benefits of the theft prevention regulation.

F. Federal, State and local experience in making arrests and prosecuting persons for violating the 1984 Act.

G. Premiums charged by insurers for comprehensive coverage for vehicles subject to the Act and any changes to these premiums due to this title.

H. Adequacy and effectiveness of Federal and State laws and law enforcement mechanisms aimed at preventing the distribution and sale of used parts removed from stolen vehicles.

I. Assessment of whether the identification of parts in vehicle classes other than passenger cars would be beneficial.

J. Any other information available to the Secretary concerning the impact of the Act.

The evaluation plan presents the scope and proposed approach by which NHTSA intends to address the above questions. The primary objectives of the evaluation are:

• To compare the magnitude of vehicle theft before and after enactment of the Theft Prevention Standard;

• To measure the effectiveness of vehicle theft countermeasures over time after promulgation of the standard;

• To determine the benefits accruing from the standard including changes in insurance premiums and payouts;

• To determine the costs imposed by the standard including incremental per vehicle and parts marking costs.

To achieve these objectives, seven specific projects are planned including:

• A vehicle fleet analysis;

• A theft data collection/analysis study to measure changes in theft rates over time resulting from the standard;

• A case study of the marketplace for stolen cars and parts to measure the impacts of the standard on car theft rings, stolen parts distribution networks, and the end users of stolen parts;

• A survey of States and localities to take a before/after measure of arrests and convictions for car theft;

• A survey of procedures used by insurance companies, Government agencies and trade associations to ascertain the quality of their vehicle theft data and uses thereof;

• A manufacturing cost/retail price analysis of vehicle and replacement parts marking methods costs and retail price impacts resulting from the standard requirements, and

• A comparative analysis using the change in payout distribution before and after the standard is in effect. A similar study will be made on the effects of the standard on premium rates.

NHTSA welcomes public review of the evaluation plan and invites all interested parties to submit comments.

It is requested but not required that 10 copies of comments be submitted.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(15 U.S.C. 2034; Delegation of Authority at 49 CFR 1.50 and 49 CFR 501.8)

Adele Spielberger,

Associate Administrator for Plans and Policy.

[FR Doc. 86-17857 Filed 8-7-86; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB No. 1545-0047

Form No. Forms 990, Schedule A (Form 990)

Type of Review: Revision

Title: Return of Organization Exempt from Income Tax Organization Exempt Under 501(c)(3)

OMB No. 1545-0089

Form No. Forms 1040NR

Type of Review: Revision

Title: U.S. Nonresident Alien Income Tax Return

OMB No. 1545-0155

Form No. Forms 3468

Type of Review: Revision

Title: Computation of Investment Credit

Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 4, 1986.

Douglas J. Colley,

Departmental Reports, Management Office.

[FR Doc. 86-17865 Filed 8-7-86; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Amendment to Department Circular—Public Debt Series—No. 4-86]

9⅜ percent Treasury Bonds of 2006

Washington, July 25, 1986.

Department of the Treasury Circular, Public Debt Series-No. 4–86, dated January 2, 1986, as supplemented, descriptive of 9⅜ percent Treasury Bonds of 2006, hereafter referred to as Bonds, is hereby amended effective August 15, 1986.

The following Section and Subsections in the original circular dated January 2, 1986, are hereby redesignated:

from 6. to 7.
from 6.1. to 7.1.
from 6.2. to 7.2.

Subsections 2.6. and 6.3. in the original circular are replaced by the Subsections 2.6. and 7.3. below and, in addition, the following Sections and Subsections are now included. The other terms and conditions remain unchanged.

2. Description of Securities

2.6. A book-entry Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.5. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a book-entry Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Bond are: each future semiannual interest payment (hereafter referred to as an Interest Component) and the principal payment (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2. In order for a book-entry Bond to be separated into the components described in Subsection 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering is $64,000.

6.3. Only Bonds in book-entry from may be separated into their components. Such separation may be effected at any time from the effective date of the amendment to this circular until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the book-entry Bonds. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.4. The Principal Component will be payable of February 15, 2006.

6.5. Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.6 In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

6.7. Once a book-entry Bond has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.8. Interest Components and Principal Components may be held only in book-entry form.

6.9. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Bond will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.10. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.11. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachment A is incorporated as part of this circular.

The foregoing amendment was effected under authority of Chapter 31 of Title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

Gerald Murphy,

Fiscal Assistant Secretary.

CUSIP Numbers and Designations for the Principal Component and Interest Components of 9⅜ Percent Treasury Bonds of February 15, 2006, CUSIP No. 912810 DU 9

The Principal Component is designated 9⅜ persent Treasury Principal (TPRN) 2006 due February 15, 2006, CUSIP No. 912803 AJ 2.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury Interest (TINT) due:	
February 15, 1987	AZ 3
August 15, 1987	BA 7
February 15, 1988	BB 5
August 15, 1988	BC 3
February 15, 1989	BD 1
August 15, 1989	BE 9
February 15, 1990	BF 6
August 15, 1990	BG 4
February 15, 1991	BH 2
August 15, 1991	BJ 8
February 15, 1992	BK 5
August 15, 1992	BL 3
February 15, 1993	BM 1
August 15, 1993	BN 9
February 15, 1994	BP 4
August 15, 1994	BQ 2
February 15, 1995	BR 0
August 15, 1995	BS 8
February 15, 1996	BT 6
August 15, 1996	BU 3
February 15, 1997	BV 1
August 15, 1997	BW 9
February 15, 1998	BX 7
August 15, 1998	BY 5
February 15, 1999	BZ 2
August 15, 1999	CA 6
February 15, 2000	CB 4
August 15, 2000	CC 2
February 15, 2001	CD 0
August 15, 2001	CE 8
February 15, 2002	CF 5
August 15, 2002	CG 3
February 15, 2003	CH 1
August 15, 2003	CJ 7
February 15, 2004	CK 4
August 15, 2004	CL 2
February 15, 2005	CM 0
August 15, 2005	CN 8
February 15, 2006	CP 3

[FR Doc. 86–17841 Filed 8–7–86; 8:45 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

International Youth Exchange Initiative Invitation for Proposals for Youth Exchanges with the Federal Republic of Germany

The United States Information Agency (USIA) announces a program of selective assistance through limited grant support to private not-for-profit organizations for programs that promote an expansion of international youth exchanges with the Federal Republic of Germany. This program has been approved by OMB Clearance No. 3116–0159 (expiration date 12–31–87).

Organizations interested in such exchanges should request further information from the International Youth Exchange Staff at the address listed at the end of this announcement.

Grant funding will generally be for 12–18 month periods. All proposals will be judged on a competitive basis. Criteria for judging proposals are listed below.

Eligibility

Academic, cultural, not-for-profit youth exchange and youth-serving organizations are eligible to apply. General guidelines for the Bureau of Educational and Cultural Affairs require that grants to organizations that have worked in the youth exchange field for less than four years may not exceed $60,000. Organizations must be capable of meeting the "Criteria for Teenager Exchange Visitor Programs" or "Criteria for Practical Trainees" which may be found in law libraries in the Code of Federal Regulation under 22 CFR Part 514 recently amended by notice published in the **Federal Register** (see 50 FR 31709, August 6, 1985) or may be obtained by writing to the Youth Exchange Staff, USIA, Washington, DC 20547.

Program Content

All proposals must justify projects in terms of the desirable outcome of the grant. An organization should be prepared to describe its current situation, its goal and the steps that are necessary to accomplish this goal. Objectives should be quantified wherever possible (e.g. to increase the number of exchange participants from 50 to 100 by June 1988). The justification must specify why the organization needs partial U.S. Government funding to accomplish its objectives above and beyond the private sector funds its plans to devote to the project.

Types of Projects

Proposals for partial funding of youth exchanges between American and German organizations for projects to be initiated between May and December 1987 are invited in the following categories: (1) Expansion of three-four week long high school classroom-to-classroom exchanges, including development of approrpiate materials on American society, government, and foreign policy; (2) thematic projects; (3) work project exchanges. Thematic exchanges should be for a minimum of four weeks for 10–16 students (and adult chaperone) aged 15–25, should be essentially one-community based, and should include orientations and debriefings for both German and American participants. Priority areas for thematic projects are journalism, the sciences, the arts, foreign policy, government (civic education), and the environment. Work projects or volunteer internships should be 6 weeks or longer. All American organizations should have identified German partners.

Review Criteria

Proposals will be judged on the extent to which projects address the following criteria:

Justification—Reviewers look for realistic, quantifiable goals, and clear directions; the need for public funds to achieve the objectives must also be adequately justified.

Networking—Certain projects involve matching the organizational experience and capability of an exchange group with the resources of a youth-serving organization or network with facilities, youth memberships, community access, etc. These proposals will be judged on their potential for forging these relationships and generating viable exchange activities.

Cost-sharing—The proposal should detail and extent of financial and in-kind support from participating organizations, schools, families, communities, counterpart German organizations, and government agencies.

Special consideration will be given to efforts to assist economically disadvantaged youth and increase the ethnic and regional diversity of American participants in exchanges, and efforts to mainstream disabled youth into exchange activities.

Reciprocity—The exchanges must be two way and as balanced (Germans/Americans) as possible.

Cost-effectiveness—The project should demonstrate greatest return for each federal dollar invested, and reasonable per capita cost in comparison with other proposals submitted.

Quality—Proposals are judged in terms of the program features which enhance the educational value of the exchange and povide for extensive interaction between exchange visitors and their host communities (e.g., homestays, joint work projects).

Organizational Competency—The proposal should attest to the ability of the organization to field adequate resources to carry out a quality exchange. Priority is given to proposals from national organizations rather than local chapters.

Self-management—The organization should demonstrate the ability to administer the project without extensive subcontracting to other not-for-profit or profit-making organizations. Where such arrangements exist, an organization should provide a copy of the service agreement.

Length of Stay—Projects that provide for longer stays than the minimum required are frequently judged as more competitive than shorter exchanges.

The following are ineligible for support under this competition:

—Sports Exchanges.
—Research studies.
—Study for post-secondary academic credit or degree programs.
—Travel/observation tours and "hotel-hopping" delegations.
—School tuition.
—Stipends to host families.
—Performing arts tours.
—Projects designed to assist organizations start an affiliate in a foreign country. Organizations should demonstrate that such a base has been established before seeking grant funds to assist in expansion.
—Projects requesting funding for development or purchase of orientation materials on the Federal Republic of Germany.
—Projects designed to promote or advertise the general program of an organization.
—Any project which is designed to lobby elected officials, promote politically partisan views, or whose aim is to promote religious activities.
—Conferences, except as part of a program that meets other criteria listed (i.e., length of stay, project model).

In the absence of special circumstances, the following should be understood to be of low priority for purposes of this competition:

—Full program support (i.e. grant funding for all costs of the exchange).

—Support for exchange activities already being carried out.

U.S. participants in all grant-funded exchange projects must be American citizens or permanent residents as a matter of policy.

Proposal Format

Interested organizations should write or call the International Youth Exchange Staff for guidelines which specify what should be included in the narrative portion of the proposal, how budgets should be designed, and what attachments ae required. The proposal should include a statement about the type of visa that will be used to bring the German youth to the U.S.

Review Process

Proposals (original and 12 copies) should be received in USIA no later than November 1, 1986. Following an initial screening for eligibility and completeness, proposals will be reviewed by a USIA advisory panel. Final decisions are made by the Associate Director for Educational and Cultural Affairs.

For further information contact the International Youth Exchange Staff (E/YX), Bureau of Educational and Cultural Affairs, U.S. Information Agency, Washington, DC 20547 or call 202–485–7299.

Dated: July 31, 1986.

Robert R. Gosende,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 86–17871 Filed 8–7–86; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 153
Friday, August 8, 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

1

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, August 13, 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 carreied 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 anouncement of bank and bank holding company applications scheduled for the meeting.

Dated: August 5, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–17935 Filed 8–5–86; 4:26 pm]

BILLING CODE 6210-01-M

2

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUCEMENT: 51 FR 27307, July 30, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Wednesday, August 6,1986.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposed Board comments to the Office of Management and Budget on draft legislation implementing the Report of the Task Group on Regulation of Financial Services.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: August 6, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–17982 Filed 8–6–86; 12:55 pm]

BILLING CODE 6210-01-M

Federal Register

Friday
August 8, 1986

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 344

Topical Otic Drug Products for Over-the-Counter Human Use; Final Monograph; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 344

[Docket No. 77N-0334]

Topical Otic Drug Products for Over-the-Counter Human Use; Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule in the form of a final monograph establishing conditions under which over-the-counter (OTC) topical otic drug products (drug products for the ear) are generally recognized as safe and effective and not misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on topical otic drug products that have come to the agency's attention. This final monograph is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: August 10, 1987.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 16, 1977 (42 FR 63556), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC topical otic drug products, together with the recommendations of the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention Treatment Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by March 16, 1978. Reply comments in response to comments filed in the initial comment period could be submitted by April 14, 1978.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final monograph, for topical otic drug products was published in the **Federal Register** of July 9, 1982 (47 FR 30012). Interested persons were invited to file by September 7, 1982, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by November 9, 1982. New data could have been submitted until September 11, 1983. Final agency action occurs with the publication of this final monograph, which is a final rule establishing a monograph for OTC topical otic drug products.

The OTC procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA is no longer using the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph state, but is using instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III).

As discussed in the proposed regulaton for OTC topical otic drug products (47 FR 30013), the agency advises that the conditions under which the drug products that are subject to this monograph will be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication in the **Federal Register**. Therefore, on or after August 10, 1987 no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to this monograph that is repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In response to the proposed rule on OTC topical otic drug products, five drug manufacturers, one association for drug manufacturers, and one college of pharmacy submitted comments. Copies of comments received are on public display in the Dockets Management Branch. Any additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

In proceeding with this final monograph, the agency has considered all comments and the changes in the procedural regulations.

This final monograph applies only to earwax removal aids. Active ingredients for claims for the prevention of swimmer's ear and treatment of water-clogged ears were submitted in comments to the tentative final monograph. They were not included in the Panel's report, nor considered by the agency in the tentative final monograph on topical otic drug products. Therefore, in order to obtain public comment on these active ingredients and claims, the agency published a proposed rule to amend the tentative final monograph for OTC topical otic drug products to include drugs used for the prevention of swimmer's ear and the treatment of water-clogged ears in the **Federal Register** of July 30, 1986 (51 FR 27366).

I. The Agency's Conclusions on the Comments

A. General Comments on Topical Otic Drug Products

1. One comment contended that OTC drug monographs are interpretive, as opposed to substantive, regulations. The comment referred to statements on this issue submitted earlier to other OTC drug rulemaking proceedings.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the **Federal Register** of May 11, 1972 (37 FR 9464) and in paragraph 3 of the preamble to the tentative final monograph for antacid drug products, published in the **Federal Register** of November 12, 1973 (38 FR 31260). FDA reaffirms the conclusions stated there. Subsequent court decisions have confirmed the agency's authority to issue substantive regulations by rulemaking. See, e.g., *National Nutritional Foods Association* v.

Weinberger, 512 F.2d 688, 696–98 (2d Cir. 1975) and *National Association of Pharmacetical Manufacturers* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *Aff'd*, 637 F.2d 887 (2d Cir. 1981).

2. One comment contended that FDA does not have the authority to legislate the exact wording of OTC labeling claims to the exclusion of what the comment described as other truthful, accurate, not misleading, and intelligible labeling for the products.

During the course of the OTC drug review, the agency has maintained that the terms that may be used in an OTC drug product's labeling are limited to those terms included in a final OTC drug monograph. (This policy has become known as the "exclusivity policy.") The agency's position has been that it is necessary to limit the acceptable labeling language to that developed and approved through the OTC drug review process in order to ensure the proper and safe use of OTC drugs. The agency has never contended, however, that any list of terms developed during the course of the review exhausts all the possibilities of terms that appropriately can be used in OTC drug labeling. Suggestions for additional terms or for other labeling changes may be submitted as comments to proposed or tentative final monographs within the specified time periods or through petitions to amend monographs under § 330.10(a)(12). For example, the labeling in this final monograph has been expanded and revised in response to comments received.

During the course of the review, FDA's position on the "exclusivity policy" has been questioned many times in comments and objections filed in response to particular proceedings and in correspondence with the agency. The agency has also been asked by The Proprietary Association to reconsider its position. In a notice published in the **Federal Register** of July 2, 1982 (47 FR 29002), FDA announced that a hearing would be held to assist the agency in resolving this issue. On September 29, 1982, FDA conducted an open public forum at which interested parties presented their views. The forum was a legislative type administrative hearing under 21 CFR Part 15 that was held in response to a request for a hearing on the tentative final monographs for nighttime sleep-aides and stimulants (published in the **Federal Register** of June 13, 1978; 43 FR 25544).

After considering the testimony presented at the hearing and the written comments submitted to the record, in the **Federal Register** of April 22, 1985 (50 FR 15810), FDA proposed to change its exclusivity policy for the labeling of OTC drug products. In the **Federal Register** of May 1, 1986 (51 FR 16258), the agency published a final rule changing the exclusivity policy and establishing three alternatives for stating the indications for use in OTC drug labeling. Under the final rule, the label and labeling of OTC drug products are required to contain in a prominent and conspicuous location, either: (1) The specific wording on indications for use established under an OTC drug monograph, which may appear within a boxed area designated "APPROVED USES"; (2) other wording describing such indications for use that meets the statutory prohibitions against false or misleading labeling, which shall neither appear within a boxed area nor be designated "APPROVED USES"; or (3) the approved monograph language on indications, which may appear within a boxed area designated "APPROVED USES," plus alternative language describing indications for use that is not false or misleading, which shall appear elsewhere in the labeling. All required OTC drug labeling other than indications for use (e.g., statement of identity, warnings, and directions) must appear in the specific wording established under an OTC drug monograph.

In the tentative final monograph (47 FR 30020), supplemental language relating to indications had been proposed and captioned as *Other Allowable Statements*. Under FDA's revised exclusivity policy (51 FR 16258), such statements are included at the tentative final stage as examples of other truthful and nonmisleading language that would be allowed elsewhere in the labeling without prior FDA review. In accordance with the revised exclusivity policy, such statements would not be included in a final monograph. However, the agency has decided that, because these additional terms have been reviewed by FDA, they should be incorporated, wherever possible, in final OTC drug monographs under the heading "Indications" as part of the indications developed under that monograph.

