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Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 540

Performance Management and Recognition System; Minimum Performance Award Funding

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising the minimum percentage for calculating funds to pay performance awards to Performance Management and Recognition System (PMRS) employees for Fiscal Year 1987. Establishing a new minimum percentage each year is required by Title II of the Civil Service Retirement Spouse Equity Act of 1984, which established the PMRS.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Jack Pokoyk, (202) 632–7620.

SUPPLEMENTARY INFORMATION: On August 20, 1986, at 51 FR 29655, OPM published a proposed regulation setting the minimum funding for performance awards to be paid to PMRS employees for Fiscal Year 1987, with a 30-day comment period. During the comment period, which ended September 19, 1986, OPM received one agency comment on the proposed legislation.

The agency recommended that OPM defer issuance of the final regulation, pending congressional action on FY 1987 appropriations. The agency thinks that, if congressional action requires agencies to make severe budget reductions, OPM should retain last year's award budget percentage (.85 percent) for FY 1987.

OPM is required by statute to prescribe regulations annually adjusting the percentage incrementally over the previous fiscal year (5 U.S.C. 5406(c)(2)(A)(i)). The last incremental adjustment expired September 30, 1986. Therefore, we are unable to adopt the agency's suggestion, and we are issuing the final regulation as it was originally proposed.

Waiver of 30-Day Delay in Effective Date of Final Regulation

Pursuant to section 553(d)(3) of Title 5 of the United States Code, I find that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective retroactively to meet the requirement in section 5406(c)(2)(A)(i) of Title 5, U.S. Code, as described in the discussion of the agency comment above. October 1, 1986, begins a new fiscal year (FY 87) and therefore OPM must adjust the minimum percentage for performance awards incrementally over the minimum percentage used in Fiscal Year (1986) on that date.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations will only affect Government employees and agencies.

List of Subjects in 5 CFR Part 540

Government employees, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 540 as follows:

PART 540—PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM

1. The authority citation for Part 540 continues to read as follows:

Authority: 5 U.S.C. Chapters 43 and 54.

2. Section 540.109(b)(1)(i) is revised to read as follows:

§ 540.109 Performance awards.

* * * * *

(b) * * *

(1) * * *

(i) Each agency is required to pay a minimum of .95 percent of the estimated aggregate amount of PMRS employees' basic pay for Fiscal Year 1987 for performance awards;

* * * * *

[FR Doc. 86-23370 Filed 10-15-86; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Parts 870 and 873

Federal Employees' Group Life Insurance Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: These regulations make two logical changes to the administration of the Federal Employees' Group Life Insurance Program—a designation of beneficiary will no longer cancel on the day an employee transfers to another agency; and the effective date of a cancellation of family optional insurance may be made retroactive under specified conditions. These two changes will make the Program more responsive to the needs of employees and annuitants.

EFFECTIVE DATE: November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Agatha Gray, (202) 632–0003.

SUPPLEMENTARY INFORMATION: On June 12, 1986, the Office of Personnel Management (OPM) published proposed regulations in the Federal Register (51 FR 21368) to eliminate the provision whereby a Federal employee's designation of beneficiary for payment of group life insurance proceeds automatically cancels on the day the employee transfers (except by mass transfer) to another agency. OPM also proposed allowing a cancellation of family optional insurance to be retroactive to the end of the pay period in which there ceased to be eligible family members whenever an employee or annuitant so requests and provides proof satisfactory to the employing office that there was no longer any family member eligible for coverage.

OPM received two written comments during the 60-day comment period. However, several agency life insurance officers provided oral comments expressing their support for our revisions under the FEGLI Program.

Only one commenter suggested changing the regulations. The suggested change was for OPM to specify an

effective date 60 to 90 days after publication of the final regulations. The commenter believes that agencies need this time to inform employees of the elimination of the automatic cancellation of designation of beneficiary provision. We did not adopt this suggestion because we believe it is unnecessary. Most employees are unaware that a transfer to another Federal agency presently results in automatic cancellation of the designation of beneficiary. Delaying the effective date would only hamper our efforts to prevent the insurance carrier's payment of large amounts of money to an unintended beneficiary.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees and annuitants.

List of Subjects in 5 CFR Parts 870 and 873

Administrative practice and procedures, Government employees, Life insurance, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Parts 870 and 873 as follows:

PART 870—BASIC LIFE INSURANCE

1. The authority citation for Part 870 continues to read as follows:

Authority: 5 U.S.C. 8716

2. In § 870.901, paragraph (f) is revised to read as follows:

§ 870.901 Designation of beneficiary.

* * * * *

(f) A designation of beneficiary is automatically canceled 31 days after the employee stops being insured.

* * * * *

PART 873—FAMILY OPTIONAL LIFE INSURANCE

3. The authority citation for Part 873 continues to read as follows:

Authority: 5 U.S.C. 8716

4. In § 873.204, paragraph (b) is revised to read as follows:

§ 873.204 Declination.

* * * * *

(b) A cancellation of family optional insurance becomes effective and family optional insurance stops at the end of the pay period in which the declination of waiver is properly filed, except that at the request of the employee or annuitant and upon proof satisfactory to the employing office that there was no family member eligible for coverage, the effective date of the cancellation may be made retroactive to the end of the pay period in which there ceased to be eligible family members.

* * * * *

[FR Doc. 86-23369 Filed 10-15-86; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-ASW-9; Amdt. 39-5430]

Airworthiness Directives; Rogerson Hiller Corp., Model UH-12D, UH-12E, UH-12E4, and Military Model OH-23F and OH-23G Series Helicopters, Including all Models Converted to Turbine Power by STC SH177WE and STC SH178WE Equipped With Main Rotor Blade Assembly, Parson's Part Number (P/N) 2253-1101-04 or 2253-1101-03

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) which presently requires inspections of the main rotor blade on certain Rogerson Hiller Corporation series helicopters. After issuing the AD, the FAA has received reports of additional incidents of severe cracking and one complete blade failure that resulted in a nonfatal accident. This amendment requires a daily visual check, reduces the compliance time for the dye penetrant inspection, and requires additional main rotor blade overhauls. This action is considered necessary to prevent potential main rotor blade failure which could result in loss of the aircraft.

EFFECTIVE DATES: November 3, 1986.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 3, 1986.

Compliance: As prescribed in body of the AD.

Comment Date: Comments must be received on or before December 1, 1986.

Comments on this amendment may be mailed in duplicate to Federal Aviation Administration, Southwest Region, Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, Texas 76106, or delivered in duplicate to the above address, Room 158, Building 3B.

Comments delivered must be marked: Docket No. 86-ASW-9.

Comments may be inspected at Room 158, Building 3B, between the hours of 8 a.m. and 4:30 p.m. weekdays, except Federal holidays.

ADDRESSES: The applicable service bulletin may be obtained from Rogerson Hiller Corporation, 2140 West 18th Street, Port Angeles, Washington 98362-0262.

A copy of the service bulletin is contained in the Rules Docket at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas. The service bulletin may also be examined at the Seattle Aircraft Certification Office, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Brodie, Rotorcraft Standards Staff, ASW-110, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 624-5116 or FTS 734-5116.

SUPPLEMENTARY INFORMATION: This amendment supersedes Amendment 39-3836 (45 FR 46345; July 10, 1980), AD 80-14-12, which currently requires repetitive inspections of certain main rotor blades for chipping and looseness of paint and fairing compound, dye penetrant inspections of the main rotor blade spar, a "coin tap" test of specified areas of the main rotor blade, and visual inspection of the surface of the fairing compound along the aft edge of the steel spar for indications of rust. After issuing Amendment 39-3836, the FAA received reports of two additional incidents of severe cracking and one complete blade failure that resulted in a nonfatal accident. In addition, the FAA has recently received reports that main rotor blades sent to approved overhaul facilities for additional overhaul in accordance with Rogerson Hiller SB UH12-51-6, dated December 19, 1985, have resulted in an approximate 60-percent rejection rate. Therefore, the FAA is superseding Amendment 39-3836 by establishing a visual check to be accomplished daily by the pilot and by decreasing both the dye penetrant inspection and the blade overhaul intervals.

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

Request for Comments on the Final Rule

Although the action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. If the FAA finds that changes are appropriate, rulemaking proceedings to amend the regulation will be initiated.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive 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 action 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/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

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

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

2. By superseding Amendment 39-3836 (45 FR 46345), AD 80-14-12, with the following new AD:

Rogerson Hiller Corp.: Applies to Model UH-12D, UH-12E, and UH-12E4 series helicopters, including military Models OH-23F and OH-23G, and all those converted in accordance with STC's SH177WE and SH178WE, certificated in any category, equipped with main rotor blade assembly Parson's P/N 2253-1101-04 or 2253-1101-03. This AD supersedes AD 80-14-12, Amendment 39-3836.

Compliance is required as indicated, unless already accomplished.

To prevent main rotor blade failure due to cracking of the spar or delamination of the trailing edge skin from the spar, accomplish the following:

(a) Prior to the first flight of each day after the effective date of this AD, visually check the main rotor blades (P/N 2253-1101-04 or -03) for cracks in the leading edge area identified in figure 1 of Rogerson Hiller Service Bulletin (SB) No. UH12-51-6, dated December 19, 1985.

(b) Within the next 25 hours' time in service after the effective date of this AD and thereafter at intervals not to exceed 25 hours' time in service from the last inspection, conduct a dye penetrant or magnaflux inspection of the blade for cracks in accordance with paragraph IIB of Rogerson Hiller SB No. UH12-51-6, dated December 19, 1985.

(c) Within the next 100 hours' time in service after the effective date of this AD and thereafter at intervals not to exceed 100 hours' time in service from the last inspection, conduct a visual and coin tap inspection of the spar to trailing-edge-skin bond line for corrosion and voids in accordance with paragraph IIC of Rogerson Hiller SB No. UH12-51-6, dated December 19, 1985.

(d) If the blade has not been overhauled and has over 1,000 hours' time in service, or has had the 2,500-hour overhaul and has more than 3,500 hours' time in service, overhaul the blade within the next 100 hours' time in service and thereafter at intervals not to exceed 1,000 hours' time in service.

(e) When the overhauls required by paragraph (d) have been accomplished, conduct the dye penetrant checks required by paragraph (b) at intervals not to exceed 100 hours' time in service.

Note 1. The overhauls required by paragraph (d) may be accomplished by an FAA authorized repair station whose certificate indicates approval for overhaul or major repair of Fairchild Hiller main rotor blades.

Note 2. A maintenance record entry showing compliance with this AD is required by FAR § 91.173.

(f) If discrepancies are found as a result of compliance with this AD which exceed the limitations specified in Rogerson Hiller SB No. UH12-51-6, dated December 19, 1985, replace the blade prior to further flight.

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

(h) Alternative inspections, modifications, blade overhaul methods' or other actions which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

This procedure shall be done in accordance with Rogerson Hiller Service Bulletin UH12-51-6, revised December 19, 1985. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Rogerson Hiller Corporation, 2140 West 18th Street, Port Angeles, Washington 98362-0262.

Copies may be inspected at the Office of Regional Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment becomes effective November 3, 1986.

This amendment supersedes Amendment 39-3836 (45 FR 46345), AD 80-14-12.

Issued in Fort Worth, Texas, on September 24, 1986.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc 86-23281 Filed 10-15-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-124-AD; Amdt. 39-5443]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD), applicable to certain Boeing Model 737-300 airplanes, which requires inspection for proper clearance between the number two engine fuel feed tube and adjacent strut fairing fasteners, and adjustment or replacement, if necessary. This action is prompted by a report of a fuel leak on one airplane, resulting from chafing between the fuel tube and fasteners. This condition, if not corrected, could result in a strut fire.

EFFECTIVE DATE: November 24, 1986.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart R. Miller, Aerospace Engineer, Propulsion Branch, ANM-140S; telephone (206) 431-1969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspection for proper clearance, and adjustment or replacement, if necessary, of the number two engine fuel feed tube was published in the **Federal Register** on June 3, 1986 (51 FR 19848). The comment period for the proposal closed on July 25, 1986.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received, which was from the Air Transport Association (ATA) of America on behalf of its members. The member airlines had no objections to the provisions of the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 60 airplanes of U.S. registry will require the inspection, which will require one manhour per airplane. It is estimated that 30 airplanes of U.S. registry will require modification, which will require 5 manhours per airplane. At an estimated labor cost of $40 per manhour, the total cost impact of this AD on U.S. operator is estimated to be $8,400.

For the reasons discussed above, the FAA has determined that this document (1) involves a regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737-300 airplanes are operated by small entities. A final regulatory evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft

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 Federal Aviation Regulations as follows:

1. The authority citation of 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.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to the Model 737-300 series airplanes specified in Boeing Alert Service Bulletin 737-28A1062, Revision 1, dated April 11, 1986, certificated in any category.

To minimize the fire hazard associated with a fuel leak, due to the fuel feed tube assembly chafing against strut fasteners, accomplish the following within 3 months after the effective date of this AD, unless previously accomplished:

A. Inspect and, if necessary, adjust fuel feed tube assembly clearance and replace chafed tubes in accordance with Boeing Service Bulletin 737-28A1062, Revision 1, dated April 11, 1986, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Nowthwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received copies of the manufacturer's Service Bulletin may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certificate Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment become effective November 24, 1986.

Issued in Seattle, Washington, on October 8, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-23280 Filed 10-15-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 73

[Airspace Docket No. 86-AWP-26]

Revocation of Restricted Area R-2521 Salton Sea, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the existing Restricted Area R-2521 in the state of California. This action is necessary since the Department of Navy no longer uses the airspace. This action restores for public use previously restricted airspace.

EFFECTIVE DATE: 0901 UTC, December 18, 1986.

FOR FURTHER INFORMATIION CONTACT: Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9245.

The Rule

The purpose of these amendments to Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) is to revoke Restricted Area R-2521 in the state of California. The Department of Navy, which is the using agency, has informed the FAA that the area is too small to effectively contain scheduled flight operations. The Department of Navy has, therefore, requested that Restricted Area R-2521 be eliminated Because the purpose of the area no longer exists, and becuse this action would simply restore the airspace to public use, I find that notice or public procedure under 5 U.S.C. 533(b) is unnecessary because the action is a minor amendment on which the public would not be particularly interested in commenting. Sections 71.151 and 73.25 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation Safety, Continental Control Area and Restricted Areas

Adoption of the Amendments

PARTS 71 AND 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) are 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. § 71.151 is amended as follows:

R-2521 Salton Sea, CA [Remove]

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

1. § 73.25 is amended as follows:

R-2521 Salton Sea, CA [Remove]

Issued in Washington, DC, on October 3, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-23282 Filed 10-15-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25092; Amdt. No. 1331]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference: Approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Standard instrument approaches, Incorporation by reference.

Issued in Washington, DC on October 3, 1986.

John S. Kern,

Director of Flight Standards.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective January 15, 1987

Montague, CA—Siskiyou County, NDB-A, Amdt. 6

Effective December 18, 1986

Santa Rosa, CA—Sonoma County, VOR RWY 32, Amdt. 18
Santa Rosa, CA—Sonoma County, ILS RWY 32, Amdt. 14
Roseau, MN—Roseau Muni, VOR -A, Amdt. 5
Roseau, MN—Roseau Muni, VOR RWY 16, Amdt. 4
Warroad, MN—Warroad Intl-Swede Carlson Field, RNAV RWY 31, Amdt. 1
Billings, MT—Billings Logan INTL, LOC BC RWY 27R, Amdt. 7, Cancelled
Lovelock, NV—Derby Field, VOR/DME RWY 1, Amdt. 1, Cancelled
Plattsburgh, NY—Clinton Co, VOR-A, Amdt. 16, Cancelled
Plattsburgh, NY—Clinton Co, VOR RWY 19, Orig
Plattsburgh, NY—Clinton Co, ILS RWY 1, Amdt. 1
Potsdam, NY—Potsdam Muni/Damon FLD—VOR/DME RWY 24, Amdt. 4
Potsdam, NY—Potsdam Muni/Damon FLD, NDB RWY 24, Amdt. 3
Saranac Lake NY—Adirondack, NDB RWY 23, Amdt. 5
Saranac Lake, NY—Adirondack, ILS RWY 23, Amdt. 7
Albemarle, NC—Stanly County, NDB RWY 4, Amdt. 2
Burlington, VT—Burlington Intl, VOR RWY 1, Amdt. 10
Burlington, VT—Burlington Intl, NDB RWY 15, Amdt. 17
Burlington, VT—Burlington Intl, ILS RWY 15, Amdt. 20
Highgate, VT—Franklin County State, VOR-A, Amdt. 2, Cancelled
Highgate, VT—Franklin County State, VOR-B, Orig
Moen Island, TT—Truk Intl, NDB-A, Amdt. 1
Moen Island, TT—Truk Intl, NDB-B, Amdt. 3
Moen Island, TT—Truk Intl, NDB/DME RWY 4, Amdt. 1
Moen Island, TT—Truk Intl, NDB/DME RWY 22, Amdt. 1

Effective November 20, 1986

Mobile, AL—Bates Field, VOR OR TACAN RWY 9, Amdt. 23
Mobile, AL—Bates Field, NDB RWY 14, Amdt. 1
Mobile, AL—Bates Field, ILS RWY 14, Amdt. 28
Mobile, AL—Bates Field, ILS RWY 32, Amdt. 5
Bakersfield, CA—Meadows Field, VOR RWY 12L, Amdt. 4
Bakersfield, CA—Meadows Field, LOC BC RWY 12L, Amdt. 8
Bakersfield, CA—Meadows Field, NDB RWY 30R, Amdt. 4
Bakersfield, CA—Meadows Field, ILS RWY 30R, Amdt. 24
Modesto, CA—Modesto City County Arpt—Harry Sham Fld., NDB RWY 28R, Amdt. 7
Modesto, CA—Modesto City County ARPT—Harry Sham Fld, ILS RWY 28R, Amdt. 11
Fort Lauderdale, FL—Ft Lauderdale-Hollywood Intl, ILS RWY 27R, Amdt. 2
Atlanta, GA—The William B. Hartsfield Atlanta Intl, NDB RWY 8R, Amdt. 44, Cancelled
Atlanta, GA—The William B. Hartsfield Atlanta Intl, NDB RWY 9L, Amdt. 8, Cancelled
Atlanta, GA—The William B. Hartsfield Atlanta Intl, NDB RWY 26L, Amdt. 15, Cancelled
Atlanta, GA—The William B. Hartsfield Atlanta Intl, NDB RWY 27R, Amdt. 5, Cancelled
Atlanta, GA—The William B. Hartsfield Atlanta Intl, RADAR-1, Amdt. 30
Moultrie, GA—Moultrie Muni, RNAV RWY 22, Amdt. 1, Cancelled
Winder, GA—Winder, VOR/DME-A, Amdt. 9
Winder, GA—Winder, LOC RWY 31, Amdt. 8
Coeur d'Alene, ID—Coeur d'Alene Air Term, ILS RWY 5, Amdt. 2
Owensboro, KY—Owensboro-Daviess County, VOR RWY 5, Amdt. 9, CANCELLED
Owensboro, KY—Owensboro-Daviess County, VOR RWY 17, Amdt. 5
Owensboro, KY—Owensboro-Daviess County, VOR RWY 35, Amdt. 13
Owensboro, KY—Owensboro-Daviess County, NDB RWY 35, Amdt. 5
Owensboro, KY—Owensboro-Daviess County, ILS RWY 35, Amdt. 7
Hagerstown, MD—Washington County Regional, ILS RWY 27, Amdt. 5
Beverly, MA—Beverly Muni, VOR RWY 16, Amdt. 2
Beverly, MA—Beverly Muni, LOC RWY 16, Amdt. 3
Beverly, MA—Beverly Muni, NDB-A, Amdt. 10
Lansing, MI—Capital City, VOR RWY 6, Amdt. 21
Lansing, MI—Capital City, VOR RWY 24, Amdt. 6
Lansing, MI—Capital City, NDB RWY 28L, Amdt. 22
Lansing, MI—Capital City, ILS RWY 10R, Amdt. 7
Lansing, MI—Capital City, ILS RWY 28L, Amdt. 23
Gothenburg, NE—Quinn Field, VOR-A, Orig
Gothenburg, NE—Quinn Field, NDB RWY 32, Orig
Millville, NJ—Millville Muni, LOC RWY 10, Amdt. 3, Cancelled
Millville, NJ—Millville Muni, ILS RWY 10, Orig
Erwin, NC—Harnett County, NDB RWY 22, Orig
Smithfield, NC—Johnston County, NDB RWY 21, Amdt. 4
Johnstown, PA—Johnstown-Cambria County, VOR RWY 5, Amdt. 5
Johnstown, PA—Johnstown-Cambria County, VOR RWY 15, Amdt. 8
Johnstown, PA—Johnstown-Cambria County, VOR/DME RWY 15, Amdt. 4
Johnstown, PA—Johnstown-Cambria County, VOR RWY 23, Amdt. 6
Johnstown, PA—Johnstown-Cambria County, VOR/DME RWY 23, Orig
Johnstown, PA—Johnstown-Cambria County, ILS RWY 33, Amdt. 2

Effective October 23, 1986

Nashville, TN—Nashville Metropolitan, ILS RWY 31, Amdt. 5

Effective September 26, 1986

Kokomo, IN—Kokomo Muni, ILS RWY 23, Amdt. 4

Effective September 18, 1986

Santa Maria, CA—Santa Maria Public, LOC/DME BC-A, Amdt. 10

Note.—Remove and destroy the following proposed procedure in TL 85-13.

Petersburg, WV, Grant County, NDB-A Orig.

[FR Doc 86-23283 Filed 10-15-86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 4

Exemptions From Restrictions on ex Parte Communications in Adjudicative Proceedings

AGENCY: Federal Trade Commission.

ACTION: Interim rule with request for comments.

SUMMARY: The Federal Trade Commission is revising Rule 4.7(f) of its Rules of Practice, which governs exemptions to the prohibitions of Rule 4.7(b) against *ex parte* communications in adjudicative proceedings. The rule is revised (1) by deleting the requirement for disclosure of statements from an exempt communication that relate to facts in issue in a pending adjudicative proceeding, (2) by deleting the requirement for placement on the public record of a description of any trade secrets or other confidential information excised from such statements, (3) by expanding the exemptions of the rule to include communications between the Commission and persons outside the Commission that are occasioned by and concern a nonadjudicative function, and (4) by clarifying two of the rule's specified exemptions.

DATES: The interim rule is effective on October 16, 1986. The Commission will, however, accept comments on the revised rule that are received on or before November 17, 1986 and may re-evaluate the rule in light of those comments.

ADDRESS: Comments should be submitted to Secretary, Federal Trade Commission, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jerome A. Tintle, Office of General Counsel, Federal Trade Commission, Washington, DC 20580, (202) 523–3521.

SUPPLEMENTARY INFORMATION: Current Rule 4.7(f) expressly exempts from the prohibitions of Rule 4.7(b) a communication between the Commission and its enforcement staff that is occasioned by and concerns a nonadjudicative matter before the Commission even though the matter may involve parties or issues that are also involved in a pending adjudicative proceeding. Rule 4.7(f) also includes a two sentence proviso, which states that "to the extent such communication relates to a fact in issue in a proceeding in adjudicative status, such portions will be placed in the docket binder of the proceeding to which it pertains except for trade secrets or other confidential commercial or financial information," and that "[a] brief statement describing the general subject matter of an *ex parte* communication of trade secrets or other commercial or financial information will be placed in the docket binder." This proviso was included not because it was required by law but simply to avoid "any appearance of unfairness." 42 FR 33042 (June 29, 1977). After nearly a decade of experience with the proviso, however, we have concluded that the burdens it creates far outweigh whatever appearances of unfairness it may allay.

In particular, we find that the proviso has imposed unnecessary burdens upon the staff in determining whether any given statement in an exempt communication "relate[s] to a fact in issue" in an adjudicative proceeding within the meaning of that phrase. The requirement has also had a chilling effect upon full and candid consultations between the Commission and its enforcement staff with respect to nonadjudicative matters. Section 554(d) of the Administrative Procedure Act ("APA") does not restrict such consultations even when they may involve parties or factual issues that are also involved in an ongoing Commission adjudicative proceeding. *Maremont Corp.* v. *FTC*, 431 F.2d 124, 128 (7th Cir. 1970); *Environmental Defense Fund, Inc.* v. *EPA*, 510 F.2d 1292, 1304–06 (D.C. Cir. 1975); *Environmental Defense Fund, Inc.* v. *EPA*, 548 F.2d 998, 1006 n.20 (D.C. Cir. 1976, *cert. denied*, 431 U.S. 925 (1977); *see also*, Asimow, *When the Curtain Falls: Separation of Functions in the Federal Administrative Agencies*, 81 Col. L. Rev. 759, 768 (1981). Accordingly, we have determined to delete the proviso from the rule.

We have also observed that outside persons involved in a nonadjudicative matter before the Commission seem reluctant to communicate fully and candidly with us about factual issues relevant to the matter when the same or similar issues may also be present in a pending Commission adjudicative proceeding. Their reluctance appears to stem from a concern that section 557(d) of the APA and Rule 4.7 may prohibit their communicating with us about such overlapping issues and may require disclosure or any such prohibited communication, once made.[1] If this is their concern, we do not believe that it is justified.

Section 557(d) of the APA by its terms applies only to adjudications and other formal proceedings required by statute to be determined on the record after opportunity for an agency hearing, and not to nonadjudicative matters. In particular, section 557(d) does not prohibit "any communication with an agency decisionmaking official if not involving a formal adjudicatory proceeding," H.R. Rep. No. 1441, 94th Cong., 2d Sess. 29 (1976), S. Rep. No. 1178, 94th Cong., 2d Sess. 29 (1976), or any communication that "does not directly discuss the merits of a pending adjudication." S. Rep. No. 354, 94th Cong., 1st Sess. 37 (1975); *see also* H.R. Rep. No. 880, Part I, 94th Cong., 2d Sess. 20 (1976); H.R. Rep. No. 880, Part II, 94th Cong., 2d Sess. 20 (1976). Hence, we do not believe that section 557(d) should be construed to prohibit private communications about a nonadjudicative matter between the Commission and persons outside the Commission who are involved in the matter even when such communications address factual or legal issues that may also be present in a pending Commission adjudicative proceeding. Nor do we believe that Rule 4.7(b) should be interpreted to impose any greater restrictions than are imposed by section 557(d).

Accordingly, we have revised Rule 4.7(f) to make clear that the rule's exemptions apply not only to communications between the Commission and its enforcement staff but also to those between the Commission and persons outside the Commission who are involved in a nonadjudicative matter.[2] With these revisions, the enforcement staff and outside persons should feel free to communicate fully and candidly with the Commission about any nonadjudicative matter in which they are involved.

It is conceivable, however, that a nonadjudicative matter could be so directly related to a pending adjudicative proceeding because of a mutuality of parties and facts that the Commission could conclude that the interests of justice would better be served by disclosure of a communication on the nonadjudicative

[1] Section 557(d) of the APA prohibits *ex parte* communications between an "interested person" outside an agency and an agency decisionmaker that are "relevant to the merits of [an adjudicative] proceeding." 5 U.S.C. 557(d)(1)(A) and (B). It further requires the agency decisionmaker to place any prohibited communication "on the public record of the proceeding." 5 U.S.C. 557(d)(1)(C). Rule 4.7(b) adopts the same prohibition as section 557(d) but extends its coverage to all persons outside the Commission, not just "interested persons"; Rule 4.7(c) implements section 557(d) by requiring public record disclosure of any *ex parte* communication prohibited by Rule 4.7(b).

[2] Ex parte communications between the Commission and its enforcement staff or persons outside the Commission that directly discuss the merits of a pending adjudicative proceeding will, of course, continue to be prohibited by Rule 4.7(b).

matter. A provision has therefore been added to Rule 4.7(f) which provides for disclosure of such a communication at the Commission's discretion and under such restrictions as it may deem appropriate. Any disclosures will, of course, be subject to statutory or other legal restrictions governing confidential commercial or other information.

In addition, the exemption of current Rule 4.7(f)(1) can be read to exclude from the prohibitions of Rule 4.7(b) a communication occasioned by and concerning the "conduct or disposition" of an "adjudicative proceeding." This reading of the exemption conflicts with sections 554(d) and 557(d) of the APA. Accordingly, the exemption has been reworded so as to make clear that it applies only to communications involving a nonadjudicative matter, such as the initiation, conduct, or disposition of an investigation, the issuance of a complaint, or the initiation of a rulemaking or other proceeding.

Finally, the exemption of current Rule 4.7(f)(4) can be read to apply to the disposition of a consent settlement under Rule 3.25 only when the settlement is "executed by some but not all respondents." The exemption is, in fact, meant to cover any Rule 3.25 consent settlement, whether it involves some or all of the respondents or some or all of the charges set forth in a complaint. The rule is revised to reflect that intention.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure.

PART 4—[AMENDED]

In consideration of the foregoing, 16 CFR Part 4 is amended as follows:

1. The authority for Part 4 continues to read as follows:

Authority: Sec. 6(g), 38 Stat. 721 (15 U.S.C. 46); 80 Stat. 383, as amended (5 U.S.C. 552).

2. Section 4.7(f) is revised to read as follows:

§ 4.7 Ex parte communications.

* * * * *

(f) The prohibitions of paragraph (b) of this section do not apply to a communication occasioned by and concerning a nonadjudicative function of the Commission, including such functions as the initiation, conduct, or disposition of a separate investigation, the issuance of a complaint, or the initiation of a rulemaking or other proceeding, whether or not it involves a party already in an adjudicative proceeding; a proceeding outside the scope of § 3.2, including a matter in state or federal court or before another governmental agency; a nonadjudicative function of the Commission, including but not limited to an obligation under § 4.11 or a communication with Congress; or the disposition of a consent settlement under § 3.25 concerning some or all of the charges involved in a complaint and executed by some or all respondents. The Commission, at its discretion and under such restrictions as it may deem appropriate, may disclose to the public or to respondent(s) in a pending adjudicative proceeding a communication made exempt by this paragraph from the prohibitions of paragraph (b) of this section, however, when the Commission determines that the interests of justice would be served by the disclosure. The prohibitions of paragraph (b) of this section also do not apply to a communication between any member of the Commission, the Administrative Law Judge, or any other employee who is or who reasonably may be expected to be involved in the decisional process, and any employee who has been directed by the Commission or requested by an individual Commissioner or Administrative Law Judge to assist in the decision of the adjudicative proceeding. Such employee shall not, however, have performed an investigative or prosecuting function in that or a factually related proceeding.

By direction of the Commission, dated October 7, 1986.

Emily H. Rock,

Secretary.

[FR Doc. 86-23332 Filed 10-15-86; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. C-3197]

Independent Insurance Agents of America, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, prohibits a New York City-based insurance agent association from encouraging its members to refuse to deal with companies based on the companies' sales policies.

DATE: Complaint and Order issued August 25, 1986.[1]

FOR FURTHER INFORMATION CONTACT: FTC/L-501, James C. Egan, Jr., Washington, DC 20580 (202) 254-6024.

SUPPLEMENTARY INFORMATION: On Monday, June 9, 1986, there was published in the **Federal Register**, 51 FR 20835, a proposed consent agreement with analysis In the Matter of Independent Insurance Agents of America, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Aiding, Assisting and Abetting Unfair or Unlawful Act or Practice: § 13.290 Aiding, assisting and abetting unfair act or practice. Subpart—Coercing and Intimidating: § 13.367 Members. Subpart—Combining or Conspiring: § 13.384 Combining or conspiring; S 13.405 To discriminate unfairly or restrictively in general

List of Subjects in 16 CFR Part 13

Insurance agents, Trade practices.