3. One comment from a small manufacturer stated that the 12-month period of time provided for manufacturers to comply with the final monograph is too restrictive. The company requested that this time period be expanded to 18 months or at least long enough to use existing supplies of cartons and labels. The company explained that to keep costs as low as possible, labels are ordered in large quantities that will provide an 18-month supply. Consequently, meeting the present 12-month requirement could result in the manufacturer having a surplus of unusable labels. The company argued that the cost of unusable labels could increase company costs, thus increasing the cost of the product to the consumer and possibly adversely affecting sales of the product.

In some advance notices of proposed rulemaking previously published in the OTC drug review, the agency suggested a 6-month effective date for monograph conditions. However, as explained in the tentative final monograph (proposed rule) for OTC topical otic drug products (47 FR 30012), the agency concluded that, generally, it is more reasonable to have a final monograph be effective 12 months after the date of its publication in the **Federal Register**. The agency believes that this period of time should enable most manufacturers to reformulate, relabel, or take other steps necessary to comply with a new monograph with a minimum disruption of the marketplace, thereby reducing economic loss and ensuring that consumers have continued access to safe and effective OTC drug products. However, in an assessment of the economic impacts of the OTC drug review, the agency concluded that although the OTC drug review was not a major rule as defined in Executive Order 12291, significantly large impacts might be experienced by some small firms in some years (Ref. 1).

Nevertheless, FDA has a statutory mandate to assure that OTC drug products are safe and effective for their intended use and are properly labeled. The statute does not allow FDA to waive these important public health considerations even though additional costs may be incurred by a manufacturer in order to achieve compliance with a monograph.

Reference

(1) "Assessment of the Economic Impacts of the OTC Drug Review Process," Docket No. 82N–0143, Dockets Management Branch.

4. One comment questioned the meaning of the word "effective." The comment asked FDA to consider whether consumer acceptance and usage of a product, without the use of coercive advertising, indicates some effectiveness of the product. The comment stated that some drugs are more effective than others and questioned whether this means that the less effective drugs are considered as being not effective at all.

As defined in § 330.10(a)(4)(ii), effectiveness means a reasonable expectation that, in a significant proportion of the target population, the pharmacological effect of the drug, when

used under adequate directions for use and warnings against unsafe use, will provide clinically significant relief of the type claimed. The regulation provides that reports of significant human experience during marketing may be used to corroborate controlled clinical investigations and other studies, in order to establish general recognition of the effectiveness of a drug. However, isolated case reports, random experience, and reports lacking the details that permit scientific evaluation are not considered. Without more substantive data, mere consumer acceptance and usage of a product is not enough to constitute proof of effectiveness.

With regard to the comment's inquiry concerning "less effective drugs," the agency does not consider the comparative efficacy of a drug in determining general recognition of effectiveness; it only considers that the drug has been shown to be effective based on the standards discussed above.

B. Comments on Topical Otic Drug Ingredients

5. One manufacturer expressed concern about the agency's decision to reclassify glycerin as an earwax removal aid from Category I to Category III "so that studies may be performed to establish effectiveness." The manufacturer stated that in response to the advance notice of proposed rulemaking on OTC topical otic drugs, it reformulated its earwax product to contain only glycerin as an active ingredient. The propylene gylcol in the product was removed. However, the comment asserted that because of the reclassification of glycerin to Category III, the expensive process of reformulation and relabeling will have to be repeated. The comment maintained that it is unfair and costly for the agency to urge manufacturers to comply with advance proposals and then change the Panel's recommendation.

Since the beginning of the OTC drug review, the agency has stated that a panel's findings are prepared independently of FDA and do not necessarily reflect the agency's position. Although the agency encourages manufacturers to comply voluntarily with a panel's recommendations in formulating and labeling their products prior to the effective date of a final monograph, manufacturers are at risk because a panel's recommendation may be accepted, rejected, or modified by the agency in the tentative final and final monographs. This concept was discussed in the preamble to each Panel's report including the report on OTC otic drug products. (See, e.g., 42 FR 63556.) The agency does not modify a panel's recommendations arbitrarily. Before making any change, the agency carefully considers all relevant data and information.

The agency reclassified glycerin as an earwax removal aid from Category I to Category III in the tentative final monograph because there were no well-controlled studies that demonstrated effectiveness. The only published effectiveness study cited by the Panel (42 FR 63562) was an in vitro study that showed that glycerin had no effect on earwax after 60 minutes and caused only surface softening of earwax after 24 hours (47 FR 30014). Therefore, there was no basis for the agency to accept the Panel's Category I classification of glycerin as an earwax removal aid. In addition, because no data were submitted after publication of the tentative final monograph to establish the effectiveness of glycerin as an earwax removal aid, it is not being included in this final monograph.

This final monograph is effective 12 months after the date of publication in the **Federal Register**. Thus, manufacturers will have a reasonable period of time to reformulate and relabel currently marketed products to comply with the monograph.

C. Comments on Labeling of Topical Otic Drug Products

6. Two comments disagreed with the agency's proposed substitution of the word "doctor" for "physician" in OTC drug labeling. One comment stated that because "physician" is a term that is recognized by people of all ages and social and economic levels, there is no need for the change, which would be costly and provide no benefit. The comment further contended that physician is a more accurate term, whereas "doctor" is a broad term that could confuse and mislead the lay person into taking advice on medication from persons other than medical doctors, such as optometrists, podiatrists, and chiropractors. The other comment favored the use of easily understood language in labeling, but noted that both "doctor" and "physician" are accurate and meaningful and argued that the use of either term should be allowed.

The agency recognizes that the term "doctor" is not a precise synonym for the word "physician," but believes that the terms are frequently used interchangeably by consumers and that the word "doctor" is likely to be more commonly used and better understood by consumers. In an effort to simplify OTC drug labeling, the agency proposed in a number of tentative final monographs to substitute the word "doctor" for "physician." Based on comments submitted following publication of these tentative final monographs, the agency has determined that final monographs will give manufacturers the option of using either the word "physician" or the word "doctor." This final monograph includes that option.

7. One comment suggested that, in the interest of consumer education, the warning, "Never use instruments such as cotton swabs, toothpicks, or hairpins to remove wax from ear canal" be required. To preclude the use of unsafe instruments to remove the earwax softened by carbamide peroxide, the comment also suggested that the phrase "the only medically approved way for safely removing earwax" be permitted in the labeling of carbamide peroxide that is packaged with a rubber bulb ear syringe for the purpose of flushing the ear.

The comment submitted no data in support of its request. Based on data and information that are available, the agency concludes that the warnings proposed in the tentative final monograph adequately inform consumers how to use these products safely and that it is unnecessary to require the comment's suggested warning in the labeling of topical otic drug products. However, as long as the required warning appears on the product's label, the agency has no objection to the information described in the comment also appearing in some other portion of the label. Such information may not appear in any portion of the labeling that is required by the monograph.

The phrase "the only medically approved way for safely removing earwax" is not being included in the monograph for use in labeling unit packages containing carbamide peroxide and a rubber bulb ear syringe. By appearing on such packages, the phrase would imply that a rubber bulb ear syringe used in conjunction with carbamide peroxide constitutes the only medically approved way of safely removing earwax. In fact, carbamide peroxide alone may safely remove earwax.

The agency stated in the tentative final monograph that the use of an irrigation syringe in the ear should be limited as much as possible (47 FR 30018). The directions in § 344.50(d) for using a rubber bulb ear syringe are include in the monograph only to assist in the removal of any earwax that may

remain after 4 days of treatment with carbamide peroxide. The agency therefore objects to any labeling that might infer that a rubber bulb ear syringe must be used to remove earwax safely.

8. Two comments suggested that the warning in § 344.50(c)(3) that states "Do not use for more than 4 days; if excessive earwax remains after use of this product, consult a doctor" be revised because it does not indicate clearly that the 4-day limitation applies to each episode of excessive earwax. One comment pointed out that many individuals are subject to chronic accumulation of earwax and will, accordingly, use these products routinely for recurring accumulation. Therefore, the comments suggested that the warning be revised by adding a phrase such as "for each occurrence of accumulated earwax" or "during any episode" to make it clearer to the user that the 4-day limitation applies to each episode of excessive earwax.

The agency believes that the present warning in § 344.50(c)(3), concerning the limitation of use for not more than 4 days, in conjunction with the directions for use in § 344.50(d), which instruct consumers to use the product twice daily for up to 4 days, is adequate to inform consumers that the 4-day limitation applies to each episode of excessive earwax accumulation. The labeling of many OCT drug products contains limitations on the number of days that the product should be used, and the agency believes that it is reasonable to expect that consumers will understand that the 4-day limitation applies to each episode of excessive earwax.

9. One comment stated that anhydrous glycerin can cause a painful, burning sensation in the eyes, and suggested that the labeling instructions should anticipate accidental contact. The comment recommended that the proposed warning in § 344.50(c)(4) "Avoid contact with the eyes," be expanded by adding the following sentences: "If accidental contact occurs, wash eye with water. Consult physician if pain or irritation persists."

The agency concludes that it is not necessary to expand the warning in § 344.50(c)(4) because glycerin does not cause any serious effects. Although anhydrous glycerin can cause irritation and stinging of the eyes, anhydrous glycerin has accepted medical usage as an agent to facilitate ophthalmoscopic examination and to reduce corneal edema (Refs. 1, 2, and 3). Accordingly, the agency is not expanding the warning in the monograph as suggested by the comment. As long as the required warning appears on the products's label, the agency has no objection to the statements described in the comment also appearing in some other portion of the label.

Such information may not appear in any portion of the labeling that is required by the monograph.

References

(1) Smith, M. B., "Ocular Toxicity," Publishing Sciences Group, Acton, MA, p. 54, 1976.

(2) "AMA Drug Evaluations—1983," 5th Ed., American Medical Association, Chicago, IL, pp. 506–507, 1983.

(3) Gennaro, A., editor, "Remington's Pharmaceutical Sciences," 17th Ed., Mack Publishing Co., Easton, PA, p. 1308, 1985.

10. One comment stated that the directions for use of an ear syringe could be more instructive to the user and suggested that the directions in § 344.50(d) be worded as follows: "Any wax remaining after treatment should be removed once a day by gently flushing the ear with warm (body temperature) water, using a soft rubber bulb ear syringe. Place tip of washer at outer edge of ear canal."

The agency believes that the directions as proposed in the tentative final monograph are sufficient for OTC use of earwax removal aids. The agency does not agree with the comment's wording "Any wax remaining after treatment should be removed once a day . . ." because such information is misleading and implies that the ear syringe should be used each day after the treatment, whereas the ear syringe should only be used after treatment is completed if there is still wax remaining in the ear after 4 days of treatment.

In addition, the agency believes that the term "warm water" is understood by consumers and that it is not necessary to require in the monograph that the term "(body temperature)" be added to the directions. Manufacturers may, however, add terms such as "(body temperature)" to the directions of products if they believe that they enhance consumer understanding. They may also add additional information in the directions regarding the proper use of the bulb ear syringe, such as suggested by the comment, provided that the information is true and not misleading. Therefore, the agency's proposed directions in § 344.50(d) will be included in the final monograph without revision.

11. Three comments objected to the directions statement in § 344.50(d), "Children under 12 years of age: consult a doctor." The comments contended that the agency's basis for this age restriction, i.e., that the studies submitted in support of the use of carbamide peroxide in children were supervised by a physician (47 FR 30017), is not valid. The comments stated that all clinical studies are professionally supervised and that these studies were conducted under the supervision of a physician not because of safety concerns, but to assure that they were conducted under controlled conditions to support efficacy and to monitor any side effects that might occur. The comments contended that the studies demonstrate that earwax removal aid products can be safely used in children 2 to under 12 years of age.

One of the comments stated that restricting the use of carbamide peroxide in children under 12 years of age will force consumers to use primitive methods for removal of earwax in this age group. Another comment from a manufacturer stated that the Panel's and the agency's concerns that parents would unnecessarily use earwax removal aids to routinely clean the ears of their children are unfounded. The manufacturer explained that there is a target population of individuals who chronically accumulate earwax and who would derive benefit from cleaning the ears to prevent irritation and potential subsequent infection. The manufacturer submitted a summary of the results of a 1980 opinion poll which indicated that, in 5 percent of the surveyed families, earwax buildup occurred in children 12 years of age or under (Ref. 1). The manufacturer also stated that in the past 18 months it had received only one product-related report associated with the use of its earwax removal aid product in children per 2 million bottles sold and argued that "such a rate of reported occurrence does not indicate a need to restrict the use of the drug to adults and children 12 and over."

In the tentative final monograph for topical otic drug products, the agency stated that an earwax removal aid should not be used in children unless a physician has made a determination that there is a need to use such a product (47 FR 30017). This was based on the fact that earwax is derived from the watery secretions of the apocrine glands and the oily secretions of the sebaceous glands (Ref. 2) and on the fact that the apocrine glands are not active until puberty (42 FR 63558). Thus, these directions were proposed because excessive earwax is less likely to occur in children under 12 years of age, not because physicians had supervised the clinical studies and examined the ears of children as alleged by the comment.

The agency recognizes that some children under 12 years of age may have excessive earwax accumulation as indicated by the submitted opinion poll (Ref. 1). However, in cases where children under 12 years of age are suspected of having excessive earwax accumulation, a physician should be consulted to make a professional diagnosis and to recommend the proper treatment. A physician's diagnosis is particularly important in children under 12 years of age because young children may not often exhibit symptoms of serious ear problems or are unable to describe the symptoms of abnormal conditions to their parents. For example, the symptoms of otitis media (an inflammatory condition of the middle ear that occurs most often during childhood) include pain, hearing loss, and fever. However, in chronic serous otitis media there is impaired hearing, but the child may not have acute symptoms and pain is usually absent (Ref. 2). Such ear disorders would be difficult for parents to distinguish from excessive earwax. These ear disorders are serious and can result in hearing loss if untreated. Therefore, it is especially important for a physician to determine the appropriate treatment for the child's condition. The physician may recommend use of an OTC earwax removal aid if it is appropriate.

The agency does not believe that advising consultation with a doctor for children under 12 years of age, in the labeling of earwax removal aids, would force consumers to use primitive methods to remove excessive earwax in children in this age group. On the contrary, this direction should alert consumers to consult a physician before routinely cleaning the ears of children with an earwax removal aid, which might not be necessary and might delay needed medical attention. The direction thus promotes better ear care. Therefore, the agency is including in § 344.50(d) of this final monograph a direction restricting the use of an earwax removal aid to adults and children over 12 years of age.

References

(1) Comment No. C00009, Docket No. 77N-0334, Dockets Management Branch.

(2) Miller, K. O., "Otic Products," *in* "Handbook of Nonprescription Drugs," 7th Ed., American Pharmaceutical Association, Washington, pp. 402–403 and 406–408, 1982.

12. One comment disagreed with the proposed directions statement in § 344.50(d) for earwax removal aids that reads "Children under 12 years of age: consult a doctor." The comment suggested that the statement be revised to read: "Children under 12 should be supervised in the use of this product. For children under 2, there is no recommended dosage except under the advice and supervision of a doctor."

The agency does not agree with the comment's suggested revision. As stated in comment 11 above, earwax removal aids should not be used in children under 12 years of age except as recommended by a physician. If a physician recommends that an earwax removal aid be used in a child under 12 years of age, the agency expects that the child would be supervised in the use of the product.

II. Summary of Significant Change From the Proposed Rule

In accord with the revised "exclusivity" policy, the agency is amending § 344.50(b) under the heading "Indications" to include some of the supplemental language that was previously included in the "Other Allowable Statements" section of the tentative final monograph (see comment 2 above). The resulting indication which includes the additional optional terms "soften" and "loosen" reads as follows: "For occasional use as an aid to" (which may be followed by: "soften, loosen, and") "remove excessive wax."

III. The Agency's Final Conclusions on OTC Topical OTIC Drug Products

Based on the available evidence, the agency is issuing a final monograph establishing conditions under which OTC topical otic drug products are generally recognized as safe and effective and not misbranded. Specifically, the agency has determined that the only ingredient that has been determined to be monograph condition is carbamide peroxide 6.5 percent formulated in an anhydrous glycerin vehicle. Glycerin, antipyrine, and benzocaine, which were also considered in this rulemaking, have been determined to be nonmonograph ingredients. All other ingredients are considered nonmonograph ingredients. Any drug product marketed for use as an OTC topical otic drug that is not in conformance with the monograph (21 CFR Part 344) will be considered a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)) and misbranded under section 502(a) of the act (21 U.S.C. 352(a)) and may not be marketed for this use unless it is the subject of an approved NDA.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (47 FR 30019). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC topical otic drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC topical otic drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 21 CFR Part 344

OTC drugs, Topical otic drug products.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations is amended by adding new Part 344, to read as follows:

PART 344—TOPICAL OTIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

Sec.

344.1 Scope.

344.3 Definitions.

Subpart B—Active Ingredients

344.10 Topical otic active ingredient.

Subpart C—Labeling

344.50 Labeling of topical otic drug products.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.11.

Subpart A—General Provisions

§ 344.1 Scope.

(a) An over-the-counter topical otic drug product in a form suitable for topical administration is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this part in addition to each of the general conditions established in § 330.1.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 344.3 Definitions.

As used in this part:

(a) *Anhydrous glycerin.* An ingredient that may be prepared by heating glycerin U.S.P. at 150° C for 2 hours to drive off the moisture content.

(b) *Earwax removal aid.* A drug used in the external ear canal that aids in the removal of excessive earwax.

Subpart B—Active Ingredients

§ 344.10 Topical otic active ingredient.

The active ingredient of the product consists of carbamide peroxide 6.5 percent formulated in an anhydrous glycerin vehicle.

Subpart C—Labeling

§ 344.50 Labeling of topical otic drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "earwax removal aid."

(b) *Indication.* The labeling of the product states, under the heading "Indication," the following: "For occasional use as an aid to" (which may be followed by: "soften, loosen. and") "remove excessive earwax." Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed above, may also be used, as provided in § 330.1(c)(2), subject to the provisions of section 502 of the act relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) "Do not use if you have ear drainage or discharge, ear pain, irritation, or rash in the ear or are dizzy; consult a doctor."

(2) "Do not use if you have an injury or perforation (hole) of the ear drum or after ear surgery unless directed by a doctor."

(3) "Do not use for more than 4 days; if excessive earwax remains after use of this product, consult a doctor."

(4) "Avoid contact with the eyes."

(d) *Directions.* The labeling of the product contains the following statement under the heading "Directions": FOR USE IN THE EAR ONLY. Adults and children over 12 years of age: tilt head sideways and place 5 to 10 drops into ear. Tip of applicator should not enter ear canal. Keep drops in ear for several minutes by keeping head tilted or placing cotton in the ear. Use twice daily for up to 4 days if needed, or as directed by a doctor. Any wax remaining after treatment may be removed by gently flushing the ear with warm water, using a soft rubber bulb ear syringe. Children under 12 years of age: consult a doctor.

(e) *Optional wording.* The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

Dated: May 3, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

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federal register

Friday
August 8, 1986

Part III

Environmental Protection Agency

40 CFR Parts 260, 261, 262, 263, and 271
Hazardous Waste Management System;
Exports of Hazardous Waste; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, and 271

[SW-FRL-3038-3]

Hazardous Waste Management System; Exports of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On March 13, 1986, the U.S. Environmental Protection Agency (EPA) proposed regulations under the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), that would apply to exports of hazardous waste (51 FR 10146). EPA is today promulgating the final regulations on this subject. Consistent with HSWA, the regulations prohibit the export of hazardous waste unless certain requirements are met. These requirements include advance written notification to EPA of the plan to export hazardous waste, prior written consent to such plan by the receiving country, attachment of a copy of the receiving country's written consent to the manifest accompanying each waste shipment, and conformance of the shipment to such consent. In addition to provisions concerning the preceding requirements, today's rule includes provisions governing special manifest requirements, exception reporting, annual reporting, recordkeeping, transporter responsibilities, confidentiality, and State authorization.

DATES: Effective Date: November 8, 1986. Exports are prohibited on or after the effective date except in compliance with these regulations. Accordingly, unless consent by the receiving country has been obtained by that date, an export cannot take place. EPA will begin accepting notifications in accordance with these regulations immediately in order to allow time to obtain consent from a receiving country by the effective date of these regulations. Exporters are, therefore, encouraged to submit notifications expeditiously in order to allow time to obtain consent by November 8, 1986, for exports to occur on or soon after that date.

ADDRESSES: The OSW docket is located at: EPA RCRA Docket (Sub-basement), 401 M Street, SW., Washington, DC 20460.

The docket is open from 9:30 to 3:30 Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call Mia Zmud at 475–9327 or Kate Blow at 382–4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: Carolyn K. Barley, (202) 382–2217, Office of Solid Waste, Room S–257 (WH–563), 401 M Street, SW., Washington, DC 20460 or the toll-free RCRA Hotline: (800) 424–9346 (in Washington, DC, call (202) 382–3000).

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

These regulations are being promulgated under the authority of sections 2002(a), 3002, 3003, 3006, 3007, 3008 and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6922, 6923, 6926, 6927, and 6937.

II. Background and Summary of Final Rule

A. Existing Export Regulations

On February 26, 1980, EPA promulgated regulations under the Resource Conservation and Recovery Act of 1976 (RCRA) governing exports of hazardous waste. 45 FR 12732, 12743–12744 (codified at 40 CFR Parts 262 and 263). These regulations place certain requirements on generators and transporters regarding exports of hazardous waste in light of the special circumstances involved in international shipments. Since RCRA did not expressly address exports of hazardous waste, these provisions were promulgated primarily under RCRA sections 3002 (Standards Applicable to Generators of Hazardous Waste) and 3003 (Standards Applicable to Transporters of Hazardous Waste) and are limited in scope. A detailed description of EPA's existing export regulations can be found in the Supplemental Information accompanying the proposed rule for Exports of Hazardous Waste. 51 FR 8744 (March 13, 1986).

B. The Hazardous and Solid Waste Amendments of 1984

On November 8, 1984, the President signed into law a set of comprehensive amendments to RCRA, entitled the Hazardous and Solid Waste Amendments of 1984 (HSWA). These comprehensive amendments have far-reaching ramifications for EPA's hazardous waste regulatory program. Among other things, they add a new Section 3017 to RCRA specifically addressing hazardous waste exports.

Generally, subsection (a) of section 3017 provides that, beginning 24 months after enactment of HSWA, the export of hazardous waste is prohibited unless the person exporting such waste: (1) Has provided notification to the Administrator; (2) the government of the receiving country has consented to accept the waste; (3) a copy of the receiving country's written consent is attached to the manifest which accompanies the waste shipment and; (4) the shipment conforms to the terms

of such consent. In lieu of meeting the above requirements, a person may export hazardous waste if the United States and the government of the receiving country have entered into an international agreement establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous waste and the shipment conforms to the terms of such agreement.

Subsection (c) of section 3017 sets forth the requirement to notify the administrator before the shipment leaves the United States and specifies the information to be included in such notification. Subsections (d) and (e) establish procedures for obtaining the receiving country's consent to accept the waste. Subsection (f) addresses the effect of an international agreement on the requirements of Section 3017. Subsection (b) requires the Administrator to promulgate regulations necessary to implement section 3017. Subsection (h) provides that section 3017 does not preclude the Administrator from establishing other standards for the export of hazardous waste under sections 3002 and 3003 of RCRA. Congress also amended section 3008 of RCRA to provide criminal penalties for knowingly exporting hazardous waste without the consent of the receiving country or in violation of an existing international agreement between the United States and the receiving country.

Section 3017 of HSWA contains one additional requirement with which exporters were required to comply immediately upon enactment of HSWA: Subsection (g) requires any person exporting hazardous waste to file with the Administrator, no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous year. EPA codified this particular statutory requirement in its export regulations on July 15, 1985. 50 FR 28702, 28746.

C. March 13, 1986 Proposed Rule

On March 13, 1986, EPA proposed to amend its hazardous waste export regulations to implement section 3017 and thereby improve its current program governing exports. 51 FR 8744. These specific amendments were plced in a revised Subpart E of 40 CFR Part 262. Because Subpart E currently includes special requirements governing imports of hazardous waste and the disposition of waste pesticides by farmers, these provisions were proposed to be moved to new Subparts F and G respectively with no substantive changes. Amendments were also proposed to 40 CFR Parts 260 regarding confidentiality, Part 263 pertaining to transporters of hazardous waste, and Part 271 with respect to State authorization.

Readers should refer to the proposed rule for a discussion of the content, alternatives considered, and rationale for the positions taken in the proposal.

D. Summary of the Final Rule

Today's final rule on the export of hazardous waste adopts most of the provisions of the proposed rule with certain modifications. In summary, today's rule prohibits exports of hazardous waste unless: (1) Notification of the intent to export is provided to the Administrator; (2) prior written consent is obtained from the receiving country; (3) a copy of the prior written consent is attached to the manifest; and (4) the shipment conforms to the terms of the written consent.

Changes arising out of comments on the proposed rule concern primarily: (1) The definition of exporter; (2) the definitions of receiving and transit countries; (3) collection of a copy of the manifest by U.S. Customs at the U.S. point of departure; (4) hazardous wastes for which notification and consent is required; (5) the period of time covered by a notification; (6) the effective date of the regulations; and (7) special requirements for exports by rail.

In addition to today's final rule on the export of hazardous waste, readers should be aware that pursuant to section 6(e) of the Toxic Substances Control Act, EPA has banned the export of polychlorinated biphenyls (PCBs) of 50 PPM or greater in the absence of an exemption. See 40 CFR 761.10. Today's rule on the export of hazardous waste does not affect this prohibition.

III. Responses to Comments and Analysis of Issues

This section of the preamble addresses the major comments received by EPA on the proposed rule and describes the Agency's position on the major issues raised in the proposal and during the comment period. A separate background document responds to each comment received on the proposal which is not responded to in this preamble as part of the record for this rulemaking. Provisions retained as proposed and not discussed in this preamble are retained for the reasons set forth in the preamble to the proposed rule.

A. Applicability and General Requirements [§§ 262.50, 262.52]

Section 262.50 describes the applicability of Subpart E. Since EPA is changing the definition of exporter [discussed in Section III.B.2. below], this section provides that Subpart E requirements are applicable not only to persons required to initiate the manifest which specifies a treatment, storage, or disposal facility (TSDF) in the receiving country as the designated facility but also to any intermediaries arranging for the export (i.e., export brokers). A reference to the requirements applicable to transporters transporting waste for export has also been added to this provision to direct transporters' attention to the applicable requirements of Part 263. As explained in the proposal, the special export requirements apply in addition to any applicable domestic requirements which apply independently (e.g., Part 262 requirements applicable to generators) except to the extent Subpart E specifically provides otherwise.

As in the proposal, this section also provides that the export requirements apply to all exports of hazardous waste unless an international agreement is entered into between the United States and the importing country which sets forth different requirements. As the United States has yet to enter into any such agreements, § 262.58 is reserved to address any agreements the United States may enter into in the future.

Section 262.53 summarizes the requirements applicable to exports. Some minor language changes have been made to this section to again reference transporter requirements of Part 263 and to reflect the delineation of responsibilities between transporters and other "exporters" of hazardous waste as discussed in Section III.B.2 below.

B. Definitions [§ 262.51]

1. Definition of "Receiving Country"

In the March 13, 1986 proposed rule, EPA defined "receiving country" as the foreign country of "ultimate destination" of a hazardous waste. It was EPA's intent to distinguish "receiving country" from "transit country" which was defined as any foreign country through which a hazardous waste passes en route to a receiving country. Prior consent was proposed to be required only from "receiving countries" not "transit countries." The Agency proposed, however, to exercise its discretion under Section 3017(h) to provide notification to transit countries.

EPA specifically requested comments concerning its proposed definition of receiving country, recognizing the importance of the term as used in section 3017. Various alternatives available for defining this term were noted in the proposal such as defining "receiving country" as: (1) All countries through which the waste passes; (2) the first country the waste enters; or, (3) the final destination of the waste. A number of comments were received on this issue, many of which were in agreement with the Agency's definition. However, some commenters recommended expanding the definition of "receiving country" to include any foreign country the waste passes through en route to its ultimate destination, i.e., "transit country."

The primary concern of these commenters was that, under the language of EPA's definition of receiving country, long-term storage or treatment could occur in a "transit country" without its consent so long as the waste would subsequently be sent elsewhere. Moreover, EPA would have no authority to prohibit long-term storage or treatment in a transit country where the transit country objected to the shipment. The scenario was presented where an exporter intended to ship a waste first to country "A" for treatment, then to country "B" for multi-year storage while the "ultimate" disposal facility in country "C" was prepared to receive and dispose of the waste. Under this scenario, even if countries "A" and "B" objected to the shipment, EPA would have no authority to prohibit the shipment to those countries. Concern was expressed that this would encourage unscrupulous exporters to evade consent requirements with sham long-term treatment and storage. In addition, the dangers involved in storing and/or treating the waste were suggested to be of equal concern as those involved in the ultimate disposal of the waste.

EPA is also concerned about long-term storage and/or treatment of U.S. waste in a foreign country. In fact, EPA's proposal explained that its intent was to require consent from the "ultimate destination" of the waste in contrast to countries where mere *transportation through* or *temporary* storage *incidental to transportation* was to occur.

The proposal, however, envisioned that although there may be several transit countries involved, there would be only one "ultimate destination" of the waste. The scenarios presented by commenters have brought to EPA's attention that not only was EPA's proposed regulatory language ambiguous but that there may be, in rare circumstances, more than one country in which something more than mere transportation and/or temporary storage incidental thereto could occur. In order to ensure that prior consent is obtained from countries, in which treatment and/or long-term storage is to occur, the final rule defines "receiving country" as the foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except for temporary storage incidental to transportation). The final rule also redefines "transit country" as any foreign country, other than a receiving country, through which a hazardous waste is transported. These definitions reflect the intent of the proposal to exempt from the prior consent requirement mere transportation through or temporary storatge incidental to transportation with the added recognition that, in rare circumstances, there may be more than one "receiving country."

In redefining the term "receiving country," EPA recognizes that there may be limits to an exporter's knowledge of further shipment of U.S. generated hazardous wastes from a treatment, storage or disposal facility (TSDF) in one foreign country to another. Thus, EPA interprets the term "receiving country" to include only those countries to which an exporters knows or can reasonably ascertain that the waste will be sent for treatment, storage or disposal. EPA cannot hold exporters responsible for independent decisions by foreign TSDFs to further export a hazardous waste.

The primary exporter is responsible for properly designating a country as a transit country. If any uncertainty arises regarding whether certain "storage" occurring in a foreign country is "storage incidental to transportation," primary exporters should refer, for guidance, to the preamble to the rule clarifying when a transporter handling shipments of hazardous waste domestically is required to obtain a storage permit. See 45 FR 86966 (December 31, 1980). Thus, in determining whether a country is a receiving country or a transit country, the factors to be considered are the nature of the handling of the waste in such country and the length of time the waste remains in such country. EPA is not at this time, however, placing a time limit on the length of time considered "temporary storage incidental to transportation." One of the commenters suggesting a broader definition of receiving country also recognized the need for an exception for temporary storage incidental to transportation. That commenter recommended a 10-day limit consistent with domestic requirements. *See* 45 FR 86966 (December 31, 1980). EPA, however, does not feel it appropriate to impose a specific time limitation on storage incidental to transportation where exports are concerned. The time limitation in the rule referenced above was reached based upon the general nature of the transportation domestically. International transportation, on the other hand, may vary among foreign countries. EPA does not have, at this time, information which would allow it to devise a generally applicable time limitation for storage incidental to transportation internationally. To ensure the proper implementation of today's regulation, EPA will selectively review notifications to ensure that countries designated by exporters as transit countries are not, in fact, receiving countries. If EPA determines that a country is improperly designated as a transit country, it will require that country's prior consent to the waste shipment.

In EPA's view, the final definitions of receiving and transit countries and the decision to require notification of transit countries and both notification of and prior consent from receiving countries is consistent with the statute and best implements Congressional intent in enacting section 3017. Congress did not define the term "receiving country" in section 3017. The statutory language uses the term "receiving country" in the singular form which arguably indicates that Congress contemplated only one receiving country. On the other hand, however, use of the singular version may simply reflect the assumption that exports commonly would involve only one receiving country. The statutory language also provides for notification of the *treatment, storage or disposal* facility abroad to which the waste will be sent. This language arguably indicates that Congress contemplated notification of any country in which "treatment," storage" or "disposal" occurs. However, this notification requirement is qualified by the term "ultimate" treatment, storage or disposal facility. This arguably indicates that "receiving country" encompasses only the final destination of the waste with the phrase "treatment, storage or disposal facility" being used simply as the common phrase for identifying the hazardous waste facility which is the "ultimate" destination. To complicate matters further, however, "ultimate" storage is a contradiction in terms since EPA has defined "storage" as the holding of hazardous waste for a

temporary period *at the end of which the hazardous waste is treated, disposed of or stored elsewhere.* Thus, technically, storage could never be "ultimate," yet Congress used the term "storage" and must have intended it to have some content. An argument could be made that "ultimate" means the TSDF in a *single* foreign country when the waste is temporarily stored in such country and then moved to another facility in that same country for disposal. In this vein, the phrase "treatment, storage or disposal facility" would arguably evidence intent that notification and prior consent be obtained from any country in which treatment, storage or disposal occurs. Unfortunately, the legislative history of section 3017 does not shed any light on Congress' intent regarding the content of "receiving country."

In view of the ambiguity of this term, EPA believes that it is best defined as the country in which treatment, storage or disposal occurs but not a country in which mere transportation (including temporary storage incidental to transportation occurs. Neither the statutory language nor legislative history evidences a clear intent to require both notification and prior consent for mere transportation through a foreign country which would include, consistent with domestic transportation, temporary storage incidental to transportation.

In EPA's view, Congress was concerned with informing a foreign country *and obtaining the prior consent* from a country which is actually ending up with the waste whether through disposal, treatment or long-term storage. In other words, Congressional concern was with countries truly accepting the waste and taking significant action to deal with the waste. Generally, the considerations and ramifications for these countries will be different from and greater than those of countries in which only transportation occurs. Moreover, treatment and long-term storage in a foreign country can be a means to avoid domestic regulation of hazardous waste disposition and can pose problems similar to the actual disposal of hazardous wastes. For example, a surface impoundment engaged in "long term storage" of a waste is likely to present risks similar to an impoundment engaged in "disposal" of a waste, assuming the unit is designed, operated and located in a similar manner. Consent from foreign countries in which treatment or storage (other than incidental to transportation) occurs also is necessary to protect against attempts to avoid consent requirements by labeling particular activities as long-term storage or treatment.

EPA believes that concerns associated solely with transportation through a country are addressed through notification alone which will provide a country with information to enable it to respond to accidents which may occur during transportation. Response is also assisted, and protection afforded for such activities, through the container, labeling and placarding requirements imposed on the transportation of hazardous waste both domestically and by other countries. The notification of transit countries also allows such country to take action to prohibit the entry of such waste into its borders. The treatment of transit countries in the final rule also furthers Congressional intent to impose a minimum of additional regulatory burdens on U.S. generators and administrative burdens on EPA while establishing a more comprehensive and responsible export policy. See 130 Cong. Rec. S9152 (daily ed. July 25, 1984); 129 Cong. Rec. H8163 (daily ed. October 6, 1983). Finally, EPA's definitions of receiving and transit countries and its decision to require prior consent of receiving countries and notification for transit countries is consistent with a new draft decision recently issued by the Organization for Economic Cooperation and Development (OECD) concerning the transboundary movement of hazardous wastes. (Draft Council Decision and Recommendation on Exports of Hazardous Waste from the OECD Area, March, 1986.)

2. Definition of Exporter

a. *Appropriate Liabilities and Responsibilities.* In the proposed rule, EPA defined "exporter" to be the person who is required to prepare the manifest in accordance with 40 CFR Part 262, Subpart B for a shipment of hazardous waste that specifies a TSDF in the receiving country as the facility to which the waste will be sent. Thus, for example, the exporter could be the generator in one case (*see* 40 CFR 260.10, 262.20), the owner or operator of a treatment, storage or disposal facility who initiates a shipment of hazardous waste in another (*see* 40 CFR 264.71(c), 265.71(c)), or a transporter who mixes hazardous waste of different DOT shipping descriptions in yet another (*see* 40 CFR 263.10(c)(2)). The proposal also discussed an alternative definition of exporter—any person who intends to export a hazardous waste. Under this definition, all parties involved in the export (i.e., the generator or person required to assume generator responsibilities, transporter, and any export broker) would be required to comply with all of the export requirements and could be held liable for any failure to do so. Under such a definition, however, only one party would be expected to assume and perform particular duties (such as providing notification) on behalf of all the parties. The proposal noted that this alternative was similar to the treatment afforded generators where several persons meet the definition of generator (*see* 45 FR 72024 (Oct. 30, 1980)).