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

Emily H. Rock,

Secretary.

[FR Doc 86-23348 Filed 10-15-86; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. 9174]

Warner Communications, Inc., et al. and Polygram Records, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent orders.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th St. and Pa. Ave., NW., Washington, DC 20580.

methods of competition, these consent orders require, among other things, two New York City record companies to obtain prior FTC approval before acquiring any interest in major record companies and to notify the FTC about distribution agreements planned with those companies.

DATE: Complaint issued March 19, 1984. Decisions issued September 8, 1986.[1]

FOR FURTHER INFORMATION CONTACT: FTC/L–501, James C. Egan, Jr., Washington, DC 20580. (202) 254–6024.

SUPPLEMENTARY INFORMATION: On Thursday, June 19, 1986, there was published in the **Federal Register**, 51 FR 22301, a proposed consent agreement with analysis In the Matter of Warner Communications, Inc., a corporation, Warner Bros. Records, Inc., a corporation, Chappell & Co., Inc., a corporation, and Polygram Records, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock or Assets: § 13.5 Acquiring corporate stock or assets; § 13.5–20 Federal Trade Commission Act; § 13.6 Arrangements, connections, dealings, etc.; § 13.7 Joint ventures. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements.

List of Subjects in 16 CFR Part 13

Major record companies, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Emily H. Rock,

Secretary.

[FR Doc 86–23349 Filed 10–15–86; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decisions and Orders are available from the Commission's Public Reference Branch, H–130, 6th St. and Pa. Ave., NW., Washington, DC 20580.

16 CFR Part 13

[Docket C–3198]

Independent Insurance Agents and Brokers of California, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, prohibits a San Francisco-based insurance agent association from encouraging its members to take action against insurance companies who use direct marketing.

DATE: Complaint and Order issued Aug. 25, 1986[1]

FOR FURTHER INFORMATION CONTACT: FTC/L–501, James C. Egan, Jr., Washington, DC 20580. (202) 254–6024.

SUPPLEMENTARY INFORMATION: On Monday, June 9, 1986, there was published in the **Federal Register**, 51 FR 20835, a proposed consent agreement with analysis In the Matter of Independent Insurance Agents and Brokers of California, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Aiding, Assisting and Abetting Unfair or Unlawful Act or Practice: § 13.290 Aiding, assisting and abetting unfair act or practice. Subpart—Coercing and Intimidating: § 13.367 Members. Subpart—Combining or Conspiring: § 13.384 Combining or conspiring; § 13.405 To discriminate unfairly or restrictively in general.

List of Subjects in 16 CFR Part 13

Insurance agents, Trade practices.

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

Emily H. Rock,

Secretary

[FR Doc. 86–23346 Filed 10–15–86; 8:45 am]

BILLING CODE: 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

16 CFR Part 13

[Docket C–3199]

Independent Insurance Agents Association of Montana, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, prohibits a Helena, Montana-based insurance agent association from encouraging its members to refuse to deal with companies based on the companies' sales policies.

DATE: Complaint and Order issued August 25, 1986.[1]

FOR FURTHER INFORMATION CONTACT: FTC/L–501, James C. Egan, Jr., Washington, DC 20580. (202) 254–6024.

SUPPLEMENTARY INFORMATION: On Monday, June 9, 1986, there was published in the **Federal Register**, 51 FR 20835, a proposed consent agreement with analysis In the Matter of Independent Insurance Agents Association of Montana, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Aiding, Assisting and Abetting Unfair or Unlawful Act or Practice: § 13.290 Aiding, assisting and abetting unfair act or practice. Subpart—Coercing and Intimidating: § 13.367 Members.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

Subpart—Combining or Conspiring:
§ 13.384 Combining or conspiring;
§ 13.405 To discriminate unfairly or restrictively in general.

List of Subjects in 16 CFR Part 13

Insurance agents, Trade practices.

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

Emily H. Rock,

Secretary.

[FR Doc. 86-23347 Filed 10-15-86; 8:45 am]

BILLING CODE: 6750-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Safety Standards for Ground Control at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule; technical amendments and corrections.

SUMMARY: This document makes nonsubstantive technical amendments and corrections to a final rule for safety standards for ground control at metal and nonmetal mines, published October 8, 1986 (51 FR 36192).

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, or Yvonne Johnson, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On October 8, 1986, the Mine Safety and Health Administration published a final rule of the safety standards for ground control at metal and nonmetal mines in Title 30 of the Code of Federal Regulations (51 FR 36192). This document makes the following nonsubstantive technical amendments and corrections:

Under **"EFFECTIVE DATE"**, eliminate the exception relating to § 57.3461.

§§ 56.3203 and 57.3203 **[Corrected]**

In §§ 56.3203(d) and 57.3203(d) the word "required" is revised to read "manufacturer's recommended hole".

(30 U.S.C. 811)

Dated: October 10, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 86-23366 Filed 10-15-86; 8:45 am]

BILLING CODE 4510-43-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1155

Statement of Organization and Procedures

AGENCY: Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board at its May 12, 1986, meeting, adopted amendments to its Statement of Organization and Procedures, which sets forth the procedures for Board and Board committee meetings. The amendments were adopted to effect changes from the previous procedures and are being published so that all affected persons will be fully informed about procedures governing the meetings.

EFFECTIVE DATE: May 12, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Laurinda Steele, Office of Administration and Management, Architectural and Transportation Barriers Compliance Board, 330 C Street, SW., Washington, DC 20202, phone (202) 245-1801 (voice or TDD).

SUPPLEMENTARY INFORMATION: Pursuant to section 502 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 391, as amended, the Architectural and Transportation Barriers Compliance Board (ATBCB or Board) adopted a Statement of Organization and Procedures on September 16, 1975. The Statement was published at 50 FR 1032 (1985) and codified at 36 CFR Part 1155. The ATBCB adopted amendments to the Statement of Organization and Procedures several times, most recently on May 12, 1986. The reasons for the amendments are to place more responsibility for committee recommendations at the Board member level rather than at the staff level, and to provide designated committee vice chairpersons.

List of Subjects in 36 CFR Part 1155

Handicapped, Organizations and Functions (Government Agencies), Procedures.

For the reasons stated in the preamble, 36 CFR Part 1155 is amended as follows:

PART 1155—[AMENDED]

1. The authority citation for Part 1155 continues to read as follows:

Authority: 29 U.S.C. 792, Pub. L. 93-112, as amended Pub. L. 95-602.

2. Section 1155.3 is amended by revising paragraph (b)(1), removing paragraph (b)(4)(i), redesignating paragraphs (b)(4) (ii), (iii), and (iv) as (b)(4) (i), (ii), and (iii), respectively, and revising the newly redesignated paragraph (b)(4)(i) to read as follows:

§ 1155.3 Committees.

* * * * *

(b) *Subject Matter Committees—(1) Composition.* The Chairperson of the Board shall appoint an equal number of public and Federal members and a chairperson and a vice chairperson for each subject matter committee, totalling at least four (4) members on each committee.

Each chairperson may appoint an acting chairperson when both the chairperson and vice chairperson are absent.

* * * * *

(4) *Voting*—(i) Only committee members or the member of the committee who holds the absent member's proxy may vote in the committee meetings. Any other Board member agency staff and the Board staff may attend and participate in meetings but may not vote.

* * * * *

Dated: September 30, 1986.

Madeleine Will,

Vice Chairperson, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 86-23288 Filed 10-15-86; 8:45 am]

BILLING CODE 6820-BP-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-5-FRL-3095-7]

Michigan; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on application of Michigan for final authorization.

SUMMARY: Michigan has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). The United States Environmental Protection Agency (U.S. EPA) has reviewed Michigan's application and found it includes all the information necessary for final authorization. U.S. EPA is granting final

authorization to the State of Michigan for the base RCRA program and Cluster I, so that it may operate its hazardous waste management program in lieu of the Federal program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (HSWA).

EFFECTIVE DATE: Final authorization for the State of Michigan is effective at 1:00 P.M. on October 30, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Sharrow, Michigan Regulatory Specialist, Solid Waste Branch, U.S. EPA, Region V, 230 South Dearborn Street, 5HS–JCK–13, Chicago, Illinois 60604, (312) 886–3718 (FTS: 8–886–3718).

SUPPLEMENTARY INFORMATION: Section 3006 of the RCRA as amended, allows U.S. EPA to authorize a State hazardous waste management program to operate in a State in lieu of the Federal hazardous waste management program. To qualify for final authorization, a State's program must: (1) Be equivalent to the Federal program; (2) be no less "stringent" than the Federal program; (3) be consistent with the Federal program and other authorized State program; (4) provide for adequate enforcement authority; and (5) provide for public participation in the permit process. [Section 3006(b) of the RCRA, 42 U.S.C. 6926(b).]

On November 7, 1985, the State of Michigan submitted a complete application to obtain final authorization to administer the RCRA program. After completion of a comprehensive review of the State's official application, U.S. EPA forwarded comments to the State on January 22, 1986. These comments reflected several areas which the State needed to further clarify. Michigan responded satisfactorily on August 20, 1986. Region V conducted a comprehensive Capability Assessment evaluating past State program performance and present resource capability for future program implementation. The Capability Assessment, which documented that Michigan continues to demonstrate a commitment to effective implementation of the Hazardous Waste Management program, was transmitted to the State on January 24, 1986, without a Letter of Intent. Region V had found that a Letter of Intent was not necessary to ensure that certain improvements were implemented.

Since the publication of the tentative determination, Region V has continued to monitor the State, and has found that a Letter of Intent is still not necessary. This action is documented in the Capability Assessment Update, which is available from Ms. Diane Sharrow, Michigan Regulatory Specialist, Solid Waste Branch, U.S. EPA, Region V, 230 South Dearborn Street, 5HS–JCK–13, Chicago, Illinois, 60604, (312) 886–3718, (FTS: 8–886–3718).

Decision

After reviewing the public comments and the clarifications made by the State, I conclude that Michigan's application for final authorization meets all the statutory and regulatory requirements established by RCRA. Accordingly, Michigan is granted final authorization to operate its hazardous waste management program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984, [Pub. L. 98–616, November 8, 1984 (HSWA)]. Michigan now has the responsibility for permitting hazardous waste management treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program, subject to HSWA. In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. U.S. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial Federal permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA provisions apply in authorized States in the interim. This authority will remain with U.S. EPA. Michigan is not authorized to operate the RCRA program on Indian lands, and this authority will remain with U.S. EPA.

As a result of HSWA, there will be a dual State/Federal regulatory program in Michigan. To the extent the authorized program is unaffected by HSWA, the State program will operate in lieu of the Federal program. Where HSWA-related requirements apply, however, U.S. EPA will administer and enforce them in Michigan until the State receives authorization to do so. Any State requirement that is more stringent than a HSWA provision also remains in effect; thus, the universe of the more stringent provisions in HSWA and the approved State program defines the applicable Subtitle C requirements in Michigan.

Michigan is being authorized for one provision under the HSWA: Section 8006(f), the Availability of Information Provision. Since this provision has been determined to be an extension of the current RCRA requirement, U.S. EPA has labeled this provision as both a RCRA and HSWA provision. Once the State is authorized to implement other HSWA requirements prohibitions, the State program in that area will operate in lieu of the Federal program. Until that time, the State will assist U.S. EPA's implementation of the HSWA under a Cooperative Agreement.

U.S. EPA has published a **Federal Register** notice that explains in detail HSWA and its effect on authorized States. That notice was published in the July 15, 1985, **Federal Register** (50 FR 28702), and should be referred to for further information.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 505(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Michigan'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

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water supply.

Authority

(Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), and EPA Delegation 8–7.)

Dated: September 23, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 86–23354 Filed 10–15–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 403

[OW-10-FRL-3095-6]

Washington Pretreatment Program Approval and Current NPDES List

AGENCY: Environmental Protection Agency.

ACTION: Approval of NPDES Pretreatment Program for Washington State and Current NPDES List.

SUMMARY: On September 30, 1986, the Environmental Protection Agency (EPA), Region 10, approved the State of Washington's National Pollutant Discharge Elimination System (NPDES) State Pretreatment Program. This action authorizes the State of Washington to administer the National Pretreatment Program as it applies to municipalities and industries within the State. Also included, in this document, is an up-to-date listing of approved NPDES States.

EFFECTIVE DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Robert R. Robichaud, Water Permits and Compliance Branch M/S 521, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Ave., Seattle, WA 98101; 206/442-1448.

SUPPLEMENTARY INFORMATION: The Pretreatment Program, required by the Clean Water Act of 1977, governs the control of industrial wastes introduced into Publicly Owned Treatment Works (POTWs). The objectives of the Pretreatment Program are to: (1) prevent introduction of pollutants into POTWs which will interfere with the operations of a POTW and/or disposal of municipal sludge; (2) prevent the introduction of pollutants into POTWs which will pass through treatment works or otherwise be incompatible with such works; and (3) improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludge. The national pretreatment program within each state is administered either by the EPA or by the state upon receiving EPA approval. In either case, local POTW pretreatment programs will be the primary vehicle for administering, applying, and enforcing pretreatment standards for industrial users.

States which administer the NPDES permit program are required to submit and administer a pretreatment program under 40 CFR 403.10. To receive pretreatment program approval, a state must submit to the EPA a modification to its National Pollutant Discharge Elimination System (NPDES) program pursuant to the requirements and procedures of the General Pretreatment Regulation (40 CFR Part 403). As required by Section 403.10(f), a request for State Pretreatment Program Approval must demonstrate that the state has adequate legal authority to implement pretreatment program requirements, procedures, funding, and staffing to carry out the program.

EPA's criteria for reviewing the State of Washington's application are contained in 40 CFR 403.10(h). Simply stated, EPA is required to insure that the state has developed and submitted a program application that satisfies the applicable requirements of § 403.10. This requires an assessment as to whether the state has adequate legal authority, procedures, funds and staff to implement the program.

The State of Washington, on May 5, 1986, submitted its program application to EPA Region 10. In support of its application for pretreatment program approval, the state provided to EPA copies of the relevant statutes and regulations; an Attorney General Statement certifying, with appropriate citations to the statutes and regulations, that the state has adequate legal authority to administer the pretreatment program as required by 40 CFR Part 403; a discussion of program procedures, a workload analysis for program implementation, and a description of resources to be dedicated to administering the program.

EPA determined that the state's application was complete and, as required under 40 CFR 123.62, issued a 30-day public notice of the state's request for pretreatment program authority. Five comment letters were received during the comment period.

EPA has concluded upon reviewing all of the state's submitted materials and a review of the public comments, that the state has adequate legal authority to administer the pretreatment program, including the authority to perform each of the activities set forth in 40 CFR 403.10(f)(1)(i)–(vi), and that it has the necessary procedures and resources, including the procedures and resources listed in 40 CFR 403.10(f) (2) and (3). This conclusion is supported not only by a review of the state's program description but also is buttressed by Washington's experience in administering its approved NPDES program. The State does not have any provisions for granting removal credits (40 CFR 403.10(f)(1)(vii)) based on its desire to be more stringent than the Federal program and not grant removal credits. The State is authorized to adopt this more stringent approach by section 510 of the Clean Water Act.

The following are responses to the major comments.

Response to Major Comments

1. *Comment:* The state does not have authority to administer the federal pretreatment program on Indian lands.

Response: The state's application for the pretreatment program does not contain a request for authority to regulate Indian lands, and today's program approval extends only to non-Indian lands. The EPA will continue to implement pretreatment program requirements for industrial sources located on Indian lands.

2. *Comment:* Two commenters indicated that the state does not have comparable public participation requirements as spelled out under EPA rules (specifically 40 CFR Part 25, and 40 CFR Part 123). One of the commenters suggested that the EPA delay approval until the state enacts comparable public participation requirements.

Response: The assurance of adequate public participation is one of EPA's primary concerns when reviewing a state program submission. Pretreatment program implementation affords the public several opportunities for meaningful participation including the following:

- Participation in the development of state laws and regulations related to the pretreatment program (34.08 RCW);
- State issuance and modification of POTW's NPDES permit which include pretreatment conditions (90.48 RCW, WAC 173–220–150);
- State approval and modification of local POTW pretreatment programs (90.48 RCW, WAC 173–208, 216);
- Public notice of all facilities which are in significant violation of the pretreatment standards and requirements (90.48 RCW, Memorandum of Understanding with EPA);
- Public access to information regarding a facility's discharge and the environmental effects including the quality of the receiving water (42.17 RCW), and;
- Public awareness of state enforcement activities, and citizen challenges to state decisions and orders, including intervention in state administrative actions [43.21.B RCW, WAC 371–08–005(2)(b)].

Requirements for state programs to assume pretreatment authority are contained in 40 CFR 403.10 and 40 CFR Part 123, so far as it pertains to public participation. Unlike the NPDES permit program, the pretreatment program is self-implementing. The pretreatment regulations require industrial facilities to comply with pretreatment standards and reporting requirements. States and local municipalities with authority to

implement pretreatment programs are required to insure that industrial facilities comply with these requirements and standards. Specifically, states and local authorities must identify users covered by published standards, notify them of the regulations and reporting requirements, review industrial reports, insure compliance by way of compliance monitoring, and institute enforcement action against non-compliers.

States and POTWs are granted the discretion of choosing from a variety of enforceable mechanisms, including contacts, agreements or permit schemes as a means of program implementation. POTWs operating approved local programs have already indicated how their programs will be implemented and may have public participation practices in addition to those provided under state law.

POTWs which have been delegated pretreatment programs are required to have extensive participation, including public notices of significant violators, informing the public of proposed changes to its sewer use ordinance, local limits, and allowing the public access to its pretreatment records (see 40 CFR 403.8(4)(2)(vii), 403.12 and 403.14). These federal requirements are in-corporated into the State program (WAC 173–216–150).

Washington's program description indicates that the state will be using a permit-type system to regulate those industrial users located in communities not required to implement local pretreatment programs (see WAC 173–090). This regulation contains a variety of public participation requirements including procedures for issuing public notices of permits for comment. Moreover, state law requires that public notices be filed in the State Register (see RCW 34.08.020).

One commenter suggested that it is difficult to obtain information from the state regarding its activities to regulate users via its permit system. Although the state's regulations require that a public notice be placed in the local newspaper, the commenter felt that this was insufficient and that a broader notice mechanism be employed. As outlined in WAC 173–216–090(4)(a), the state does maintain a mailing list of persons and organizations who have expressed an interest in the state's environmental activities.

As a matter of practice, the state generates reports, newsletters on agency ongoing activities such as enforcement actions. They are generally prepared in a timely fashion in part to facilitate public participation, as appropriate. In addition, the state provides notices on public hearings for regulation changes and proposed state policy, notices of proposed permit issuance and proposed state-issued permits to indirect dischargers, and notices on general pretreatment program requirements. EPA believes these practices provide citizens of Washington with public awareness and participation. It is our understanding that the state will, upon request, provide specific notice on ongoing activities to interested parties.

3. *Comment:* The state does not have similar freedom of information requirements as contained in federal regulations (40 CFR Part 2). EPA should require the state to develop comparable requirements as provided in 40 CFR Part 2.

Response: After reviewing the Washington submission, EPA finds that the public has adequate access to information, other than confidential business information (42.17 RCW). In particular, WAC 173–216–080 states that all information describing the quantity and characteristics of the effluent must be made available. Apparently, one of the chief concerns raised by two commenters was the "waiver of fee" requirement. EPA is not in a position to evaluate the propriety of the state's decision on fees charged for providing information to individuals.

4. *Comment:* A few comments revolved around pretreatment programs at the local level. The following points were raised: 1) local programs in the state should not have been approved by EPA; 2) local programs are not being implemented consistently, and; 3) local officials lack understanding of pretreatment program requirements and are unwilling to implement the program.

Response: EPA's assessment of the state's ability to implement the federal pretreatment program rests on a determination of those requirements contained in § 403.10(f) (1), (2), and (3). EPA's own efforts to date in implementing the pretreatment program are not relevant to addressing the adequacy of the state's pretreatment program application; however, the Agency provides the following as a response to the points raised by the two commenters.

The EPA Region 10 office has approved six (6) local pretreatment programs in the state. These programs were approved based on each community satisfying the program requirements contained in 40 CFR 403.8(f). Each of the local communities have similar pretreatment requirements contained in their NPDES permit or contained in their approval letter. Once programs have been approved, states and EPA are required to insure that local programs are being implemented adequately.

Pretreatment audits have been conducted by the EPA of each of the six local programs. As one of the commenters suggested, some programs are not being adequately or consistently implemented. The Agency has written reports and submitted comments to the affected POTWs requiring program deficiencies to be addressed. If the affected POTWs do not fully address the deficiencies and implement all essential program requirements, EPA may take enforcement actions against the POTWs. The state will be required to undertake similar activities under its approved pretreatment program.

With regards to POTWs' lack of understanding program implementation, the Agency has developed numerous guidance documents and conducted workshops. EPA's goal is to foster a better understanding among POTWs. The fact that the state is requesting approval of the federal pretreatment program should not only facilitate consistent implementation, but also permit timely assistance by the state regional office staff who have closer contact with the POTWs.

5. *Comment:* The state has not dedicated sufficient resources necessary to implement the program.

The present pretreatment application states that 5.5 Full Time Equivalents (FTE's) will be dedicated to pretreatment implementation, 2.0 FTE paid for by the use of EPA's Section 104(b) grant funds. (EPA expects that 104(b) funds will continue to be made available in FY '87.) After reviewing the detailed workload and pricing factor analyses in the program submission, EPA finds that the level of manpower is adequate to administer the pretreatment program in Washington. It is expected that the bulk of pretreatment activities in the State will be accomplished by local POTW programs. Currently, there are 6 such approved programs and 4 more under development. In addition, the State is studying 6 more communities as potential program candidates and anticipates program approvals by 1990, if local programs are determined to be needed. Together these POTWs account for approximately 80–85 percent of the significant industrial users in the State. In cases where some shortfall will exist, the state will be able to utilize, as needed, EPA staff and its contractor to assist in program implementation. The EPA will monitor the state's progress in implementation. It will use the annual planning process (State-EPA agreement) to identify

priority activities and correct any major deficiencies.

6. *Comment:* The EPA should delay approval of the state's pretreatment program until the Puget Sound Water Quality (PSWQA) issues its final water quality plan for the Puget Sound area.

Response: EPA does not believe that delaying approval of the pretreatment program is warranted while the water quality plan is being finalized. Provided that the state application meets the requirements contained in Section 403.10, the state needs to begin immediate implementation of program requirements on POTWs and industrial users statewide.

Because of the heightened interest in the Puget Sound area, we would expect that the state will focus its attention on regulating toxics from industrial sources located on Puget Sound as well as insuring that POTWs in the Puget Sound area adequately implement their respective program. Approving the Washington program will serve to strengthen the regulatory response to the plan once it is finalized. In the interim, EPA and the state are reviewing the various PSWQA issue papers that will be used in finalizing the Puget Sound water quality plan and will work toward implementing its recommendations.

Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA will provide **Federal Register** notice of any action by the Agency approving or modifying a State NPDES program. The following table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country.

States program	Approved NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment
Alabama	10/19/79	10/19/79	10/19/79
California	05/14/73	05/05/78	
Colorado [1]	03/27/75		
Connecticut	09/26/73		06/03/81
Delaware	04/01/74		
Georgia	06/28/74	12/08/80	03/12/81
Hawaii	11/28/74	06/01/79	08/12/83
Illinois [1]	10/23/77	09/20/79	
Indiana	01/01/75	12/09/78	
Iowa	08/10/78	08/10/78	06/03/81
Kansas	06/28/74	08/28/85	
Kentucky [1]	09/30/83	09/30/83	09/30/83
Maryland	09/05/74		09/30/85
Michigan	10/17/73	12/09/78	06/07/83
Minnesota	06/30/74	12/09/78	07/16/79
Mississippi	05/01/74	01/28/83	05/13/82
Missouri [1]	10/30/74	06/26/79	06/03/81
Montana [1]	06/10/74	06/23/81	
Nebraska	06/12/74	11/02/79	09/07/84
Nevada	09/19/75	08/31/78	
New Jersey [1]	04/13/82	04/13/82	04/13/83
New York	10/28/75	06/13/80	
North Carolina	10/19/75	09/28/84	06/14/82
North Dakota	06/13/75		
Ohio	03/11/74	01/28/83	07/27/83
Oregon [1]	09/26/73	03/02/79	03/12/81
Pennsylvania	06/30/78	06/30/78	
Rhode Island [1]	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82
Tennessee	12/28/77		08/10/83
Vermont	03/11/74		03/16/82
Virgin Islands	06/30/76		
Virginia	03/31/75	02/09/82	
Washington	11/14/73		
West Virginia [1]	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80
Wyoming	01/30/75	05/18/81	

[1] Indicates State approved to issue General Permits.

Review Under Executive Order 12291 and the Regulatory Flexibility Act.

The Office of Management and Budget (OMB) has exempted this action from OMB review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this State Pretreatment Program Approval will not have a significant impact on a substantial number of small entities. Approval of the Washington NPDES State Pretreatment Program establishes no new substantive requirements, but merely transfers responsibility for administration of the program from EPA to the State.

Dated: September 30, 1986.

Robie G. Russell,

Regional Administrator, Region 10.

[FR Doc. 86-23353 Filed 10-16-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6625

[AA-320-07-4220-10; C-39308]

Colorado; Withdrawal of National Forest System Land for Protection of Recreational Values

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 4,572 acres within the Arapaho National Forest from mining for a period of 50 years for the protection of existing and planned recreational facilities near Keystone, Colorado. The lands have been and remain open to such other forms of disposition as may by law be made of national forest lands and mineral leasing.

EFFECTIVE DATE: October 16, 1986.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, 303-236-1768.

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

1. Subject to valid existing rights, the following described national forest lands, which are under the jurisdiction of the Secretary of Agriculture, are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Channel 2) to protect existing and planned recreational values which are a part of the Keystone Ski Area:

Arapaho National Forest

Sixth Principal Meridian

T. 5 S., R. 76 W.,

Sec. 19, lots 28 through 38, 40 through 51, S½SW¼SE¼NW¼NE¼, NW¼NE¼SW¼NE¼, N½NW¼SW¼NE¼, SW¼NW¼SW¼NE¼, N½SW¼SW¼NE¼, S½NE¼SE¼NW¼, and N½SE¼SE¼NW¼, comprising all those lands in sec. 19 reconveyed to the United States in Forest Exchange Colorado 23301, more particularly described in Warranty Deed dated March 15, 1979, Reception No. 188191, and recorded with the County Clerk and Recorder, Summit County, Colorado, containing 28.734 acres (previously described as lots 28 through 38, 40 through 57, and 28.734 acres in the SW¼NE¼ and SE¼NW¼);

Sec. 29, W½SW¼;

Sec. 30, lots 1 through 4, E½NE¼, exclusive of Mineral Survey No. 15359B, Patent No. 38078 and Mineral Survey No. 15346B, Patent No. 38079, W½NE¼, E½W½, and NE¼SE¼ (previously described as lots 1 through 4, NE¼ exclusive of patented land, E½W½, and NE¼SE¼);

Sec. 31, lots 1 through 4, W½NE¼, SE¼NE¼, E½W½, and SE¼;

Sec. 32, NW¼NW¼.

T. 5 S., R. 77 W.,

Sec. 24, lots 8 and 9, SE¼, and two parcels aggregating 10.83 acres in the S½N½NE¼ and N½S½NE¼, comprising all of parcels 3 (East) and 3 (West), reconveyed to the United States in Forest Exchange Colorado 23301, more particularly described in Warranty Deed dated March 15, 1979, Reception No. 188191, recorded with the County Clerk and Recorder, Summit County, Colorado (previously described as 10.83 acres in the S½N½NE¼ and N½S½NE¼);

Sec. 25, NE¼, NE¼NW¼, E½SE¼, and NW¼SE¼;

Sec. 36, NW¼SE¼NW¼, S½SE¼NW¼, E½NE¼SW¼, W½NW¼SE¼, and S½SE¼.

T. 6 S., R. 76 W.,

Sec. 6, lots 3 through 6, 11 through 14, E½SW¼, and W½SE¼;

Sec. 7, lots 1 through 4, NE¼, E½NW¼, NE¼SW¼, and NE¼SE¼, that portion

lying northwesterly of the northwesterly boundary of Mineral Survey No. 5703, Patent No. 18207 (previously described as the N½SE¼).

T. 6 S., R. 77 W.,
Sec. 1, lots 1 through 4, S½N½, and S½;
Sec. 2, E½SE¼;
Sec. 12, NE¼, N½NW¼, SE¼NW¼, and N½SE¼.

The areas described aggregate approximately 4,571.53 acres of national forest lands in Summit County, Colorado.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of national forest lands under lease, license, or permit of governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Mangement Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles,

Assistant Secretary of the Interior.

October 10, 1986.

[FR Doc. 86-23350 Filed 10-15-86; 8:45 am]

BILLING CODE 4310-84-M

Proposed Rules

Federal Register
Vol. 51, No. 200
Thursday, October 16, 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 Part 890

Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise its Federal Employees Health Benefits Program (FEHBP) regulations to amend the timeframe for conversion to nongroup coverage when an FEHBP enrollment is terminated. This change would ensure that all employees have a sufficient amount of time to convert, regardless of whether or not receipt of the conversion notice was delayed.

DATE: Comments must be received on or before December 15, 1986.

ADDRESS: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Myers, (202) 632–4634.

SUPPLEMENTARY INFORMATION: Under current FEHB regulations, an individual whose group coverage is terminated other than by voluntary cancellation of the enrollment or by discontinuance of the plan under which he or she is covered is entitled to a 31-day extension of group coverage which begins the day after the date that his or her enrollment is terminated. (An individual whose plan is discontinued may enroll in another plan.) The FEHB regulations currently permit an individual to convert within 15 days of the agency notice of the right to convert, but in no event later than 75 days from the loss of group coverage. Since there is currently no requirement for agencies to issue a conversion notice within a specific timeframe, many agencies do not issue such notices in a timely fashion. As a result, most individuals have 15 days or less to apply for conversion, which is often insufficient to complete the conversion process.

To ensure that individuals have a sufficient time to convert to nongroup coverage, we are proposing to require agencies to produce a notice of the right to convert within 60 days after the initial loss of group coverage. In addition, we are proposing to extend the timeframe from 15 days from the date of the agency notice or 75 days from the loss of group coverage (whichever is earlier) to 31 days from the date of the agency notice or 91 days from the loss of group coverage (whichever is earlier). If the agency fails to issue a notice within 60 days after the loss of group coverage or an individual can show cause beyond his or her control for not requesting conversion in a timely manner, we are proposing that the individual be given a belated opportunity to request conversion by writing directly to the carrier. Such a request would have to be made within 6 months from the date of the loss of group coverage and would have to be accompanied by verification of the loss of group coverage; i.e., a Standard Form 50 showing the individual's separation from the service.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedures, Government employees, Health insurance.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to amend 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.102 also issued under 5 U.S.C. 1104 and sec. 3(5) of Pub. L. 95–454, 92 Stat. 1112; Sec. 890.301 also issued under 5 U.S.C. 8905(b); Sec. 890.302 also issued under 5 U.S.C. 8901(5) and 5 U.S.C. 8901(9); Sec. 890.701 also issued under 5 U.S.C. 8902(m)(2); Subpart H also issued under Title I of Pub. L. 98–615, 98 Stat. 3195, and Title II of Pub. L. 99–251.