EPA rejected this alternative primarily because: (1) It is difficult to define the point at which intent to export occurs and the manifest constitutes clear evidence of such intent (e.g., a question arises as to whether an initial generator who sends its waste to a domestic recycling facility and that facility subsequently exports the waste for further recycling "intends" to export); (2) where several parties meet the definition of "exporter," confusion might occur regarding which party should provide notification on behalf of all the parties potentially causing delay and/or duplicative notification; (3) parties such as transporters should not be subject to liability for responsibilities more appropriately placed on generators or persons required to assume generator responsibilities; and, (4) the party preparing the manifest generally appeared to be in the best position to supply EPA with the information required in the notification, receive the EPA Acknowledgment of Consent for attachment to the manifest, and ensure that the shipment conformed with the terms of the receiving country's consent.

While some commenters supported EPA's proposed definition of exporter, others suggested that full potential liability for export notification and other violations should be placed on all parties engaged in the export. One commenter suggested that EPA could avoid duplicative notification by requiring transporters and brokers to submit a copy of the relevant notification and other documents with an appropriate certification, thereby creating an incentive for such persons to verify the information obtained from the person preparing the manifest. One commenter was especially concerned that, under the proposed rule, waste transporters and brokers who often actually arrange for the domestic transport, international transit, and ultimate treatment, storage, and disposal of the waste would be largely exempt from enforcement.

The Agency agrees, at least in part, with the concerns expressed by these

commenters. Although the Agency suggested in the preamble that the preparer of the manifest designating a foreign TSDF would remain liable for any violations of the duties imposed upon him when performed by a broker on his behalf, the Agency agrees with the commenter that brokers arranging for the export should also be held directly responsible for accurate notification and compliance with the consent of the receiving country. These persons are acting on behalf of the party required to initiate the manifest and often may be similarly situated. For example, a broker would be knowledgeable of most information required in a notification since he would be arranging for the export. Therefore, the Agency has added to the definition of exporter "any intermediary arranging for the export."

The term "intermediary" means "broker." An intermediary/broker is a party who arranges for an export by acting as a middleman between the party originating the manifest and another party involved in the export such as the transporter or foreign waste management facility. An intermediary/broker can be licensed or unlicensed, an agent or an indepentent contractor. The term "intermediary" excludes transporters, provided the transporter's role is limited to transporting the waste. The term would, however, include transporters if the transporter were also taking on intermediary responsibilities such as arranging for the management of the waste with the foreign TSDF.

With regard to the responsibilities and liabilities of transporters transporting waste for export, EPA is not, for the most part, making the changes suggested by these commenters. The proposed rule included two significant amendments to § 263.20. One prohibited a transporter from accepting a waste from an exporter unless an EPA Acknowledgment of Consent was attached to the manifest. The other required transporters to ensure that the EPA Acknowledgement of Consent accompanied the hazardous waste en route. In addition, existing regulations require transporters to send a copy of the manifest back to the generator (§ 263.20(g)) and to deliver the entire quantity of hazardous waste to the place outside the United States designated by the generator (§ 263.21(a)(4)). These duties parallel the duties placed on transporters of domestic waste shipments. EPA does not believe that transporters of hazardous waste for export should be held responsible for other elements of the notification and consent, such as ensuring that the waste meets the description contained in the notification or that the quantity of waste consented to by the receiving country has not been exceeded. EPA does not believe it necessary or practical to require transporters to verify that the waste matches the description contained in the notification. This could be construed to necessitate periodic sampling and waste analysis by transporters who are generally not qualified to undertake these actions. In addition, it is possible that the originator of the manifest may employ a number of transporters to transport waste covered by a single notification. It does not seem equitable or practical to require each transporter to ensure that the total quantity consented to by the receiving country has not been exceeded.

Of course, if the transporter knows or is willfully blind to the fact that the waste does not conform with the terms of the consent, he may nonetheless be subject to criminal enforcement action under section 3008(d). In view of the availability of criminal sanctions for such actions, EPA is adding to the requirements applicable to transporters, the requirement that a transporter may not accept a waste for export where he knows the shipment does not conform to the Acknowledgement of Consent. Thus, whereas a transporter has no affirmative duty to ensure conformance of the shipment with the consent, if he is aware that the shipment is not in conformity, he has the duty to refuse to transport the waste.

To clarify its criminal enforcement authority under section 3008(d)(6) against a transporter who knowingly exports hazardous waste without the consent of the receiving country, the Agency is making another change to the definition of exporter. In so doing, EPA wishes to preclude any misunderstanding about the reach of seciton 3008(d) which might otherwise have been caused by the definiton of "exporter" for Subpart E purposes. Therefore, in order to make clear its criminal enforcement authority under section 3008(d) while clearly delineating the limited administrative responsibilities of transporters, the final rule uses the term "primary exporter" to refer to the person defined as an "exporter" in the proposed rule, and, as discussed previously, any intermediary arranging for the export. This change makes clear that these persons are not the only parties which are "exporters" subject to certain responsibilities under section 3017 and criminal enforcement action under Section 308. Transporters transporting hazardous waste for export are also a type of "exporter."

The responsibilities of the primary exporter are contained in Part 262, Subpart E. Although under this revised definition, there may be more than one party acting as the primary exporter, e.g., "the person required to initiate the manifest . . . and any intermediary arranging for the export,' the Agency expects one party to submit the notification, keep the required records, and submit the required annual report, etc. on behalf of all the parties. These parties should decide amongst themselves which party should perform these functions on behalf of the other parties meeting the definition of "primary exporter." This is similar to the situation where several parties meet the definition of generator. See 45 FR 72024, 72026 (October 30, 1980). Enforcement actions can, however, be taken against all primary exporters where equitable and in the public interest.

The responsibilities of transporters are identified in 40 CFR Part 263. These responsibilities include the two amendments to § 263.20 included in the proposed rule (with a minor adjustment for rail transportation discussed at Section G below), the existing requirements of §§ 263.20(g), 263.21 and 263.22(d), and the new requirements that a transporter may not accept hazardous waste for export if he knows the shipment does not conform with the Acknowledgment of Consent and he must deliver a copy of the manifest to the U.S. Customs official at the point the waste leaves the United States (discussed at Section E below). In EPA's view, Section 3017 accords it the discretion to determine who constitutes the "person who exports" or "person who intends to export" and to delineate the responsibilities of each person involved consistent with the intent of section 3017.

At the suggestion of commenters, EPA is also making one other change to the definition of exporter. Rather than define "primary exporter" as the person required to "prepare" a manifest, the final rule defines "primary exporter" as the person required to "originate" a manifest designating a foreign TSDF. The purpose of this revision is to make clear that it was and remains EPA's intent that liability is not solely on the individual who physically completes the manifest but rather on the person responsible for originating the manifest. It should be noted that "person" is broadly defined in § 260.10 to include, among others, individuals, corporations, and partnerships. An entity such as a corporation may comprise many individuals. Thus, many individuals can, in appropriate circumstances, be held

liable for non-compliance with the requirements applicable to a primary exporter. For example, the corporate president, vice-president, facility manager, and environmental officer may all be subject to criminal enforcement action under section 3008(d)(6) where such persons decide to export hazardous waste without the consent of the receiving country. EPA emphasizes that the definition of primary exporter does not limit EPA's authority to enforce criminally under section 3008(d)(6) against such parties. *Cf. United States v. Johnson & Towers, Inc.*, 741 F. 2d 662, 667 (3rd Cir. 1984) *cert. denied*, 105 S. Ct. 1171 (1985) (holding that definition of "person" for purposes of knowing unpermitted disposal of hazardous waste under section 3008(d)(2) is not limited to the "owners or operators" regulated under RCRA administrative requirements but rather extends as well to individual employees of the entity disposing of the waste).

b. Applicability of the Export Requirements to Certain Hazardous Wastes. Under EPA's proposed definition of "exporter," the regulations governing exports would be applicable to exports of hazardous waste initiated by persons required to prepare a manifest under 40 CFR Part 262, Subpart B or an equivalent provision in an authorized State program. Thus, exports of any hazardous wastes that are exempt from the manifest requirements of Part 262, Subpart B would not be subject to any of the export requirements. Accordingly, such hazardous wastes as samples, residues in empty containers, wastes generated in product transportation vehicles, certain wastes when recycled, and wastes generated by small quantity generators of less than 100 kg/mo would be excluded from the export requirements. *See*, e.g., 40 CFR 261.4(c) and (d), 261.5, 261.6, and 261.7. In the preamble to the proposed rule, EPA questioned whether Congress intended to regulate for export wastes not regulated domestically and requested comment on whether EPA should expand the wastes subject to section 3017.

(1) *Comments Suggesting that EPA Narrow the Applicability of Section 3017.* Several commenters focused on recycled waste and suggested that all hazardous waste exported for use, reuse, reclamation or other recycling be exempt from the export requirements even when subject to the manifest requirement. Various reasons for this position were put forth including: (1) Additional administrative costs created by the regulations of hazardous waste exported for recycling could damage or destroy the economic viability of such recycling and result in environmentally less preferable management; (2) due to the volatility of prices paid for recycled metals in international trade, the delay caused by waiting for the receiving country's consent could have a significant adverse economic impact; (3) recyclers have an economic incentive to be certain that their wastes are in fact recycled; therefore, more secure handling of wastes intended for recycling is assured; and (4) the stigma involved in treating hazardous wastes intended for recycling as "hazardous waste" might cause the receiving country to refuse consent. These commenters further argued that there is no indication of Congressional intent to include hazardous wastes for recycling under section 3017; in their view, the phrase "treatment, storage or disposal" as used in section 3017 does not include recycling. Lastly, these commenters cite other sections of RCRA and its legislative history as an indication of Congressional intent to foster all types of recycling of hazardous waste.

EPA does not agree that all hazardous wastes exported for use, reuse, reclamation or other recycling should be exempt from the export requirements. EPA's authority to regulate materials for recycling under Subtitle C has been fully discussed in other rule-makings and need not be repeated in detail here. *See* 48 FR 14472 (April 4, 1983); 50 FR 614 (January 4, 1985). Hazardous waste recycling and ancillary activities are within the statutory meanings of the terms "treatment, storage and disposal." In view of the absence of statutory language limiting the reach of these terms for purposes of section 3017, EPA does not believe Congress intended to exempt hazardous wastes for recycling which EPA fully regulates domestically. Similarly, the argument that hazardous wastes that are recycled do not require regulations because they are inherently valuable and do not generally pose significant risks also has been refuted elsewhere. *See*, e.g., 48 FR at 14473 *et seq;* 50 FR at 617–18. Moreover, although EPA is sympathetic to any impacts the requirement of consent may have with respect to some wastes when exported for recycling, where EPA has made the determination that a hazardous waste recycling activity poses sufficient risk domestically to be subjected to full regulation, there is no justification sufficient to override the need of a foreign country receiving such wastes to be accorded notification and the opportunity to accept or reject such waste. Full regulation domestically is clear evidence that this is the type of waste for which foreign countries would also wish to receive notice and have the means by which to reject such waste and police activities involving such wastes. Narrowing the applicability of section 3017 as these commenters suggested might also encourage sham recycling activities. The potential for this is increased in the context of exports since the foreign facility is outside EPA's jurisdiction, thus making enforcement by EPA more difficult. Accordingly, the final rule continues to apply to all wastes for recycling, which are required to be manifested.

To accommodate commenters' concerns regarding stigmatization of exported recycled hazardous wastes by labeling these materials "hazardous wastes," EPA recommends that exporters include information in their notifications indicating that the waste involved is a "recyclable material" (see 40 CFR 261.6(a)(1)). EPA can then pass this information on to the foreign countries involved. EPA also is doubtful that the possibility of stigmatization or the economic impacts some commenters fear will prove significant. As a result of international discussion and agreement, many countries have become knowledgeable regarding the issue of transboundary movements of hazardous waste. For example, joint decisions and recommendations have been generated under the auspices of the Organization for Economic Cooperation and Development and by the Commission of European Communities. Accordingly, in many cases where recycling of a valuable material is involved, it is likely that the countries involved will demonstrate a sufficient degree of sophistication to respond appropriately and expeditiously to notifications concerning such activities. Moreover, in view of the means EPA intends to use to transmit information, delay on the United States' part and any consequent economic impacts which might result therefrom are unlikely.

The Agency wishes to point out that a relatively narrow set of hazardous secondary materials are not defined as solid wastes and, therefore, are not hazardous wastes when recycled in a particular manner (e.g., listed commercial chemical products that are to be reclaimed (50 FR 614, 619, *codified at* 40 CFR 261.2)). Thus, these materials would not be subject to the export requirements.[1] Exporters of such

[1] These same listed commercial chemical products would, however, be a hazardous waste when, for example "used in a manner constituting disposal." *Id.*

materials, nevertheless, should keep in mind that they have the burden of proof to show that such materials are to be recycled in a manner bringing them outside the scope of "solid waste." *See* 50 FR at 642 and 40 CFR 261.2(f). Exporters "must keep whatever records or other means of substantiating their claims that they are not managing a solid waste because of the way the material is to be recycled." 50 FR at 642–643. This might include, for example, a description of the foreign recycling facility, evidence that the recycling facility is licensed or otherwise qualified by the foreign jurisdiction, and/or a copy of the contract indicating the terms of the transaction. *See* also *United States v. Hayes International Corp.*, 786 F.2d 1499, (11th Cir. 1986) (in a prosecution under Section 3008(d)(1) of RCRA for the knowing transportation of waste to an unpermitted facility, the court rejected defendant's claim that it believed the hazardous waste at issue was being recycled, where evidence indicated the lack of a good faith belief).

EPA is aware of evidence that certain materials that have been exported ostensibly for recycling were actually examples of sham recycling. Improper disposal was intended and in fact occurred. For example, a 41-count indictment charging conspiracy, mail fraud, and utilization of false statements was returned on April 17, 1986, by a federal grand jury sitting in the Southern District of California against four officers and owners of two corporations that were allegedly, among other things, claiming to be recycling waste when in fact they knew it was being illegally disposed of in Mexico.

Any notification, consent or annual report based on false representations is invalid. Thus, persons exporting hazardous waste are subject to civil and criminal enforcement actions. These actions are based upon the fact that the exporter did not comply with applicable notification, consent and/or annual report requirements.

Another extremely small group of hazardous secondary materials, although considered hazardous wastes, are either fully exempt or partially exempt from regulation by EPA domestically. *See* 40 CFR 261.6(a)(2) and (3) (50 FR 614, 665 (January 4, 1985)). Exporters of such secondary materials should keep in mind that the burden of proof is also on the exporter to demonstrate that such waste falls within one of these exemptions. The applicability of the export requirements to these wastes when exported is discussed in detail below in conjunction with other wastes for which manifests are not required domestically.

EPA also wishes to note that if, as a result of promulgating a new hazardous waste characteristic, adding additional wastes to the list of hazardous wastes, or other regulatory changes, additional wastes become subject to manifesting, exporters of such waste must also comply with the requirements promulgated in today's rule.

(2) *Comments Suggesting that EPA Broaden the Applicability of section 3017.* Some commenters supported the Agency's proposal to exempt from the export requirements those wastes that are presently exempted from manifest requirements. One commenter, however, objected to this scheme suggesting that the language of section 3017 (which states that ". . . no person shall export any hazardous waste identified or listed under this subtitle" unless the requirements of section 3017 are met) clearly indicates Congressional intent to subject all hazardous wastes to the export requirements of section 3017. EPA does not agree that Congress intended to require notification and consent for all hazardous wastes in view of the statutory language itself and the established domestic RCRA program.

EPA's regulatory definition of "hazardous waste" is a broad one. It includes all solid wastes which are listed hazardous wastes or which exhibit the characteristic of ignitability, corrosivity, reactivity, or EP toxicity. Generally, hazardous wastes (whether listed or characteristic) are subject to the generally applicable regulations governing their generation, transportation, treatment, storage and disposal. *See* 40 CFR Parts 262, 263, 264 and 265. However, there are a very small number of "hazardous wastes" which EPA, for one reason or another, has totally exempted from domestic regulation. These include, for example, residues under certain specified amounts in empty containers and scrap metal (if it demonstrates a characteristic of hazardous waste) when sent for recycling. 40 CFR 261.7, 261.6(a)(3)(iv). In EPA's view, Congress could not have intended to regulate for export those "hazardous wastes" which EPA does not regulate domestically. It is highly unlikely that Congress would have been more concerned about wastes exported than wastes in its own backyard. For example, as Representative Mikulski, the sponsor of section 3017, stated:

> Our own country will have safeguards from the ill effects of hazardous waste upon passage of [HSWA]. We should take an equally firm stand on the transportation of hazardous waste bound for export to other countries. 129 Cong. Rec. H8163 (daily ed. October 6, 1983) [emphasis added].

An "equally firm" stand on exports would not require regulation of a waste for export not regulated domestically.

Nor does EPA agree that section 3017 is clear on its face regarding its scope of coverage. Although section 3017(a) does include language prohibiting the export of "any hazardous waste" unless certain conditions are met, one of those conditions is the requirement to attach a copy of the receiving country's consent "to the *manifest* accompanying the hazardous waste shipment" [emphasis added]. And, in transmitting notification to a receiving country, section 3017 includes a requirement that EPA, in conjunction with the Department of State, include "a description of the Federal regulations which would apply to the treatment, storage and disposal of the hazardous waste in the United States." These requirements evidence an intent on Congress' part to encompass something less than "all hazardous wastes" since where a waste is not regulated domestically, consent could *not* be attached to the manifest nor would there be any regulations for EPA to describe which govern the domestic treatment, storage or disposal of such wastes. Thus, EPA does not believe that Congress mandated notifying a foreign country of a "hazard" the United States itself does not believe of sufficient concern to regulate domestically.