2. In § 890.201, paragraph (a)(4) is amended by revising the third sentence and adding a sentence immediately after the third sentence to read as follows:

§ 890.201 Minimum standards for health benefits plans.

(a) * * *

(4) * * * When an employing office gives an employee, annuitant, or former spouse written notice of his or her privilege of conversion, the carrier shall permit conversion at any time before 31 days after the date of notice or 91 days after the enrollment is terminated, whichever is earlier. Belated conversion opportunities as provided in section 890.401(c) shall also be permitted by the carrier.

* * * * *

3. Section 890.401 is amended by adding a new paragraph (c) to read as follows:

§ 890.401 Temporary extension of coverage and conversion.

* * * * *

(c)(1) The employing agency must notify the employee, annuitant, or former spouse of the loss of group coverage and the right to convert to an individual policy within 60 days of the loss of such coverage.

(2) The individual who has lost group coverage must request conversion information from the losing carrier within 31 days of the agency notice of loss of group coverage and of the right to convert.

(3) When an agency fails to provide the notification described in paragraph (c)(1) of this section within 60 days of the loss of group coverage, or the individual fails for other reasons beyond his or her control to request conversion as described in paragraph (c)(2) of this section, he or she may request conversion to an individual policy by

writing directly to the carrier. Such a request must be filed within 6 months after the individual became eligible to convert his or her group coverage and must be accompanied by verification of the loss of group coverage; e.g., an SF 50, showing the individual's separation from the service. In addition, the individual must show that he or she was not notified of the loss of group coverage and of the right to convert, and was not otherwise aware of it, or that he or she was unable, for cause beyond his or her control, to convert. The carrier will determine if the individual is eligible to convert, and when the determination is affirmative, the individual may convert within 31 days of the determination. If the determination by the carrier is negative, the individual may request a review of the carrier's determination from OPM.

(4) When an individual converts his or her coverage anytime after the group coverage has ended, the individual plan coverage is retroactive to the day following the day the temporary extension of group coverage ended. The individual must pay the premiums due for the retroactive period.

(5) An individual who fails to exercise his or her right to convert to an individual policy within 31 days after receiving notice of the right to convert from the carrier is deemed to have declined the right to convert unless the carrier determines the failure was for cause beyond his or her control.

[FR Doc. 86-23368 Filed 10-15-86; 8:45 am]
BILLING CODE 6325-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Rules of Practice for Domestic Licensing Proceedings; Role of NRC Staff in Adjudicatory Licensing Hearings

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking; withdrawal.

SUMMARY: The Nuclear Regulatory Commission is withdrawing an advance notice of proposed rulemaking that presented for comment possible changes to the NRC staff's role as a full party in adjudicatory hearings in initial licensing proceedings for nuclear power reactors. The Commission has decided that the staff's existing role as an advocate in these proceedings should not be changed.

FOR FURTHER INFORMATION CONTACT: Linda S. Gilbert, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-7678.

SUPPLEMENTARY INFORMATION: On November 2, 1983 the Commission published an advanced notice of proposed rulemaking (ANPR) on the role of the NRC staff in adjudiciary licensing proceedings. 48 FR 50550. In that ANPR the Commission explained that it was considering amending its rules of practice to change the staff's role as a full party in initial licensing hearings for nuclear power reactors. The Commission requested advice and recommendations on several proposals and on a series of related questions designed to assist the Commission in deciding whether and to what extend the staff's role should be changed.

As described in the ANPR, Option 1 would have limited the staff's participation to controverted factual issues on which the staff disagreed with the technical bases, rationale, or conclusions of another party. Staff participation as a party would have been discretionary. The staff also could have acted as an *amicus*, advising the presiding officer on the second regarding matters in controversy, either on the staff's initiative or at the presiding officer's request.

Option 2 would have required the staff to participate as a party with respect to all substantive issues raised but would have eliminated staff advocacy and participation with respect to procedural issues.

Option 3 would have retained the staff's existing role as a full party. It could have been implemented without any modification of existing practice. Alternatively, it could have been coupled with measures designed to improve public perception of the staff's role or to allow greater Commission access to staff expertise.

Option 4 would have expanded the opportunity for public involvement in the early stages of initial licensing proceedings, before issuance of a notice of opportunity for hearing. It could have been used alone or in combination with any of the first three options.

The comment period expired on January 3, 1984. The Commission received twenty-eight letters of comment on the ANPR. Twelve were from nuclear utilities or their counsel, nine were from present and former intervenors or their counsel, four were from individuals, and three were from nuclear engineering firms or industry groups. The Commission's Regulatory Reform Task Force prepared a detailed summary of the comments received for the Commission's consideration. The summary may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

The comments indicated support for all four options, although the majority of persons commenting favored either Option 2 or Option 3. The major issues raised in the comments are addressed briefly below. Following a review of the comments received, as well as advice supplied by its legal office, the Commission decided that the staff's existing role as an advocate in initial licensing proceedings should not be changed. *See* Letter from Nunzio J. Palladino, Chairman, U.S. Nuclear Regulatory Commission, to the Honorable Tom Bevill, Chairman, Subcommittee on Energy and Water Development, Committee on Appropriations, U.S. House of Representatives, dated January 2, 1985. Accordingly, the Commission is adopting Option 3 (no change in the staff's role) and is withdrawing the ANPR for the reasons discussed below.

Several concerns had prompted the Commission's publication of the ANPR. First, in a proceeding for the issuance of a license to construct or to operate a nuclear power reactor, the license applicant has the burden of showing that it can construct and operate the plant safely. Because the NRC staff has no real stake in the issuance of the license, the need for the staff's participation as a full party in the licensing hearing could be questioned. Second, the staff's advocacy of a particular position could have the effect of lending support to the case in favor of the license applicant and, therefore, could create the impression that the staff is advocating the applicant's case. Third, the staff's participation as a full story in licensing hearings might not represent the most efficient use of staff resources. Fourth, it could be argued that changes in the staff's role as an advocate might mitigate the legal constraints placed on the Commission's access to staff expertise in contested cases.

Further examination of these concerns reveals that no change to the staff-existing role is warranted. Regarding the first point, the Commission has concluded that the staff's participation on all substantive issues is necessary to assist in the development of a sound record. It therefore has decided to reject Option 1. The Commission and the adjudicatory boards rely heavily on the staff's expertise in determining whether an applicant has met the requirements for issuance of a license and what

conditions the license should contain. The Commission also believes that the staff is the representative of the public interest in these proceedings and that the staff should continue to present and defend the results of its objective evaluation of the application at the hearing for the benefit of the public. The staff's participation on procedural issues is desirable because it could reduce or even eliminate some of the substantive issues to be heard. In addition, the staff is often the best source of guidance for the adjudicatory boards on procedural matters. In short, the Commission believes that the staff should continue to participate as a full party and has therefore decided to reject Option 2 as well. Of course, this does not preclude from declining to take a position on matters which do not affect the staff's interests in the proceedings.

With regard to the matter of public perception, the Commission agrees with comments that such perception is difficult to assess and that it is important to distinguish between members of the public in general and those who are familiar with NRC proceedings. The Commission is not convinced that there is a problem with respect to public perception of the staff's role. To the extent that such a problem may exist, however, it is attributable not to bias on the staff's part but to the nature of the staff's extensive prehearing review of the application. The applicant often makes changes in the application in order to secure the staff's approval, so that by the time the hearing commences, many of the staff's concerns have been accommodated. Intervenors might otherwise have to argue for such changes in the application during the hearing.

The Commission considered providing an opportunity for expanded public involvement prior to issuance of a notice of opportunity for hearing (Option 4) as a possible means of increasing public understanding of the staff's role. The Commission also sought comments on this option as a possible means of providing useful information about local and site-related concerns in a non-adversarial setting. The Commission has concluded that there is no need to adopt this proposal, either alone or in combination with any of the other options. Pursuant to 10 CFR 2.101, a copy of a tendered application for a nuclear facility is made available for public inspection in the Commission's Public Document Room (PDR). The Commission also establishes a Local Public Document Room (LPDR) near the site of the proposed facility. Upon completion of its review of the acceptability of the application for docketing, the staff holds an initial management meeting with the applicant to discuss the review process and schedule. Notice of this meeting is published and members of the public may attend. After the application is docketed, the staff's licensing review process is accessible to the public through noticed open meetings and the placement of formal correspondence in the PDR and LPDR. The staff also holds informal meetings with potential intervenors and members of the public in the vicinity of the plant site. The Commission believes that these measures provide an adequate opportunity for public information and involvement in the early stages of the licensing process. In addition, the Commission has concluded that the staff resources that would have to be expended for increased public involvement prior to issuance of a notice of opportunity for hearing would outweigh any improvement that might result in public perception of the staff's role.

At present, the Commission does not believe that staff resources committed to litigation of admitted contentions in individual licensing proceedings could better be used to study, analyze, and resolve other important uncontested matters involved in particular proceedings or generic safety questions common to one or more classes of light water reactors. The Commission believes that, instead of changing the staff's role in licensing hearings, effort should be directed to improving the effectiveness and efficiency of the hearing process to the benefit of all parties. This is the purpose of the Commission's recently published regulatory reform proposals. *See* "Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process," 51 FR 24365 (July 3, 1986). The Commission will reexamine this issue should it become necessary to do so.

Finally, the Commission has concluded that the appropriate role for the staff should be determined independently of any consideration of legal constraints on the commission's access to its staff in contested cases. That issue is now being considered in another recently published proposed rule. *See* "Revisions to Ex Parte and Separation of Functions Rules Applicable to Formal Adjudicatory Proceedings," 51 FR 10393 (March 26, 1986).

For all the foregoing reasons, the Commission has concluded that it has not identified a problem with the staff's existing role in reactor licensing proceedings that any of the suggested options would resolve. Accordingly, the Commission is adopting Option 3 and is withdrawing the ANPR.

Dated at Washington, DC, this 10th day of October, 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-23385 Filed 10-15-86; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Parts 50 and 73

[Docket No. PRM-50-36]

Nuclear Utility Backfitting and Reform Group; Partial Grant and Partial Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Partial grant and partial denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission has assessed the petition for rulemaking filed by the Nuclear Utility Backfitting and Reform Group that petitions the NRC to modify reporting requirements imposed on its licensees of nuclear power plants and applicants for nuclear power plant construction permits. The petition discusses eight issues of concern and requests amendment of the regulations in 10 CFR Parts 50 and 73. Two of the petitioner's concerns were granted in two other rules; two others are being denied; and the remaining four are being considered and will be addressed in pending proposed rulemakings. This notice discusses NRC actions to date on each of the eight issues.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert Parcover, Information and Records Management Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-8699.

SUPPLEMENTARY INFORMATION:

1. Background

On June 21, 1983, the Commission published in the **Federal Register** (48 FR 28282) a notice announcing the receipt of

a petition for rulemaking filed by the Nuclear Utility Backfitting and Reform Group. A brief description of the eight issues follows:

Issue I

The petitioner proposes to amend § 50.54(p) to make it consistent with § 50.59(b), so that a change to a security or safeguards effectiveness plan that does not decrease its effectiveness be submitted to the NRC annually.

Issue II

The petitioner proposes to amend § 50.54(q) so that a change to an emergency plan that does not decrease its effectiveness be submitted to the NRC annually or, as an alternative, to make it consistent with § 50.54(p), reported within two months of a change, rather than 30 days under the current rule.

Issue III

The petitioner proposes to amend § 50.55(e) to eliminate the 24-hour telephone notification by holders of construction permits of each deficiency found in design and construction, which if it were to remain uncorrected, could have adversely affected safety or, as an alternative, proposes a 5-day telephone notification after discovery for a reportable deficiency in design or construction under a construction permit.

Issue IV

The petitioner proposes (1) that, for a licensee of an operating production or utilization facility, § 50.59(b) requirements to submit reports of a change to a facility or a procedure described in a Final Safety Analysis Report (FSAR) be satisfied by compliance with § 50.71 requirements and (2) that reports of conduct of tests and experiments not described in the FSAR be submitted annually, except for changes to a facility or procedure or the conduct of tests or experiments that involve a change in a facility's technical specifications or an unreviewed safety question.

Issue V

The petitioner proposes to amend Appendix E, Section V, to 10 CFR Part 50 to specify a "threshold of significance" for reporting changes to emergency plans which must be satisfied before a report is required.

The petitioner proposes that the "threshold" be similar to the one specified in § 50.54(p), and that changes be reported annually, rather than within 30 days.

Issue VI

The petitioner proposes to amend § 73.71 so that a followup written report involving loss, theft, or sabotage of strategic special nuclear material or lessened effectiveness of physical security systems be required 30 days after an initial verbal report, rather than 15 days.

Issue VII

The petitioner proposes that when reporting requirements in license technical specifications duplicate the reporting requirements of § 50.72(a), the plant technical specifications should be amended to eliminate duplicate requirements.

Issue VIII

The petitioner proposes to lengthen the period between an initial telephone report and the due date for a followup written report of reportable occurrences from 14 to 30 days in response to NUREG–0123 and to any similar provisions in NUREGs–0103, –0212, and –0452.

Eighteen comments were received on the petition: Two from a single commenter, eleven from electric utilities, three from engineering firms, two from private citizens, and one from an industrial association. Seven commenters generally endorsed the petition, some of them offering specific comments on certain issues Nine commenters agreed with the petition, in part, and one disagreed with all of the petitioner's proposals. Issue III (§ 50.55(e)) received the most comments.

The petitioner's concerns addressed in Issues II, III, V, and VI are being considered and will be addressed in current rulemakings. The petitioner's concerns already have been granted for Issues VII and VIII. The petitioner's proposals to alleviate the concerns stated in Issues I and IV are being denied.

One commenter stated that most of the existing immediate notification reports, which were at issue in this petition for rulemaking, were initiated prior to the inception of the Resident Inspector Program, which is now time-tested and proven. He suggests that making the resident inspector the point of contact for some of these immediate notification requirements may resolve some of the reporting burdens at issue in this petition.

Another commenter proposed that a review of the standards by which safety significance is assessed in the following regulations relates to this petition and should be assessed:

—10 CFR Part 21, Substantial Safety Hazards
—10 CFR 50.55(e), Significant Deficiencies
—10 CFR 50.59, Unreviewed Safety Question
—10 CFR 50.92, Significant Hazards Considerations.

Of these, the § 50.59 standard is discussed under Issue IV. The Part 21 and § 50.55(e) standards are being considered in the proposed rule related to Issue III. The § 50.92 standard was addressed in a final rule published in the **Federal Register** March 6, 1986 (51 FR 7744).

2. Discussion Of Comments Received and NRC Action On Each Issue

Issue I

The petitioner proposes to amend § 50.54(p) to make it consistent with § 50.59(b), so that a change to a security or safeguards effectiveness plan that does not decrease its effectiveness be submitted to the NRC annually.

Currently, the reports required by § 50.54(p) must be submitted to the NRC within two months after a change has been made.

Comments

Of the eight commenters who specifically addressed this issue, one disagreed with the petitioner and stated that 10 CFR 50.54(p) should not be changed because the judgment as to whether safeguards effectiveness has been reduced should be made by the NRC within the 60 days now allowed in order to see if the changes did or did not decrease the safeguards effectiveness of the plan. The other seven commenters agreed, at least in part, with the petitioner stating, in part, that annual changes to emergency and safeguards plans and procedures are sufficient because the majority of changes are not significant and are not important from a standpoint of public health and safety. These commenters think that implementation of this change would reduce a large administrative burden now imposed on licensees.

Action

The NRC is denying the petition with respect to this issue. The petitioner considers the changes to the plan unimportant from the standpoint of public health and safety. However, NRC disagrees that such changes are unimportant because in the event that the licensee misjudges the significance of the change, the NRC would be unaware of such misjudgment for up to a year and would be unable to take timely

corrective actions. Actions in the past have shown that changes thought to be insignificant by the licensees have in fact been significant and required timely corrective action. The NRC does not consider it to be in the best interest of the public health and safety to delay judging the effect of each change any longer than two months after a change has been implemented.

Issue II

The petitioner proposes to amend § 50.54(q) so that a change to an emergency plan that does not decrease its effectiveness is submitted to the NRC annually to make it consistent with § 50.54(p), or, as an alternative, reported within two months of a change.

Currently, the reports required by § 50.54(q) must be submitted to the NRC within 30 days of implementation.

Comments

Of the eight commenters who specifically addressed this issue, one disagreed with the petitioner and stated that the NRC should judge whether or not a change is "substantial" and should judge the impact of cumulative changes to a single procedure. Another disagreed with the petitioner's proposal because, if implemented, the NRC copy of each emergency plan could be from 2 to 12 months out of date from the plan in effect. This commenter thinks that changes should be submitted "within 2 months" after they are made. Six commenters supported the petitioner's proposal and stated, in part, that the changes could be codified without adversely impacting the quality of the emergency plans or adversely affecting public health and safety and would eliminate much unnecessary paperwork.

Action

The staff is planning to reevaluate the emergency planning regulations in 1987 in light of new information based on the ongoing research pertaining to accident source terms as this information becomes available. The petitioner's proposal to increase the interval for submitting emergency plan changes will be considered during this planned review.

Issue III

The petitioner proposes to amend § 50.55(e) to eliminate the 24-hour telephone notification by holders of construction permits of each deficiency found in design and construction, which if it were to remain uncorrected, could have adversely affected safety or, as an alternative, proposes that a reportable deficiency in design or construction under a construction permit be submitted up to five days following discovery.

Currently, holders of construction permits must notify the NRC by telephone within 24 hours of each deficiency in design and construction which, if it were not corrected, would adversely affect the safety of operations anytime throughout the expected lifetime of the plant, and follow up this initial verbal notification with a written report within 30 days.

Comments

Of the ten commenters who specifically addressed this issue, two commenters disagreed with the petitioner and eight generally agreed. One commenter who disagreed, was concerned about whether the NRC or the utility made the determination on a reportable deficiency. The other commenter who disagreed thought that the current practice is contrary to the regulatory requirement. The commenter contends that the current regulation does not require notification until 24 hours after a deficiency has been found significant, but that often industry reports a deficiency within 24 hours of discovery. Therefore, the commenter thinks the rule change is unnecessary. Some of those supporting the petition believe that the deficiency is reportable upon discovery, others do not. Those who understand that the licensee reporting the deficiency determines whether it is reportable stated, in part, that the 24-hour notification does not allow sufficient time to collect and analyze data to determine whether a problem is a reportable deficiency. Further, determining whether a problem is reportable is said to require multi-disciplinal and multi-organizational review. This proposal would, according to some commenters, minimize the reporting of nonproblems without adversely impacting the public health and safety. Several commenters said that these deficiencies, reported while a plant is being constructed, pose no immediate danger to public health and safety.

Action

The petitioner's concerns are being considered and will be addressed in a rulemaking currently being developed in amendments to 10 CFR Parts 21 and 50, "Revisions to the Criteria and Procedures for the Reporting of Defects," scheduled to be published as a proposed rule in the near future The contact person for this rulemaking is Rabindra Singh, telephone number (301) 492–4149.

Issue IV

The petitioner proposes (1) that, for a licensee of an operating production or utilization facility, § 50.59(b) requirements to submit reports of a change to a facility or a procedure described in a Final Safety Analysis Report (FSAR) be satisfied by compliance with § 50.71 requirements and (2) that reports of conduct of tests and experiments not described in the FSAR be submitted annually, except for changes to a facility or procedure or the conduct of tests or experiments that involve a change in a facility's technical specifications or an unreviewed safety question.

Currently, the reports required by § 50.59(b) must be submitted annually or at shorter intervals specified in a license. These changes are also reported annually as updates to the facility's FSAR under § 50.71.

Comments

Of the eight commenters who specifically addressed this issue, one commenter who disagrees with the petitioner's proposal believes that a § 50.59(b) brief report is easier for the Commission to review in order to regulate changes to a licensee's plant than an annual update to an FSAR. He contends that understanding reports of a change submitted under § 50.71 requirements would require searching out and studying several FSAR sections.

Another commenter agrees that the reports could be combined if § 50.59(b) were rewritten to reflect accurately, what he thinks is, its intent. That is, the commenter thinks the requirement is intended to provide the NRC an opportunity for a reflective review of each change made by a licensee to see whether or not it compromises safety and, ultimately, constitutes an unreviewed safety question. The commenter thinks that the words, "change in the facility (procedure) as described in the Safety Analysis Report (SAR)," actually leads to a prescriptive or cursory review to determine whether or not a figure or text in the FSAR must be altered as a result of the change. The commenter is concerned that such a prescriptive approach often causes one to lose sight of the basic purpose of § 50.59(b).

The commenter adds that these words are interpreted inconsistently within the nuclear industry. The commenter thinks that some licensees apply this terminology if any portion of the facility or procedure being changed is described in any manner in the FSAR and others, perhaps most, apply this requirement

only if the portion of the facility or procedure being changed is specifically described in the FSAR. The commenter believes this latter application can lead to a prejudgment on erroneous grounds as to whether a change can compromise safety. He suggests rewriting § 50.59(b) to remove troublesome and unnecessary terminology from the regulations and focus the attention in § 50.59(b) on the performance of safety evaluations in support of conclusions as to whether or not proposed changes involve an unreviewed safety question.

Of the seven who specifically supported this issue, one commenter suggested that FSAR updates be submitted within two years of completion of the FSAR for new licensees and annually thereafter. Other commenters stated that the current § 50.59(b) reporting requirement, in effect, duplicates other reports and that by eliminating such duplication, available resources could be directed toward matters of genuine safety significance.

Action

The NRC is denying the portion of the petition affecting § 50.59(b). The intent of the requirement in § 50.71 for updating FSARs is to keep the description of the plant up to date. FSARs provide cumulative records of all changes. But, the report required by § 50.59(b) is applicable to specific changes made throughout the year and is available at the plant site for ready review by the NRC s resident inspectors. It is important to recognize that efforts performed in support of § 50.59(b) reviews are substantially different from the final product the Commission would expect to be documented in FSAR updates. Specifically, a utility reviews and documents complicated projects to determine whether they involve unreviewed safety questions, whether changes to Technical Specifications are required, and, as necessary, to make determinations about significant hazards considerations under 10 CFR 50.92.

The synthesis of a large volume of work will usually be condensed in the FSAR update and technical evaluations will be referenced. The Commission's regulations address the submittal of all § 50.59(b) actions on an annual basis or at such shorter intervals as may be specified in the license. Periodically, at the request of the resident inspector, a Regional Office will review an individual § 50.59(b) action.

The reporting under § 50.59(b) enables the staff to perform timely and efficient reviews of the changes made by a licensee to determine whether or not its changes impact the public health and safety, often before receipt of the annual updates to the FSAR. Therefore, reliance on § 50.71 annual FSAR submittals would not allow continual determinations of licensees' changes that could, in their opinion, impact public health and safety; moreover, delayed NRC reviews could adversely impact safety.

Issue V

The petitioner proposes to amend Appendix E, Section V, to 10 CFR Part 50 to specify a "threshold of significance" for reporting changes to emergency plans which must be satisfied before a report is required. The petitioner proposes that the "threshold" be similar to the one specified in § 50.54(p), and that changes be reported annually.

Currently, changes to emergency plans or procedures must be reported to the NRC within 30 days of making the changes.

Comments

Two of the six commenters who specifically addressed this issue disagreed with this proposal. One proposed that a change be submitted "within 2 months" of the change to prevent, as in the case of § 50.54(q), the emergency plan the NRC retains from being as much as one year out of date. The other felt that the NRC should determine the threshold of significance as is now done by review of each change within 30 days.

The other commenters who agreed with the petitioner specifically on this issue stated that the reports currently generated are of questionable value when compared to the effort expended. One commenter cited the utility's approximate 3,000-page submittal of changes as "a wasteful use of paper and resources." One commenter, further, stated that hundreds of procedures are changed without written notification under § 50.59, and also that section V of Appendix E to 10 CFR Part 50 is an example of a requirement imposed that was an overreaction to the accident at Three Mile Island and that its requirements should be relaxed.

Action

The staff is planning to reevaluate the emergency planning regulations in 1987 in light of new information based on the ongoing research pertaining to accident source terms as this information becomes available. The petitioner's proposal to establish a "threshold of significance" for submitting changes to emergency plans or procedures will be considered during this planed review.

Issue VI

The petitioner proposes to amend § 73.71 so that a followup written report involving loss, theft, or sabotage of strategic special nuclear material or lessened effectiveness of physical security systems be required 30 days after an initial verbal report.

Currently, the written followup report required by 73.71 must be submitted within 15 days.

Comments

One of the six commenters who specifically addressed this issue disagreed with this proposal and thinks that a timely written report provides the NRC better factual information than a verbal report by telephone, which may create confusion.

The other five commenters specifically agreed with the petitioner on this issue. They stated, in part, that the modified reporting criteria would improve the usefulness of these reports by allowing licensees to fully resolve the problem before submitting a written report. An increased reporting interval would allow licensees to resolve problems more quickly and comprehensively instead of expending resources to generate reports of marginal value.

Action

The Commission agrees that it is desirable to extend this reporting period from 15 to 30 days and it published a proposed rule on August 27, 1985 (50 FR 34708) that would grant this portion of the petition. The final rule is scheduled to be published in January 1987.

Issue VII

The petitioner proposes that when reporting requirements in license technical specifications duplicate the reporting requirements of § 50.72(a), the plant technical specifications should be amended to eliminate duplicate requirements.

Comments

Of four commenters who specifically addressed this issue, three commenters addressed Issue VII and agreed with the petitioner. A commenter stated, in part, that technical specifications should contain only those requirements that directly impact public health and safety. Reports which are mere duplicates of regulations are unnecessary and should be eliminated.

One commenter suggests that "significant events" (§ 50.72(a)) and "reportable occurrences" (technical specifications) be consolidated in either the regulations or the technical

specifications. Further, he thinks that the reporting requirements for these two types of events are currently inconsistent, and suggests that written reports for "significant events" should be required as they are for events requiring "prompt notification with written follow-up." One commenter disagreed with the petitioner stating that the current requirements force individuals to look at the entire problem.

Action

The issue of duplicative requirements has already been addressed and the petition was granted in two final rules published July 27, 1983 (48 FR 33850) and August 29, 1983 (48 FR 39039), that both became effective on January 1, 1984. The first of these rules amended 10 CFR 50.73 and the second amended 10 CFR 50.72. The amendments to 10 CFR 50.72 and 50.73 superseded the old requirements in § 50.72(a) (2) and (5), eliminated the 24-hour report and the confirming telegram, changed the reporting period from 14 to 30 days, and clarified the language that caused the licensee to perceive that differing reporting requirements were required by the NUREGs in question. In addition, Generic Letter 83–43 [1] (December 19, 1983) provided guidance for complying with this regulation.

Issue VIII

The petitioner proposes to lengthen the period between an initial telephone report and the due date for a written followup report of reportable occurrences from 14 to 30 days in response to NUREG–0123 and to any similar provisions in NUREGs–0103, –0212, and –0452.

Comments

Five of the six commenters who specifically addressed this issue expressed agreement with this proposal. One commenter stated, in part, that the reporting modification would improve effectiveness without adversely affecting NRC's ability to ensure that corrective and preventive actions are accomplished. Another commenter noted that the Licensee Event Report (LER) has replaced the 14-day reporting interval with a 30-day reporting requirement. One commenter disagreed with the petitioner.

Action

The petition for this issue was also addressed and granted in a final rule published July 27, 1983 (48 FR 33850), that became effective January 1, 1984. The amendment to 10 CFR 50.73 in this rule changed the reporting period from 14 days to 30 days and clarified any perception that different reporting periods are described in NUREGs–0123, –0103, – 0212, and –0452. Generic Letter 83–43 (December 19, 1983) provided guidance for complying with the July 27, 1983, regulation.

3. Summary of Actions

The Nuclear Regulatory Commission has acted upon the petitioner's concerns as follows: two are being denied, four are being addressed in current rulemakings, and two have been granted. Issues I and II (§ 50.54(p) and § 50.59(b)) are denied for the reasons given in "Discussion of Comments." Issues II, III, V, and VI (50.54(q), 50.55(e), App. E, and 73.71) are being addressed in current rulemakings. Issues VII and VIII (50.72(a), NUREGs–0123, etc.) have been resolved and the petitioner's concerns met by the amendment to 10 CFR 50.73.

Dated at Bethesda, Maryland, this 3rd day of October 1986.

For The Nuclear Regulatory Commission.

Victor Stello, Jr.

Executive Director for Operations.

[FR Doc. 86–23242 Filed 10–15–86; 8:45 am]

BILLING CODE 7590–01–M

[1] Generic Letter 83–43 is available for inspection or copying for a fee at the NRC's Public Document Room, 1717 H Street NW., Washington, DC 20555.

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10 CFR Part 71

[Docket No. PRM–71–10]

The State of Wisconsin; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–71–10) filed by the State of Wisconsin. The petitioner requests that the NRC expand the scope of its regulations pertaining to spent nuclear fuel transport "to ensure that both the need for and the safety and environmental consequences of proposed shipments have been considered in a public forum prior to approval of the shipment and route." It is the NRC's conclusion that the new procedure requested in the petition is not justified by the arguments presented in the petition when considered together with the views and arguments of other persons who commented on the petition and in light of experience, testing, analysis, and other information. The Commission concludes that its existing regulation of the transportation of spent nuclear fuel, when viewed in the context of the combined program of the NRC, the Departments of Transportation (DOT) and Energy (DOE), the Federal Emergency Management Agency (FEMA), and the States is sufficient to provide adequate assurance against unreasonable risk to the health and safety of the public. The Commission also concludes that the procedures suggested in the petition would not significantly serve to improve the protection of the public against unreasonable risk from the transportation of radioactive materials.

ADDRESSES: Copies of correspondence and documents cited in this document are available for public inspection and copying for a fee at the NRC's Public Document Room at 1717 H Street NW., Washington, DC. Copies of NUREG–0170 may be purchased by calling (202) 275–2060 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: Donald R. Hopkins, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 443–7690.

SUPPLEMENTARY INFORMATION:

I. Background
II. Issues raised
III. Public comments
IV. Consideration of petition issues
V. Consideration of comment issues
VI. NRC conclusion

I. Background

By letter dated December 13, 1984, Mr. Carl A. Sinderbrand, on behalf of the State of Wisconsin, filed with the NRC a petition for rulemaking which requested that the NRC amend its regulations to initiate a new procedure to specifically approve individual spent nuclear fuel shipments and to afford a mechanism for public input for each approval decision. The NRC published a notice of receipt of the petition on February 4, 1985 (50 FR 4866), including the full text of the petitioner's proposed amendment, and invited public comments.

NRC has never had a procedure for approving individual shipments of spent nuclear fuel. Under its regulatory program, the Atomic Energy Commission (AEC) issued specific licenses authorizing types of shipments, including a specified shipping cask, until 1973. Repetitive specific licenses were issued when more than one licensee used the same shipping cask.

In 1973 the AEC agreed to take the lead in reviewing and approving packages for all commercial radioactive

material shipments except those limited to designated small quantities, while DOT exercised its authority in other areas. At that time, the procedure of issuing repetitive specific licenses was dropped and was replaced by the current system of approving designs of and quality assurance programs for packages which any licensee may use by registering as a user. This system was combined with a general license authorizing any Commission licensee to make shipments in an NRC-approved package provided the person is registered to use the package, has an NRC approved quality assurance program, and has certain specified documentation. The use of the general license eliminated a large paperwork burden on AEC and licensees alike, and has been proven by experience over the years to provide adequate control.

II. Issues Raised

The petitioner proposes a rule which would (1) prohibit unapproved spent nuclear fuel shipments; (2) require an application for approval which demonstrates (i) that the applicant will satisfy safety, safeguards, and routing requirements, (ii) that the shipment is necessary, (iii) that there are no unique risks along the proposed route, (iv) that alternatives to the shipment and route have been evaluated, and (v) that the proposed shipping cask will withstand all reasonably foreseeable incidents along the proposed rule; (3) provide an opportunity for public participation in the approval decision; and (4) provide for adequate protection of the public health and safety.

The petitioner cites the existence of the following five conditions in support of its claim that NRC needs to establish a regulatory process for the evaluation and approval of individual shipments of spent nuclear fuel proposed by licensees:

1. No Federal agency considers the safety or environmental risks associated with selected routes;
2. No Federal agency requires adequate safeguards to protect the public in the event of an accident or other emergency;
3. The NRC does not regulate the carrier of spent nulcear fuel or consider its safety record;
4. No Federal agency considers the need for or propriety of individual shipments of spent nuclear fuel; and
5. The public has no opportunity for meaningful participation with respect to the decision to transport spent nuclear fuel.

III. Public Comments

In response to the invitation for public comments on the petition for rulemaking, 44 comment letters were submitted to the NRC by State and local governments, individuals, public interest groups, and power and other industrial companies. Of the 21 comment letters from State and local governments, 18 supported the need for the new regulatory process or some variation of it. Those who expressed reservations cited undue hardship associated with the proposal, security problems, and undue delays associated with the proposed hearings. One Indian tribe noted the lack of any specific provision for involvement by Tribal governments. Six of the seven individual commenters supported the rule for the reasons stated in the petition. The one who expressed reservations cited the lack of justification for the proposal. All six public interest groups supported the proposal for the reasons outlined in the petition. The 10 power companies and other industrial organizations that commented opposed the petition citing lack of justification, duplication, undue burden, and lack of legal foundation. In summation, 30 commenters supported the petition primarily for the reasons given in the petition, and 14 commenters opposed the petition for lack of justification, duplication, security problems, undue burdens and delays, and lack of a legal foundation for the petitioner's proposal.

IV. Consideration of Petition Issues

The petitioner cites a number of contentions in support of its request that the NRC adopt the proposals in the petition.

1. Failure to consider safety or environmental risks of specific routes

In its first contention, the petitioner, in speaking of spent nuclear fuel shipments over the last 18 months, states that "no federal agency has considered . . . the safety or environmental risks associated with the selected routes. . . ." Petition at 4. Later, the petitioner argues that "the NRC does not independently consider the safety of the particular route, does not evaluate the potential safety and environmental risks of the shipment. . . ." *Id* at 6. Finally, in describing what it considers to be "a significant gap in the regulatory program," the petitioner states that "no agency considers risks associated with specific routes." *Id.*

The petition would require that an applicant for spent nuclear fuel shipment approval evaluate alternatives to the proposal route and demonstrate that the proposed shipment, including its route, is the alternative which provides the least risk of radiological exposure to the public.

The DOT has specific regulations for the routing of spent nuclear fuel by road which require, with certain exceptions, that the carrier operate over preferred routes which include interstate highways and State-designated alternate routes. The routes are selected after consideration is given to minimization of radiological risk. The routing rule was upheld by the Second Circuit Court of Appeals in *City of New York* v. *Department of Transportation*, 715 F.2d 732 (2nd Cir. 1983), *cert. denied*, 104 S. Ct. 1403 (1984). In upholding the DOT regulation, the Court stated that the Hazardous Materials Transportation Act (HMTA) does not require that the safest means be used in transporting spent fuel or any other hazardous material, but only requires the DOT to promulgate rules that provides for adequate safety. *Id.* at 740. Thus, no Federal agency, under the HMTA, could require a licensee to show that the proposed shipment is the alternative which provides the least risk as long as the shipment provides for adequate safety as prescribed under the DOT routing rules.

The routing rule is based on the DOT's finding that the interstate highway system generally minimizes the risk of transporting spent nuclear fuel, and that State agencies can designate alternate routes in accordance with DOT guidelines for minimizing risk. The DOT has made a generic evaluation of highway routes and concludes that the interstate highway system should serve as the basic Federal framework for providing safe and efficient routes for transporting spent nuclear fuel by road. In addition to this generic evaluation by DOT of interstate and alternate routes available for spent nuclear fuel transportation, the NRC specifically evaluates and approves routes selected by licensees for safeguards purposes. These route approvals are not limited to individual shipments of spent nuclear fuel, but may be used for repetitive shipments.

For rail transportation, the DOT physically inspects rail track for safety when a rail route is used for transportation of spent nuclear fuel. The inspections are made before the start of a series of shipments over the same route and at six-month intervals during those shipments. Although there is no formal routing rule for rail shipments of spent nuclear fuel, the Federal Railroad Administration (FRA) works informally with the utility and carrier to investigate

alternative routes by rail. Many of the principles of the highway routing rule are incorporated into the process for rail route selection.

In addition to the informal application of routing standards for spent nuclear fuel shipments by rail, the FRA has regulations in 49 CFR Part 174 which impose rail safety requirements. These rules require a separation of spent nuclear fuel by at least one car from the engine, from an occupied caboose, and from another placarded car in the train. The rules impose a 48-hour limit on forwarding a spent nuclear fuel shipment after acceptance at an originating point or receipt at any yard or transfer station (weekends and holidays excluded). The FRA rules require documentation aboard the train and reports of any accidents and incidents enroute. The FRA rules also set standards for wheels and brakes, hours of service, track standards related to train speeds, employee training, and qualifications of train crews.

The FRA's 325 inspectors are responsible for complete inspection of all rolling stock, including locomotives; for monitoring carrier's operating rules and training procedures; for monitoring the nation's rail tracks; for monitoring the railroads signal systems; and for inspecting hazardous cargoes. For the initial move of all the spent nuclear fuel shipments from Nebraska and Minnesota to Morris, Illinois, since August 1984, FRA has inspected the entire track from origin to destination, and completely inspected the signal systems, the carriers' operating rules, the equipment to be used, the documentation and the cargo. In addition to the FRA's complete inspection for the initial move, it is FRA policy to conduct a full equipment inspection and documentation check on each spent nuclear fuel shipment. After the initial track and signal inspection, further inspections are conducted on a periodic basis.

In addition to the DOT controls exercised over spent nuclear fuel shipments, NRC conducts a safeguards evaluation of rail routes in much the same way as it does for highway routes.

In addition to the determinations of routing adequacy made by the DOT, the NRC concluded, after issuing its Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes (NUREG–0170) in December 1977, that its regulations were adequate to protect the public against unreasonable risk from the transportation of spent nuclear fuel. For 1985, the report projected that there would be 1,530 spent nuclear fuel shipments by truck and 652 by rail (Table 1.1). These shipments were evaluated as presenting an accident risk of only .0004 latent cancer fatalities per year (Table 5.9). Based on this evaluation, the risk associated with any individual shipment of spent nuclear fuel transported in accordance with NRC and DOT regulations is small.

In support of the petition's contention that shipping controls may not be adequate for some routes, a commenting State agency conducted a review of the technical literature on cask design, development, and performance and concluded that the safety of existing casks is sufficiently uncertain as to warrant more extensive testing which would address potentially hazardous conditions for each proposed route. An individual commenter noted that casks now in use have not been tested for strength when heated to the temperature at which they travel and then submerged into the cold waters of the Mississippi River.

The Commission notes the long-standing disagreement between it and some persons who question the adequacy of the NRC package standards for transportation of radioactive material and who doubt whether the packages can be adequately evaluated by engineering analysis rather than being physically tested under all conditions to ensure their accident resistance. The NRC employs the package standards of the International Atomic Energy Agency which have been in use throughout most of the world for almost 20 years. While spent nuclear fuel casks have not been subjected to all possible combinations of accident conditions during that time, there has been enough accident and testing experience to confirm the high strength of casks in use today. The difference between the normal operating temperature of a spent nuclear fuel cask and the temperature of a large river such as the Mississippi is not large enough to cause a structural or containment problem. Furthermore, the large mass of the cask would slow its cooling, thereby reducing any potential for damage.

2. Protection of the Public in Emergencies

The petitioner's second assertion is that no Federal agency requires "adequate safeguards to protect against emergencies," and that "NRC . . . only gives cursory attention to emergency planning." Petition at 5 and 6.

The Federal plan for providing adequate safeguards to protect against radiological emergencies is described in a **Federal Register** notice issued by the FEMA on September 12, 1984 (49 FR 35896). The plan describes how 12 Federal agencies that have resources and capabilities to respond to a radiological emergency will work together and will work with State governments and private organizations during an emergency response.

The plan, known as the Federal Radiological Emergency Response Plan (FRERP), describes how the Federal Government will respond to State requests for assistance during a major radiological emergency, how the Department of Energy (DOE) will maintain radiological monitoring and assessment support to the State and local governments, and how the other Federal agencies are prepared to augment the DOE support, if necessary. The FRERP has been tested by the Federal agencies and proven viable. NRC has issued a general statement of Policy on NRC Response to Accidents Occurring During the Transportation of Radioactive Material (49 FR 12335, March 29, 1984).

The scope of the FRERP specifically includes Federal response to transportation accidents involving radioactive materials. One of the FRERP planning assumptions is that State or local governments have primary responsibility for determining and implementing any measures to protect life, property, and the environment in any areas not within the boundaries of a fixed nuclear facility. In a transportation accident, the State or local government has the responsibility for taking emergency action, while appropriate Federal resources may be used to support State and local government response measures, if requested. Federal agency response plans recognize the primacy of the response roles of state and local governments, operators of the transporting vehicle, and owners of the spent fuel.

A utility commented that when an accident occurs the response to it is, of necessity, a local responsibility. After reviewing the responsibility of the DOT to reduce the probability of transportation emergencies and the responsibility of the DOE to maintain response teams to assist local authorities in the event of a nuclear emergency, the utility referred to a DOT conclusion that "spent nuclear fuel poses a much lower risk of transportation accident than do any number of common chemicals, the containment of which could also be expected to exceed the capacity of local groups to respond (49 FR 46664)."

In commenting on the petition, a second utility agreed that it would appear appropriate for a State, in conjunction with its emergency response

capabilities, to examine possible transport routes within its borders and recommend to NRC that these preselected routes be used. The Commission notes that this process is already in use for safeguards purposes and that a number of States have recommended routes within their boundaries. These State recommendations are considered by NRC in its route approval process for spent nuclear fuel shipments.

An individual from the State of Wisconsin, after reviewing the regulatory system now in place, the small risk of radiation injuries from a spent nuclear fuel incident, and the numerous competent groups available to respond to a transportation accident involving radioactive material in Wisconsin, concluded that the Wisconsin proposal would result in adverse consumer economics without significantly improving public safety.

An item sometimes referred to as necessary for an effective emergency response is prenotification to State and local authorities that a spent fuel shipment is being made. In response to a Congressional requirement, NRC regulations in 10 CFR 71.97 now require prior notification of licensee shipments of spent nuclear fuel to the Governor of each State through or into which the shipment will pass. In commenting on the Wisconsin petition, a State agency noted that, particularly in the area of advance notification of shipment of spent nuclear fuel, the NRC's regulations must be strengthened. A second State expressed its concern with the lack of enforcement and inspection procedures needed to assure that proper prenotification is made by the shipper and that information submitted is accurate. In addition, a city urged the NRC to increase the length of the notice period for spent nuclear fuel advance notifications. The Commission considers its advance notification rule to be reasonable in terms of the length of notification period and considers its inspection and enforcement of this rule to be sufficient to ensure its effectiveness. However, this must be considered a separate issue not covered within the Wisconsin petition, because no proposal to amend the advance notification provisions is included in the petition. Changes to those requirements may be proposed under the "petition for rulemaking" provisions of 10 CFR 2.802 of the NRC regulations.

Another essential ingredient for adequate emergency response capability is trained response personnel at both the State and local levels. The FEMA, in its March 11, 1982 revision of 44 CFR Part 351, "Radiological Emergency Planning and Preparedness," sets out Federal agency roles and assigns tasks regarding Federal assistance to State and local governments in their radiological emergency planning and preparedness activities. FEMA places upon itself the responsibility to develop and manage a radiological emergency response training program to meet State and local needs, using technical expertise and resources of other involved agencies. The NRC, the Environmental Protection Agency, and the Departments of Health and Human Services, Energy, Transportation, Agriculture, and Commerce all have responsibilities to assist FEMA, in their particular fields of expertise, in the development, implementation, and presentation of training programs for Federal, State, and local radiological emergency preparedness personnel. The DOT has the particular responsibility in the area of transportation emergencies to provide guidance and materials for use in training emergency services and other response personnel for transportation accidents involving radioactive materials.

Emergency response training programs which have resulted from these Federal responsibilities are as follows:[1]

a. DOE, through Oak Ridge Associated Universities (ORAU), offers—

- "Medical Planning and Care in Radiation Accidents," a one-week course for physicians, training about 48 participants per year.
- "Health Physics in Radiation Accidents," a one-week course for health physicists, training about 36 participants per year.
- "Handling of Radiation Accidents by Emergency Personnel," a 2½-day course for emergency room surgeons and nurses, training about 54 participants per year.

b. DOT offers—

- "Radioactive Materials Transportation Information and Incident Guidance," a self-training manual.
- *Emergency Response to Hazardous Materials in Transportation (Self Study Guide)*, U.S. Department of Transportation, 1982. This is a DOT-offered self-study course on full-spectrum transportation regulations.
- "Handling Radioactive Materials Transportation Emergencies," a training package for first-on-the-scene responders. This is a 6- to 8-hour tape and slide presentation.
- *Hazardous Materials: 1980 Emergency Response Guidebook*, U.S. Department of Transportation, 1980. This document has relevance to full-spectrum hazardous material response. The DOT has distributed this document with the intent of providing a copy of operators of every emergency vehicle in the United States.

c. FEMA Radiological Emergency Preparedness (REP) program offers—

- "Radiological Emergency Planning Seminar," a one-week seminar focusing on nuclear power plant offsite planning requirements.
- "Radiological Accident Assessment Course," a one-week course to train radiological health personnel in offsite dose assessment and projection techniques.
- "Radiological Emergency Response Course," a ten-day course to train State and Federal radiological emergency response team personnel in techniques of responding to a wide range of radiological accidents. Approximately 400 persons are trained each year.

d. NRC, through, ORAU, offers—

- A ten-week program for State health physicists, training about 20 participants per year.

e. Colorado Training Institute offers—

- A three-day seminar and a two-week course on all phases of hazardous materials transportation incident response, including radioactive materials. Originally funded by a grant from DOT, but now an independent State-run program.

On a training related issue, the DOT highway routing regulation requires that drivers of vehicles carrying spent nuclear fuel receive emergency action training within the 2 years preceding that transportation. The training must include the properties and hazards of the spent nuclear fuel and the procedures to be followed in the event of an accident or other emergency. The DOT regulation also requires the driver to have a copy of the mandatory route plan including telephone numbers which will access emergency assistance in each State to be entered. 49 CFR §§ 177.825(c)–(d). The required training for escorts, applicable to all modes of transport, includes the following five subjects: (1) Security en route, (2) communications, (3) radiological considerations, (4) response to contingencies, and (5) response to threats.

[1] FEMA–REP–5, Guidance for Developing State and Local Radiological Emergency Response Plans and Preparedness for Transportation Accidents, March 1983, Federal Emergency Management Agency.

3. NRC Regulations of the Carrier

The petitioner's third contention that "the NRC does not regulate the carrier or consider its safety record" fails to recognize that the DOT performs this function. Petition at 6. DOT imposes regulations that relate to both the hazardous nature of the cargo and the safety aspects of the transporting vehicle. DOT also inspects and enforces against its carrier rules.

Although NRC considers that it has the authority under the Atomic Energy Act to regulate carriers insofar as they transport material regulated by the NRC, it has agreed under a Memorandum of Understanding with DOT dated June 8, 1979 (44 FR 38690) that it will leave the development of carrier safety standards to DOT because of DOT's greater experience and expertise in that role.

On the issue of incomplete regulatory control, one State referred to a report issued in 1984 by the National Research Council entitled "Social and Economic Aspects of Radioactive Waste Disposal-Considerations for Institutional Management." On the issue of transportation of spent nuclear fuel, the panel of experts "found that an underdeveloped regulatory framework currently exists for the transportation of spent fuel and high-level waste. The federal governmental agencies involved defer to each other, with primary responsibility essentially delegated to NRC's reactor licensees." The panel recommends "a careful evaluation of existing federal regulation of highway transport to assure that (a) a sufficiently broad and uniform regulatory regime exists for the safe transport of radioactive wastes, (b) any redundancies and incompleteness in the existing NRC-DOT regulations have been eliminated, and (c) the needs of States to control safety on their highways are met." The State submits that the conclusions and recommendation of the report are warranted, and that adoption of the Wisconsin petition would help the problem. The Commission strongly disagrees that its regulatory framework is underdeveloped. The existing rules were developed over substantial periods of time with full opportunity for public comment. The regulations have met the test of time producing an excellent safety record over many years. In the absence of any demonstration that the regulations are inadequate, and the National Research Council report has not been specific in that regard, the Commission is not inclined to act on the recommendations of the report.

A nuclear equipment manufacturer commented that the Wisconsin petition is apparently based on the premise that the transport of spent nuclear fuel is not adequately even though it is one of the most heavily regulated transportation activities. The commenter argued that the basic regulatory system for transport of spent nuclear fuel has been demonstrated by experience nationally and internationally to be sufficiently encompassing to ensure protection of public health and safety. The proposed procedures for approval of spent nuclear fuel shipments would cause an enormous use of NRC and utility resources for little, if any, public gain. The Commission agrees that the same package and transportation standards are applied internationally and have proved to be adequate. However the systems (i.e., agencies or combination of agencies) that apply those uniform standards differ from country to country. The NRC is continually monitoring the relationship between its regulations and those of the other agencies with which it shares jurisdiction in the United States.

4. Need for and Propriety of Individual Shipments

In referring to spent nuclear fuel shipments over the last 18 months, the petitioner comments that "no Federal agency has considered the need for the shipments . . . or the propriety of exposing the public to these risks." Petition at 4. In enlarging on this same concept, the petitioner argues that "the utilities' ratepayers may be exposed to substantial costs, the public in the vicinity of the route may be exposed to substantial safety hazards, and States and municipalities along the route may be exposed to substantial liability and costs for emergency response without any opportunity to question the propriety of the shipment." Petition at 7. The petitioner requests that an applicant for approval of an individual spent nuclear fuel shipment be required to demonstrate that "the proposed shipment is necessary to meet the requirements of the licensee's operating license or required minimum fuel storage capacity." Petition at 2.

A State agreed with Wisconsin's assertion that there are significant gaps in the regulatory program regarding shipment of spent nuclear fuel. Specifically,

- There should be a Federal policy designed to minimize spent nuclear fuel shipments prior to the operation of a commercial nuclear waste repository; and
- There should be a Federal regulatory system for evaluating the *need* for spent nuclear fuel shipments prior to the operation of a repository.

A State senator supported that view by noting that spent nuclear fuel shipments which have been and are being made to the Morris Storage Facility will have to be removed from Morris and transported again when the U.S. Government develops an interim storage facility or a disposal facility. He believes this raises the serious question of the necessity of shipments to Morris. An individual agreed by noting that shipments of spent nuclear fuel from Monticello, Minnesota to Morris, Illinois are being made only for economic gain since the storage pool at Monticello has about 4 more years of space left in it at current use rates.

A public interest group asserted that there should be consideration given to the need for the shipments and the safety and environmental risks associated with various routes, and related that consideration to its belief that the training of fire fighters, law departments, and hospitals is inadequate at this time.

A State summarized its view that it is irrefutable that spent nuclear fuel shipments pose some risk and that the unnecessary and uncoordinated random shipment of those materials must be avoided. the State concluded that even after a comprehensive and reasonably predictable strategy for spent nuclear fuel management has been developed and the impacts of shipments can be analyzed, a review of the need for such shipments must be conducted and used as the basis for granting or denying authorization for the shipments.

On the other hand, a utility noted that local governments have imposed regulations in the past requiring the transporter to demonstrate a need for each shipment. The utility further noted that all such regulations have been struck down as being in violation of the Commerce Clause of the U.S. Constitution. As support for this proposition, the utility cited *Kassel* v. *Consolidated Freightways Corporation of Delaware*, 450 U.S. 662 (1981).

A law firm representing multiple utilities commented that the Wisconsin petition proceeds from the two false assumptions that (1) spent nuclear fuel shipments are so dangerous or environmentally harmful that they should only be permitted in the event of dire need, and (2) NRC possesses the legal authority to determine the "need" for proposed shipments. The commenter cited the Nuclear Waste Policy Act of 1982 and its requirement that the Department of Energy provide interim storage capacity (prior to the establishment of a permanent high-level waste repository) for civilian nuclear

power reactors that cannot reasonably provide adequate storage on site. This capacity is to be made available only to a person who is "diligently pursuing licensed alternatives to the use of Federal storage capacity" including transshipent to another civilian nuclear power reactor owned by such person. The commenter believes that Congress thus expressly acknowledged the possible need for electric utilities to transship spent nuclear fuel. The commenter also cited Public Law 96–295, which required that NRC provide for prenotification of spent nuclear fuel shipments to State Governors, as evidence that Congress specifically contemplated shipments of spent nuclear prior to the operation of a repository. The commenter then pointed to the NRC and DOT regulations under which spent nuclear fuel shipments are authorized, regulations the adequacy of which has been reaffirmed on a number of occasions, and concluded that "any additional specific determinations by NRC as to the 'need' to transport would needlessly and unlawfully circumscribe the managerial discretion of the operators of licensed nuclear power plants."

Finally, a State agency noted that the issue of whether spent nuclear fuel should be transported is not an appropriate subject for resolution through the rulemaking process, but should be resolved only by Federal legislative action.

The NRC has analzyed the risks associated with the transportation of spent nuclear fuel, and found them to be small. The Commission acknowledges enactment of several laws (e.g., The Atomic Energy Act of 1954, as amended, The Nuclear Waste Policy Act of 1982, and The Hazardous Materials Transportation Act) which make it abundantly clear that some spent nuclear fuel shipments are expected and accepted in the public interest, but this cannot be taken as a statement of national policy that all shipments of spent nuclear fuel have been authorized by Congress.

The NRC's recent rulemaking to establish 10 CFR Part 53, "Criteria and Procedures for Determinign the Adequacy of Available Spent Nuclear Fuel Storage Capacity," published in the Federal Register on February 11, 1985 (40 FR 5548), raised the issue whether the Commission should give preference to onsite storage alternatives in determining the need for Federal interim storage for a licensee. Consideration was given to indications in the legislative history of the Nuclear Waste Policy Act of 1982 (NWPA) to the effect that onsite storage of spent nuclear fuel should be encouraged and that transportation of spent nuclear fuel should be minimized. The Commissoin took the position in that rulemaking action, and affirms it here, that it has no authority under subtitle B of the NWPA to establish priorities for the pursuit of spent nuclear fuel storage alternatives. if the Commission finds, pursuant to 10 CFR Part 53, that one or more alternatives to Federal interim storage is feasible, the utility is not eligible to participate in the Federal interim storage program. The choice of which alternative to pursue will be decided elsewhere.

As to the petitioner's concern over substantial costs to the utilities' ratepayers from unnecessary shipments of spent nuclear fuel, the economic decisions made by utilities in transporting spent nuclear fuel are beyond the purview of the NRC's regulatory authority as long as the utility meets NRC regulatory requirements with respect to health, safety, common defense, and security. See, *Pacific Gas & Electric Co.* v. *State Energy Resources Conservation and Development Commission*, 461 U.S. 190, 221–22 (1983).

In addition to the Commission having found that the risks of spent nuclear fuel transportation are low, it also explored the consequences of serious incidents which might cause the spent nuclear fuel casks to fail. One recent series of tests included the destructive testing of spent nuclear fuel in simulated fuel casks occurring from presumed acts of sabotage. The preponderance of available evidence, including the recent testing to analyze the effect of explosives, showed that accidental releases from spent nuclear fuel casks would be neither severe nor far-reaching.[2] Based on this preponderance of evidence, the Commission finds no basis for further restrictions on the shipment of spent nuclear fuel or for an examination of the need for individual shipments.

The Commission does have a study underway on this subject, however, to assess the accident resistance of spent nuclear fuel shipping casks when subjected to the stresses associated with historically-based realworld accidents. The study will evaluate the ability of spent fuel transportation containers designed ot meet the performance criteria in current NRC regulation (10 CFR Part 71) to safely retain its radioactive contents, maintain its shielding, and prevent nuclear criticality when subjected to stresses associated with severe road or rail accidents. it will also assess the probability and potential consequences of any accidents in which stresses exceed values associated with current regulations. The study is nearly complete and results are expected to be published in late 1986 following an indepenent peer review. This study, as well as other initiatives, is part of the continuing Commission process to assess and maintain its transportation regulations adequate in light of changing transportation patterns and technologies.

With risks low and potential consequences even from an improbable, severe accident less than catastrophic, additional controls are only justified if the cost of those controls does not exceed their benefits. In the case of the additional controls sought by the petitioner, the technical benefits would be measures in terms of the value of normal and accidental exposures avoided. While the costs of the new approval procedure proposed in the petition have not been quantified, it is the Commission's judgment that, because of the small technical benefits available under any foreseeble circumstances, a favorable cost/benefit balance could not be obtained.

5. Opportuntiy for Meaningful Public Participation

The petitioner's final contention in support of the proposal is that "the public has no opportunity for meaningful input into the decision to transport waste, as this decision is wholly within the discretion of the licensee." Petition at 7. The petitioner requests that the "NRC exercise its regulatory authority to ensure that both the need for and the safety and environmental consequences of proposed shipments have been considered in a public forum. . . ." *Id* at 1.

A State commenter reported that two public discussions held in advance of spent nuclear fuel shipments from the State had some constructive results. The utility involved was able to demonstrate that it had reviewed alternate means of addressing its storage problems, and State agencies, the utility, and the carrier were spurred by public concern to take safety precautions beyond the minimum required by Federal regulations. Based on this experience, the State suggested three reasons for a positive response to the Wisconsin petition:

[2] NUREG–0170 "Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes," December 1977. NUREG/CR–2472, "Final Report on Shipping Cask Sabotage Source Term Investigation," October 1982.

• Open discussion of the issues may result in a greater range of choices, both formal and informal;

• Fears that public participation would somehow get out of hand and undermine rational, technically-sound decisionmaking are probably not realistic. Reasonable resolution leaves everyone better off; and

• If the NRC itself provides a public forum, resort to State and local government as a source of information and discussion is less likely. Legally futile attempts to ban spent nuclear fuel transportation by local ordinance can only generate local resentment and undermine Federal authority.

The Commission, together with DOT, has also attempted to establish a dialogue with affected persons on the issue of spent nuclear fuel transportation. At a DOT/NRC hosted seminar in Chicago on July 31–August 2, 1985, those agencies met with representatives of 49 States, local governments, and Indian Tribes to discuss the problems and potential solutions associated with spent nuclear fuel transportation. A total of 275 people participated.

In addition, an NRC contractual study has included numerous interviews with government officials and members of the public regarding their concerns over shipments of spent nuclear fuel from the West Valley, New York, former reprocessing plant now being decommissioned. The focus of the study has been to obtain information documenting the concerns and actions of affected institutions in previous spent fuel shipment campaigns. The contractual study is not yet complete.

Most of the public commenters who supported the Wisconsin petition also supported the formal hearing process which was part of the petition and on which the approval of the spent nuclear fuel shipment in question would in part be based. For example, a State observed that members of the affected public have not been given an opportunity through the route-approval process to express their concerns about their own personal safety and the protection of the environment in which they live. The Wisconsin petition gives the public an appropriate opportunity to provide input into the decisionmaking process. A public interest group complained that "it has been impossible to provide input into the decisionmaking process for nuclear waste shipments," and believes that "if there is no public input the health and safety of the public will not be insured."

Some persons supporting and some persons opposing the petition registered comments against the formal hearings proposed. A utility commented that the rule as proposed is silent on whether the requirements would be repeatedly imposed for a specific shipping route even though approval was granted for a prior shipment, and could be construed so as to benefit individuals interested in making frivolous repeated requests for hearings for already established shipping routes. A State commented that the basic reason for the rulemaking petition is to allow more public input to the decisions regarding transportation of spent nuclear fuel. While the State encouraged public participation in all aspects of interstate transportation, it believed the Wisconsin proposal would result in undue hardship on the shipper and carrier. The State believed that NRC and DOT provisions for public input have been adequate for route selection, and in fact the State had designated certain routes as preferred routes for spent nuclear fuel shipments. The State's recent accident experience has been good.

There was some division of sentiment among State and local officials on the time when public hearings would be most useful. Although it was not clear from the petition whether a series of shipments could be approved as a result of a single hearing or whether an individual shipment would be subject to the entire approval process by itself, some commenters clearly preferred approval of a series of shipments. For example, a commenting State favored a generic, rather than specific, examination of spent fuel shipments to establish generic criteria for designating routes and alternate routes, for establishing the need to ship, and for calculating risks, but favored avoiding the possibility of a hearing each time spent nuclear fuel is shipped. A city endorsed Wisconsin's request for individual approval of spent nuclear fuel shipments, for public comments on each request, and for environmental impact statements if required under Federal law, rules and requirements, but would give the NRC discretion on whether to conduct a hearing when requested by a commenting person.

Another State supported the Wisconsin contention that the current NRC transportation rules be thoroughly reviewed by the Commission, including ample opportunity for State and public comments. Procedurally, however, the State supported a thorough public review only prior to any major campaign to ship radioactive wastes between two points, including an opportunity for affected States to participate in routing decisions. It suggested that an understanding should also be reached with all affected States of the roles of all parties in inspection of shipments, emergency response, prior notification, and liability.

A State supporting the Wisconsin petition suggested the following revisions to the Wisconsin proposal:

(1) Allow for an application and approval/denial for a series of shipments from one point of origin to one destination; and

(2) Clarify whether an Enviornmental Impact Statement or an Environmental analysis will be required.

Finally, some commenters seemed to express more of a need for an exchange of information than for a formal hearing where a shipment approval decision is involved. A public interest group complained that the public does not have information as to the safety of the casks being used, the necessity of the shipments, the proper routes to take, or other life protection issues. The commenter did not believe that shipping spent nuclear fuel from one temporary location to another is a responsible policy, and urged that shipments be stopped until a more responsible policy can be put into effect. One individual supported the petition for its provisions allowing public input, believing that any economic activity affecting the economic and physical health of the public should be subject to effective public input.

The Commission believes it has been very open to public participation in the processes which established the present rules for transporting spent nuclear fuel. This includes public rulemaking proceedings for establishment of packaging standards in 10 CFR Part 71 begun on December 21, 1965 (30 FR 15748); for the general-license, package-approval system in 10 CFR Part 71 begun on November 20, 1971 (36 FR 22134); for the establishment of standardized impacts associated with the transportation of radioactive material, including spent nuclear fuel, to and from nuclear power plants begun on November 1, 1973 (38 FR 30203); and the reevaluation of NRC transportation regulations begun on June 2, 1975 (40 FR 23768). In each of these cases, announcements were issued and public comments were solicited.