The question of the reach of section 3017 also arises with respect to certain hazardous wastes which are regulated minimally domestically, although excluded from the generally applicable requirements placed on the generation, transportation, treatment, storage and disposal of hazardous wastes. These include, for example, samples for testing and wastes generated by small quantity generators generating less than 100 kg/mo of hazardous waste. *See* 40 CFR 261.4(d); 261.5 FR at 10174 (March 24, 1986).[2]

EPA does not believe that application of the export requirements was intended for those wastes excluded from the generally applicable manifesting requirement even though some de minimus requirements are imposed domestically. In EPA's view, the function served by the manifest domestically is similar to the function served by the notification and consent internationally. The manifest notifies persons receiving the waste or handling the waste of the nature of the materials

[2] The final rule as it applies to small quantity generators is also discussed at Section H of this preamble.

being dealt with and as such affords such persons the opportunity to reject the waste or, if accepted, provides sufficient information to ensure proper handling of the waste. The manifest also serves as a tracking mechanism which allows policing of hazardous waste management and allows action to be taken against persons improperly handling the waste. Similarly, the notification requirement for exports notifies the foreign country receiving the waste of the nature of the materials and as such affords the receiving country the opportunity to reject the waste or if accepted, allows it to have information sufficient to enable it to deal with the waste. The consent requirement allows the foreign country to take action to prohibit unsafe or inadequate handling of a waste by withholding consent.

In EPA's view, therefore, the lack of imposition of the manifest requirement domestically indicates that such wastes do not reach a level of concern to necessitate notice or a mechanism by which action can be taken to police or enforce against improper handling of these wastes. Accordingly, it is unnecessary to impose an equivalent mechanism on exports of these wastes. It also is doubtful that Congress intended to regulate a waste for export more stringently than domestically. Since no tracking mechanism is available domestically for EPA to know whether such a waste ultimately was exported or actually remained in this country, no similar mechanism is necessary for foreign countries. Moreover, in many cases it is unlikely that, in view of the reasons for excluding such wastes from the manifest requirement, these are the types of wastes for which Congress intended notification and consent. For example, in view of the de minimus amounts and practical safeguards involved in dealing with samples, it is unlikely that a significant environmental problem could result or that a foreign country would be significantly concerned about such wastes. *See* 46 FR at 47426 (September 25, 1981).

Accordingly, EPA is not expanding the scope of section 3017 beyond those wastes for which manifesting is required domestically, with one exception. That exception is spent industrial ethyl alcohol when exported for reclamation. This particular hazardous waste presents a special situation. This waste was exempted from regulation by EPA domestically in view of the fact that the Bureau of Alcohol, Tobacco and Firearms already imposes notice and tracking requirements similar to those imposed generally by EPA on hazardous wastes domestically. EPA regulation, therefore, was considered redundant. *See* 50 FR at 649 (January 4, 1985). Since notice and tracking requirements are placed on these wastes domestically in lieu of EPA's requirements, EPA believes that this is the type of waste for which notification and consent should apply for exports. Thus, the final regulation includes an amendment to 40 CFR 261.6 regarding spent industrial ethyl alcohol when exported for recycling. That provision requires that, in the absence of an applicable international agreement specifying different requirements, the person initiating the export of such material and any intermediary arranging for the shipment must: (1) Provide notification to EPA; (2) export only with the consent of the receiving country and in conformance with such consent; (3) provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the material for export; (4) submit an annual report; and, (5) retain certain records. The "person initiating the shipment" is intended to mean the person who would have been required to prepare the manifest but for the exemption in existing 40 CFR 261.6(a)(3)(i). In addition, the final rule requires transporters carrying such materials to refuse to accept such shipment if he knows that it is inconsistent with the Acknowledgment of Consent, ensure that the EPA Acknowledgment of Consent accompanies the waste and that the waste is delivered to the facility designated by the person initiating the shipment. These requirements meet the statutory minimum of section 3017 plus a recordkeeping requirement for enforcement purposes. All other requirements applicable to other exports will not apply to exports of industrial ethyl alcohol exported for recycling since they are essentially tied to the EPA manifesting system or are inapplicable domestically.

(3) *Other Issues Related to the Applicability of section 3017.* One foreign government commented that the definition of exporter should apply to persons required to prepare a manifest both for waste subject to EPA's regulations as well as waste considered hazardous by the transit and receiving countries. Although EPA supports such an approach in principal, it believes that if a foreign receiving country wishes to expand the universe of waste for which it receives notification, this can best be accomplished through an international agreement between the country and the United States. Moreover, it is questionable whether section 3017 provides authority for EPA to regulate any materials for export that are not "hazardous wastes" identified or listed under RCRA.

Several commenters requested clarification of the applicability of the definition of exporter to certain specific situations. One commenter presented the situation where multiple generators send their waste to a domestic facility for recycling and the recycler later exports still bottoms and other byproducts of the recycling process for use as fuel. In this scenario, the recycler would be the party who originates the manifest designating a foreign TSDF, and thus would be the primary exporter. The initial generators would have designated the domestic facility on their manifests and therefore would not meet the definition of primary exporter. Of course, if the initial generator knew that its waste was being exported by the recycler without the consent of the receiving country, and yet continued to ship waste to that recycler or agreed to participate in the scheme, the initial generator might well be subject to criminal charges for aiding and abetting the recycler and/or conspiring with the recycler to violate section 3008.

Another commenter requested clarification on the aplicability of the export requirements when hazardous waste is generated in Alaska and transported through Canada to a facility in the continental United States. This commenter noted that, apparently, EPA did not intend to require notification of Canada under such circumstances since the term "transit country" was proposed to be defined as the country through which a hazardous waste passes "en route to a receiving country." The phrase "en route to a receiving country" was used in the proposal simply to denote short-term storage that may occur "en route." EPA did not intend this language to exempt such shipments from the notification requirement applicable to transit countries. To make this clear, the phrase "en route to a receiving country" has been deleted in the final rule. This action is consistent with an OECD decision to which the United States is a signatory. Decision and Recommendation of the Council on Transboundary Movement of Hazardous Waste, February 1, 1984.

Two commenters urged the Agency to broaden the exemption for certain samples from the export requirements. These commenters requested that EPA broaden the sample exemption to cover hazardous waste samples exported for the purpose of determining: (1) Whether the foreign facility will accept the waste

stream; (2) the treatment, storage, or disposal measures the foreign facility would use; and (3) the price the foreign facility would charge for the treatment, storage, or disposal of the waste. Existing §261.4(d) conditionally exempts from Subtitle C requirements, any sample of solid waste that is collected "for the sole purpose of testing to determine its characteristic or composition." Because such samples are not subject to the manifest requirements of Part 262, Subpart B, they are exempt from the export requirements. The Agency believes that this comment has merit, not only in the context of exports but also for the management of samples domestically. However, the Agency believes that creating such an exemption would require further analysis for both exports and domestic shipments, and if deemed appropriate, proposal for public comment. The Agency questions what the appropriate conditions for such an exemption would be. For example, the Agency would want to consider whether a quantity limitation or some type of limit on the types of waste covered by the exemption would be desirable. Accordingly, the Agency will consider these suggestions for possible further regulatory action and is not expanding the scope of the § 261.4(d) sample exemption at this time. Unless and until future regulatory action is taken, exports of hazardous waste samples outside the scope of § 261.4(d) must comply with the export requirements. Alternatively, foreign waste management facilities could contract with laboratories in the United States to do any necessary analysis.

3. *Other Definitions.* In its proposed rule, EPA proposed definitions for two additional terms—"EPA Acknowledgment of Consent" and "Consignee." The definition of "EPA Acknowledgment of Consent" has not been changed from the proposed rule. A full discussion of comments and EPA's plans regarding the EPA Acknowledgment of Consent is set forth in Section III. D. of this preamble.

Two comments were received on the proposed definition of "Consignee.' in the proposal, "Consignee" was defined as the ultimate treatment, storage, or disposal facility to which the hazardous waste will be sent in the receiving country. One commenter suggested adding "recycling" to the list of facility types, since the proposal intended to cover wastes exported for recycling. EPA does not believe that this change is necessary because, as discussed above, the term "treatment" clearly covers recycling (see, e.g., 40 CFR 260.10).

The second commenter objected to the use of the word "ultimate" in the definition of "Consignee," suggesting that in the case of hazardous wastes that are exported for recycling, storage or treatment, the initial TSDF that receives the waste may transfer certain portions of the waste to a second TSDF. According to this commenter, exporters frequently have no knowledge of or control over such secondary transfers and may be unable to identify, especially prospectively, such secondary TSDF's. EPA acknowledges that further management of an exported waste may occur after it is sent to a foreign TSDF which is beyond the control or knowledge of the exporter. A foreign TSDF may on its own initiative decide to send waste to another TSDF. EPA did not intend to require an exporter to specify actions which occur in a foreign country unknown to him or beyond the scope of his control. EPA used the adjective "ultimate," consistent with the statutory language of Section 3017, to distinguish between the facility to which the waste is being sent for treatment, storage or disposal in a receiving country and a facility *in that same country* at which a shipment may be stored incidental to transportation (e.g., at transfer facilities, loading docks). For example, if a waste is being exported to London, England via Portsmouth, England and the waste is held temporarily in Portsmouth awaiting transportation to London, the consignee would be the facility in London.[3]

The type of storage incidental to transportation which EPA intended to distinguish from the "ultimate" destination of the waste is similar to that type of storage discussed in the preamble to the rule clarifying when a transporter handling shipments of hazardous waste is required to obtain a storage facility permit.

See 45 FR 86966 [Dec. 31, 1980]. However, for purposes of determining who is the consignee, as between a temporary storage facility at which the waste may be stored incidental to transportation and the ultimate destination of the waste, no time limit on the length of such storage is being proposed as is the case in the rule referenced above. EPA believes it would be extremely difficult, if not impossible due to unforeseen events occurring in transit abroad, for an exporter to know prospectively whether a shipment might be stored, for example, for more than ten days at a storage facility in the course of transportation and would thus become the consignee. Accordingly, the consignee is the facility of ultimate destination of the waste in a receiving country and not a temporary storage facility where a waste may be stored for a short period of time incidental to transportation.

Thus, EPA interprets the term "ultimate TSDF" to mean the final destination of the waste in a receiving country known to the exporter. In view of its interpretation of this term, EPA finds it unnecessary to change the language of the proposed rule.

C. Notifications of Intent to Export [§ 262.53]

EPA received a number of comments on the subject of notification. These comments focused on four issues related to the notification: (1) The 60-day advance time suggested for submission of the notification; (2) separate notification for each shipment; (3) the period covered by the notification; and (4) renotification.

Subsection (c) of section 3017 requires that any person who intends to export a hazardous waste shall, before such waste is scheduled to leave the United States, provide notification to the Administrator. The purpose of this notification is to provide sufficient information so that a receiving country can make an informed decision on whether to accept the waste and, if so, to manage it in an environmentally sound manner. The notification is also intended to ensure that environmental, public health, and U.S. foreign policy interests are safeguarded and to assist EPA in determining the amounts and ultimate destination of exports of U.S. generated hazardous waste so as to enable EPA and Congress to gauge whether the right to export is being abused.

The regulatory notification requirements are intended to implement the broad statutory requirements for notification set forth in section 3017(c) and ensure that sufficient information is obtained to satisfy Congressional intent.

1. Sixty-Day Advance Time

Section 262.53(a) of the proposed rule suggested that the exporter submit notification to the Agency 60 days before the waste was scheduled to leave the United States. This 60-day advance time represented EPA's best estimate of the amount of time it would take to notify a receiving country, obtain consent, and transmit such consent to the exporter. EPA noted in the proposal that the statute itself sets forth the time

[3] In view of the changes in the definition of receiving country, it should be noted that there may be more than one consignee in those rare circumstances where there is more than one receiving country.

frame (30 days) within which a complete notification must be transmitted to the receiving country after receipt by EPA and the time frame (30 days) within which the consent or objection must be transmitted to the exporter after receipt by the Secretary of State. Since EPA believed the information could be transmitted in less time than statutorily required (see discussion in Section III.D), this 60-day advance time allowed approximately thirty days for the receiving country to provide its consent or objection to the Department of State.

EPA received several comments on the 60-day advance time. Most of the commenters focused their responses primarily on the 30-day period for a receiving country to transmit its consent or objection to the Department of State. One commenter stated that 30 days was an adequate period for dissenting governments to protest shipments. The commenter added that a longer period would cause unnecessary and costly delays in disposing of wastes. Another commenter proposed that a receiving country should be deemed to have given its consent if it fails to respond to EPA's notice within 30 days.

Other commenters expressed a concern that a 60-day advance notice was inadequate and that a 90-day advance notice would be necessary. One commenter in favor of a 90-day advance time stated that the 60-day notice would cause delays in exporting waste. Another commenter expressed the view that a 60-day advance time was too long. This commenter maintained that 30 days would be sufficient and proposed a "fast track" system to expedite EPA transmission.

After reviewing the comments, EPA has decided to retain the 60-day advance time as the recommended submittal time. This period should provide time for EPA, the Department of State, and the receiving country to process the notification and transmit the receiving country's consent or objection to the exporter. In fact, the amount of time estimated for EPA and the Department of State to transmit information already reflects a "fast track" system to expedite transmission. Therefore, EPA does not believe, at this time, that it would be appropriate to shorten the suggested time frame. Of course, exporters may submit notifications at a later date since the 60-day advance time is solely a recommended minimum advance time. Exporters should keep in mind, however, that this could increase the risks of a delay in receipt of consent and consequent delay in shipment.

EPA disagrees with the commenter's recommendation that failure by a receiving country to respond to a notification should be considered consent. EPA cannot require a foreign country to respond within a specific number of days. Moreover, EPA does not have the authority to assume consent if there is no response within a specific time period because the statute prohibits exports in the absence of written consent. With respect to those exporters who believe the 60-day advance time is too short, EPA notes that exporters may always submit notifications further in advance if they so desire.

EPA reminds exporters that the 60-day advance time is only EPA's best estimate of the time transmission of information will take. A receiving country may take longer to respond than estimated. Accordingly, regardless of the time when a notice is submitted (even if submitted 60 days or more in advance), the shipment cannot take place until consent has been obtained. Exporters therefore, are encouraged to submit notifications at the earliest possible date.

2. Separate Notification for Each Shipment

The proposed rule provided that a single notification could cover more than one shipment; a separate piece of paper providing notification for each shipment would not be necessary. This was considered consistent with legislative intent since the statute itself specifies that a notification include information on the "frequency of shipment." Since the statute was not clear on this point, however, the Agency specifically requested comments regarding whether separate notification should be required for each shipment.

The vast majority of commenters stated that separate notification was unnecessary. Several commenters noted that such notification would be burdensome to the Agency as well as to industry. Another commenter found separate notifications for each shipment to be contrary to Congressional intent since the statute requires that the "frequency of shipment" be specified in the notification. Only one commenter supported separate notification for each shipment. This commenter, however, stressed that such notification would be the ideal. EPA agrees with the majority of commenters that Congress did not intend notification for each shipment, and that such notification would create unnecessary burdens on industry, the Agency, and foreign countries. As a result, separate notification for each shipment is not required in the final rule.

3. Notification Period (24 Months vs. 12 Months) [§ 262.53]

In its proposal, EPA indicated that a notification could cover a period of up to 24 months. The Agency also requested comment on the alternative of allowing notifications to cover only a 12-month period. Comments received on this issue were divided.

Except for one comment, those in favor of a 24-month period did not provide EPA with a reason why they favored this time period over the 12-month period. The commenter who did provide an explanation suggested that a two-year period would provide the receiving country with time to become familiar with the characteristics of the hazardous waste and to determine whether the facilities were able to properly dispose of the hazardous waste.

Other comments supported the change to a 12-month notification period. Several commenters suggested that because of the difficulties in forecasting export activities over a 24-month period, numerous renotifications would be required, resulting in no net reduction of the burden on exporters. A commenter in support of the 12-month period said that it would improve the accuracy of the estimated number and quantity of shipments identified in a notification. One commenter was concerned that foreign countries would be reluctant to consent to exports for a period as long as 24 months, resulting in the need for protracted negotiations with the receiving country. Another commenter explained that the 12-month time period would allow the receiving country to have greater control over the shipments across the border.

EPA finds the comments in favor of a 12-month notification persuasive and agrees that the better view is to allow notifications to cover a maximum of 12 months rather than 24. In addition, EPA notes that since governments within some countries tend to change rapidly and records may be lost or misplaced or policy changes may occur, the more frequent annual notice would provide more current information to foreign governments than would a 24 month notice. Finally, the amount and detail of information on the effects of hazardous waste on human health and the environment is always increasing, and annual reviews of consent would allow reassessment of any new data.

One commenter asserted that, in view of its regular standard exportation practices, annual or biennial "renotification" for unchanged practices should not be required where a single

notification provides a complete and accurate picture of the waste exportation practices that will occur. Recognizing that practices which deviate from the notification could be enforceable violations of RCRA, this commenter felt that a notification should be allowed to cover any period of time so long as the initial notification fully and accurately reflects the notifier's practices. EPA does not believe that submittal of the notification on an annual basis presents a burden to exporters since such a requirement would only entail duplication of the original notification. Moreover, prudent planning by the exporter should prevent any interruption in exports which might result as a consequence of awaiting new consent. Further, annual notification provides receiving countries with a formal mechanism to review information relative to incoming shipments in light of any new developments which may occur within that country within the previous 12-month period.

4. Renotification [§ 262.53]

Paragraph (c) of proposed § 262.53 required renotification and new consent from the receiving country for changes in the conditions specified in the original notification. Two commenters suggested that renotification should not be required for small variations in shipping procedures and routes.

EPA believes there is some merit to these comments. In fact, the proposal represented an attempt to build into the notification requirements the flexibility to allow for minor changes without renotification and consent. For example, it was proposed that notification include the "estimated" number of shipments of the hazardous waste. Upon re-examination of the issue of notification, however, EPA has decided that some minor regulatory changes would be appropriate. Whereas EPA believes that renotification is necessary where material conditions in the original notification change (since this may affect the original consent granted by the receiving country), it does not believe that certain minor deviations from the original notification warrant renotification and additional consent. In EPA's view, certain notification information is more for informational purposes than integral to a decision to accept or reject a waste. Accordingly, EPA believes that it is doubtful that such deviations would be of sufficient concern to a foreign country for it to wish to reconsider its consent. Moreover, renotification for minor deviations in certain information would put unnecessary burdens on foreign countries, EPA and exporters. And, in view of the need for at least a two-month advance notification, exporters may not at that date have highly detailed information on an export.