As with the radioactive material transportation regulations promulgated by NRC, those adopted by the DOT were also considered through public rulemaking proceedings. The DOT routing rule is an example where there were multiple opportunities for public participation. An Advance Notice of Proposed Rulemaking was issued on August 17, 1978 (43 FR 36492) soliciting

public comments. A Notice of Proposed Rulemaking followed on January 31, 1980 (45 FR 7410) that was followed by seven public hearings held in Philadelphia, Atlanta, Chicago, Denver, Seattle, Boston, and New York, plus three additional public meetings in Akron, Ohio; Eugene, Oregon; and Union City, California. DOT received and reviewed over 1,000 public comments and reviewed over 1,600 pages of transcripts from the public meetings. This represents an extraordinary level of public participation.

V. Consideration of Comment Issues

The public comments raised a number of issues not included in the Wisconsin petition, but which are related to the petition in various ways.

1. Disclosure of Safeguards Information

A utility suggested that the requirement for an applicant to demonstrate that he or she has fulfilled the 10 CFR 73.37 requirements for physical protection of spent nuclear fuel in transport is redundant since the regulation already imposes an obligation to comply with its provisions. The utility further suggested that if a licensee were required to make available for public inspection detailed information relating to security of the shipments, the purposes of § 73.37 would be defeated. A State agency thought that adoption of the Wisconsin petition would compromise the security to spent nuclear fuel shipments by making known during the public hearing process the actual shipment dates and times. An individual commented that announcement of proposed shipments in the **Federal Register** would breach some needed security and thereby increase the risk of sabotage or theft of the shipment.

The Commission does not agree with the utility's comment that there is no difference between having a requirement for a physical protection program in 10 CFR 73.37 and having the NRC staff review that program to assure that it satisfies those same requirements. As with individuals working in any specialty, the NRC staff develops expertise from reviewing and discussing a large number of physical protection programs which the staff can then apply to its review of other programs. In the Commission's judgment, this process results in greater assurance that the physical protection requirements of 10 CFR 73.37 are being adequately applied. In fact, for some time an NRC staff review of licensee's physical protection program for transportation of spent nuclear fuel has been done when the licensee applies for its route approval under § 73.37(b)(7).

The Commission, however, does agree with the commenters that public hearings in which details of a particular shipment and the security arrangements regarding the shipment are discussed might result in increasing the risk of its sabotage or theft.

2. Extending Scope of Wisconsin Petition

A State recommended that the concept proposed in the Wisconsin petition be extended to "other highly radioactive material that the Commission . . . determines by rule requires permanent isolation" under the provisions of the Nuclear Waste Policy Act (NWPA). The same commenter urged that the same rules also apply to spent nuclear fuel and high-level waste transportation activities undertaken by DOE. A second State also endorsed the amendments to 10 CFR Part 71 proposed by PRM 71–10, and was particularly concerned that the amendments apply to DOE shipments to spent nuclear fuel pursuant to the NWPA. The State interpreted 10 CFR Part 71 requirements as applying to the DOE shipments.

A public interest group supported the Wisconsin petition but asked that protection of the environment be added to the proposed consideration of minimizing radiological exposures. The group also requested that the Commission, on reciept of a request for hearing while considering an individual licensing case, be required to hold a hearing within 60 days in the State from which the request was received.

In general, DOE activities—including spent nuclear fuel shipments—are exempt from NRC regulation as a matter of law. (For the principal exception, see section 202 of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5842.) It should be noted, however, that DOE is required by section 137 of the NWPA, 42 U.S.C. 10157, to utilize by contract private industry to the fullest extent possible in each aspect of transportation of spent nuclear fuel under that Act. As a result, the rules pertaining to licensed shipments may apply.

It is the Commission's view that no additional regulatory review of spent nuclear fuel shipments is necessary or desirable. The same view would apply to other types of radioactive material with comparable hazards.

3. Miscellaneous Support For and Opposition to the Petition

Many of the commenters were forceful in their support for or opposition to the petition without providing much new information which would assist the Commission in deciding the issue. A sampling of those comments follows:

a. Support For the Petition

- A public interest group supported the Wisconsin petition by asking for a public rulemaking proceeding to examine the issues raised by Wisconsin, and for a hearing to be held in Wisconsin. The reasons for concern are the following:

1. The lack of consideration of the need for spent nuclear fuel shipments;
2. The lack of examination of alternatives to the shipment;
3. The lack of physical testing of casks;
4. The lack of demonstrated emergency response capability in case of a radiation accident; and
5. The lack of clear evaluation of alternative routes.

- Another public interest group supported the Wisconsin petition because of its concern that there is no Federal agency considering the safety of the public or environmental risks involved in radioactive waste shipments.

- A State Representative believed that "despite the extreme hazard of these radioactive materials the safety of these shipments has not been adequately assured." He cited the failure to determine the need for the shipments, safety and environmental risks associated with specific routes, and lack of adequate emergency response capability as the reasons for inadequate safety. He concluded by stating that all citizens subject to the hazards of these highly radioactive shipments have the right to be assured that all possible steps are being taken to assure their safety.

- One individual supported the Wisconsin petition based on his belief that no adverse or ill effects would be realized by power companies or shippers of spent nuclear fuel.

b. Opposition To The Petition

- An industry commenter made the point that the petitioner has not identified a need for adoption of the proposed rule, and the petition contains no new data or information which would point out inadequacies in the current regulatory basis. The commenter stated his belief that the current transport regulations of the Commission and the corresponding regulations of the DOT provide significantly more than adequate assurances of the public health and safety.

• A utility, in addition to finding the Wisconsin proposal inappropriate and unnecessary, found the language of the proposal so vague in places that one could not demonstrate compliance. The utility also believed that spent nuclear fuel transportation has relatively benign credible accident consequences compared to many chemical shipments which are not subject to such scrutiny.

• A utility referred to a report by Drs. Courtney and Lambremont of Louisiana State University on a review of 190 scientific and technical papers examining radioactive material transportation over an 18-year period. The reviewers concluded that "the risk to the general public from the transportation of radioactive materials is extremely low. The extensive amount of work which supports this conclusion reflects a remarkable international consensus."

• A utility believed the Wisconsin proposal unnecessary given (1) the emphasis on cask design safety; (2) the security provisions of Part 73; (3) the spent nuclear fuel considerations in reactor licensing hearings; and (4) the regulations of the DOT. The utility argued that there has been no showing that an additional evaluation would provide any increased public health and safety protection.

• A representative of an Indian Tribe noted that the Wisconsin proposal omits any reference to a Tribal government's interest in applications for approval of spent nuclear fuel shipments and is thus inconsistent with policies under the NWPA which generally encourage Tribal consent and consultation in the decision-making process.

• A utility, after considering the NRC regulatory framework, safeguards/safety studies, and the safeguards/safety record, recommended that current requirements be reduced.

VI. NRC Conclusion

The petition was examined in the context of the Memorandum of Understanding (MOU) between NRC and DOT dated June 8, 1979 (published July 2, 1979; 44 FR 38690), by which transportation regulatory functions are divided between the two agencies in the interest of completeness and avoidance of duplication of effort. Where the MOU calls for the DOT to lead in some particular area, such as in the regulation of carriers of radioactive material and the routes over which they travel, NRC does not consider its regulations or its regulatory programs to be deficient because they do not duplicate that control. The Commission concludes that its existing regulation of transportation of spent nuclear fuel, when viewed in the context of the combined programs of NRC, DOT, DOE, FEMA and the States, is sufficient to provide adequate assurance against unreasonable risk to the health and safety of the public. The contentions cited in the petition are therefore not accepted by the Commission as adequate justification for the changes requested in the petition. The Commission also concludes that the procedures suggested in the petition would not significantly serve to improve the protection of the public against unreasonable risk from the transportation of radioactive materials.

For the above reasons, the NRC has denied this petition.

While denying the State of Wisconsin's petition for rulemaking, the Commission certainly recognizes the concern on the part of Wisconsin and other States about the transportation of spent nuclear fuel and high level radioactive waste. The transportation of spent nuclear fuel is an issue which will affect many States. A safe and reliable spent nuclear fuel transportation system will be an important element for a successful nuclear waste disposal program.

While believing that the exiting Federal system provides adequate protection of the public health and safety, the Commission realizes the desire of States for greater participation in the transportation regulation process. If States desire an additional degree of confidence that spent nuclear fuel is being transported safely within their borders, the Commission suggests that States examines the inspection and escort program of the State of Illinois. Each spent fuel shipment traveling in Illinois is inspected by the State's Department of Nuclear Safety to assure that all applicable Federal and State radiation protection requirements are met. The Illinois State Police inspect and escort trucks carrying these shipments. The Illinois Commerce Commission inspect rail shipments. This inspection and escort program provides Illiniois with an added measure of assurance that spent nuclear fuel is being transported safely without, it appears, imposing burdensome procedures on licensees and carriers.

Dated at Washington, DC, this 10th day of October, 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-23384 Filed 10-15-86; 8:45 am]

BILLING CODE 7590-01-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 615

Capital Adequacy and Minimum Capital Requirements

AGENCY: Farm Credit Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (FCA Board), publishes for comment proposed regulations that eliminate FCA prior approval requirements and incorporate requirements contained in the proposed capital adequacy regulations that were published in the July 23, 1986 Federal Register (51 FR 26402).

DATE: Written comments must be received on or before November 14, 1986.

ADDRESS: Submit any comments (in triplicate) in writing to Frederick R. Medero, General Counsel, Farm Credit Administration, McLean, VA 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020.

SUPPLEMENTARY INFORMATION: On July 23, 1986, the FCA published proposed regulations relating to capital adequacy and minimal capital requirements for Farm Credit System (System) institutions (51 FR 26402). The capital adequacy regulations, when final, will eliminate many FCA approval requirements that are currently applicable to the capital-related activities of System institutions. These proposed regulations, approved by the FCA Board at its regularly scheduled August meeting, contain conforming amendments to other regulations that will eliminate specific approval requirements and incorporate other changes provided for in the proposed capital adequacy regulations

The current regulation § 614.4270 establishes a general requirement for System institutions to develop interest rate policies. Proposed § 614.4270 would incorporate the requirements contained in the capital adequacy regulations by requiring each System institution to set interest rates at a level sufficient to generate the earnings required to maintain its capital above the minimum capital requirements, taking into consideration all relevant requirements.

including each institution's obligation to provide assistance to other System institutions.

The current regulation § 614.4280 requires System institutions to obtain FCA approval for their interest rate policies and the rates established pursuant to those policies. In addition, the regulation establishes parameters for the contents of interest rate plans and limits the power of bank boards to delegate interest rate setting authorities. Proposed § 614.4280 eliminates the requirements for FCA prior approvals and, in accordance with the proposed capital adequacy regulations, requires each System institution to establish interest rates in accordance with the institution's financial plan. The proposed regulation also clarifies the authority of each System institution's board of directors to delegate interest rate setting activities to management.

The current regulation § 614.4320 provides that interest rates charged by production credit associations (PCAs) shall be authorized by Federal intermediate credit bank (FICB) programs which have been adopted by the bank board and approved by the FCA. Proposed § 614.4320 provides that each PCA shall establish interest rates in accordance with the PCA's financial plan. As with all regulations providing for activities to be undertaken in accordance within financial plans, when the institution's financial condition has deterioriated and the financial health of the institution is threatened, FCA approval of those financial plans will be required in accordance with the proposed capital adequacy regulations.

The current regulation § 614.4330 establishes requirements relating to loan participations. The proposed amendment to § 614.4330 deletes the reference to statutory debt-to-capital ratios, which were repealed by the Farm Credit Amendments Act of 1985 (1985 Amendments), and substitutes a reference to the capital requirements contained in the proposed capital adequacy regulations.

The current regulation § 615.5320 establishes requirements relating to the retirement of stock by FICBs. Proposed § 615.5320 conforms the regulation with the 1985 Amendments by deleting the reference to ownership of FICB stock by the Governor of the FCA. In addition, the proposed amendments conform the regulation to the proposed capital adequacy regulations by requiring that all retirements of stock, participation certificates, and allocated legal reserve shall be made in accordance with the financial plan of the bank.

Proposed § 615.5340 combines and replaces current regulations §§ 615.5330, 615.5335, and 615.5340, relating to allowances for loan losses applicable to each System institution. The proposed regulation requires that all allowance for loan loss accounts be maintained in accordance with generally accepted accounting principles except in the case of PCAs, where under certain circumstances the Act authorizes an allowance greater than that required under generally accepted accounting principles.

Proposed § 615.5350 combines and replaces current regulations §§ 615.5350, 615.5360, 615.5370, 615.5390, 615.5400, 615.5410, 615.5420, and 615.5430, relating to the payment of dividends and patronage refunds by System institutions. The proposed regulation (1) eliminates existing requirements for FCA approval; (2) conforms the dividend payment and earnings distribution requirements with the provisions of the capital adequacy regulations; (3) requires that dividends and patronage refunds be made in accordance with the institution's financial plan and the proposed capital adequacy regulations; and (4) prohibits any institution from paying dividends or making a patronage distribution during any period in which such institution is a net recipient of financial assistance from the Farm Credit System Capital Corporation. The remaining provisions in the proposed regulation are unchanged from current regulations and conform with statutory requirements.

List of Subjects in 12 CFR Parts 614 and 615

Accounting, Agriculture, Banks, banking, Capital, Credit, Government securities, Investments, Rural areas.

As stated in the preamble, it is proposed that Parts 614 and 615 of Chapter VI, Title 12, of the Code of Federal Regulations be amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for Part 614 is revised to read as follows:

Authority: Secs. 4.12, 4.13, 4.13A, 4.13B, 4.14, 5.9, 5.10, and 5.17, Pub. L. 99-205, 99 Stat. 1678 12 U.S.C. 2252(a)(10).

Subpart G—Interest Rates and Charges

2. Section 614.4270 is revised to read as follows:

§ 614.4270 Policy.

It shall be the objective of each System institution, in setting interest rates and fees on loans, to provide the types of credit needed by eligible borrowers at the lowest reasonable cost on a sound business basis, taking into account the cost of money, necessary reserves and expenses, services provided to members, the capital requirements prescribed by Part 615 of this chapter, and the obligation of each institution to provide financial assistance to other System institutions.

3. Section 614. 4280 is revised to read as follows:

§ 614.4280 Interest rates—banks.

Banks shall establish interest rates charged on loans in accordance with the financial plan of the institution. The board of directors of each bank may establish interest rates or make interest rate changes either on a case-by-case basis or by providing guidance to management regarding the circumstances under which management may adjust rates subject to specified limits on the range within which management may raise or lower rates.

4. Section 614.4320 is revised to read as follows:

§ 614.4320 Interest rates—production credit associations.

The board of directors of each production credit association shall establish the rates of interest charged on loans within approved interest rate programs in accordance with the association's financial plan.

Subpart H—Loan Participations

5. Section 614. 4330 is amended by revising paragraph (d)(5)(ii) to read as follows:

§ 614.4330 General.

* * * * *

(d) * * *

(5) * * *

(ii) The amount subject to the repurchase agreement shall be considered a liability of the selling Farm Credit System institution for the purpose of determining capital requirements prescribed in Subpart H of Part 615 of this chapter.

* * * * *

PART 615—FUNDING AND FISCAL AFFAIRS

6. The authority citation for Part 615 is revised to read as follows:

Authority: Secs. 4.3, 5.9, 5.17, Pub. L. 99-205, 99 Stat. 1678, 12 U.S.C. 2154, 2243, 2252(a)(10).

7. The title for Part 615 is revised to read as follows:

PART 615—FUNDING AND FISCAL AFFAIRS

Subpart J—Prescription, Subscription, and Retirement of Stock

8. Section 615.5320 is amended by revising paragraphs (a), (b) introductory text, and (b)(2)(ii) to read as follows:

§ 615.5320 Retirement of Federal intermediate credit bank Class B stock, participation certificates, and allocated legal reserve.

(a) Except as provided in paragraph (b) of this section, banks may, in accordance with their financial plans and the provisions of Subpart H of this part, retire Class B stock at par, participation certificates at face amount, and allocated legal reserve at book value without preference to all holders thereof and in such manner that the oldest outstanding stock, participation certificates, or allocated legal reserve will be retired first.

(b) Notwithstanding the priorities contained in paragraph (a) of this section:

* * * * *

(2) * * *

(ii) In case of liquidation of a production credit association; or

* * * * *

9. The title of Subpart K is revised to read as follows:

Subpart K—Reserves

§§ 615.5330 and 615.5335 [Removed]

10. Subpart K is amended by removing §§ 615.5330 and 615.5335.

11. Section 615.5340 is revised to read as follows:

§ 615.5340 Allowance for loan losses.

(a) Banks. Each bank shall establish and maintain an allowance for losses account on loans and loan-related assets determined in accordance with generally accepted accounting principles.

(b) Federal land bank associations. Each Federal land bank association shall establish and maintain an allowance for losses for its liability on loans and loan-related assets that exists by reason of its endorsement liability, or its liability under agreement to share losses with the Federal land bank on loans originated by the association. This allowance shall be determined in accordance with generally accepted accounting principles.

(c) Production credit associations. Each production credit association shall establish and maintain an allowance for losses on loans and loan-related assets. Additions to the allowance for losses on loans and loan-related assets. Additions to the allowance shall be equal to the greater of (1) 0.5 percent of outstanding loans and accrued interests, or net income without respect to such addition, whichever is less, or (2) the amount of such addition needed to maintain the allowance at a level determined in accordance with generally accepted accounting principles. Where the allowance for loan losses equals or exceeds 3.5 percent of outstanding loans and accrued interest, additions to the allowance shall be made only as required in accordance with generally accepted accounting principles.

(d) The Farm Credit System Captial Corporation shall establish and maintain an allowance for losses account on loan and loan-related assets which is determined in accordance with generally accepted accounting principles.

(e) Determinations of the amounts necessary to maintain the allowance for losses shall be made at such frequency as is required to ensure that the allowance is maintained in accordance with generally accepted accounting principles. Upon such determination, each institution shall make the adjustments to the allowance for losses necessary to ensure issuance of accurate financial reports.

§§ 615.5360 and 615.5370 [Amended]

12. Supart L is amended by removing §§ 615.5360 and 615.5370.

13. Section 615.5350 is revised to read as follows:

§ 615.5350 Dividends and patronage refunds.

(a) Federal land banks and Federal land bank associations.

(1) Each Federal land bank and Federal land bank association may declare dividends or pay patronage refunds in accordance with the provisions of its financial plan and the provisions of Subpart H of this part, out of the whole or part of net earnings.

(2) Federal land bank and Federal land bank association dividends shall be noncumulative and may be paid on stock or participation certificates. Dividends may be paid in the form of stock, participation certificates, or cash. The rate of dividends may differ between classes and issues of stock and participation certificates on the basis of the comparative contributions of the holders thereof to the capital or earnings of the institution but otherwise dividends shall be without preference.

(3) Each Federal land bank and Federal land bank association may pay patronage refunds in nonvoting stock, participation certificates, allocated surplus, and/or cash. The patronage refund paid to each borrower shall be in proportion to the amount of interest paid by the borrower divided by the total amount of interest paid by all borrowers during the fiscal year. A Federal land bank may make a indirect patronage refund to borrowers by making a distribution to the associations which will make a corresponding distribution of like kind and equivalent value to the borrowers.

(b) Federal intermediate credit banks.

(1) Each Federal intermediate credit bank, in accordance with its financial plan and the provisions of Subpart H of this part, may declare dividends or pay patronage refunds out of the whole or part of net earnings.

(2) Dividends shall be noncumulative and may be paid in the form of stock, participation certificates, or cash. The dividend rate may differ between classes and issues of stock and participation certificates when computed on the basis of each holder's relative contributions to the capital or earnings of the bank; otherwise, dividends shall be paid without preference.

(3) Patronage refunds may be paid to production credit associations and other financing institutions in stock, participation certificates, and/or cash. Each patronage refund shall be distributed to patrons in the same proportion as the interest paid by each patron bears to the total interest paid to the bank.

(c) Production credit associations.

(1) Each production credit association may pay noncumulative dividends on preferred stock in accordance with the authorization to issue such stock. Each production credit association may pay noncumulative dividends on stock, other than preferred stock, and participation certificates in accordance with the association's financial plan and bylaws. The rate of dividends may differ between classes and issues of stock and participation certificates on the basis of the comparative contributions of the holders thereof to the capital or earnings of the association, but otherwise dividends shall be paid without preference.

(2) Each production credit association may, in accordance with the association's financial plan and bylaws, pay a patronage distribution in stock, participation certificates, allocated equities, and/or cash. Patronage refunds shall be paid to borrowers of the fiscal year for which such patronage refunds are distributed. The patronage refund paid to each borrower shall be in proportion to the amount of interest paid by the borrower divided by the total

amount of interest paid by all borrowers during the fiscal year.

(d) Banks for cooperatives.

(1) Each bank for cooperatives may, in accordance with its financial plan, pay dividends on nonvoting investment stock of the bank.

(2) Each district bank for cooperatives may, in accordance with its financial plan, make a patronage distribution in stock, participation certificates, and/or cash to borrowers. The amount of the patronage distribution paid to each borrower shall be in proportion to the amount of interest and fees on loans paid by the borrower divided by the total amount of interest and fees on loans paid by all borrowers during the fiscal year.

(3) The Central Bank for Cooperatives may, in accordance with its financial plan, make a patronage distribution in stock, participation certificates, and/or cash to district banks for cooperatives and cooperative associations that are direct borrowers. Patronage distribution to district banks for cooperatives shall be based on the interest held by the Central Bank for Cooperatives in loans made by the district banks. Patronage distributions to cooperative associations that are direct borrowers of the Central Bank for Cooperatives shall be paid to the district bank or banks which issued the stock to the cooperative borrower incident to the loan, and such district bank or banks shall make a corresponding distribution of like kind and equivalent value to the cooperative borrowers. The amount of the patronage refund paid to each district bank for cooperatives or indirectly paid to each cooperative association that is a direct borrower shall be in proportion to the amount of interest and fees paid to the Central Bank for Cooperatives from loan participations with a district bank or paid by a direct borrower divided by the total amount of interest and fees paid to the Central Bank for Cooperatives.

(e) No institution shall make patronage distributions or pay dividends during any period in which such institution is a net recipient of financial assistance from the Farm Credit System Capital Corporation.

Subpart M—[Removed and Reserved]

14. Subpart M is removed and reserved.

Marvin Duncan,

Acting Chairman, Farm Credit Administration.

[FR Doc. 86-23382 Filed 10-15-86; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 73

[Airspace Docket No. 86-ACE-1]

Proposed Alteration of Restricted Areas R-4501 A-D and Establishment of R-4501E Fort Leonard Wood, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions, altitudes, and/or times of use of Restricted Areas R-4501 A, B, C and D and to establish R-4501E, located near Fort Leonard Wood, MO. After reviewing the subject restricted areas, the FAA has determined that the alteration of Restricted Areas R-4501 A-D and the establishment of R-4501E will enable the using agency, U.S. Army, to release additional airspace to the flying public when it is not in use.

DATE: Comments must be received on or before November 28, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Central Region, Attention: Manager, Air Traffic Division, Docket No. 86-ACE-1, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9245.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ACE-1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned With this rulemaking will be filed in the docket. Send comments on environmental and land use aspects to Commanding General, Fort Leonard Wood, MO.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposals

The FAA is considering amendments to Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to alter the descriptions, altitudes, and/or times of use of Restricted Areas R-4501 A-D and to establish R-4501E, located near Fort Leonard Wood, MO. After reviewing R-4501 A-D, the FAA has determined that the alteration of these areas and the establishment of R-4501E will give the U.S. Army the ability to release additional airspace to the flying public when the areas are not in use. R-4501A will be removed from the Continental Control Area and R-4501E will be added. These proposals will also reduce

the amount of time the restricted areas are in use. Sections 71.151 and 73.45 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

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 Parts 71 and 73

Aviation Safety, Continental control area, Restricted areas.

The Proposed Amendments

PARTS 71 AND 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

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

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

2. Section 71.151 is amended as follows:

R–4501A Fort Leonard Wood West, MO [Remove]

R–4501E Fort Leonard Wood, MO [New]

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

4. Section 73.45 is amended as follows:

R–4501A Fort Leonard Wood West, MO [Amended]

By removing the present Time of designation and substituting the following:

Time of designation. 0700–1800 local time, Monday–Friday; other times by NOTAM issued at least 24 hours in advance.

R–4501B Fort Leonard Wood East, MO [Amended]

By removing the present Time of designation and substituting the following:

Time of designation. 0700–1800 local time, Monday–Friday; other times by NOTAM issued at least 24 hours in advance.

R–4501C Fort Leonard Wood, MO [Amended]

By removing the present Designated altitudes and Time of designation and by substituting the following:

Designated altitudes. From 2,200 feet MSL to 5,000 feet MSL.

Time of designation. As specified by NOTAM issued at least 24 hours in advance.

R–4501D Fort Leonard Wood, MO [Amended]

By removing the present Boundaries, Designated altitudes and Time of designation and by substituting the following:

Boundaries. Beginning at lat. 37°41'00" N., long. 92°16'10" W.; to lat. 37°41'26" N., long. 92°10'15" W.; to lat. 37°40'16" N., long. 92°07'05" W.; to lat. 37°38'20" N., long. 92°06'55" W.; to lat. 37°36'07" N., long. 92°10'27" W.; to lat. 37°35'22" N., long. 92°15'31" W.; to the point of beginning.

Designated altitudes. From 5,000 feet MSL to 12,000 feet MSL.

Time of designation. As specified by NOTAM issued at least 24 hours in advance.

R–4501E Fort Leonard Wood, MO [New]

Boundaries. Beginning at lat. 37°41'00" N., long. 92°16'10" W.; to lat. 37°41'26" N., long. 92°10'15" W.; to lat. 37°40'16" N., long. 92°07'05" W.; to lat. 37°38'20" N., long. 92°06'55" W.; to lat. 37°36'07" N., long. 92°10'27" W.; to lat. 37°35'22" N., long. 92°15'31" W.; to the point of beginning.

Designated altitudes. From 12,000 feet MSL to FL 180.

Time of designation. As specified by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Kansas City ARTCC.

Using agency. U.S. Army, Commanding General, Fort Leonard Wood, MO.

Issued in Washington, DC, on October 7, 1986.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 86–23284 Filed 10–15–86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Department of the Navy

48 CFR Parts 5242 and 5252

Department of the Navy Federal Acquisition Regulations; Policy Concerning Navy Requests for Refunds

AGENCY: Department of the Navy.

ACTION: Proposed rule.

SUMMARY: The Department of the Navy is proposing to amend its policy and associated clause concerning refunds for overpriced spare parts and items of support equipment. This revision clarifies the definition of intrinsic value, establishes a time limit for mandatory refunds, and establishes conditions under which a contractor is not liable for a refund.

DATE: Comments must be received on or before November 17, 1986.

ADDRESS: Comments may be mailed to: Office of the Assistant Secretary of the Navy (Shipbuilding and Logistics), Contracts and Business Management (CBM–BPC), Attn: S. Tronic, Washington, DC 20360–5000.

FOR FURTHER INFORMATION CONTACT: Mr. Sidney Tronic, Office of the Assistant Secretary of the Navy (Shipbuilding and Logistics), Contracts and Business Management (CBM–BPC), Washington, DC 20360–5000, Telephone (202) 692–3558/9.

SUPPLEMENTARY INFORMATION:

1. Background

As published on June 3, 1986 at 51 FR 19842–19843, the Navy promulgated guidance and a clause effective April 28, 1986 which provides for the Navy to be entitled to mandatory refunds in the event that the price paid by the Navy for a spare part or item of support equipment exceeds the part or item's intrinsic value. Discussion and comment concerning the Navy's guidance and clause continued after the period specified for public comment. Several constructive suggestions for improvement were subsequently made. The Navy has reviewed these comments and determined that certain changes in the Navy's guidance and clause are appropriate. The following is a summary of the significant changes which the Navy proposes to make in its guidance and clause.

Definition of Intrinsic Value

The definition of "intrinsic value" is expanded for items that are sold, or that are substantially similar or functionally equivalent to items that are sold, in substantial quantities to the general public to mean the established catalog or market price, plus the value of any unique requirements. In addition, the definition of "intrinsic value" as it applies to other items is changed to delete the reference to "standard" costs and to clarify that the price an individual would expect to pay is based upon the cost to manufacture in economic production quantities.

Time Limit On Refund Requests

A time limit of four years after delivery of the part or item is established for the Navy to request a refund. This four year period is proposed because it coincides with the contract record retention period discussed in Federal Acquisition Regulation Subpart 4.705.

Contractor Notification That Price Exceeds Intrinsic Value

Provision is made for a contractor to not be liable for a refund if the contractor advises the contracting officer that the price it would propose for a spare part or item of support equipment will exceed the part or item's intrinsic value. This change will protect contractors in those situations where they know that their price will exceed intrinsic value, but are specifically directed to deliver the part or item, anyhow.

Clause Inapplicable To Prices Established Through Adequate Price Competition

The clause is revised to clarify that it is not, and was not before, applicable to prices established through adequate price competition.

2. Statutory and Regulatory Requirements

The proposed revisions to the existing Navy guidance and clause will not have a significant economic effect (and need not be published for public comment). Therefore, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) is not applicable. The Paperwork Reduction Act (44 U.S.C. 3501 et seq.) does not apply to the proposed revisions because they do not impose any additional reporting requirements on the public.

3. Public Comments On Proposed Revisions

Prior to promulgating final revisions to its guidance and clause concerning refunds for spare parts and items of support equipment, however, the Navy desires to consider any comments received from interested parties. Such comments should be submitted in writing to the address listed above.

List of Subjects in 48 CFR Parts 5242 and 5252

Government procurement.

For the reasons set out in the preamble, it is proposed to amend Parts 5242 and 5252 of Title 48, Code of Federal Regulations, as follows.

1. Part 5242 is revised to read as follows:

PART 5242—CONTRACT ADMINISTRATION

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35

Subpart 5242.90—Refunds Requirements (Spares and Support Equipment)

5242.9000 Requests for refunds.

(a) *Policy.* This subpart establishes uniform policy and procedures on requesting refunds and ensuring fair and reasonable prices for spare parts or items of support equipment. Contracting activities shall request a refund whenever the contract price of any spare part or item of support equipment significantly exceeds the item's intrinsic value after considering the impact of specified delivery terms and quantity. The intrinsic value of an item is defined as follows:

(1) If the item is one which is sold, or is substantially similar or functionally equivalent to one that is sold, in substantial quantities to the general public, intrinsic value is the established catalog or market price, plus the value of any unique requirements, including inspection, packaging or labeling.

(2) If there is no comparable item sold in substantial quantities to the general public, intrinsic value shall be defined as the price an individual would expect to pay for the item based upon the cost to manufacture the item in economic production quantities.

(b) *Examples.* The following are examples of circumstances which may establish a basis for a refund request or pricing adjustment:

(1) A technical or engineering analysis, such as that done by PRICE FIGHTER, results in a determination that the intrinsic value is significantly lower than the historical price.

(2) The price paid for an item bought competitively in similar quantity *and circumstances* (e.g. urgency, delivery terms) is significantly less than the former sole source price.