In determining what types of changes should trigger the need for renotification and consent, EPA considered which items are most likely to be highly variable and more importantly, which items would be likely to affect the receiving country's consent. For example, EPA believes that any increase over the estimated quantity of waste to be exported should require renotification and consent. However, EPA has concluded that decreases in the quantity exported would not be likely to affect the receiving country's consent and, therefore, is not requiring renotification for such changes. EPA also is requiring renotification and consent for any changes in the waste description, consignee, ports of entry to and departure from a foreign country, the manner in which the waste will be treated, stored or disposed of in the receiving country, the name of any transit countries, the handling of the waste in transit countries, important factors for a receiving country in determining whether to accept or reject a hazardous waste or for a transit country to take appropriate action. Although renotification will be required for changes in the ports of entry to and departure from transit countries, the names of any transit countries, the appropriate length of time the waste will remain in transit countries, and the nature of the handling of the waste in such countries, consent of the receiving country will not be required for these changes since they are unlikely to affect the receiving country's original consent. However, when the Agency receives notification for these types of changes, it will provide notice of them to any affected transit country.

Renotification will not be required when there is a change in the mode of transportation to be utilized. An exporter may not know sufficiently in advance the highly specific details on how the waste is to be transported. Moreover, the mode of transportation may change en route. For example, transportation which was originally planned to take place by truck may be changed at the last minute to railroad due to unexpected events. EPA also will not require renotifications when there is a change in the type of container in which the waste will be transported. The exporter must already meet the specific container requirements of the Department of Transportation, as well as any such requirements of all transit and receiving countries. Moreover, exporters must be allowed to repackage containers damaged en route. Renotification will also not be required for changes in the exporter's telephone number since such a change should not affect the receiving country's consent.

The changes noted above are consistent with Section 3017 since the statutory language itself in several respects builds in flexibility in the notification requirements in an effort to achieve the same result as these more specific regulatory provisions. In addition, in the absence of these changes, exporters are likely, for example, to simply list all possible ways a waste may be transported to avoid renotification. Under such circumstances, a foreign country would be receiving no more specific information on these elements. Accordingly, § 262.53(c) has been changed to require renotification for all changes in the original notification except for changes in the exporter's telephone number, mode of transportation, type of container, and decreases in quantity. In addition, the regulatory language has been modified to make clear that consent of the receiving country is not required for changes to the information noted above which is pertinent to transit countries.

EPA is also concerned about the language of proposed § 262.53(a)(2)(ii) which required that the notification contain "the estimated number of shipments of the hazardous waste and the approximate date of each shipment." Commenters stated that the requirement to estimate the number and total quantity is meaningless and explained that waste generation is never preplanned and exact, therefore, information on the amount of waste generated cannot be exact. Other commenters disagreed with the requirement to include the date of shipment, also explaining that waste generation is never preplanned and exact, consequently, information on the shipment dates cannot be exact. Other commenters also disagreed with the requirement to include the date of shipment, explaining that it is not always feasible to know even 60 days in advance of a shipment the exact date when waste will be transported. The commenters suggested that EPA require the expected frequency of shipment rather than the exact date.

Although the notification requirement as proposed only required the *approximate* dates and estimated number of shipments, EPA notes that no guidance was provided on how much deviation from the approximate date and estimated number of shipments was

allowable without the need for renotification. To avoid the uncertainty inherent in the proposed language, and in view of the comments received expressing concern with this requirement, EPA has chosen to adopt, in the final rule, the statutory language requiring notification of "the estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported." EPA believes this change clearly meets Congressional intent for notification while providing important flexibility to exporters.

Except for the changes regarding notification discussed above, EPA is retaining § 262.53 as proposed for the reasons set forth in the preamble to the proposal.

D. Procedures for the Transmission of Notification, Consent or Objection

Subsections (d) and (e) of section 3017 require the Department of State to transmit notification of the intended export to the government of the receiving country within thirty days of receipt by EPA of a complete notification from the primary exporter. EPA must then notify the primary exporter of the receiving country's consent or objection to the intended export within thirty days of receipt of a response by the Department of State. Because the exchange of information among EPA, the Department of State, receiving countries and transit countries is administrative in nature and imposes no requirements on the public, EPA did not propose specific procedures to implement these statutory requirements.

As discussed in the proposal, EPA and the Department of State plan to telegraphically transmit the notification as well as the receiving country's response. Notifications would be sent from EPA to the Department of State for transmission to the U.S. Embassy in the receiving country. The U.S. Embassy would forward the information to appropriate authorities in the receiving country in translation, if necessary, with a request for an expeditious written response. Upon receipt of this written response, it would be translated by the U.S. Embassy in the receiving country, if necessary, and cabled to the Department of State for transmission to EPA. Where the terms of the receiving country's consent are understandable only by reference to the export notification (e.g., the receiving country simply references a notification and gives consent without reiterating terms described in the notification), the cable will also include relevant portions of such notification. Where the receiving country fully consented to the export or consented with specified modifications, this cable would constitute the EPA Acknowledgment of Consent and would be sent to the primary exporter for attachment to the manifest. Where the foreign country reject the shipment, EPA would so notify the primary exporter in writing. Meanwhile, the original written communication from the receiving country would be sent to the Department of State in Washington in the diplomatic pouch mail. This document would then be forwarded to EPA for retention. A copy would also be forwarded to the exporter.

As required by section 3017, in notifying receiving countries of intended shipments, the government of the receiving country would also be advised that United States' law prohibits the export of hazardous waste unless the receiving country consents to accept the waste. The notification would include a request to provide the Department of State with a response to the notification which either consents to the full terms of the notification, consents to the notification with specified modifications, or rejects receipt of the hazardous waste. Also in accordance with statutory requirements, a description of the Federal regulations which would apply to the treatment, storage, and disposal of hazardous waste in the United States would be provided to the receiving country.

While most commenters favored EPA's suggested procedure of using the cable as the EPA Acknowledgment of Consent, several commenters maintained that an exact duplicate or mechanical reproduction of the actual written consent must be used in lieu of a cable. These commenters suggested that EPA's proposal was contrary to the plain language of the statute and voiced concern over the possibility of human error in transcribing information into a cable or in translating such information.

In EPA's view, transcription of a receiving country's consent into a cable and attachment of such cable to the manifest meets the statutory requirement that a "copy" of the receiving country's written consent be attached to the manifest accompanying the waste shipment. The term "copy" is not limited to a "photo" copy or other mechanical reproduction but can include typed or handwritten "copies." Moreover, EPA believes that "copy" is broad enough to encompass a translation of a receiving country's consent. EPA also believes that the statute accords EPA the discretion to implement the export requirements in a workable and practical fashion. In EPA's view, this necessitates use of telegraphic communications.

U.S. Embassy personnel will be well qualified to translate the receiving country's response and, as indicated in the proposal, EPA will work closely with the Department of State to ensure that cables prepared by the U.S. Embassy include an exact reiteration or translation of the receiving country's consent. EPA remains concerned that mailing actual reproductions of documents will cause unnecessary delays that can be avoided by the use of cables. Without the use of cables, it would be necessary to increase, and possibly significantly increase, the advance time for submission of notifications. This would require exporters to project their export plans even further into the future when submitting their notifications, risking an increase in the number of renotifications necessary and consequent burdens on EPA, exporters, foreign countries and the Department of State. In addition, were EPA to require that the actual consent document be mailed, transmission would be dependent on a postal system over which neither EPA nor the Department of State would have control. It would be unfair to leave exporters dependent upon postal systems which, in some countries, are of questionable reliabilty. Nor does EPA believe it would be appropriate to use the Department of State's diplomatic pouch mail. The Department of State has indicated that while diplomatic pouch mail is generally received within two weeks, in some instances it can take from three to six weeks and, therefore, transmission could exceed the 30-day time frame provided by the statute for transmission of consent to the exporter upon receipt by the Secretary of State.[4]

One commenter suggested that, although a facsimile of the written consent should be provided the exporter, a Department of State translation might also be helpful. However, this commenter believed that exporters should, nonetheless, be held to compliance with the foreign language

[4] One commenter suggested that the statutory time frame problem could be resolved by defining receipt by the Secretary of State as receipt by the Department of State in Washington. Generally, the U.S. Embassy in a foreign country is the representative of the Secretary of State and, therefore, the better view is that receipt by the Embassy is receipt by the Secretary of State. Even were this suggestion adopted, however, the problem would remain that notifications would need to be submitted further in advance thereby risking a consequent increase in burdens on all parties involved due to the increased likelihood that renotification would be necessary for changes in the shipment.

version. EPA notes in response to this comment that it would not take enforcement action against an exporter who relied in good faith on an Embassy translation. Moreover, it would be unfair to require reliance on the foreign language version under such circumstances. Any difficulties arising out of an erroneous translation by the United States is a matter best dealt with by the governments of the countries involved and is a matter of foreign relations appropriately left to the Department of State. Furthermore, were exporters held to the foreign language version, exporters might feel the need to obtain their own translations which could result in various versions of the consent. This could cause needless complications. With use of the Department of State translation, exporters and EPA will be relying on the same translation. Accordingly, EPA is retaining its definition of Acknowledgment of Consent and the procedures for transmission of the notification and consent as proposed except in one respect. To assist in expediting transmission, the final rule adds a requirement that exporters mark the envelope containing the notification "Attention: Notification to Export."

With regard to transit countries, transmission of notification will proceed similar to that for receiving countries. EPA will notify primary exporters of any response of a transit country. As noted earlier, EPA strongly urges exporters to reroute wastes objected to by transit countries since transit countries may take action to prohibit entry.

E. Special Manifest Requirements [§ 262.54]

This section sets forth special manifest requirements pertaining to exports of hazardous waste in light of the special circumstances relative to such shipments. The final rule adopts the provisions as proposed for the reasons set forth in the preamble to the proposed rule except in one significant respect.

During the development of the proposed rule, EPA considered requiring the transporter to deliver a copy of the manifest to a U.S. Customs official at the point the waste leaves the United States. Customs officials would periodically forward the copies it collected to EPA. Such a requirement would serve as a means to assist EPA in enforcing section 3017. The Agency decided not to propose this requirement because it had no evidence that exporters were violating current notification requirements. In addition, the Agency was of the opinion that copies of manifests retained by generators could be obtained (e.g., for comparison with notification and consent documents) if concerns arose about violations of section 3017.

The Agency received comments both opposing this requirement as well as strongly urging the Agency to reconsider its decision on this subject. After evaluating the comments received on this issue, obtaining further information on violations of existing notification requirements, and reconsidering the advantages and disadvantages of the collection of manifest copies, EPA has determined that submission of the manifest at the border should be required. Thus, § 262.54(i) of today's rule requires the primary exporter to provide the transporter with an additional copy of the manifest and § 263.20(g)(4) requires the transporter to deliver a copy of the manifest to the Customs official at the point the waste leaves the United States. This is a new tracking device intended to assist EPA in working with the U.S. Customs Service to establish an effective program to monitor and spot-check exports of hazardous waste. This requirement will allow the Agency to monitor closely the generator's compliance with the EPA Acknowledgment of Consent, coordinate enforcement actions with foreign countries, establish trends and patterns for enforcement and program development, and respond to Congressional inquiries. It also provides clear evidence of an important element of proof in enforcement actions (i.e., that an export did or did not occur) and serves as a deterrent to illegal activities. Moreover, this requirement will allow EPA to respond promptly to hazardous waste incidents in foreign countries. Routine submission of these documents to EPA is important in light of foreign policy concerns involved in exporting hazardous wastes. The diplomatic ramifications of improper shipments of United States' wastes could have a significant impact on the United States as a responsible member of the international community.

The Agency believes that the need for an additional copy of the manifest will result in an insignificant increase in the paperwork burden on the regulated community since this requirement does not include preparation of any additional information but only requires an additional copy of existing information.

F. Annual Reports, Recordkeeping, and Exception Reports [§§ 262.55, 262.56, 262.57]

Section 3017(g) of RCRA imposes a new annual reporting requirement for exports of hazardous waste. The annual reports should be sent to the Office of International Activities (A-106), United States Environmental Protection Agency, Washington, D.C. 20460. Comments received regarding the proposed rule's annual reporting requirement were largely favorable.

One commenter noted that meeting the annual report requirement for exported wastes would be very easy for exporters who reside in States, such as New York, which already require such reports. Another commenter proposed the creation of an annual report form. Since the number of exporters filing annual reports is expected to be very small, the Agency does not believe that an annual report form is necessary in order to enable it to process annual reports. Nor does the Agency believe that expenditure of the resources necessary to develop and print annual report forms is justified in view of the relatively small number of exports.

One commenter explained that submittal of the annual report would be unrealistic since its members presently do not submit reports and, therefore, do not maintain records on export shipments. This commenter also stated that EPA could easily obtain the material found in the annual report from the biennial report, and that requiring both is unnecessary. EPA notes, in response to this commenter, that section 3017 of RCRA requires annual submissions of information on exports. Therefore, annual reporting is a statutory requirement and information submitted biennially would not meet this requirement. Since commenters did not refute EPA's assertion that most generators retain separate records on domestic shipments and exports, EPA does not believe that the administrative burden on exporters to file annual reports on exports and biennial reports on domestic waste management is excessive. Also, as discussed in the proposal, EPA believes that this approach is administratively less burdensome on the Agency.

A second commenter questioned whether information found in the annual reports could be more readily obtained from computerized notice records. Because the annual report is a statutory requirement, regarding what actually occurred, the notice records cannot be used as a substitute. The annual reporting information will tend to be more specific than the notification information. For example, it will provide information of the actual quantity exported if under the amount estimated in the prior notification.

Accordingly, EPA has retained the annual reporting requirement as

proposed except in one respect. One commenter stated that, by exempting generators who file annual reports from reporting exports on the biennial report form, EPA cannot exempt exporters from the new HSWA waste minimization requirements of section 3002(a)(6) (C) and (D). EPA does not believe that exporters will be exempt from such requirements in most cases based upon the assumption that, generally, an exporter will not only export waste but also will ship some wastes off-site for treatment, storage or disposal domestically. Accordingly, the requirements of section 3002(a)(6) (C) and (D) will be met for all wastes by filing the biennial report as required by 40 CFR 262.41. Nevertheless, to cover the annual circumstance where a person exports all his hazardous wastes, the final rule includes a requirement that unless provided pursuant to 40 CFR 261.41, an exporter must include in the annual report submitted in even numbered years: (1) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and (2) a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984. Small quantity generators generating less than 1,000 kg/mo are exempt from this requirement consistent with 40 CFR 262.44 (*See* 51 FR 10146, 10176 (March 24, 1986)). Exporters of spent industrial ethyl alcohol for reclamation are also exempt since this requirement does not otherwise apply to such wastes.

With regard to the proposed recordkeeping and exception reporting requirements, EPA received no significant comments on these provisions. Accordingly, EPA is retaining §§ 262.55 and 262.57 as proposed for the reasons set forth in the preamble to the proposed rule.

G. Transporter Responsibilities

The March 13, 1986 proposal amended § 263.20 to prohibit a transporter from accepting waste from an exporter unless, in addition to a manifest, an EPA Acknowledgment of Consent was attached to the manifest. EPA also proposed to amend this section to require transporters to ensure that an EPA Acknowledgment of Consent accompanied the waste en route. No changes were proposed regarding other requirements of Part 263 applicable to transporters transporting waste for export. *See* 40 CFR 263.20(g), 263.21, 263.22(d). As discussed in Section III.B. of this preamble, EPA is retaining these requirements as proposed and is adding the additional requirements that the transporter deliver a copy of the manifest to a U.S. Customs official at the point the waste leaves the United States and that the transporter refuse to accept hazardous waste for export if he knows it does not conform to the Acknowledgment of Consent.

One further change is also being made in the transporter requirements. This pertains to exports by rail. In drafting the proposed rule, EPA recognized that existing domestic regulations for shipments by rail do not require that the manifest travel with the waste shipment nor do they require that intermediate rail transporters sign the manifest. *See* 40 CFR 263.21(d). Instead, a shipping paper is required to accompany the waste and the manifest must be sent to the next non-rail transporter, the TSDF, or, for exports, the last rail transporter designated to handle the waste in the United States. These special requirements were imposed on rail transporters due to the special nature of the railroad industry in recognition that railroads have sophisticated computerized tracking information systems. If the manifest system were applied to the rail system without adjustment, normal operating practices would be so disrupted as to effectively prevent the use of this method of transportation. *See* 45 FR 86970, 86971 (December 31, 1980). In the rail system, shipping papers are left with railcars at interchange points to be picked up by the transferee railroad. Thus, no face-to-face contact occurs and the normal manifest system is unworkable.

In keeping with the existing system for railroads, EPA's proposed export provisions required the Acknowledgment of Consent to be attached to the shipping paper in lieu of the manifest. In commenting on the proposal, the Association of American Railroads, brought to EPA's attention that the rail industry is now moving toward a system where there will be no exchange of papers between rail carriers. Each rail carrier will have its own shipping paper issued through a computerized system and therefore not even an exchange of a shipping paper will occur by leaving the shipping paper with the rail car. Instead, each rail carrier operator would carry its own shipping paper for the shipment. In the rail industry's view, the proposed export requirements represented a step backward since the requirement that the Acknowledgment of Consent be attached to the shipping paper would require that papers be passed from rail carrier to rail carrier and the new "paperless" exchange would be unworkable. This commenter, therefore, suggested that the Acknowledgment of Consent be attached to the manifest which is forwarded ahead to the last rail transporter to carry waste in the U.S.

EPA did not intend to prevent or discourage the use of rail transportation through the export requirements. Nor does EPA believe that this was Congress' intent. In fact, EPA's intent in the proposal was to accommodate the special circumstances of the rail industry while ensuring that the purpose and intent of section 3017 was met. However, while EPA understands that attachment to a shipping paper under the new rail system may not be workable, it is difficult to understand why a copy of the Acknowledgment of Consent cannot be left in the rail car with the shipment. This would not require any face-to-face contact since the document would simply travel with the rail car as it is passed from one railroad to another. Accordingly, the final rule provides that the Acknowledgment of Consent simply accompany the waste shipment for shipments by rail and need not be attached to the shipping paper. Consistent with section 3017, this will allow the consent to accompany the waste shipment.[5] EPA invites further comment on this issue and will consider further modification to this requirement once the new "paperless" rail system is implemented if it can be shown that this requirement essentially prohibits exports by rail.

H. Small Quantity Generators

As previously discussed in Section III.B.4 of this preamble, EPA proposed to define an exporter as the person required to prepare the manifest pursuant to 40 CFR Part 262, Subpart B for a shipment of hazardous waste that specifies a treatment, storage, or disposal facility in the receiving country to which the waste will be sent. Under the rules existing at the time of the March 13, 1986 proposal, generators of less than 1000 kg/mo of hazardous waste in a calendar month (i.e., small quantity generators) were not subject to Subpart B of Part 262 (or any other Part 262–266 or 270 regulations),[6] provided

[5] The proposed rule also allowed the Acknowledgment of Consent to be attached to the shipping paper for exports by water (bulk shipment) in view of the domestic scheme for this type of transportation. The final rule does not change the proposal with regard to these exports since there were no comments suggesting that this would be a significant problem.

[6] Generators of between 100–1000 kg/mo were required by Section 3001(d)(3) of HSWA to manifest any waste shipped off-site with a single copy of the Uniform Hazardous Waste Manifest beginning July 1985.

the small quantity generator complied with § 262.11 (hazardous waste determination) and ensured delivery of his waste to an on-site facility or off-site facility either of which met one of five criteria:

1. Permitted under Part 270;
2. In interim status under Parts 270 and 265;
3. Authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 271;
4. Permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or
5. A facility which beneficially uses, reuses, or legitimately recycles or reclaims its waste or treats its waste prior to beneficial use, reuse, or legitimate recycling or reclamation.

As the preamble to the proposal noted, it appeared that, technically, a small quantity generator who exported his waste would be subject to then-existing export requirements since he would be unable to comply with any of the above requirements. The proposed rule did not propose to change this result. Therefore, under the proposed rule, small quantity generators who exported their wastes would have been subject to full Part 262 requirements, including the proposed export requirements, while small quantity generators who shipped to any of the five kinds of domestic facilities identified above would continue to be exempt from the Part 262 requirements. The proposal indicated that EPA would be considering whether this was the appropriate treatment of small quantity generators in the final rule. In so doing, EPA would specifically consider any changes which ultimately might be made in the small quantity generator provisions being considered in a separate rulemaking (50 FR 31278 (August 1, 1985)). In addition, EPA would consider whether there should be more concern for a waste exported than dealt with domestically.

Since the March 13, 1986 proposal on exports, EPA has published its final rules for generators of less than 1000 kg/mo at 51 FR 10146 (March 24, 1986). In general, that rulemaking subjects generators of 100–1000 kg/mo to most of the hazardous waste management regulations, including the Part 262 multiple copy manifest requirements and retains the current exemption for generators of less than 100 kg/mo from the Part 262 manifesting and other regulatory requirements.

In determining the final export requirements appropriate for generators of less than 100 kg/mo of hazardous waste, EPA has decided to exempt these generators from the export requirements to be consistent with the Agency's domestic policy with respect to these generators. As discussed at Section III.B.2. above, in EPA's view, only those wastes for which manifests are required domestically are the types of wastes that are properly the subject of section 3017. Moreover, as EPA stated in the March 24, 1986 final rule, it had no data to indicate that additional regulation of generators of less than 100 kg/mo of hazardous waste would provide any significant additional level of environmental protection. Generators of less than 100 kg/mo of hazardous waste account for only 0.07 percent of the total quantity of hazardous waste generated nationally. A review of damage cases also indicated that very few incidents involved quantities below 100 kg. Finally, it does not appear that the effect of the then-existing regulatory language which subjected exports by these generators to Part 262 requirements was intentional.

Accordingly, the final rule modifies § 261.5 to make clear that these generators are exempt from Part 262 requirements for exports as well as for domestic shipments. Any concerns that a foreign country may have about receiving such wastes can be resolved through a bilateral agreement by including the requirement that generators of less than 100 kg/mo provide notification for exports of hazardous wastes.

Generators of 100–1000 kg/mo will be subject to the export rules since under the March 24, 1986 final rule, they are now subject to manifesting requirements.

I. State Authority

1. Effect on State Authorization

Consistent with existing procedures, the proposal provided that States could not assume the authority to receive notifications of intent to export. In addition, States would not be authorized to transmit such information to foreign countries through the Department of State or to transmit Acknowledgments of Consent to the exporter. In EPA's view, foreign policy interests and exporters' interests in expeditious processing were better served by EPA's retaining these functions. This would provide the Department of State with a single point of contact in administering the export program and will better allow for uniformity and expeditious transmission of information between the United States and foreign countries. With the exception of these functions, EPA proposed that States include requirements equivalent to those promulgated today.

EPA specifically requested comments on this approach. As no comments were received objecting to the notification process set forth in the proposed rule, EPA has retained the language of the proposed rule in this respect. However, the final rule includes changes to proposal § 271.11 to require State programs to include a requirement that, for exports, a transporter may not accept a waste for export if he knows it does not conform to the Acknowledgment of Consent and must deliver a copy of the manifest to the U.S. Customs official at the point the waste leaves the United States. These changes simply reflect the addition of these requirements to the Federal requirements discussed above.

2. Universe of "Hazardous Waste" in Authorized States

In the preamble to the proposed rule, EPA explained that where a State has obtained authorization, "hazardous waste" for purposes of the export requirements would be the authorized State's universe of hazardous wastes plus wastes EPA identifies or lists pursuant to HSWA. EPA requested comments on the alternative of basing implementation on the Federal universe of hazardous wastes.

Comments received on this issue were divided. One commenter stated that the approach proposed could result in inconsistencies among States which would be confusing to foreign countries. In addition, such an approach could create unfair burdens on persons exporting from certain States. This commenter also stated that EPA's concern that exporters would have to become familiar with both Federal and State universes of hazardous waste if only the Federal universe was regulated was unfounded.

This commenter further stated that since any authorized State's universe of hazardous wastes must include at least the entire Federal universe, exporters would have little difficulty familiarizing themselves with the Federal universe. In addition, this commenter noted that the use of the Federal universe would be simpler for persons who export from more than one State, obviating the need for detailed knowledge of the universe of hazardous wastes in every State where such persons engage in the export business.

Commenters supporting EPA's approach argued that all wastes considered hazardous at the point of origination should be subject to the

export requirements to assure proper management and disposition.

After reviewing the comments received on the proposed approach and the implications of such an approach, EPA has determined that basing implementation on the authorized State universe plus those wastes identified or listed by EPA pursuant to HSWA remains the better approach. The "authorized State universe" of hazardous wastes consists of: (1) Those wastes in the Federal universe for which the State was authorized at the time it first received final authorization and (2) any wastes subsequently identified or listed by EPA for which the State has received authorization (by filing a request for approval of a program revision). The authorized State universe does not include wastes which are identified or listed by the State as hazardous wastes under State law but are not identified or listed as such by EPA. *See* 40 CFR 271.1(i)(2).

This approach is consistent with EPA's usual interpretation of the phrase "hazardous wastes identified or listed under this subtitle." The only period of time when any inconsistency among States might occur is during the period allowed States to update their programs to add a non-HSWA waste newly listed or identified by EPA. See 40 CFR 271.21 (Amendments to this section were proposed on January 1986 at 51 FR 496–504.) Only during this period might a particular waste from State A be subject to the export requirements (because State A's program revision is approved early) while the same waste from State B would not be subject to the export requirements (because State B's program revision is approved later than State A's). EPA does not believe that the potential for this inconsistency merits deviating from its usual interpretation of the phrase "identified or listed under this subtitle." Moreover, were export requirements applicable to the Federal universe, more wastes would be subject to the export requirements than are regulated on a national level domestically. This would be inconsistent with the intent to treat wastes for export similar to wastes dealt with domestically. Similarly, a material newly listed by EPA and stored in a State during the time period allowed a State to revise its program to add such waste, would not be subject to regulation while stored but would be subject to regulation once the export of such waste was initiated. Thus, materials exported would become subject to regulation ahead of the time States are required to regulate the waste domestically. This would make little sense.

To what extent commenters may be suggesting that EPA also regulate wastes listed by a State beyond those regulated Federally, EPA also rejects this approach as inconsistent with its usual interpretation of "identified or listed" under this Subtitle. In addition, EPA would not have the authority to enforce violations with respect to such wastes which would make little sense with respect to a program primarily Federally implemented. Thus, under this final rule, hazardous wastes identified or listed by the State as part of its authorized program which are broader in scope (not in the Federal universe) will not be subject to the export regulations.

J. Confidentiality

EPA proposed to amend § 260.2 to provide that information for which a claim of confidentiality is made will be disclosed by EPA only to the extent and by means of the procedures set forth in 40 CFR Part 2, Subpart B, except that information contained in a notification of intent to export a hazardous waste will be provided to appropriate authorities in receiving countries and the Department of State, regardless of such a claim. Information would otherwise be disclosed to the public and transit countries in accordance with 40 CFR Part 2. The final rule adopts this provision as proposed.

As the preamble to the proposal explained, this approach to the confidentiality of section 3017 notices was based upon EPA's interpretation of RCRA. There is an apparent conflict on the face of the statute between section 3007(b) and section 3017. Section 3007(b) could be read as prohibiting all disclosure of any confidential business information contained in a notice of intent to export. However, this reading would contradict section 3017.

Because the statute must be interpreted to give the fullest possible effect on both section 3007(b) and section 3017, EPA interprets section 3017 to require provision of the notification information to a receiving country through the Department of State even if the information in the notice is confidential, but to prohibit disclosure by EPA of such confidential business information to other persons. The purpose of the notification is to allow receiving countries to make an informed decision as to whether to accept the waste and, if accepted, how to deal with that waste. Moreover, section 3017 prohibits the export of hazardous waste in the absence of consent by the receiving country. Thus, unless such information can be divulged to the Department of State and receiving countries, informed consent could not be obtained and the export would be prohibited.

If a claim of confidentiality is asserted as to any notification information, EPA will exercise its discretion to determine whether it is the type of information that is important for a transit country to know. For example, it would be important for a transit country to know the type and amounts of waste but probably not important for it to know the port of entry to a receiving country. If the information claimed confidential is deemed to be information of which a transit country should know, the time frame set forth in section 3017(d) for submission of a "complete" notification to a receiving country will not begin to run until a determination by EPA of the validity of any such claim has been made. Only upon EPA's completion of the processing of the confidentiality claim will the notification information be provided to receiving countries and any nonconfidential information provided to transit countries. Since an export cannot take place in the absence of the consent of the receiving country, exporters should be aware that claims of confidentiality could, therefore, significantly delay shipment.

EPA received comments on this subject which stated that the availability of export information should not be abridged. EPA does not believe that the final rule in any way abridges the availability of export information contrary to Congressional intent. In fact, as EPA noted in the proposal, it does not believe that notification information generally is entitled to treatment as confidential business information. It has been EPA's experience that existing notifications, which consist of identification of the exporter, waste and consignee, have not been claimed by exporters to be confidential.

Another commenter questioned why EPA could not provide confidential information to a transit country. As discussed above, EPA believes that the only correct reading of sections 3007(b) and 3017 precludes disclosure of confidential information to parties other than receiving countries and the Department of State. However, EPA notes that a transit country that is not satisfied with the information it receives from the notification may take action to prohibit the waste from entering the country.

IV. Enforcement

A. EPA

Noncompliance with RCRA section 3017 or regulations promulgated thereunder is subject to civil and criminal enforcement action under section 3008. As the legislative history of section 3017 states:

> The requirements of this section should be vigorously enforced using all the tools of Section 3008. To accomplish this, the Agency should work with the U.S. Customs Service to establish an effective program to monitor and spotcheck international shipments of hazardous waste to assure compliance with the requirements of the section. Violations should then be vigorously pursued. S. Rep. No. 98-284, 98th Cong., 1st sess. 48.

Most important, HSWA includes an amendment to section 3008(d) of RCRA authorizing criminal penalties against any person who exports a hazardous waste without the consent of the receiving country or in nonconformance with an international agreement between the U.S. and a receiving country. Section 3008(d)(6) establishes incarceration of up to two years and/or a fine of $50,000 per day for knowingly exporting a hazardous waste without consent or in violation of a bilateral agreement. Penalties and prison terms may be doubled for second offenses. EPA intends to prosecute violators to the fullest extent.

Subsection (d)(6) of section 3008 subjects to criminal sanctions "any person who knowingly exports" hazardous waste to a foreign country without that sovereign's consent. The receiving country's consent is premised on the correctness of the data on the export notification. "Consent" based upon the false representation of the exporter is invalid.

The following examples of knowing exportation are meant to illustrate (but do not limit) cases in which the Agency would find that the receiving country's consent has not been given and criminal enforcement might be pursued:

1. Exportation of hazardous waste without notification (or without renotification as required under 40 CFR 262.53(c));
2. Exportation of hazardous waste after notification but without consent (or after renotification but without consent based on the renotification); or
3. Exportation of hazardous waste with "consent" based on false representation(s) in the notification.

In the enforcement of these regulations, EPA may also use section 3008(d)(3) of RCRA (which prohibits the knowing omission of material information or the making of a false statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained, or used for compliance with Subtitle C (e.g., the notification of intent of export)). These two violations are each punishable by up to two years imprisonment and/or a fine of $50,000. (Potential fines and prison terms are doubled for second offenses.)

B. U.S. Customs Service

The new HSWA provision on the export of hazardous waste raises issues concerning cooperation between EPA and the U.S. Customs Service on enforcement matters. As noted above, Congress intended that EPA "should work with the U.S. Customs Service to establish an effective program to monitor and spotcheck international shipments of hazardous waste to assure compliance with the requirements of [section 3017]." To further this legislative intent, EPA has consulted with and is continuing to consult with the U.S. Customs Service in order to develop an effective program to monitor and spotcheck hazardous waste exports.

The United States Customs Service has independent authority to stop, inspect, search, seize, and detain suspected illegal exports of hazardous waste under the Export Administration Act, 50 U.S.C. App. 2411, as amended by the Export Administration Amendments Act of 1985, Pub. L. No. 99-64, 99 Stat. 120 (1985), case law, and U.S. Customs Service regulations (e.g., 19 CFR Part 162). Exporters who violate the Export Administration Act or U.S. Customs Service regulations may also be subject to enforcement actions under those authorities.

C. Other Agencies

Exporters of hazardous waste also may be required to comply with pertinent export control laws and regulations issued by other agencies. For example, regulations promulgated by the Bureau of the Census of the Department of Commerce require exporters to file Shipper's Export Declarations for shipments valued over $1,000. 15 CFR Part 30. It may very well be possible that hazardous waste exported for purposes of recycling would have a value of $1,000. On January 1, 1986, the Bureau of Census created a new statistical reporting number for hazardous waste within the "Schedule B—Statistical Classification of Domestic and Foreign Commodities Exported from the United States." This number (818.8000) must be used in preparing shipper Export Declarations as required by 13 U.S.C. 301, and 15 CFR 30.7.

Failure to file a Shipper's Export Delcaration is subject to civil penalties as authorized by 13 U.S.C. 305. It is also unlawful to knowingly make false or misleading representations in such documents. This constitutes a violation of the Export Administration Act. To knowingly and willfully make false or misleading statements relating to information on the Shipper's Export Declaration is a criminal offense subject to penalties as provided for in 18 U.S.C. 1001.

V. Effective Date of the Final Regulations

EPA proposed that any final regulatory provisions issued pursuant to section 3017(c) setting forth export notification requirements shall become effective 30 days after promulgation. It was EPA's position that, although the statute specifies a 180-day effective date, the statute also accorded EPA the discretion to shorten that time period under appropriate circumstances.

Several commenters expressed serious concern with the 30-day effective date, reading EPA's statement on this issue to mean that exports taking place starting 30 days after the date of publication of the final rule would be subject not only to the notification requirement but also the consent requirement. It was not EPA's intent, however, to require both notification and consent for shipments occurring 30 days after promulgation. Rather, EPA intended the date occurring 30 days after promulgation to be the point at which it would begin processing notifications. Consent would not be necessary until the November 8, 1986 statutory deadline.

Accordingly, to effectuate EPA's intent and to provide time for consent to be obtained for shipments occurring on or soon after November 8, 1986, the final rule provides that the regulations are effective November 8, 1986, but that EPA will begin accepting notifications immediately for shipments to occur on or after that date. This should allow time to process notifications in order to obtain consent by the statutory deadline and thereby avoid any hiatus in exports of hazardous waste.

Another commenter asserted that EPA has no authority to shorten the 180-day effective date. However, as explained in the preamble to the proposal, EPA interprets the statute to afford it the discretion to shorten this time period. Section 3010(b) provides that regulations promulgated under Subtitle C shall have an effective date six months after the date of promulgation. That section also allows the Administrator to provide for a shorter period prior to the effective date under specified conditions. Section

3017(b) also sets forth the requirement that regulations be effective six months (180 days) after promulgation. However, it does not mention specifically the Administrator's discretion to allow a shorter time. Thus, the question arises as to whether section 3010(b) or section 3017(b) is controlling. It is EPA's view that section 3010(b) is controlling. Where Congress intended that the Administrator have no discretion to shorten the period prior to the effective date, Congress used specific language to that effect. For example, section 3001(d)(9) (Small Quantity Generator Waste) provides that "the last sentence of § 3010(b) shall not apply to regulations promulgated under this Section." Accordingly, since Congress did not specifically provide otherwise under section 3017, the Administrator retains the authority to shorten this period.

EPA believes a shorter effective date is appropriate with respect to the export rule because the regulated community does not need six months to come into compliance with these rules. These rules are not complex and simply involve the exchange of general information. Moreover, because of the date of promulgation of this final rule, these regulations cannot be effectuated by November 8, 1986,[7] and still allow for a 180 day period prior to the effective date. Yet, EPA believes it is important to have rules in effect to properly implement section 3017 by that date.

Assuming, however, that section 3010(b) is not controlling, EPA believes that its scheme for effectuation of these rules is also authorized by section 3017 itself. Section 3017 specifies several dates by which certain acts should occur: 24 months for full statutory implementation; 12 months for implementation of the notification requirements of subsection (c); 12 months for enactment of regulations to implement the section; and, 180 days before the effective date of the regulations. Exactly how these time frames were intended to work together is unclear. For example, regulations need not be promulgated for 12 months but notification requirements were required to go into effect in 12 months. At the same time, 180 days was specified as the time between promulgation and effectuation of regulations. The various time frames established in section 3017 do not, on their face, logically interrelate, nor is it apparent which time frame would control if any slippage were to occur. In view of the lack of clarity of the statutory language in this respect, it is EPA's position that the time for full implementation of section 3017 must take precedence over the number of days between the promulgation date and effective date of the implementing notes. This scheme comports with Congressional intent that this section go into effect by November 8, 1986, and that regulations be in place by that time. Where EPA is unable to satisfy both of these statutory time frames, the November 8, 1986, deadline for implementing section 3017 is more important than the number of days between promulgation of the rule and its effective date.