(3) Prices paid to the manufacturer of an item indicate the amount previously charged by the prime contractor for the item significantly exceeded the intrinsic value of the prime contractor's efforts in providing the item.

(4) Postaward audit reports identify overcharges.

(c) *Solicitation Provisions.* The contracting officer shall insert the clause at 5252.242–9000 in solicitations, Basic Ordering Agreements, and contracts (as defined in FAR 2.101) which contain or may contain requirements for spare parts or items of support equipment, except those contracts awarded as a result of competitive small purchase procedures. Heads of Contracting Activities (HCAs) are delegated, without power of redelegation, authority to establsh monetary thresholds below which refunds will not be requested.

2. Part 5252 is revised to read as follows:

PART 5252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35

Subpart 5252.2—Texts of Provisions and Clauses

5252.242–9000 Refunds.

As prescribed in 5242.9000 insert the following clause:

Refunds (Spares and Support Equipment (Sep 86)

(a) In the event that the price of a spare part or item of support equipment delivered under this contract exceeds its intrinsic value, the contractor agrees to refund the difference.

(b) For purposes of this clause, the intrinsic value of an item is defined as follows:

(1) If the item is one which is sold, or is substantially similar or functionally equivalent to one that is sold in substantial quantities to the general public, intrinsic value is the established catalog or market price, plus the value of any unique requirements, including inspection, packaging, or labeling.

(2) If there is no comparable item sold in substantial quantities to the general public, intrinsic value shall be defined as the price an individual would expect to pay for the item based upon the cost to manufacture the item in economic production quantities.

(c) At any time up to four years after delivery of a spare part or item of support equipment, the contracting officer may notify the contractor that based on all information available at the time of the notice, the price of an item described above, exceeds its intrinsic value.

(d) The contractor shall enter into good faith negotiations for the downward repricing of an item. All information available to the Navy, whether or not available at the time the original contract price was negotiated and any additional information, including cost data, supplied by the contractor, shall be considered in determining the amount of any refund.

(e) If agreement on a downward repricing of the item cannot be reached, and the Navy's return of the new or unused item to the contractor is practical, the Navy may elect to return the item to the contractor. Upon return of the item to its original point of government acceptance, the contractor shall refund in full the price paid. If no agreement concerning downward repricing is reached, and return of the item by the Navy is impractical the contracting officer may, with the approval of the Head of the Contracting Activity,

determine a reasonable refund, subject to contractor appeal as provided in the Disputes clause.

(f) The contractor will make refunds, as required under this clause, in accordance with instructions from the contracting officer.

(g) The contractor shall not be liable for a refund if the contractor advised the contracting officer that the price it would propose for a spare part or item of support equipment exceeded its intrinsic value, and with such advice, specified the estimated proposed price, the estimated intrinsic value, and alternative sources or items that can meet the requirement, and the contracting officer after receipt of that information directed the contractor to provide the item. The government shall not be liable for any cost for such part or item unless after receipt of the information, the contracting officer directs in writing that such part or item be provided.

(h) This clause does not apply to any spare parts or items of support equipment whose price is determined through adequate price competition.

[End of clause]

Dated: October 10, 1986.

Harold L. Stoller, Jr.,

CDR, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 86-23337 Filed 10-15-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390-399

[BMCS Docket No. 118, Notice No. 86-14]

Commercial Motor Vehicle Safety Regulatory Review Panel; Opportunity To Review Draft Compilation

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of opportunity to review draft compilation.

SUMMARY: The FHWA, in support of the Commercial Motor Vehicle Safety Regulatory Review Panel, has sent a copy of a draft compilation of State laws and regulations pertaining to commercial motor vehicle safety to each State and to each FHWA Division Office, Office of Motor Carrier Safety. The compilation sent to each State and Division Office consists only of the State laws and regulations of that State. A complete compilation of all the State laws and regulations has been placed in the public docket referred to above and maintained in Washington, DC. Each compilation provides the citation to the State law or regulation, the citation to the comparable Federal regulation, if any, and the text or an abstract of the text of each State law or regulation. States and other interested persons are requested to review these compilations. The Safety Panel seeks information as to whether the compilation for each State is complete and accurate, and whether each State law or regulation is matched with an appropriate corresponding Federal regulation if one exists.

DATE: Comments are requested by December 1, 1986.

ADDRESSES: Comments should refer to the docket number that appears at the top of this document, and should be addressed to the Commercial Motor Vehicle Safety Regulatory Review Panel, Office of Motor Carrier Standards, Federal Highway Administration, Room 3404, 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, Office of Motor Carrier Standards, (202) 366-2991, or Mr. Thomas P. Holian, Attorney, Office of the Chief Counsel, (HCC-20), (202) 366-1350, 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 Commercial Motor Vehicle Safety Regulatory Review Panel (Safety Panel) was established by the Federal Highway Administration (FHWA) on June 18, 1985, pursuant to section 209 of the Motor Carrier Safety Act of 1984 (the Act), 49 U.S.C. App. section 2508 (Supp. II 1984). Establishment of the Safety Panel was announced in the **Federal Register** on August 2, 1985 at 50 FR 31452.

Pursuant to section 208 of the Act, 49 U.S.C. App. section 2507 (Supp. II 1984), the Safety Panel is reviewing all State laws and regulations pertaining to commercial motor vehicle safety to determine whether each such law or regulation has the same effect as, is less stringent than, or is additional to or more stringent than any regulation issued by the Department of Transportation. The Safety Panel is to notify the Secretary of Transportation, through the Federal Highway Administrator, of its determinations.

The Secretary, pursuant to notice and comment rulemaking and giving great weight to the corresponding determinations of the Safety Panel, is required by the law to determine the relative stringency of each State law or regulation pertaining to commercial motor vehicle safety. 49 U.S.C. App. section 2507(c) (Supp. II 1984). If the Secretary determines that any State law or regulation has the same effect as a regulation issued by the Secretary, then that State law or regulation may remain in effect and be enforced with respect to commercial motor vehicles in interstate commerce after October 30, 1989. If the Secretary determines that any State law or regulation is less stringent than a regulation issued by the Secretary, then the State law or regulation shall not have effect and be enforced with respect to commercial motor vehicles in interstate commerce after October 30, 1989. If the Secretary finds that a State law or regulation is additional to or more stringent than a regulation issued by the Secretary, then the State law or regulation may be in effect and enforced with respect to commercial motor vehicles in interstate commerce after October 30, 1989, unless the Secretary further finds that there is no safety benefit associated with the State law or regulation; the State law or regulation is incompatible with the regulation issued by the Secretary; or enforcement of the State law or regulation would be an undue burden on interstate commerce.

Pursuant to section 207 of the Act, 49 U.S.C. App. section 2506 (Supp. II 1984), States have been asked to submit and have previously submitted copies of all their laws and regulations pertaining to commercial motor vehicle safety to the Safety Panel. 50 FR 1243 (Jan. 10, 1985) and 7357 (Feb. 22, 1985) (notices of guidelines to the States) and 51 FR 5565 (Feb. 14, 1986) (announcement of review of State safety regulations). The guidelines provided to the States requested that the States submit all safety laws, regulations, rules, standards, or orders related to the subject matter of each of the Federal Motor Carrier Safety Regulations, 49 CFR Parts 390-399. The submissions were not to include such subjects as: (1) Vehicle size and weight laws; (2) vehicle traffic laws, unless they are unique in their applicability to commercial motor vehicles; and (3) licensing or permit laws. This request is a continuing one in that States have been asked to submit changes to their laws or regulations as they occur. *See* 49 U.S.C. App. section 2506(b) (Supp. II 1984). Changes in State law or regulation which have occurred after April 30, 1986, will also have to be addressed by the Safety Panel, and information on any such changes is also requested. The States have also been requested to submit their stringency analyses of their own laws and regulations for consideration by the Safety Panel. (51 FR 5565 Feb. 14, 1986).

The purpose of this notice is to afford all interested persons an opportunity to review the draft compilation of State laws and regulations and to advise the Safety Panel of any omissions or other inaccuracies. Because of the expense involved, each State and FHWA Division Office has been provided only with that portion of the compilation which relates to that State or the State in which the Division Office is located. It is believed that this will be adequate for most interested persons from each such State. Interested persons may contact the appropriate FHWA Division Office, Office of Motor Carrier Safety, to arrange to review this material. The FHWA Division Offices in each State are typically located in the State capital city, and the addresses of these offices are set forth at 49 CFR Part 7, Appendix D (1985).

Because of administrative necessity, the compilation includes only those State laws and regulations which were in effect as of April 30, 1986.

The Safety Panel has begun its review and analysis of State laws and regulations based on the draft compilation. This work will incorporate information provided to the Safety Panel as a result of comments received in response to today's notice. In conducting its stringency analysis of State laws and regulations, the Safety Panel intends to consider the analyses submitted by the individual States. It is anticipated that adequate opportunity for public participation in this phase of the Panel's deliberations will be provided at the appropriate time. The form this participation will take and the schedule for it will be considered more fully by the Safety Panel at its next scheduled pubiic meeting which will be announced in the **Federal Register.**

Issued on October 8, 1986.

R.D. Morgan,

Executive Director, Federal Highway Administration.

[FR Doc 86-23265 Filed 10-15-86; 8:45 am]

BILLING CODE 4910-22-M

Notices

Federal Register
Vol. 51, No. 200
Thursday, October 16, 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

Forms Under Review by Office of Management and Budget

October 10, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

- Rural Electrification Administration
  REA Borrower Service Area Data
  REA Form 50
  Once in six years
  Businesses or other for-profit; Non-profit institutions; 1,900 responses; 3,800 hours; not applicable under 3504(h)
  Thomas M. Scanlon, (202) 382–1946.

Revision

- Cooperative State Research Service
  Food and Agricultural Sciences National Needs Graduate Fellowships Program
  Forms CSRS 701, 702, 703, 706; New Form 707; Delete Forms 704 & 705
  On occasion; Annually
  Individuals or households; Non-profit institutions; 400 responses; 8,500 hours; not applicable under 3504(h)
  Dr. K. Jane Coulter, (202) 447–7854.
- Food and Nutrition Service
  Nutrition Program for the Elderly; Titles III and VI of the Older Americans Act. Program Performance Reports; Subpart II, C–1, C–2.
  Program Performance Reports: Title III-Part II: Subparts C–1, C–2, Title VI Parts, C–3, C–4
  Recordkeeping; Monthly
  State or local governments; Federal agencies or employees; 2,172 responses; 694 hours; not applicable under 3504(h)
  Anneva Hackley, (703) 756–3166.
- Foreign Agricultural Service
  Licensing of Sugar Exempt from Quotas for Purpose of Production of Polyhydric Alcohol
  On occasion; Monthly
  Businesses or other for-profit; 225 responses; 225 hours; not applicable under 3504(h)
  Gordon E. Patty, (202) 447–2579.

Reinstatement

- Federal Crop Insurance Corporation
  Standard Reinsurance Agreement
  On occasion; Weekly; Monthly; Annually
  Businesses or other for-profit; 1,818 responses; 22,360 hours; not applicable under 3504(h)
  William Flora, (202) 382–9897.

Donald E. Hulcher,

Departmental Clearance Officer.

[FR Doc. 86–23375 Filed 10–15–86; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Marketing Service

Beef Promotion and Research; Board and State Beef Council Addresses

AGENCY: Agricultural Marketing Service.

ACTION: Notice.

SUMMARY: This document provides the address of the Cattlemen's Beef Promotion and Research Board, established pursuant to the Beef Promotion and Research Act, and the addresses of the 40 qualified State beef councils certified by the Board.

FOR FURTHER INFORMATION CONTACT: Ralph Tapp, Chief, Marketing Programs and Procurement Branch, (202) 447–2650.

SUPPLEMENTARY INFORMATION: Pursuant to the Beef Promotion and Research Act (7 U.S.C. 2901 *et. seq.*), a Beef Promotion and Research Order (Order) was published in the July 18, 1986 **Federal Register** (51 FR 26132). Regulations implementing the order were published in the October 1, 1986, issue of the **Federal Register** (51 FR 35196).

The order and the regulations provide that, beginning October 1, 1986, cattle sold in the United States are subject to an assessment of $1 per head. Persons who collect assessments from producers under the order and regulations are required to remit them to the qualified State beef council of the State where they reside, or to the Cattlemen's Beef Promotion and Research Board (Board), is there is no qualified State beef council in their State. Imported cattle, beef and beef products are also subject to assessments; these are paid through the U.S. Customs Service.

Producers may request refunds of assessments from the qualified State beef council in the State where they reside, or if there is no qualified State beef council in that State, producers may request refunds from the Board.

This Notice provides the addresses of the Board and the qualified State beef councils. It should be noted that many of the qualified State beef councils have different addresses for different purposes. Requests for refund application forms should be sent to the address for inquires and general business of the appropriate State beef council; request for refunds should be sent to the indicated address. The address of the Board is Cattlemen's Beef Promotion and Research Board, P.O. Box 27–275, Kansas City, Missouri 64180–0001.

ADDRESSES OF THE QUALIFIED STATE BEEF COUNCILS

Inquiries and general business	Remit assessments and accompanying reports to—	Request refunds from—
Alabama Cattlemen's Association, P.O. Box 1746, Montgomery, AL 36103.	Alabama Dept. of Agr., Stockyards & Brand Sec., P.O. Box 3336, Montgomery, AL 36193.	Alabama Cattlemen's Association, P.O. Box 1746, Montgomery, AL 36103.
Arizona Beef Council, Suite 110, 5025 E. Washington St., Phoenix, AZ 85034.	Arizona Lvstk. Board, 1688 W. Adams St., Room 333, Phoenix, AZ 85007.	Arizona Beef Council, Suite 110, 5025 E. Washington St., Phoenix, AZ 85034.
Arkansas Beef Council, P.O. Box 31, 10720 Kanis Road, Little Rock, AR 72211.	Arkansas Revenue Div., Misc. Tax Section, P.O. Box 896, Rm. 230, Little Rock, AR 72203.	Arkansas Revenue Div., Misc. Tax Section, P.O. Box 896, Rm. 230, Little Rock, AR 72203.
California Beef Council, Suite A, 551 Foster City Bovd., Foster City, CA 94404.	Californria Dept. of Marketing, 1220 N. St., Sacramento, CA	California Beef Council, Suite A, 551 Foster City Bovd., Foster City, CA 94404.
Colorado Beef Council, 328 Lvstk. Exchg. Bldg., Denver, CO 80216.	State Board of Stock Inspec. Commissioners, 201 Lvstk. Exchg. Bldg., Denver, CO 80216.	Colorado Beef Council, 328 Lvstk. Exchg. Bldg., Denver, CO 80216.
Florida Beef Council, P.O. Box 1929, Kissimmee, FL 32741	Florida Beef Council, P.O. Box 1929, Kissimmee, FL 32741	Florida Beef Council, P.O. Box 1929, Kissimmee, FL 32741.
Georgia Beef Board, Suite 107, 2966 Riverside Drive, Macon, GA 31204.	Georgia Beef Board, P.O. Box 6515, Macon, GA 31208-9990	Georgia Beef Board, P.O. Box 18006, Miteon, GA 31209.
Idaho Beef Council, 2120 Airport Way, Boise, ID 83705	State of Idaho Brand Dept., 2118 Airport Way, Boise, ID 83705.	Idaho Beef Council, 2120 Airport Way, Boise, ID 83705.
Illinois Beef Council, Suite 337, 2375 W. Monroe, Springfield, IL 62704.	Illinois Beef Council, Suite 337, 2375 W. Monroe, Springfield, IL 62704.	Illinois Beef Council, Suite 337, 2375 W. Monroe, Springfield, IL 62704.
Indiana Beef Council, 8790 Purdue Road, Indianapolis, IN 46268.	Indiana Beef Council, 8790 Purdue Road, Indianapolis, IN 46268.	Indiana Beef Council, 8790 Purdue Road, Indianapolis, IN 46268.
Iowa Beef Industry Council, P.O. Box 451, Ames, IA 50010	Iowa Beef Industry Council, P.O. Box 451, Ames, IA 50010	Iowa Beef Industry Council, P.O. Box 451, Ames, IA 50010.
Kansas Beef Council, P.O. Box 4569, Topeka, KS 66604	Kansas Beef Council, P.O. Box 4569, Topeka, KS 66604	Kansas Beef Council, P.O. Box 4569, Topeka, KS 66604.
Kentucky Beef Cattle Assoc., Suite 110, 366 Waller Ave., Lexington, KY 40504.	Kentucky Beef Cattle Assoc., Suite 110, 366 Waller Ave., Lexington, KY 40504.	Kentucky Beef Cattle Assoc., Suite 110, 366 Waller Ave., Lexington, KY 40504.
Louisiana Beef Industry Council, P.O. Box 26, I-10 West Service Rd., Port Allen, LA 70767.	Louisiana Dept. of Agr., P.O. Box 94002, Baton Rouge, LA 70804-9002.	Louisiana Dept. of Agr., P.O. Box 94002, Baton Rouge, LA 70804-9002.
Maryland Beef Council, P.O. Box 1117, Bowie, MD 20715	Maryland Beef Council, P.O. Box 1117, Bowie, MD 20715	Maryland Beef Council, P.O. Box 1117, Bowie, MD 20715.
Michigan Beef Industry Commission, Suite 307, 815 Coolidge Road, Lansing, MI 48912.	Michigan Beef Industry Commission, Suite 307, 815 Coolidge Road, Lansing, MI 48912.	Michigan Beef Industry Commission, Suite 307, 815 Coolidge Road, Lansing, MI 48912.
Minnesota Beef Council, Suite 111, 2950 Metro Drive, Minneapolis, MN 55420.	Minnesota Beef Council, Suite 111, 2950 Metro Drive, Minneapolis, MN 55420.	Minnesota Dept. of Agr., Beef Promotion Refunds, 90 W. Plato Blvd., St. Paul, MN 55107.
Mississippi Cattle Industry Board, 121 N. Jefferson, Jackson, MS 39201.	Mississippi Cattle Industry Board, 121 N. Jefferson, Jackson, MS 39201.	Mississippi Cattle Industry Board, 121 N. Jefferson, Jackson, MS 39201.
Missouri Beef Industry Council, P.O. Box 315, Ashland, MO 65010.	Missouri Beef Industry Council, c/o Missouri Dept. Agr., P.O. Box 630, Jefferson, MO 65102.	Missouri Beef Industry Council, c/o Missouri Dept. Agr., P.O. Box 630, Jefferson, MO 65102.
Montana Beef Council, P.O. Box 1679, 420 N. California St., Helena, MT 59601.	Montana Dept. of Lvstk., Capitol Station, Helena, MT 59620	Montana Dept. of Lvstk., Capitol Station, Helena, MT 59620.
Nebraska Beef Industry Development Board, P.O. Box 2408, Rovar Park B-1, Unit 1, Kearney, NE 68847-2408.	Nebraska Beef Industry Development Board, P.O. Box 2408, Rovar Park B-1, Unit 1, Kearney, NE 68847-2408.	Nebraska Beef Industry Development Board, P.O. Box 2408, Rovar Park B-1, Unit 1, Kearney, NE 68847-2408.
Nevada Beef Council, P.O. Box 11100, Reno, NV 89510	Nevada Beef Council, P.O. Box 11100, Reno, NV 89510	Nevada Beef Council, P.O. Box 11100, Reno, NV 89510.
New Mexico Beef Council, 2604 Aztec, N.E., Albuquerque, NM 87194.	New Mexico Lvstk. Board, 7013 Central N.E., Albuquerque, NM 87108.	New Mexico Beef Council, 2604 Aztec, N.E., Albuquerque, NM 87194.
New York Beef Industry Council, P.O. Box 219, Richmondville, NY 12149.	New York Beef Industry Council, P.O. Box 219, Richmond, NY 12149.	New York Beef Industry Council, P.O. Box 219, Richmondville, NY 12149.
North Carolina Cattlemen's Assoc., P.O. Box 25756, 221 W. Martin St., Raleigh, NC 27611.	North Carolina Dept. of Agriculture, P.O. Box 27647, Raleigh, NC 27611.	North Carolina Cattlemen's Assoc., P.O. Box 25756, 221 W. Martin St., Raleigh, NC 27611.
North Dakota Beef Commission, 4023 N. State St., Bismarck, ND 58501.	North Dakota Beef Commission, 4023 N. State St., Bismarck, ND 58501.	North Dakota Beef Commission, 4023 N. State St., Bismarck, ND 58501.
Ohio Beef Council, P.O. Box 845, 283 S. State St., Westerville, OH 43081.	Ohio Beef Council, P.O. Box 845, 283 S. State St., Westerville, OH 43081.	Ohio Beef Council, P.O. Box 845, 283 S. State St., Westerville, OH 43081.
Oklahoma Beef Commission, 312 NE 28th, Oklahoma City, OK 73105.	Oklahoma Beef Comm., 312 NE 28th, Okla. City, OK 73105	Oklahoma Beef Comm., 312 NE 28th, Okla. City, OK 73105.
Oregon Beef Council, Red Lion Lloyd Ctr. Hotel, 1000 NE Multnomah, Portland, OR 97232.	Oregon Dept. of Agr., Lvstk. Division, 635 Capitol St., NE, Salem, OR 97310.	Oregon Dept. of Agr., Lvstk. Division, 635 Capitol St., NE, Salem, OR 97310.
Pennsylvania Beef Council, 4714 Orchard St., Harrisburg, PA 17109.	Pennsylvania Beef Council, 4714 Orchard St., Harrisburg, PA 17109.	Pennsylvania Beef Council, 4714 Orchard St., Harrisburg, PA 17109.
South Carolina Cattle and Beef Board, Wade Hampton Office Bldg., P.O. Box 11280, Columbia, SC 29211.	South Carolina Cattle and Beef Board, c/o S.C. Dept. of Agr., P.O. Box 11280, Columbia, SC 29211.	South Carolina Cattle and Beef Board, c/o S.C. Dept. of Agr., P.O. Box 11280, Columbia, SC 29211.
South Dakota Beef Industry Council, P.O. Box 1037, Pierre, SD 57501.	South Dakota Beef Industry Council, P.O. Box 1037, Pierre, SD 57501.	South Dakota Beef Industry Council, P.O. Box 1037, Pierre, SD 57501.
Tennessee Beef Industry Council, Suite C-6, 109 Holiday Court, Franklin, TN 37064.	Tennessee Beef Industry Council, c/o Williamson County Bank, P.O. Box 220, Franklin, TN 37065-0220.	Tennessee Beef Industry Council, Suite C-6, 109 Holiday Court, Franklin, TN 37064.
Texas Beef Industry Council, Suite 300, 12741 Research, Austin, TX 78759.	Texas Beef Industry Council, Dept. RB0825, P.O. Box 550, Austin, TX 78789-0825.	Texas Beef Industry Council, Suite 400, 6504 Bridgepoint Pkwy., Austin, TX 78730.
Utah Beef Council, Suite 10-B, 150 South 6th East, Salt Lake City, UT 84102.	Utah Dept. of Agr., 350 N. Redwood Rd., Salt Lake City, UT 84116.	Utah Beef Council, Suite 10-B, 150 South 6th East, Salt Lake City, UT 84102.
Virginia Cattle Industry Board, P.O. Box 176, U.S. Route 220, Daleville, VA 24083.	Virginia Cattle Industry Board, P.O. Box 176, U.S. Route 220, Daleville, VA 24083.	Virginia Cattle Industry Board, P.O. Box 176, U.S. Route 220, Daleville, VA 24083.
Washington State Beef Commission, P.O. Box 799, 1720 Canyon Rd., Ellensburg, WA 98926.	Livestock Service Div., Mail Stop AX-41, Olympia, WA 98504	Washington State Beef Commission, P.O. Box 799, 1720 Canyon Rd., Ellensburg, WA 98926.
West Virginia Beef Industry Assess. Board, General Delivery, Scherr, WV 26726.	West Virginia Beef Industry Assess. Board, P.O. Box 268, Buckhannon, WV 26201.	West Virginia Beef Industry Assess. Board, P.O. Box 268, Buckhannon, WV 26201.
Wisconsin Beef Council, 3946 Hypoint Road, Lancaster, WI 53813.	Wisconsin Beef Council, P.O. Box 770, Madison, WI 53701-0770.	Wisconsin Beef Council, P.O. Box 770, Madison, WI 53701-0770.
Wyoming Beef Council, P.O. Box 206, Cheyenne, WY 82201	Wyoming Lvstk. Board, P.O. Box 206, Cheyenne, WY 82201	Wyoming Lvstk. Board, P.O. Box 206, Cheyenne, WY 82201.

Done at Washington, DC, on October 10, 1986.

James C. Handley,

Administrator.

[FR Doc. 86-23351 Filed 10-15-86; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

Prevented Planting Deficiency Payments for 1986 Crops of Wheat, Feed Grains, Upland Cotton, and Rice

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Notice of determination.

SUMMARY: The Urgent Supplemental Appropriation Act of 1986 (Pub. L. 99-349) requires the Secretary of Agriculture to make payments to certain producers who are prevented from planting 1986 crops of wheat, feed grains, upland cotton, or rice or other nonconserving crops on the intended acreage for such crops because of flood, heavy rains, excessive moisture, or

drought. The purpose of this notice is to inform producers of the requirements for eligibility for these payments and the deadline for applying for payment.

DATE: Applications for such payments will not be accepted after November 17, 1986.

FOR FURTHER INFORMATION CONTACT: Charles J. Riley, Chief, Production Adjustment Branch, Cotton, Grain and Rice Price Support Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013 (202) 447–4696.

SUPPLEMENTARY INFORMATION:

Background

The Urgent Supplemental Appropriation Act of 1986 (the "Act") includes a requirement that the Secretary of Agriculture make payments to producers who were prevented from planting wheat, feed grains, upland cotton, rice ("program crops") or other nonconserving crops because of adverse weather conditions. The Act requires that these payments ("prevented planted deficiency payments") be made with respect to these 1986 program crops if the Secretary determines that:

(a) The producers on a farm are prevented from planting, because of flood, heavy rains, excessive moisture, or drought, any portion of the acreage intended for a program crop to the crop or other nonconserving crops; and

(b) The farm is located in an area that the Secretary determines has been substantially affected by a natural disaster in the United States or by a major disaster or emergency designated by the President under the Disaster Relief Act of 1974 (42 U.S.C. 5121 et seq.).

The amount of prevented planting deficiency payments shall be computed by multiplying:

(a) 40 percent of the projected deficiency payment rate for the crop by

(b) The number of acres which the producer was prevented from planting, because of flood, heavy rains, excessive moisture, or drought, to the program crop or other nonconserving crop but not to exceed the acreage planted to the crop for harvest (including any acreage that the producers were prevented from planting to the crop or other nonconserving crops in lieu of the commodity because of flood, heavy rains, excessive moisture, or drought) in the immediately preceding year by

(c) The Farm program payment yield established for the crop for the farm.

The amount of any prevented planting deficiency payment is required to be deducted from crop insurance indemnity payments due the producer as a result of such disaster.

Determination

Prevented planting deficiency payments required by the Act shall be made available to producers who: (1) Have filed applications with the county Agricultural Stabilization and Conservation (ASC) committees for disaster credit in accordance with 7 CFR 713.105, (2) are in compliance with all contract provisions of the 1986 production adjustment program for the applicable program crop, and (3) otherwise meet the requirements set forth by the Act. State Agricultural Stabilization and Conservation committees shall, in accordance with instructions issued by the Executive Vice President, CCC, determine areas which have been substantially affected by a natural disaster for the purpose of determining eligibility for these payments. Accordingly, producers who believe that they qualify for such payments and desire to file an application for payment may obtain further information from county Agricultural Stabilization and Conservation Service offices.

Applications for such payments will not be accepted after November 17, 1986.

Signed at Washington, DC, on October 10, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation and Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 86–23376 Filed 10–15–86; 8:45 am]

BILLING CODE 3410–05–M

1986 Crop Soybean Final Loan and Purchase Rate; Final Determination of Price Level

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination of 1986 crop soybean final level of price support.

SUMMARY: The level of price support for the 1986 soybean crop is $4.77 per bushel. This determination is made pursuant to section 201(i) of the Agricultural Act of 1949, as amended (the "1949 Act").

EFFECTIVE DATE: September 12, 1986.

FOR FURTHER INFORMATION CONTACT: Orville I. Overboe, Agricultural Economist, Analysis Division, ASCS–USDA, P.O. Box 2415, Washington, DC 20013, Telephone (202) 447–4417.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated "not major." It was designated "not major" because it will not result in: (1) An annual effect on the economy or $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions; or (3) significant adverse impacts on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign based enterprises in domestic or export markets.

The title and number of the federal assistance program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation is not requied by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice. A final impact analysis has been prepared and is available from the above named individual.

Section 201(i)(1)(A) of the 1949 Act provides that the price of soybeans for each of the 1986 through 1990 marketing years shall be supported through loans and purchases. Section 201(i)(1)(B) provides that the support price for the 1986 and 1987 crops of soybeans shall be $5.02 per bushel. However, if the Secretary of Agriculture determines in accordance with section 201(i)(2) that the level of loans or purchases determined for a marketing year would discourage the exportation of soybeans and cause excessive stocks of soybeans in the United States, the Secretary may reduce the loan and purchase level for soybeans by the amount the Secretary determines necessary to maintain domestic and export markets for soybeans, except that the price support level cannot be reduced by more than 5 percent in any year nor below $4.50 per bushel. Any reduction made in accordance with section 201(i)(2) in the loan and purchase level for soybeans shall not be considered in determining the loan and purchase level for soybeans for subsequent years.

Section 201(i)(5) of the 1949 Act provides that the Secretary shall make a preliminary announcement of the level of price support for a crop of soybeans not earlier than 30 days prior to September 1, the beginning of the soybean marketing year, based upon the latest imformation and statistics then

available. The final announcement of the level of price support must be made no later than October 1 of the marketing year to which the announcement is applicable. The level of support in the final announcement cannot be less than that of the preliminary announcement.

A preliminary announcement of a price support level of $4.77 per bushel for the 1986 crop of soybeans was made on August 29, 1986 (51 32343). It was announced on September 12, 1986 that the level of price support for the 1986 crop of soybeans is $4.77 per bushel.

Determination

Ending stocks of soybeans for the 1985–1986 marketing year are expected to be approximately 535 million bushels, an amount considered to be excessive. Maintaining the price support level for the 1986 crop of soybeans at $5.02 per bushel would likely result in ending stocks of approximately 630 million bushels for the 1986–1987 marketing year since such a support level would discourage the exportation of soybeans and, to a lesser degree, result in lower domestic use of soybeans. Based upon 1986 estimated production of soybeans, it is estimated that a $4.77 per bushel price support level would result in ending stocks of approximately 590 million bushels for the 1986–1987 marketing year. As compared to a $5.02 per bushel price support level, a $4.77 per bushel price support level would increase the export of soybeans about 2 percent and also increase slightly the domestic use of soybeans. The price support level for the 1986 crop of corn has been established at $1.92 per bushel. Establishing a 1986 soybean price support level of $5.02 per bushel, based upon a $1.92 per bushel price support level for corn, would result in an adverse distortion of the historical corn/soybean price relationship and result in an adverse impact on the use of soybeans. However, a 1986 soybean price support level of $4.77 per bushel would better maintain this normal corn/soybean price relationship. Accordingly, the 1986-crop soybean price support level is $4.77 per bushel, which is 5 percent less than the price support level of $5.02 per bushel which was established for the 1985 crop of soybeans.

(Sec. 201 of the Agricultural Act of 1949, as amended, 63 Stat. 1052, as amended (7 U.S.C. 1446))

Signed at Washington, DC, on October 9, 1986.

Peter C. Myers,

Acting Secretary.

[FR Doc. 86–23322 Filed 10–15–86; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Proposed Forest Land and Resource Management Plan and Draft Environmental Impact Statement, Shasta-Trinity National Forests, CA, Humboldt, Modoc, Shasta, Siskiyou, Tehama, and Trinity Counties, CA

In response to several public requests the Department of Agriculture, Forest Service, has extended the public review and comment period for the Shasta-Trinity National Forest Proposed Forest Plan and Draft Environmental Impact Statement to January 16, 1987. All written comments must be postmarked by January 16, 1987 and should be addressed to Forest Supervisor Robert R. Tyrrel, Shasta-Trinity National Forests, 2400 Washington Avenue, Redding, CA 96001.

The Forest Service will hold four public hearings on its Proposed Forest Land and Resource Management Plan and Draft Environmental Impact Statement for the Shasta-Trinity National Forests. The hearings will be held in Redding, Hayfork, Weaverville, and Mt. Shasta City, California. The public hearings are being held to receive formal public comments on the two referenced documents. The hearing times, dates, and places are as follows:

December 8, 1986, Monday, 2–5 and 7–10 p.m., Redding: Redding City Council Chambers, 1313 California Street.

December 9, 1986, Tuesday, 2–5 and 7–10 p.m., Hayfork: Trinity County Fairgrounds, Dining Hall.

December 10, 1986, Wednesday, 2–5 and 7–10 p.m., Weaverville: Civil Defense Hall, C.D. Loop.

December 11, 1986, Thursday, 2–5 and 7–10 p.m., Mt. Shasta City: Mt. Shasta City Park, Recreation Center Building, 1315 Nixon Road.

The hearings will be conducted by a hearing officer. A court reporter will keep a verbatim record of all oral testimony. Speakers may pre-register for any one of the hearings with the receptionist at the Forest Supervisor's Office in Redding (916–246–5222) or at the door beginning one-half hour prior to the hearing. Speakers will be asked to give comments in the order of registration. Elected officials will be entitled to speak first. Each person may be limited to a five minute presentation to ensure that everyone has an opportunity to speak. The Forest Service will neither respond to comments nor debate issues during the hearings.

For additional information on the hearings, contact the Public Affairs Officer at the above address or telephone number for the Shasta-Trinity National Forests.

Dated: October 8, 1986.

Robert R. Tyrrel,

Forest Supervisor.

[FR Doc. 86–23377 Filed 10–15–86; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Members of the Departmental Performance Review Board

This notice announces the members of the Departmental Performance Review Board (PRB) in the Department of Commerce. The purpose of the Departmental PRB is to review the performance of appointing authorities and their immediate deputies who are in the SES and SES members whose ratings are initially prepared by their respective appointing authorities.

These Departmental PRB members are appointed for the two year term ending November 30, 1988. The list of members eligible to serve on the Departmental PRB is as follows:

Office of the Secretary

Mark Policinski, Associate Deputy Secretary
Helen Robbins, Executive Assistant to the Secretary.

Office of General Counsel

Robert Brumley, Deputy General Counsel
Marilyn Wagner, Assistant General Counsel for Administration.

Office of the Assistant Secretary for Administration

Otto Wolff, Deputy Assistant Secretary
Joseph Brown, Deputy Director, Office of Personnel and Civil Rights.

Minority Business Development Agency

John Christian, Associate Director for Field Operations.

Economic Development Administration

Steven Brennen, Deputy Assistant Secretary for Loan Programs
Beverly Milkman, Deputy Director for Grants Programs
John Corrigan, Atlantic Regional Director.

Office of Economic Affairs

John Cremeans, Director, Office of Business Analysis
Robert Wilson, Director, Office of Strategic Resources
C. Louis Kincannon, Deputy Director, Bureau of the Census
Allan Young, Director, Bureau of Economic Analysis
Lucy Falcone, Senior Advisor to the Chief Economist.

National Telecommunications and Information Administration

Carol Emery, Associate Administrator for Policy Analysis and Development
Dennis Connors, Director, Office of Policy Coordination and Management.

International Trade Administration

Saul Padwo, Director, Office of Trade Information Services
Peter Hale, Director, Office of Western Europe
Vincent DeCain, Deputy Assistant Secretary for Export Administration
John Richards, Director, Office of Industrial Resource Administration
Roger Severance, Director, Office of the Pacific Basin
George Hambleton, Deputy Assistant Secretary for U.S. and Foreign Commercial Services
James Phillips, Deputy Assistant Secretary for Capital Goods and International Construction
Robert Watkins, Deputy Assistant Secretary for Automotive Affairs and Consumer Goods
George Muller, Deputy Director, Office of Export Trading Company Affairs.

National Oceanic and Atmospheric Administration

Alan Thomas, Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research
Paul Wolff, Assistant Administrator, Ocean Services and Coastal Zone Management
Robert Smith, Director, Eastern Administrative Support Center
B. Kent Burton, Director, Congressional Affairs.

National Bureau of Standards

Edward Brady, Associate Director for International Affairs
Samuel Kramer, Deputy Director, National Engineering Laboratory
Lyle Schwartz, Director, Institute for Materials Science and Engineering
Guy Chamberlin, Director of Administration.

Patent and Trademark Office

William Lawson, Patent Documentation Administrator
Stephen Kunin, Group Director

Persons desiring any further information about the Departmental PRB or its membership may contact Mr. David E. Mathis, Executive Secretary to the Departmental Performance Review Board, Office of Personnel, Herbert C. Hoover Building, Room 5102, Washington, DC 20230 (202) 377–3453.

Dated: October 2, 1986.

David E. Mathis,

Executive Secretary, Departmental Performance Review Board, Department of Commerce.

[FR Doc. 86–23304 Filed 10–15–86; 8:45 am]

BILLING CODE 3510-BS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management Programs and Estuarine Sanctuaries State Programs; Alabama; Approval of Amendment

ACTION: Notice of approval of amendment.

Location: Baldwin County, Alabama.

SUMMARY: Notice is hereby given that the Director of the Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA) approved Amendment No. 2 to the federally approved Alabama Coastal Area Management Program (ACAMP). The amendment consists of a change in the State's regulatory definition of its Construction Setback Line (CSL) to a Construction Control Line (CCL) for managing development on beaches and dunes in Baldwin County, Alabama. The CCL is a fixed, mapped line demarcated by the use of concrete monuments. This amendment eliminates the need to identify the crestline of the primary dune system on a case-by-case permit request basis. The amendment allows for increased predictability and consistency in the management of the ACAMP. This approval was made pursuant to section 306 of the Coastal Zone Management Act of 1972, as amended (CZMA), (16 U.S.C. 1451 *et seq.*), and NOAA regulations on Amendments to Approved State Management Programs, 15 CFR 923.80–923.82 (March 28, 1979).

Notice of the Director's preliminary decision to approve the amendment was published on July 16, 1986 in the **Federal Register** (51 FR 25726). An environmental assessment with a Finding Of No Significant Impact was distributed and a 30-day comment period was provided. Five responses were received and responded to prior to making the final findings of approvability.

A copy of the findings and responses to comments made by the Director including that this Amendment meets the requirements of the CZMA may be obtained from the Office of Ocean and Coastal Resource Management. Inquires regarding the ACAMP and the findings may be addressed to: James P. Burgess, Chief, Coastal Programs Division, Universal South Building, 1825 Connecticut Avenue NW., Washington, DC 20235, (202) 673–5130.

In accordance with section 307 of the CZMA, Federal agencies are required to conduct their activities directly affecting the coastal zone consistent to the maximum extent practicable with the ACAMP, as amended. The Federal consistency requirements are fully explained at 15 CFR Part 930. To determine how these requirements are applied in Alabama, Federal agencies should contact William A. Rushton, Director, Office of State Planning and Federal Programs, State Capitol, Montgomery, Alabama 36130, (205) 285–8706.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: October 9, 1986.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 86–23338 Filed 10–15–86; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management Programs and Estuarine Sanctuaries State Programs; Alaska; Approval of Amendment

ACTION: Notice of approval of amendment.

LOCATION: Bristol Bay, Alaska.

SUMMARY: The Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA) received a request from the State of Alaska to amend the Alaska Coastal Management Program (ACMP) to incorporate the Bristol Bay Coastal Resource Service Area (CRSA) Coastal Management Program (BBCMP). The State's request was made pursuant to section 306(g) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 14559(g) and implementing regulations at 15 CFR 923.81. The BBCMP creates a new coastal boundary for the ACMP in the region and establishes goals and policies for activities taking place in Bristol Bay's coastal area. The BBCMP follows the guidelines and standards for local program development set in the ACMP and will be administered both by the CRSA and the State.

The Director of the Office of Ocean and Coastal Resource Management has reviewed the amendment request and has made a preliminary determination

that the ACAMP as amended will still constitute an approvable program and that the procedural requirements of section 306(c) of the CZMA have been met.

The Director also determined that approval of the proposed change does not constitute a major Federal action having a significant effect on the environmment. Therefore, an environmental impact statement on the approval of the amendment under the National Environmental Policy Act of 1969, as amended, is not required. Copies of the Finding of No Significant Impact (FONSI), including the supporting Environmental Assessment (EA) and the Director's preliminary determination of approvability, are available at the address below.

Comments on the Preliminary Determination to approve the Alaska amendment request and on the EA and FONSI should be made within 30 days from the date of this notice. Address comments to: Ben Mieremet, Coastal Hazards and Technical Assistance Coordinator, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235, (202) 673–5181.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: October 10, 1986.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 86–23339 Filed 10–15–86; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management; Federal Consistency Appeal of Exxon From an Objection by the California Coastal Commission

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Resumption of appeal.

On September 5, 1986, Exxon Company U.S.A. (Exxon) requested that the Secretary of Commerce resume processing of its appeal filed in January, 1983 under sections 307(c)(3)(A) and (B) of the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1456(c)(3)(A) and (B), and regulations at 15 CFR 930 Subpart H. The appeal was taken from an objection by the California Coastal Commission to Exxon's proposed Development and Production Plan (DPP) to increase production from the Santa Ynez Unit (SYU), contiguous oil and gas lease tracts on the Outer Continental Shelf in the Western Santa Barbara Channel. The SYU is estimated to contain 300–400 million barrels of crude oil and 600–700 standard cubic feet of natural gas.

On October 8, 1986, the Secretary of Commerce granted Exxon's request for the reactivation of its appeal. Public comments will be invited on the remaining issues to be decided on appeal, after Exxon has filed information supporting the resumption of its appeal. Notice will be given in the **Federal Register** at that time. In addition, a public hearing will be held on the issues raised by this appeal. Notice giving place, date and time will be published in **Federal Register** thirty days before the hearing will be held.

FOR ADDITIONAL INFORMATION CONTACT: L. Pittman, Attorney/Advisor, Office of the Assistant General Counsel for Ocean Services, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: October 9, 1986.

Daniel W. McGovern,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 86–23279 Filed 10–15–86; 8:45 am]

BILLING CODE 3510-08-M

National Telecommunications and Information Administration

[Docket No. 61091–6191]

Comprehensive Review of Rate of Return Regulation of the U.S. Telecommunications Industry

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice; Request for comments.

SUMMARY: The National Telecommunications and Information Administration (NTIA) is responsible for developing and setting forth telecommunications policies pertaining to the nation's economic and technological advancement and to the regulation of the telecommunication industry. Accordingly, NTIA: (a) Conducts studies and makes recommendations regarding telecommunications policies, activities, and opportunities; and (b) ensures that Executive branch views on telecommunications matters are effectively presented to the Federal Communications Commission (FCC), state and local governments, and Congress.

With this notice, NTIA is initiating a review of rate of return regulation, the mechanism historically used by Federal and state agencies to regulate prices charged by domestic and international telecommunications firms. Our objective is to determine whether rate of return regulation remains an effective method of supervising companies in rapidly-changing telecommunications services markets, and whether there are preferred alternative regulatory mechanisms.

DATE: Comments in response to this request should be submitted not later than 60 days from the date of this Notice to receive full considreration.

ADDRESS: Send comments to: Honorable Alfred C. Sikes, Assistant Secretary for Communications and Administraiton, National Telecommunications and Information Administration, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Carol R. Emery, Associate Administrator, Office of Policy Analysis and Development, National Telcommunications and Information Administration, U.S. Department of Commerce, Washington, DC 20230 ((202) 377–1880).

I. Introduction

Government regulation of prices charged by enterprises "affected with a public interest" has been practiced for more than a century.[1] Telecommunications has long been considered sufficiently "affected with a public interest" to warrant government scrutiny. Regulation was premised on a belief that telcommunications services exhibited "natural monopoly" characteristics; multiple suppliers would thus be inefficient. Rate of return regulation has been the preferred mechanism to constrain the economic power of the "natural monopoly" suppliers.

Rate of return regulation imposes certain costs on society, however. Agencies and firms incur significant adminsitrative and personnel costs. A growing body of economic literature, moreover, identifies potential inefficiencies and undesirable incentives created by this form of regulation.[2]

We are therefore soliticing comments on the costs imposed by rate of return regulation, as well as any inefficiencies and adverse incentives resulting from it. While we identify obvious problem areas, interested parties are strongly encouraged to address other aspects of

[1] *See Munn* v. *Illinois*, 94 U.S. 113 (1877).

[2] *See* Sections III and IV, *infra*.

rate of return regulation.[3] Finally, we seek comment on potential alternatives to rate of return regulation, as well as interim measures appropriate during any necessary transition from rate of return regulation to other regimes. These alternatives may provide comparable protection for ratepayers with fewer costs to society.

II. Components of Rate of Return Regulation

Conceptually, rate of return regulation is straightforward. Regulated firms are allowed to set prices that (a) recover allowable operating expenses and (b) earn a return sufficient to cover the cost of capital acquired in debt and equity markets. Rate of return regulation, in theory, gives consumers the benefits of large scale production while assuring "just and reasonable" rates. At the same time, shareholders are assured a fair return on investment used to provide regulated services.

Implementation of the theory is more complicated, however. Rate of return regulation has numerous components, including:

1. Determining property to be included in the rate base;
2. Prescribing depreciation rates used to compute depreciation expenses;
3. Determining a rate of return that reflects the regulated firm's cost of capital;
4. Establishing criteria for "allowable" operating expenses;
5. Developing regulatory accounting and information systems to track revenues and expenses;
6. Specifying criteria to review submitted tariffs; and
7. Establishing rules and procedures to exercise regulatory control.

Each enumerated component, in turn, presents implementation problems. Difficulties in determining the rate base, for example, have led to valuation of assets at historical, versus replacement costs. Such a practice may lead to distortions in incentives to invest in capacity for telecommunications services. Likewise, there are problems with determining a "fair" return on equity. Examining returns in "comparable" industries suffers the perennial problem of identifying such industries. These and related problems raise the question whether problems with rate of return regulation can be eliminated or mitigated by just modifying some constituent elements, or if costs and inefficiencies can by minimized only be eliminating the entire process and replacing it with an improved system to protect ratepayers.

[3] In each case, commenting parties should support their views with quantitative data and economic analysis.

III. Direct Costs of Rate of Return Regulation

Rate of return regulation imposes direct costs on the public and regulated firms. There are 51 state public utility commissions (including the District of Columbia), in addition to the FCC, all supported chiefly by taxpayers. To assess these regulatory costs, we request specific data on the following question: How much staff time and what percentage of operating budgets do state and Federal agencies devote to regulating telecommunications firms subject to their jurisdiction?

"Public" costs of rate of return regulation are paralleled by costs imposed on regulated firms. Each company incurs substantial costs to participate effectively in the process. Regulated firms are requested to submit data in response to the following question: What management, personnel, and administrative costs are incurred in complying with rate of return regulation?

The direct costs of rate of return regulation may be exacerbated by "regulatory lag." By creating a time lag between the filing of a rate increase and its effective date, rate of return regulation may adversely affect a regulated firm's earnings, particularly during periods of inflation. We seek comment on the effect of regulatory lag on the operations and financial performance of regulated firms.

IV. Indirect Costs Attributable to Rate of Return Regulation

Rate of return regulation may also produce indirect costs by creating incentives in regulated firms to behave inefficiently. Although we discuss only the most frequently cited concerns, interested parties are encouraged to identify others. Commenters should also consider whether regulatory alternatives might reduce or eliminate any of these undesirable incentives.

A. Distorted Investment Decisions

A common criticism of rate of return regulation is predicated on the so-called Averch-Johnson-Wellisz ("A–J–W") effect. The A–J–W theory holds that because profits of rate regulated firms are functionally related to rate base size, those firms have an incentive to make more capital investment than is required to produce a given level of output.[4] As a related matter, rate of return regulation may distort a firm's research and development ("R&D") efforts by encouraging development of labor saving innovations, rather than capital saving innovations.[5]

Some economists criticize the A–J–W theory on a number of grounds. Williamson argues the A–J–W model is flawed because it assumes that firms generally maximize profits, which may not be the case.[6] Bailey and Coleman suggest regulatory lag, attributable to rate of return regulation, often encourages cost minimization.[7] Finally, because incentives to overcapitalize obtain only when capital costs are less then the rate of return, one of the authors of the A–J–W models has recognized the A–J–W effect may not occur during periods of inflation.[8]

Accordingly, we request parties to comment on the following: Does the A–J–W effect exist in the domestic telecommunications industry? Are the economic welfare effects substantial? What market assumptions underlying the A–J–W model are necesary for its operation? Does rate of return regulation distort R&D efforts, for example, by favoring labor saving innnovations over capital saving innovations?

B. Incentives To Inflate Costs

A related problem stems from the fact that rate of return regulation gives rise essentially to "cost-plus" ratemaking. Regulated firms are generally entitled to recover all costs legitimately expended to provide service. As a result, firms may be disinclined to minimize operating costs, or may "gold plate" their service offerings. The result is excessive use of scarce resources, to the detriment of ratepayers. Interested

[4] Wellisz, *Regulation of Natural Gas Pipeline Companies: An Economic Analysis*, 55 J. Pol. Econ. 30 (1963); Averch and Johnson, *Behavior of the Firm Under Regulatory Constraint*, 53 Am. Econ. Rev. 1053 (1962).

A recent study has confimed the existence of the A–J–W effect in the Candaian telecommunications industry. Mirаucki, *A Study of the Averch-Johnson Hypothesis in the Telecommunications Industry, 13 Atlantic Econ. J. 121 (1984).*

[5] *See* Westfield, "Innovation and Monopoly Regulation," in *Technological Change in Regulated Industry* 529 (W. Capron ed. 1971).

[6] Williamson, *The Economics of Discretionary Behavior: Managerial Objectives in a Theory of the Firm* (1964). The notion that firms may not be profit maximizers has important implications for an analysis of rate of return regulation. The costs and incentives created by rate of return regulation may be different depending on the corporate objectives of the regulated firms. *See, eg.*, Bailey and Malone, *Resources Allocation in the Regulated Firm*, 1 Bell J. Econ. and Mgmt Sciences 129 (1970) (under rate of return constraint, profit maximizing firms will tend to overcapitalize; sales or output maximizing firms will tend to undercapitalize). We therefore solicit comment on how best to characterize the corporate objectives of the typical regulated telecommunications firm.

[7] *See* Bailey and Coleman, *The Effect of Lagged Regulation in an A–J Model*, 2 Bell J. Econ. and Mgmt. 278 (1971).

[8] Johnson, *Behavior of the Firm Under Regulatory Constraint: A Reassessment*, 63 Am. Econ. Rev. 90 (1973).

parties are requested to comment on the following: Is "gold plating" prevalent in the domestic telecommunications industry? To what extent would increased competition induce regulated firms to minimize costs of operation?

C. Adverse Effects on Innovation

Some observers claim rate of return regulation stifles the incentives of regulated firms to innovate. Such claims remain unproven since existing studies compare the relationship between innovation and market structure.[9] Verification of these claims requires an analysis contrasting the level of innovation produced in a rate of return regulated industry with the level produced in a comparable industry that is not rate regulated. We encourage interested parties to provide us with such analyses. More generically, commenters are requested to submit analysis on the relationship between rate of return regulation and levels of innovation.

A 1976 study performed by A.D. Little for AT&T cites a possible link between rate of return regulation and innovation.[10] The study concluded that, in the short run, rate regulated firms have greater incentives to introduce cost-reducing innovations than to introduce demand-increasing innovations.[11] Cost-reducing innovation enables regulated firms to increase profits by holding prices steady and capturing cost savings. Profits would persist until regulators moved to reduce prices.

Demand-increasing innovation typically involves increasing rates or introducing new services. Delays in obtaining regulatory approval may limit the firm's ability to obtain immediate benefit from the innovation. Under many likely price regulation conditions, moreover, increased profits generated by a demand-increasing innovation will be less than the increased profits attributable to a cost-reducing innovation.[12] For these reasons, the Little study concluded that regulated firms would tend to favor cost-reducing innovations. Is this conclusion valid under current market and regulatory conditions?

Although the Little study suggests that rate of return regulation may induce regulated firms to prefer one type of innovation over another, it does not indicate whether or not rate regulation reduces a firm's incentive to introduce both types of innovations. Interested parties are encouraged to comment on this issue. They should also consider whether society should prefer cost-reducing innovations over demand-increasing innovations, or vice versa. If demand-increasing innovations create greater welfare, it would seem unwise to retain a regulatory scheme—rate of return regulation—that may impede the introduction of such innovations.

To assess the potential impact of rate of return regulation on innovation, a measure for the level of innovation must be identified. One possible measure is domestic telecommunications patent activity recorded by the United States Patent and Trademark Office.[13] The Patent Office found the proportion of foreign-originated patents in telecommunications increased sharply between 1970 and 1983. In 1983, 43.8 percent of United States telecommunications patents were of foreign origin, as compared to 25.6 percent in 1970. The decline in the proportion of telecommunications patents granted to domestic firms may reflect a decline in the R&D activities of those firms. This may hamper their ability to compete in international markets and, thus, contribute to the growing U.S. trade deficit.

What are the advantages and limitations of using patent activity to measure the innovation levels in the telecommunications industry? Interested parties are requested to address whether changes in the level of domestic-originated patenting between 1970 and 1983 may be, in part, attributable to rate of return regulation. Commenters are also requested to submit data in response to these questions:

1. Do the rate of return process and related proceedings (especially the opportunities they afford competitors to challenge new offerings before administrative agencies) deter introduction of new products by regulated firms?

2. Are the goals of maintaining rate of return regulation and facilitating rapid dispersal of the latest technologies incompatible?

3. Has rate of return regulation exacerbated the U.S. trade deficit by dampening domestic telecommunications research and development and innovation activities? How would increased R&D and innovation by U.S.-based telecommunications firms enhance their position in the international marketplace?

V. Alternatives to Rate of Return Regulation

Given the costs and inefficiencies attributable to rate of return regulation, it may be appropriate to replace rate regulation with another mechanism that provides comparable protection against excessive rates with lesser social and economic costs. Several alternatives to rate of return regulation have been proposed. We seek comment on each alternative, as well as suggestions for other approaches.

A. "Social Contract" and Related Regulatory Schemes

Several states have considered "social contract" approaches to telecommunications regulation. Under plans such as the one proposed by Vermont Public Service Board Chairperson Louise McCarren, prices for local exchange service to residential and small business customers would be frozen for a designated period of time. Increases thereafter would be limited by a certain formula (such as increases in the consumer price index). In return, all other telephone company services would be deregulated or detariffed.

Legislation recently enacted in Nebraska employs a variation of the "social contract" approach. As of January 1, 1987, local telephone companies may increase local exchange rates up to 10 percent on 90 days notice without state commission approval. For five years, however, the commission will be required to hold hearings upon petition from a certain percentage of the company's customers. In return, companies will be freed from rate of return regulation for other services. Moreover, interLATA toll services will be deregulated as of January 1, 1987, and intraLATA services will be deregulated two years later.

These regulatory schemes are not without problems. The consumer price index may not be an appropriate benchmark for determining subsequent price increases. some companies contend any rigid cap on their prices would constitute an unconstitutional "taking," because they, potentially, would be obligated to render service at arbitrarily fixed, noncompensatory prices.

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[9] *See, e.g.*, Kamien and Schwartz, *Market Structure, Elasticity of Demand, and Incentive to Invent*, 13 J. Law and Econ. 241 (1970).

[10] A.D. Little, Inc., *The Relationship of Market Structure to Innovation* (1975), reprinted in *Domestic Telecommunications Common Carrier Policies: Hearing Before the Subcom. on Communications of the Senate Comm. on Commerce, Science, and Transportation*, 95th Cong., 1st Sess. 309 (1977).

[11] *Id.* at 322–23. In the longer term, however, a series of cost-reducing innovations may produce a demand-increasing innovation by laying the groundwork for a new service that was not possible previously. *Id.* at 323.

[12] *Id.* at 335 and Addendum A–1.

[13] U.S. Patent and Trademark Office, *Patent Profiles: Telecommunications* (1984).

Additionally, telephone companies might possibly evade pricing limits by degrading service quality while holding prices flat. The cost of providing regulated local exchange services might also decline, as was the case for toll services. If so, local telephone companies might reap excessive profits. Finally, freezing prices for only one customer class might stimulate cross-subsidization, with attendant inefficiencies.

Interested parties should comment on "social contract" alternatives to rate of return regulation. In this regard, the British Government adopted such an approach when it privatized British Telecom in 1984. We request further information on the success of the British plan.

B. "Marketbasket" Regulation

Some experts propose supervising only the overall performance of regulated telephone companies, giving them broad discretion in day-to-day operations. Under one approach, a regulated firm's performance would be compared annually to a "marketbasket" of corporate stocks with performance and risk characteristics comparable to telephone companies. If the regulated company's stock outperformed the marketbasket, suggesting excessive profits, regulators could order appropriate refunds. This approach would give companies broad pricing and rate structure discretion while ensuring abuses would trigger a refund obligation.

Adoption of marketbasket regulation, however, might simply exchange a complicated regulatory "known"—rate of return regulation—for a complicated regulatory unknown. Additionally, the standards may be difficult to apply to firms that offer both regulated and unregulated services. A firm might outperform the marketbasket because of large profits in its unregulated operations, and regulators might require refunds even though the regulated portion of the firm's business produced only normal profits. Further, there is concern that this approach might deter innovation or competitive pricing initiatives for fear that firms might, by competing more effectively, trigger refund obligations.

Interested parties should address these and other issues related to marketbasket regulation. In particular, they should specify criteria that could be used to identify stocks that have performance and risk characteristics comparable to telephone companies.

C. "Banded" Pricing

A third approach might be to give all regulated telecommunications firms discretion to raise or lower prices within a certain band without requiring regulatory approval. The band could be held constant over time, or gradually expanded from year to year. The objective would be to move towards total deregulation of competitive services while giving users and competitors time to adjust to a changing regulatory environment.

There have been criticisms of banded pricing proposals with respect to interstate services. Some claim AT&T retains "market power" in that market, and thus according it greater pricing flexibility increases the potential for predatory pricing. This argument, however, assumes both that AT&T possesses market power and that predatory pricing is a rational policy. We request comment on the validity of these assumptions.

Some also argue that allowing AT&T to institute selective price cuts may increase pressures for deaveraging interstate toll rates. Additionally, large users may find that adoption of banded pricing complicates the task of interpreting carrier tariffs, forecasting costs, and efficiently managing private networks. We request comment on these and other potential drawbacks of banded pricing. We also seek views on its benefits, as well as the appropriate way to implement banded pricing.

D. Deregulation of Small Companies

Some states have considered or adopted plans exempting telephone companies with fewer than a specified number of customers or access lines from rate of return regulation. This reduces administrative costs that are borne, in part, by customers of those companies. Critics argue, however, that because small companies typically serve areas that are less likely to attract competitive entry, their ability to fix excessive rates or provide inadequate service is greater than larger companies facing competitive entry. Critics also argue that so long as AT&T and other carriers are required to provide long distance services to and from small company service areas, regulatory scrutiny remains necessary to ensure reasonable interstate access charges.

We seek comment on the merits of small company deregulation. In particular, we solicit views on the appropriate definition of a "small company." Interested parties should also comment on the potential market power exercisable by small companies, the costs which full rate of return regulation imposes on them, and the extent to which small company service areas are subject to competitive entry. We also solicit data comparing the rates charged by smaller companies with those established by larger, presumably more closely regulated companies.

VI. Promotion of Greater Competition in Telecommunications Markets

These alternative plans seek to minimize the direct costs attributable to rate of return regulation by limiting the services or companies subject to regulatory scrutiny, or by broadening the range of price changes allowed before triggering regulatory involvement. None, however, necessarily resolves another fundamental problem associated with rate of return regulation: The fact it is frequently coupled with restrictions on competitive entry. It may therefore be appropriate to accompany any replacement of rate of return regulation with the removal of legal barriers to entry into all telecommunications markets, to create the potential for competitive provision of all services.[14]

Allowing competitive entry would induce incumbent firms to be more efficient. Cost savings may exceed any economies of scale attributable to provision of service by a single firm. This conclusion is supported by studies comparing prices for electrical utilities possessing monoploy franchises with utilities facing competitive providers. One study concluded that operational inefficiencies resulting from monopoly provision of electricity outweighed the benefits of economies of scale below annual sales of 225 million kilowatt hours.[15] We seek comment on whether similar net efficiency gains can be obtained by allowing greater competitive entry into domestic telecommunications markets.

VII. Conclusion

The purpose of this Notice of Inquiry is to further debate on the continued efficacy of rate of return regulation in controlling the prices charged by domestic telecommunications firms. We hope to gather sufficient data to enable us to evaluate the costs resulting from rate of return regulation. Our objective is to determine whether these costs are sufficiently high to warrant replacement of rate of return regulation with an alternative system which provides

[14] *Cf.* Rassenti and Smith, *Electric Utility Deregulation*, Univ. of Arizona Econ. Sci. Lab. Working Paper No. 86-3 (Mar. 1986).

[15] *See* Primeaux, *An Assessment of X-Efficiency Gained Through Competition*, 1977 Rev. of Econ. and Statistics 105-08.

protection against excessive prices with lesser cost to society.

Dated: October 10, 1986.

Alfred C. Sikes,

Assistant Secretary for Communications and Information.

[FR Doc. 86-23372 Filed 10-15-86; 8:45 am]

BILLING CODE 3510-60-N

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Notice was published September 17, 1986, at 51 FR 32943 that the Naval Research Advisory Committee Panel on Over the Horizon Targeting Capabilities will meet on October 29-30, 1986. The meeting agenda has been changed to add an Executive Session on Friday, October 31, 1986. The additional session will commence at 9:00 a.m. and terminate at 1:00 p.m. on October 31, 1986. All other information in the previous notice remains effective.

Dated: October 10, 1986.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 86-23336 Filed 10-15-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No: 6(c)-86]

Proposed Legal Interpretation of Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act; Notice of Availability and Hearing Procedures

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of availability.

SUMMARY: Bonneville Power Administration (BPA) proposes to interpret section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act or Act), 16 U.S.C. 839d(c). Section 6(c) requires the Administrator to conduct public hearings on any BPA proposal to acquire a major resource and to implement a conservation measure which will conserve an amount of electric power equivalent to a major resource, and to determine whether the proposed major resource acquisition is consistent with the Pacific Northwest Electric Power and Conservation Planning Council's (Council) Northwest Conservation and Electric Power Plan (Plan). If either BPA or the Council determine that the proposed major resource acquisition is inconsistent with the Plan, BPA can acquire the major resource only after receiving approval from Congress. The proposed legal interpretation addresses the types of resource acquisition proposals subject to section 6(c) review, the procedures for section 6(c) hearings, and the criteria for a BPA finding of consistency with the Plan.