[7] Section 3017(a) requires compliance with export requirements 24 months after enactment of HSWA (November 8, 1986).

VI. Economic, Environmental and Regulatory Impacts

A. Impact on Small Quantity Generators

Because of the limited number of generators of between 100–1000 kg/mo EPA expects will export hazardous waste, the impact on small quantity generators should be minimal.

B. Executive Order 12291—Regulatory Impact

Executive Order 12291 (46 FR 13193, February 9, 1981) requires that a regulatory agency determine whether a new regulation will be "major" and if so, that a Regulatory Impact Analysis be conducted.

The Administrator has determined that today's final rule is not a major rule, because it has total estimated costs of less than $100 million per year, and has no significant adverse economic effects.

While EPA recognizes that some companies may experience economic dislocation if there are significant delays in processing notifications and consents, the Agency believes that judicious planning on the part of these companies could eliminate or lessen the impact of such delays, if any. As stated in the preamble to the proposed rule (51 FR 10146, March 13, 1986), EPA will process all notifications and written consents as expeditiously as possible.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2050–0035.

D. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, a Regulatory Flexibility Analysis must be performed if the regulatory requirements have a significant impact on a substantial number of small entities. No Regulatory Flexibility Analysis is required where the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Since 1980, generators exporting hazardous waste have been required by EPA to notify the Administrator four weeks before the initial shipment of hazardous waste to each country in each calendar year. Based upon an analysis of those notifications received, the Agency has determined that no small entitles have filed notifications of intent to export. EPA does not anticipate that the universe of generators exporting hazardous waste will significantly change in the future. Therefore, this rule is not expected to have a significant economic impact on a substantial number of small entities and does not require a Regulatory Flexibility Analysis. Therefore, pursuant to 5 USC §601(b), I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous waste, Liquids in landsfills.

40 CFR Part 261

Intergovernmental relations, Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 262

Hazardous material transportation, Hazardous waste, Imports, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Waste minimization.

40 CFR Part 263

Hazardous material transportation, Waste treatment and disposal.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping

requirements, Water pollution control, Water supply.

Lee M. Thomas,

Administrator.

August 5, 1986.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, 3019 and 7004, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974).

2. Section 260.2 is amended by revising paragraph (b) to read as follows:

§ 260.2 Availability of information; confidentiality of information.

* * * * *

(b) Any person who submits information to EPA in accordance with Parts 260 through 266 of this chapter may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in § 2.203(b) of this chapter. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in Part 2, Subpart B, of this chapter except that information required by § 262.53(a) which is submitted in notification of intent to export a hazardous waste will be provided to the Department of State and the appropriate authorities in a receiving country regardless of any claims of confidentiality. However, if no such claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the person submitting it.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for Part 261 is revised to read as follows:

Authority: Secs. 1006, 2002[a], 3001, 3002, and 3017 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, 6922, and 6937).

4. Section 261.6 is amended by revising paragraphs (a)(3)(i) to read as follows:

§ 261.6 Requirements for recyclable materials.

(a) * * *

(3) * * *

(i) Industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in § 262.58:

(A) A person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in §§ 262.53, 262.56 (a)(1)–(4), (6), and (b), and 262.57, export such materials only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in Subpart E of Part 262, and provide a copy of the EPA Acknowledgment of Consent to the shipment to the transporter transporting the shipment for export;

(B) Transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA Acknowledgment of Consent, must ensure that a copy of the EPA Acknowledgment of Consent accompanies the shipment and must ensure that it is delivered to the facility designated by the person initiating the shipment.

* * * * *

5. Section 261.5 is amended by revising paragraphs (f)(3) and (g)(3) to read as follows:

§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

* * * * *

(f) * * *

(3) A conditionally exempt small quantity generator may either treat or dispose of his acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:

* * * * *

(g) * * *

(3) A conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

6. The authority citation for Part 262 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3002, 3003, 3004, 3005, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6906, 6912(a), 6922, 6923, 6924, 6925, and 6937).

7. Section 262.41 is amended by revising the introductory text to paragraph (a), (a)(3), (a)(4) and (a)(5), and adding a sentence at the end of paragraph (b) to read as follows:

§ 262.41 Biennial Report.

(a) A generator who ships any hazardous waste off-site to a treatment, storage or disposal facility within the United States must prepare and submit a single copy of a Biennial Report to the Regional Administrator by March 1 of each even numbered year. The Biennial Report must be submitted on EPA Form 8700–13A, must cover generator activities during the previous year, and must include the following information:

* * * * *

(3) The EPA identification number, name, and address for each off-site treatment, storage, or disposal facility in the United States to which waste was shipped during the year;

(4) The name and EPA identification number of each transporter used during the reporting year for shipments to a treatment, storage or disposal facility within the United States;

(5) A description, EPA hazardous waste number (from 40 CFR Part 261, Subpart C or D), DOT hazard class, and quantity of each hazardous waste shipped off-site for shipments to a treatment, storage or disposal facility within the United States. This information must be listed by EPA identification number of each such off-site facility to which waste was shipped.

* * * * *

(b) * * *

Reporting for exports of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth at 40 CFR 262.56.

8. 40 CFR Part 262 is amended by revising Subpart E to read as follows:

Subpart E—Exports of Hazardous Waste

Sec.

Subpart E—Exports of Hazardous Waste

§ 262.50 Applicability.

This subpart establishes requirements applicable to exports of hazardous waste. Except to the extent § 262.58 provides otherwise, a primary exporter

of hazardous waste must comply with the special requirements of this subpart and a transporter transporting hazardous waste for export must comply with applicable requirements of Part 263. Section 262.58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, treatment, storage and disposal of hazardous waste for shipments between the United States and those countries.

§ 262.51 Definitions.

In addition to the definitions set forth at 40 CFR 260.10, the following definitions apply to this subpart:

"Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste will be sent.

"EPA Acknowledgment of Consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

"Primary Exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with 40 CFR Part 262, Subpart B, or equivalent State provision, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

"Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

"Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

§ 262.52 General requirements.

Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this Subpart and Part 263. Exports of hazardous waste are prohibited unless:

(a) Notification in accordance with § 262.53 has been provided;

(b) The receiving country has consented to accept the hazardous waste;

(c) A copy of the EPA Acknowledgment of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)).

(d) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent.

(Approved by the Office of Management and Budget under control number 2050–0035)

§ 262.53 Notification of intent to export.

(a) A primary exporter of hazardous waste must notify EPA of an intended export before such waste is scheduled to leave the United States. A complete notification should be submitted sixty (60) days before the initial shipment is intended to be shipped off site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the primary exporter, and include the following information:

(1) Name, mailing address, telephone number and EPA ID number of the primary exporter;

(2) By consignee, for each hazardous waste type:

(i) A description of the hazardous waste and the EPA hazardous waste number (from 40 CFR Part 261, Subparts C and D), U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste as identified in 49 CFR Part 171–177;

(ii) The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported.

(iii) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700–22);

(iv) All points of entry to and departure from each foreign country through which the hazardous waste will pass;

(v) A description of the means by which each shipment of the hazardous waste will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));

(vi) A description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country (e.g., land or ocean incineration, other land disposal, ocean dumping, recycling);

(vii) The name and site address of the consignee and any alternate consignee; and

(viii) The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there;

(b) Notification shall be sent to the Office of International Activities (A–106), EPA, 401 M Street, SW., Washington, DC 20460 with "Attention: Notification to Export" prominently displayed on the front of the envelope.

(c) Except for changes to the telephone number in paragraph (a)(1) of this section, changes to paragraph (a)(2)(v) of this section and decreases in the quantity indicated pursuant to paragraph (a)(2)(iii) of this section when the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous waste specified in the original notification), the primary exporter must provide EPA with a written renotification of the change. The shipment cannot take place until consent of the receiving country to the changes (except for changes to paragraph (a)(2)(viii) of this section and in the ports of entry to and departure from transit countries pursuant to paragraph (a)(2)(iv) of this section) has been obtained and the primary exporter receives an EPA Acknowledgment of Consent reflecting the receiving country's consent to the changes.

(d) Upon request by EPA, a primary exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(e) In conjunction with the Department of State, EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (a) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(f) Where the receiving country consents to the receipt of the hazardous waste, EPA will forward an EPA Acknowledgment of Consent to the primary exporter for purposes of § 262.54(h). Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA will notify the primary exporter in writing. EPA will also notify the primary exporter of any responses from transit countries.

(Approved by the Office of Management and Budget under control number 2050–0035)

§ 262.54 Special manifest requirements.

A primary exporter must comply with the manifest requirements of 40 CFR 262.20–262.23 except that:

(a) In lieu of the name, site address and EPA ID number of the designated permitted facility, the primary exporter must enter the name and site address of the consignee;

(b) In lieu of the name, site address and EPA ID number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee.

(c) In Special Handling Instructions and Additional Information, the primary exporter must identify the point of departure from the United States;

(d) The following statement must be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA Acknowledgment of Consent";

(e) In lieu of the requirements of § 262.21, the primary exporter must obtain the manifest form from the primary exporter's State if that State supplies the manifest form and requires its use. If the primary exporter's State does not supply the manifest form, the primary exporter may obtain a manifest form from any source.

(f) The primary exporter must require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in 40 CFR 264.72(a)) between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.

(g) In lieu of the requirements of § 262.20(d), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter must:

(1) Renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with § 262.53(c) and obtain an EPA Acknowledgment of Consent prior to delivery; or

(2) Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and

(3) Instruct the transporter to revise the manifest in accordance with the primary exporter's instructions.

(h) The primary exporter must attach a copy of the EPA Acknowledgment of Consent to the shipment to the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA Acknowledgment of Consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA Acknowledgment of Consent to the shipping paper.

(i) The primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the U.S. Customs official at the point the hazardous waste leaves the United States in accordance with § 263.20(g)(4).

(Approved by the Office of Management and Budget under control number 2050–0035)

§ 262.55 Exception reports.

In lieu of the requirements of § 262.42, a primary exporter must file an exception report with the Administrator if:

(a) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within forty-five (45) days from the date it was accepted by the initial transporter;

(b) Within ninety (90) days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the consignee that the hazardous waste was received;

(c) The waste is returned to the United States.

(Approved by the Office of Management and Budget and assigned under control number 2050–0035)

§ 262.56 Annual reports.

(a) Primary exporters of hazardous waste shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. Such reports shall include the following:

(1) The EPA identification number, name, and mailing and site address of the exporter;

(2) The calendar year covered by the report;

(3) The name and site address of each consignee;

(4) By consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from 40 CFR Part 261, Subpart C or D), DOT hazard class, the name and US EPA ID number (where applicable) for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification;

(5) Except for hazardous waste produced by exporters of greater than 100 kg but less than 1000 kg in a calendar month, unless provided pursuant to § 262.41, in even numbered years:

(i) a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(ii) a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.

(6) A certification signed by the primary exporter which states:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately rsponsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(b) Reports shall be sent to the following address: Office of International Activities (A–106), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(Approved by the Office of Management and Budget under control number 2050–0035)

§ 262.57 Recordkeeping.

(a) For all exports a primary exporter must:

(1) Keep a copy of each notification of intent to export for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(2) Keep a copy of each EPA Acknowledgment of Consent for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(3) Keep a copy of each confirmation of delivery of the hazardous waste from the consignee for at least three years from the date the hazardous waste was accepted by the initial transporter; and

(4) Keep a copy of each annual report for a period of at least three years from the due date of the report.

(b) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

(Approved by the Office of Management and Budget under control number 2050–0035)

§ 262.58 International agreements. [(Reserved)]

9. Title 40 CFR Part 262 is amended by adding new Subpart F to read as follows:

Subpart F—Imports of Hazardous Waste

Sec.
262.60 Imports of hazardous waste.

Subpart F—Imports of Hazardous Waste

§ 262.60 Imports of hazardous waste.

(a) Any person who imports hazardous waste from a foreign country into the United States must comply with the requirements of this part and the special requirements of this subpart.

(b) When importing hazardous waste, a person must meet all the requirements of § 262.20(a) for the manifest except that:

(1) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number must be used.

(2) In place of the generator's signature on the certification statement, the U.S. importer or his agent must sign and date the certification and obtain the signature of the initial transporter.

(c) A person who imports hazardous waste must obtain the manifest form from the consignment State if the State supplies the manifest and requires its use. If the consignment State does not supply the manifest form, then the manifest form may be obtained from any source.

10. Title 40 CFR Part 262 is amended by adding a new Subpart G to read as follows:

Subpart G—Farmers

§ 262.70 Farmers.

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this part or other standards in 40 CFR Part 270, 264 or 265 for those wastes provided he triple rinses each emptied pesticide container in accordance with § 261.7(b)(3) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

Appendix—Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700–22 and 8700–22A and Their Instructions)

11. The instructions to the Uniform Hazardous Waste Manifest form in the Appendix to Part 262 is amended to add under Item 16 a new paragraph after the first paragraph as follows:

* * * * *

Primary exporters shipping hazardous wastes to a facility located outside of the United States must add to the end of the first sentence of the certification the following words "and conforms to the terms of the EPA Acknowledgment of Consent to the shipment."

* * * * *

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

12. The authority citation for Part 263 is revised to read as follows:

Authority: Secs. 2002(a), 3002, 3003, 3004, 3005 and 3017 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and as amended by the Quiet Communities Act of 1978 (42 U.S.C. 6912, 6922, 6923, 6924, 6925 and 6937).

13. Section 263.20 is amended by revising paragraphs (a), (c), (e)(2), (f)(2) and (g)(3) and by adding paragraph (g)(4) to read as follows:

§ 263.20 The manifest system.

(a) A transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest signed in accordance with the provisions of 40 CFR 262.20. In the case of exports, a transporter may not accept such waste from a primary exporter or other person (1) if he knows the shipment does not conform to the EPA Acknowledgment of Consent; and (2) unless, in addition to a manifest signed in accordance with the provisions of 40 CFR 262.20, such waste is also accompanied by an EPA Acknowledgment of Consent which, except for shipment by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)).

* * * * *

(c) The transporter must ensure that the manifest accompanies the hazardous waste. In the case of exports, the transporter must ensure that a copy of the EPA Acknowledgment of Consent also accompanies the hazardous waste.

* * * * *

(e) * * *

(2) A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste; and

* * * * *

(f) * * *

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports an EPA Acknowledgment of Consent accompanies the hazardous waste at all times.

* * * * *

(g) * * *

(3) Return a signed copy of the manifest to the generator; and

(4) Give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

14. The authority citation for Part 271 continues toread as follows:

Authority: Secs. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

§ 271.1 [Amended]

15. Section 271.1 paragraph (j) is amended by adding the following entry to Table 1 in chronological order:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of regulation
* * * * *	
[Insert date of publication].....	Exports of hazardous waste.

16. Section 271.10 is amended by revising paragraph (e) to read as follows except for the note which remains unchanged.

§ 271.10 Requirements for generators of hazardous wastes.

* * * * *

(e) The State program shall provide requirements respecting international shipments which are equivalent to those at 40 CFR Part 262 Subparts E and F, except that:

(1) Advance notification, annual reports and exception reports in accordance with 40 CFR 262.53, 262.55 and 262.56 shall be filed with the Administrator; States may require that copies of the documents referenced also be filed with the State Director; and

(2) The Administrator will notify foreign countries of intended exports in conjunction with the Department of State and primary exporters of foreign countries' responses in accordance with 40 CFR 262.53.

* * * * *

17. Section 271.11 is amended by revising paragraph (c) to read as follows:

§ 271.11 Requirements for transporters of hazardous wastes.

* * * * *

(c) The State must require the transporter to carry the manifest during transport, except in the case of shipments by rail or water specified in 40 CFR 263.20 (e) and (f) and to deliver waste only to the facility designated on the manifest. The State program shall provide requirements for shipments by rail or water equivalent to those under 40 CFR 263.20 (e) and (f). For exports of hazardous waste, the State must require the transporter to refuse to accept hazardous waste for export if he knows the shipment does not conform to the EPA Acknowledgment of Consent, to carry an EPA Acknowledgment of Consent to the shipment, and to provide a copy of the manifest to the U.S. Customs official at the point the waste leaves the United States.

* * * * *

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S. 415/Pub. L. 99-372

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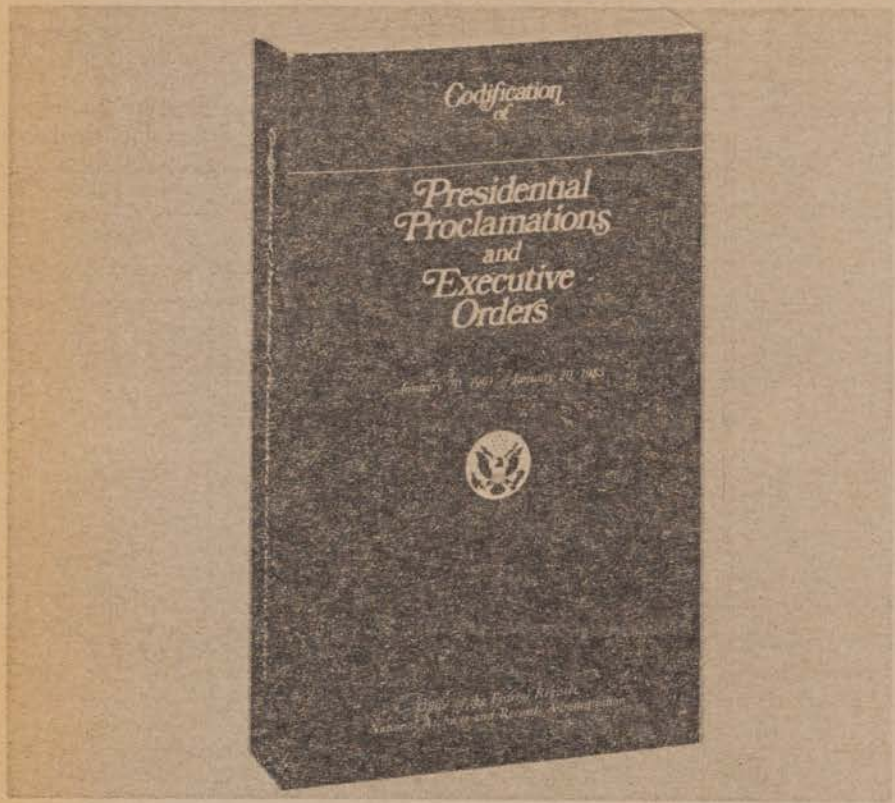

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