Responsible Officials: James O. Luce, Assistant General Counsel, is the official responsible for this statutory interpretation. John D. Carr, Director, Division of Planning and Evaluation, Office of Conservation, is an official responsible for implementing section 6(c).

DATE: The proposed statutory interpretation is available at this time.

ADDRESS: Requests for a copy or copies of the proposed interpretation should be made to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Lynn W. Baker, Public Involvement Office, at the address listed above, 503-230-3478. Oregon callers outside Portland may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800-547-6048. Information may also be obtained from:

Mr. Terrence G. Esvelt, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206-442-4130.

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Federal Building, 550 W. Fort Street, Rm 376, Boise, Idaho 83724, 208-334-9137.

SUPPLEMENTARY INFORMATION:

I. Background

A. Relevant Statutory Provision

Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act, (Act) 16 USC 839d(c), requires the Administrator to conduct public hearings on any BPA proposal to acquire a major resource or to implement a conservation measure which will conserve an amount of electric power equivalent to a major resource, and to determine whether the proposed major resource acquisition is consistent with the Council's Plan. In addition, the Act also permits the Council to determine subsequently whether the major resource or conservation measure is consistent with the Council's Plan. If either the Administrator or the Council determine that the proposed major resource acquisition or conservation measure implementation is inconsistent with the Plan, BPA can acquire the major resource or implement the conservation measure only after receiving expenditure authorization from Congress. Section 6(c) provides:

6.(c)(1) For each proposal under subsection (a), (b), (f), (h) or (l) of this section to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to that of a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource, the Administrator shall—

6.(c)(1)(A) publish notice of the proposed action in the FEDERAL REGISTER and provide a copy of such notice to the Council, the Governor of each State in which facilities would be constructed or a conservation measure implemented, and the Administrator's customers;

6.(c)(1)(B) not less than sixty days following publication of such notice, conduct one or more public hearings, presided over by a hearing officers, at which testimony and evidence shall be received, with opportunity for such rebuttal and cross-examination as the hearing officer deems appropriate in the development of an adequate hearing record;

6.(c)(1)(C) develop a record to assist in evaluating the proposal which shall include the transcript of the public hearings, together with exhibits, and such other materials and information as may have been submitted to, or developed by, the Administrator; and

6.(c)(1)(D) following completion of such hearings, promptly provide to the Council and make public a written decision that includes, in addition to a determination respecting the

requirements of subsection (a), (b), (f), (h), (l), or (m) of this section, as appropriate—

6.(c)(1)(D)(i) if a plan is in effect, a finding that the proposal is either consistent or inconsistent with the plan or, notwithstanding its inconsistency with the plan, a finding that it is needed to meet the Administrator's obligations under this Act, or

6.(c)(1)(D)(ii) if no plan is in effect, a finding that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) of this Act or notwithstanding its inconsistency, a finding that it is needed to meet the Administrator's obligations under this Act.

6.(c)(1)(D) In the case of subsection (f) of this section, such decision shall be treated as satisfying the applicable requirements of this subsection and of subsection (f) of this section, if it includes a finding of probable consistency, based upon the Administrator's evaluation of information available at the time of completion of the hearing under this paragraph. Such decision shall include the reasons for such finding.

6.(c)(2) Within sixty days of the receipt of the Administrator's decision pursuant to paragraph (1)(D) of this subsection, the Council may determine by a majority vote of all members of the Council, and notify the Administrator—

6.(c)(2)(A) that the proposal is either consistent or inconsistent with the plan, or

6.(c)(2)(B) if no plan is in effect, that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

6.(c)(3) The Administrator may not implement any proposal referred to in paragraph (1) that is determined pursuant to paragraph (1) or (2) by either the Administrator or the Council to be inconsistent with the plan or, if no plan is in effect, with the criteria of section 4(e)(1) and the considerations of section 4(e)(2)—

6.(c)(3)(A) unless the Administrator finds that, notwithstanding such inconsistency, such resource is needed to meet the Administrator's obligations under this Act, and

6.(c)(3)(B) until the expenditure of funds for that purpose has been specifically authorized by Act of Congress enacted after the date of the enactment of this Act.

6.(c)(4) Before the Administrator implements any proposal referred to in paragraph (1) of this subsection, the Administrator shall—

6.(c)(4)(A) submit to the appropriate committees of the Congress the administrative record of the decision (including any determination by the Council under paragraph (2)) and a statement of the procedures followed or to be followed for compliance with the National Environmental Policy Act of 1969.

6.(c)(4)(B) publish notice of the decision in the **Federal Register** and

6.(c)(4)(C) note the proposal in the Administrator's annual or supplementary budget submittal made pursuant to the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following).

6.(c)(4) The Administrator may not implement any such proposal until ninety days after the date on which such proposal has been noted in such budget or after the date on which such decision has been published in the **Federal Register**, whichever is later.

6.(c)(5) The authority of the Council to make a determination under paragraph (2)(B) if no plan is in effect shall expire on the date two years after the establishment of the Council.

B. Public Comment Procedures

BPA and the Council published a joint Issue Paper on July 29, 1986, in which the major issues involving section 6(c) were presented and alternative approaches were discussed and explored. BPA and the Council received 30 written comments in response to the Issue Paper. BPA and the Council also created a Consultation Group to meet with both agencies to discuss the Issue Paper and assist the agencies in the development of their respective proposed interpretations. This group met on July 24 and September 2, 1986.

Requests for copies of the proposed interpretation should be directed to the Public Involvement Manager at P.O. Box 12999, Portland, Oregon 97212. BPA intends to publish the final interpretation in late October, 1986.

C. Scope of Interpretation

This proposed interpretation of section 6(c) addresses only proposals to acquire major resources under subsections (a), (b) and (1), and proposals to implement a conservation measure under subsection (a) and (b) which will conserve an amount of electric power equivalent to that of a major resource. This proposed interpretation does *not* address proposals to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource under subsection (f), or proposals to grant billing credits or services involving a major resource under subsection (h).

II. Proposed Legal Interpretation

A. Definitions

This section contains definitions of terms used in the proposed legal interpretation and is a part of the interpretation. Terms defined in the Northwest Power Act have the same meaning in this interpretation, unless further defined.

1. *Acquire or acquisition.* To "acquire" means to incur, and an "acquisition" is, a contractual obligation to make payment for (1) specified rights to the output or capability of a resource or (2) for the installation of specified conservation measures.

2. *Binding contract offer.* A "binding contract offer" exists when the Administrator presents a unilaterally executed contract for signature by the other contracting party.

3. *Conservation resource.* A "conservation resource" is actual or planned reduction of electric power consumption resulting from increases in the efficiency of energy use, production or distribution, by either:

a. the direct application of renewable resources by a consumer; or

b. the implementation of conservation measures.

4. *Generating resource.* A "generating resource" is actual or planned electric power capability of a generating facility of a type of either:

a. renewable resources, such as solar, wind, hydro, geothermal, biomass, or similar sources of energy; or

b. resources using waste heat or having high fuel conversion efficiency; or

c. thermal resources, such as nuclear, coal, or combustion turbine.

5. *Option.* An "option" is the purchase of a unilateral right to acquire an existing or proposed generating or conservation resource within a particular time on specified terms. No commitment to acquire a resource is made at the time an option is purchased.

B. Threshold

1. Proposals

a. The existence of a proposal, and when to initiate a section 6(c) hearing process on the proposal, will be determined by the Administrator in his sole discretion. This determination will take into account, among other criteria, the existence of sufficient information concerning a future resource action such that the proposal's compliance with statutory requirements and its consistency with the Council's Plan can be adequately assessed.

b. BPA and the Council shall consult with one another and with representatives from the region prior to the time a section 6(c) review is initiated. Such consultation will address the advisability of modifying BPA's proposal and/or amending the Council's Plan. In addition, BPA shall consult periodically with the Council and representatives of the region with a view to discussing potential proposals to acquire resources within the context of section 6(c).

2. Generating resources

a. A proposal to acquire a generating resource shall be subject to section 6(c) review if the aggregate megawatts proposed to be acquired at any one generating resource project constitute

more than 50 average megawatts and are acquired for a period of more than 5 years.

b. A proposal to acquire a generating resource through a utility system sale shall be subject to section 6(c) review if the aggregate megawatts proposed to be acquired from the utility from that sale constitute more than 50 average megawatts and are acquired for a period of more than 5 years.

c. The aggregate megawatts proposed to be acquired shall be measured by the Administrator upon consideration of factors including, but not limited to, planned capability measured with generally accepted planning criteria, the term of the contract for acquisition, and the existing and proposed budget levels or limitations.

3. Generation programs

a. A generation program shall be subject to section 6(c) review if the Administrator proposes to multiple entities binding contract offers proposed by the Administrator to capture more than 50 average megawatts of electric power for a period of more than 5 years,

(1) from a single generating resource technology, and

(2) at a fixed price or formula.

b. The electric power proposed to be acquired shall be measured by the Administrator upon consideration of factors including, but not limited to, planned capability measured with generally accepted planning criteria, the term of the contract for acquisition, and the existing and proposed budget levels or limitations.

c. An individual contract resulting from a generation program which has been reviewed under section 6(c) shall not be subject to further review under section 6(c).

4. Conservation resources

a. A proposal to acquire a conservation resource shall be subject to section 6(c) review if the aggregate megawatts proposed to be acquired under a single contract constitute more than 50 average megawatts and are acquired for a period of more than 5 years.

b. The aggregate megawatts proposed to be acquired shall be measured by the Administrator upon consideration of factors including, but not limited to, the planned savings based upon a reasonably expected penetration of the activities, the resource planning horizon, the term of the contract for acquisition, and the existing and proposed budget levels and limitations.

5. Conservation programs

a. A conservation program shall be subject to section 6(c) review if the Administrator proposes to multiple entities generic contracts which consist of a set of logically related activities proposed by the Administrator to capture more than 50 average megawatts of energy savings in a recognized planning sector or subsector for a period of more than 5 years, and which either:

(1) Do not specify particular measures to be installed or implemented, but require an actual delivery of savings for payment; or

(2) Are provided by a single mode or program delivery and consist of a well-defined set of measures, but do not require actual delivery of savings for payment.

b. The energy savings proposed to be acquired shall be measured by the Administrator upon consideration of factors including, but no limited to, the planned savings based upon a reasonably expected penetration of the activities, the term of the contract for acquisition, and the existing and proposed budget levels and limitations.

c. An individual contract resulting from a conservation program which has been reviewed under section 6(c) shall not be subject to further review under section 6(c).

6. Requests for proposals

a. A request for proposals (RFP) issued by the Administrator, which the Administrator has determined does not constitute a binding contract offer, shall not be subject to section 6(c) review.

b. In response to a RFP, the Administrator retains the discretion to acquire the electric power or the energy savings through an acquisition under sections 2–5, above. In the event of an acquisition under section 3 or 5, the Administrator may choose to expand the program to entities which did not participate in or respond to the RFP.

7. Options to acquire major resources

a. A proposal to purchase an option shall not be subject to section 69(c) review.

b. A proposal to exercise an option shall be subject to section 6(c) review.

8. Section 6(1) Resources

a. A proposal to acquire a major extraregional renewable resource shall be subject to section 6(c) review.

b. Interregional exchanges are not subject to section 6(c) review.

C. Section 6(c) Hearings Procedures

Appendix A, incorporated by reference into this proposed interpretation, specified the proposed procedures for the section 6(c) hearing is limited to an inquiry into whether the Administrator's proposal will achieve substantially the goals and objectives of the Council's Plan as described in section D. The Council has the option of participating in the hearing, and the Administrator may determine prior to the initiation of the hearing whether an expedited proceeding is appropriate.

D. Consistency

A BPA proposal pursuant to section 6(c)(1) of the Northwest Power Act shall be found consistent with the Northwest Conservation and Electric Power Plan if it is judged to be so structured that it will achieve substantially the goals and objectives of the power plan in effect at the time the proposal is made.

Issued in Portland, Oregon, on this 19th day of September, 1986.

James J. Jura,

Administrator.

Appendix A—Major Resource Acquisition Hearings Procedures

1. Applicability and Scope

(a) *General Procedures.* These procedures apply to all proceedings conducted under the procedural requirements contained in section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839d(c).

(b) *Scope.* The scope of all proceedings conducted under these procedures shall be limited to an inquiry into whether the action proposed by the Administrator will achieve substantially the goals and objectives of the Council's Power Plan.

(c) *Waiver.* To the extent permitted by law, the Administrator may waive any section of these procedures or prescribe any alternative procedures he determines to be appropriate.

2. Definitions

(a) "Administrator" means the BPA Administrator or the Acting Administrator.

(b) "Agent" means counsel, consultants, witnesses, employees and other representatives of a person.

(c) "Council" means the members appointed to the Pacific Northwest Electric Power and Conservation Planning Council.

(d) "Hearing Officer" means the official designated by the Administrator to conduct a hearing pursuant to Northwest Power Act section 6(c).

(e) "Legal Issue" includes any issue grounded on any contractual right or obligation, any of BPA's organic statutes, the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*, or the Trade Secrets Act, 18 U.S.C. 1905, which has a bearing on the propriety of the action proposed by the Administrator.

(f) "Participant" means any person submitting for the record oral or written comments pursuant to section 6 of these procedures on a major resource action proposed by the Administrator.

(g) "Party" means any person whose intervention is effective under section 5.

(h) "Person" means an individual, partnership, corporation, association, an organized group of persons, a municipality, including a city, county, or any other political subdivision of a state, a state, any agency, department, or instrumentality of a state, a state compact agency or interstate body, a province, or the United States, or any officer, or agent of any of the foregoing acting in the course of his or her employment or agency.

(i) "Record" means the testimony, exhibits, transcripts, notices, comments, briefs, pleadings, such other materials and information as submitted or developed by the Administrator, draft record of decision, and record of decision certified by the hearing officer.

(j) "Record of Decision" means the document, issued by BPA which identifies and resolves each issue in the 6(c) hearing; summarizes the factual, legal and policy arguments presented by BPA and the parties on each issue; and sets forth the Administrator's decision on each issue.

3. Notice of Proposed Action

(a) The Administrator shall publish notice of any proposed action pursuant to section 6(c) in the **Federal Register** and provide a copy of the notice to:

(1) The members of the Council and its executive staff,

(2) The Governor of each State in the Pacific Northwest Region,

(3) The Administrator's customers, and

(4) Others the Administrator deems appropriate.

(b) The Administrator may initiate the public hearing with this notice by indicating a date, not less than 60 days following publication of this notice, on which a public hearing or hearings will be held pursuant to section 6(c). This notice must comply with the requirements of section 4.

4. Initiation of 6(c) Hearing

(a) A hearing on the Administrator's proposed major resource action may be initiated by a hearing notice published in the **Federal Register.** The hearing notice shall:

(1) Specify the proposed major resource action;

(2) Establish a deadline for filing petitions to intervene;

(3) State the timeframe permitted the hearing officer to conduct the 6(c) hearing together with a statement of reasons for the Administrator's decision;

(4) Establish a date on which the hearing officer will conduct the prehearing conference and commerce the 6(c) hearing;

(5) Specify the date on which the Administrator will issue the record of decision, which date shall be used by the hearing officer in establishing the procedural schedule for the hearing; and

(6) Provide other information which the Administrator determines to be pertinent to the hearing.

(b) The Administrator shall provide a copy of the notice to the persons identified in section 3(a).

5. Intervention

(a) *Filing.* A person seeking to become a party in a 6(c) hearing must file a petition to intervene with the hearing officer. A copy of the petition shall be served on BPA's Office of General Counsel/APP.

(b) *Contents.* The petition shall state the name and address of the person and the person's interests in the outcome of the hearing. Petitioners may designate no more than two persons on whom service will be made. The major resource sponsor, contracting entities, or the Council shall be granted intervention, based on a petition filed in conformity with this section. Other petitioners must explain their interests in sufficient detail to permit the hearing officer to determine whether they have a relevant interest in the hearing.

(c) *Time.* (1) Petitions must be filed within the time specified in the section 4. Notice for the hearing in question.

(2) Granting an untimely petition to intervene must not be a basis for delaying or deferring any procedural schedule. A late intervenor must accept the record developed prior to its intervention. In acting on an untimely petition, the hearing officer shall consider whether:

(i) The petitioner has a good reason for filing out of time,

(ii) Any disruption of the proceeding might result from allowing a late intervention,

(iii) The petitioner's interest is adequately represented by existing parties, and

(iv) Any prejudice to, or extra burdens on, existing parties might result from permitting the intervention.

(d) *Opposition.* Any opposition to an intervention petition shall be filed and served at least 24 hours before the prehearing conference. Opposition to a late intervention petition shall be filed and served within 2 days after service of the petition.

(e) *Application of hearing procedures.* Procedures specified in sections 8–15 are available only to parties, and are not available to participants.

6. Participation

Any person who is not a party, may become a participant by submitting oral or written recommendations for the record or by testifying in legislative-style hearings when conducted by the Administrator for the purpose of receiving public comments. Oral or written comments must be submitted to the BPA Public Involvement Office. The hearing officer may allow reasonable questioning of participants by BPA counsel or requesting parties.

7. Prehearing Conference

A prehearing conference shall be held on the date specified in the Administrator's section 4. **Federal Register** notice. During the conference, the hearing officer hall:

(a) Act on all intervention petitions,

(b) Establish any special procedures the hearing officer considers appropriate, provided that such special procedures conform to BPA's procedures governing proposed major resource acquisitions.

(c) Establish a service list,

(d) Establish a procedural schedule for the entire hearing, and

(e) Consolidate parties with similar interests into groups for purposes of filing jointly sponsored testimony and briefs and for expediting cross-examination.

8. Discovery

BPA and the parties to any 6(c) hearing may engage in discovery, and be subject to discovery requests, according to the following rules:

(a) *Informal requests.* Prior to initiation of a 6(c) hearing, information concerning the Administrator's proposed action may be requested by making a written request through BPA's Public Involvement Office.

(b) *Data requests.* Data requests shall be made in writing at the times designated in the procedural schedule. Any relevant information may be requested that is not privileged or unduly burdensome to produce. Requests shall be addressed to counsel for the party to whom the requests are sent (or directly to a party not represented by counsel), and shall be served on all parties to the service list compiled by the hearing officer. Responses to data requests are required to be served on the requesting party or counsel for the requesting party.

(c) *Clarification sessions.* The hearing officer may schedule one or more transcribed sessions for the purpose of allowing parties to question witnesses about the contents of their prepared testimony and the derivation of their recommendations and conclusions. The procedural schedule shall require that BPA and the parties wishing to participate in clarification of a witnesses' testimony serve all data requests pertaining to that testimony at least one business day prior to the session. Witnesses shall have the option of providing answers to data requests during the clarification session. If a witness is unable to answer a given question during the clarifying session, the answer to that question shall be provided in accordance with paragraph (b) of this section.

(d) *Objections to discovery.* Objections to data requests or to questions asked during clarification sessions shall be submitted within the time specified in the procedural schedule. Objections must explain the grounds on which response is being withheld.

(e) *Motions to compel.* Anyone whose data request or clarifying question is not answered may file a motion with the hearing officer to compel an answer. The movant must certify that it first attempted to resolve the objection informally with the objecting party. Motions to comple must be made within the time specified in the procedural schedule.

(f) *Privileged Information.* The hearing officer may issue protective orders or made in camera inspection of documents as necessary to protect copyrighted, proprietary, or otherwise privileged information. The hearing officer may not order release of documents in BPA's possession withheld on the basis of exemptions to the Freedom of Information Act, 5 U.S.C. 552, or the Trade Secrets Act, 18 U.S.C. 1905.

(g) *Sanctions.* The hearing officer may remedy any refusal to comply with an order compelling answer to a data request or clarification question by:

(1) Striking the testimony or exhibits to which the question or request relates, or

(2) Limiting discovery or cross-examination by the party refusing to answer or respond, or

(3) Recommending to the Administrator that an appropriate adverse inference be

drawn against the party refusing to answer or respond.

(h) *Copies.* Any party wishing copies of data responses should request them for the party submitting the response.

9. General 6(c) Proceedings

A general 6(c) proceeding is a hearing on the Administrator's proposed major resource action where the Administrator does not utilize the procedures in section 10. For an expedited 6(c) proceeding. The hearing officer may establish the procedures and conduct hearings, consistent with this rule, as necessary to develop a full and complete record and to receive public comment and argument related to the proposal.

10. Expedited 6(c) Proceedings

(a) *General Rule.* The Administrator may expedite the 6(c) hearing to accommodate the nature of the proposal. The record of decision in 6(c) hearings conducted under this section shall be issued within 30, 60, 90, or 120 days after the date set for hearing in the notice issued under section 4, except as provided in paragraph (b) of this section. Consistent with fairness to the parties, the hearing officer shall establish the procedures necessary to satisfy the Administrator's expedited schedule.

(b) *Extensions.* Only the hearing officer may request the Administrator to extend the hearing limit, on a showing of good cause by a party. Upon a determination of the hearing officer that a party's showing has merit and is not dilatory, the hearing officer may request in writing an extension of time from the Administrator. Submission of a request shall not have the effect of staying the proceedings. The Administrator shall notify the hearing officer and the parties of his determination within 4 days thereafter.

11. Testimony And Exhibits

(a) General Rule.

(1) The opportunity for refutation or rebuttal on any material submitted by any other party or by BPA shall be provided to the parties as the hearing officer deems appropriate. Except as provided in paragraph (b), witnesses shall submit all testimony and exhibits at the times specified in the procedural schedule. Oral testimony will be permitted only by leave of the hearing officer.

(2) Any rebuttal to BPA's direct case must be contained in a party's direct testimony, which shall also contain any affirmative case that party wishes to present. Any subsequent rebuttal testimony permitted by the hearing officer shall be limited to rebuttal of the parties' direct cases. In lieu of cross-examination, the hearing officer is encouraged to allow the filing of surrebuttal testimony on an issue.

(3) Written testimony must have line numbers inserted in the left-hand margin of each page. It is the responsibility of each party to obtain from the hearing officer's clerk exhibit numbers for display on prefiled testimony and exhibits.

(4) The hearing officer shall reject exhibits and other documentation of excessive length. Parties may only introduce into evidence excerpts or summaries of such documentation, which excludes irrelevant or redundant material.

(b) *Items by reference.* Other testimony, exhibits, or studies may be designated as items by reference in any proceeding. Items by reference should not be physically included in the record, unless the hearing officer so orders.

(c) *Official notice.* The hearing officer may take official notice of any matter that may be judicially noticed by federal courts, or any matter about which BPA is expert.

(d) *Motions to strike.* Motions to strike prefiled testimony and exhibits shall be filed within 7 days after service. Answers to the motion may be made; however, the movant may not reply to the answer.

(e) *Record of participants.* Testimony and comments received pursuant to section 6, shall be compiled in a separate section of the record.

(f) *Sanctions.* The hearing officer may reject or exclude all or part of any evidentiary material or pleading not submitted in accordance with this section.

12. Hearing

(a) *Panels.* The hearing officer may permit a party's witnesses to testify in a panel, provided that each panel member (1) has submitted a statement of qualifications, and (2) is under oath. Any panel member may respond to a cross-examination question.

(b) *Cross-examination.* (1) Cross-examination shall be provided as the hearing officer deems appropriate and shall be limited to issues which the hearing officer determines there are material disputes of fact or to issues identified in a statement of issues adopted by the hearing officer. The hearing officer may impose reasonable time limitations on the cross-examination of any witness.

(2) Only counsel for a witness may object to questions asked during cross-examination, except in instances of friendly cross-examination or where the objector can demonstrate that answers would unduly prejudice its interests.

(3) Where parties have substantially similar positions, the hearing officer may appoint lead counsel to conduct cross-examination.

(4) The hearing officer shall not permit cross-examination on issues where it is clear that the questioner's position is not adverse to that of the witness, *viz.*, friendly cross-examination.

(c) *Cross-examination exhibits.* (1) Documents used during cross-examination of any witness must be submitted to the hearing officer and to the witnesses' counsel 1 day prior to the date set for cross-examination.

(2) If a document used as a cross-examination exhibit contains material not offered as evidence, the party utilizing the exhibit must:

(i) Plainly designate the matter offered as evidence; and

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable.

(d) *Stipulations.* The hearing officer may receive into evidence stipulations on any issue of fact.

(e) All other matters relating to conduct of hearings are left to the discretion of the hearing officer.

13. Briefs

(a) *General rule.* Briefs shall be filed at times specified by the hearing officer in the procedural schedule. All evidentiary arguments in briefs must be based on cited material contained in the record. Materials not admitted into evidence shall not be attached to any brief. Incorporation by reference shall not be permitted. The hearing officer may impose page limitations on any brief.

(b) *Waiver of issues or arguments.* Parties whose briefs do not raise and fully develop their positions on any issue shall be deemed to take no position on such issue. Arguments not raised are deemed to be waived.

(c) *Initial brief.* At the conclusion of the evidentiary portion of a hearing, the hearing officer shall allow each party to submit an initial brief. The purpose of an initial brief is to identify separately each legal, factual, and policy issue to be resolved by the Administrator and present all arguments in support of a party's position on each of these issues. The initial brief should also rebut contentions made by adverse witnesses in their prepared testimony.

(d) *Brief on exceptions.* After issuance of BPA's draft record of decision, each party may file a brief on exceptions. The purposes of the brief on exceptions are to: (i) Raise any alleged legal, policy, or evidentiary errors in the draft record of decision, or (ii) provide additional support for tentative decisions contained in the draft record of decision. Alleged errors not raised in briefs on exceptions shall be deemed waived.

(e) *Sanctions.* The hearing officer shall not admit into the record any brief that does not conform to this section.

14. Oral Argument

An opportunity for parties to present oral argument may be provided at the discretion of the Administrator.

15. Service Of Documents

BPA and each party shall provide a copy of all motions, briefs, pleadings and prefiled materials to all persons listed in the service list compiled by the hearing officer. Until a service list is adopted by the hearing officer under section 6, service on parties may be made by service on BPA General Counsel/APP. Parties may designate no more than two persons on whom service shall be made. The Administrator may designate additional persons upon whom service will be made. Participants shall not be included on the service list. Service of requests for data and responses to such requests is governed by section 8(b) and (h).

16. Record Of Decision

(a) Determinations.

The Administrator shall make public a written decision which contains the following two determinations:

(1) the proposed action satisfies the requirements of subsection (a), (b), (f), (h), (l), or (m) of section 6 of the Northwest Power Act, as appropriate; and either:

(2) the proposed action is consistent with the Council's Power Plan; or

(3) the proposed action is inconsistent with the Council's Power Plan; or

(4) notwithstanding the proposed action's inconsistency with the Council's Power Plan a finding that the proposed action is needed to meet the Administrator's obligations under the Northwest Power Act.

(b) Submission of Record.

The Administrator shall promptly provide a copy of the Record of Decision to the Council.

(c) Service of Record.

The Administrator shall promptly serve copies of the record of decision on all parties to the proceeding. Copies of the record of decision will be made available to participants and the public upon request to BPA's Public Involvement Manager.

[FR Doc. 86-23398 Filed 10-15-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

National Energy Extension Service Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: National Energy Extension Service Advisory Board.

Date and Time: Thursday, November 13, 1986, 8:00 a.m.—5:00 p.m., Friday, November 14, 1986, 8:00 a.m.—12:00 noon.

Place: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington DC 20008.

Contact: Susan D. Heard, Department of Energy, Forrestal Building—6A081, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202-252-8290.

Purpose of The Board: The Board was established to carry on a continuing review of the National Energy Extension Service and the plans and activities of each State in implementing Energy Extension Service programs. Additionally, the Board is responsible for reporting on an annual basis to the Congress, the Secretary of Energy, and the Director of the Energy Extension Service.

Tentative agenda

Thursday, November 13, 1986

- Overview of EES Program.
- Briefings on Energy Extension Service Programs by Board Members.
- Public Comment (10 minute rule).

Friday November 14, 1986

- Issues for Eighth Annual Report.
- Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Susan D. Heard at 202-252-8290. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday thru Friday, except Federal holidays.

Issued at Washington, DC, on October 10, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86-23399 Filed 10-15-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER86-716-000, et al.]

Electric Rate and Corporate Regulation Filings; Appalachian Power Co. et al.

October 9, 1986.

Take notice that the following filings have been made with the Commission:

1. Appalachian Power Company

[Docket No. ER86-716-000]

Take notice that on September 25, 1986, Application Power Company (APCO) tendered for filing a power sales agreement executed with Utilicorp United Inc. (Utilicorp). Utilicorp has entered into an agreement Virginia Electric and Power Company (Virginia Power) to purchase Virginia Power's West Virginia retrail electric service territory. Under the provisions of the enclosed service agreement Utilicorp proposed to purchase from APCO at APCO's standard rate for wholesale service the power and energy necessary to serve the West Virginia retail electric service territory being acquired by Utilicorp.

APCO requests a proposed effective date for the tendered agreement of December 1, 1986 to match the requested effective date for service requested by Utilicorp.

Copies of the filing were served upon Utilicorp, Virginia Power and the Public Service Commission of the State of West Virginia.

Comment date: October 27, 1986, in accordance with Standard paragraph E at the end of this notice.

2. Consolidated Edison Company of New York, Inc.

[Docket No. EC87-1-000]

Take notice that on October 6, 1986, Consolidated Edison Company of New York, Inc. (Applicant), a corporation organized under the laws of the State of New York, with its principal business office at New York, New York, filed an application with the Federal Energy Regulatory Commission, pursuant to section 203 of the Federal Power Act, seeking an Order authorizing the Applicant to purchase or acquire securities of other public utilities as a part of a planned expansion of corporate investments. The Applicant proposes to limit its holding or ownership of any given class of securities, directly or through subsidiaries, of affiliaties, to an amount not to exceed one percent of the issuer's capital stock or funded debt outstanding. Additionally, the Applicant is requesting a modification of the reporting requirements under 18 CFR 33.8 to allow an annual update and status report only. The application is on file with the Commission and open to public insepction.

Comment date: October 27, 1986, in accordance with Standard paragraph E at the end of this notice.

3. The Dayton Power and Light Company

[Docket No. ER86-715-000]

Take notice that on September 25, 1986, The Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the village of Minster (Minster), Ohio.

The proposed Agreement allows Minster to purchase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to Minster.

Comment date: October 27, 1986, in accordance with Standard paragraph E at the end of this notice.

4. The Dayton Power and Light Company

[Docket No. ER86-718-000]

Take notice that on September 29, 1986, The Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the Village of Versailles (Versailles), Ohio.

The proposed Agreement allows Versailles to purcahse energy requirements from Third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to Versailles.

Comment date: October 27, 1986, in accordance with Standard Paragraph E at the end of this document.

5. Kansas Gas & Electric Company

[Docket No. ER83-628-010]

Take notice that on September 29 1986, Kansas Gas & Electric Company (KG&E) tendered for filing a refund report for the cities of Augusta, Burlington, Chanute, Coffeyville and Girard, Kansas. The refund amount includes interest from the date payment was received through September 26, 1986 at the appropriate interst rate in accordance with 18 CFR 35.19 (a).

Comment date: October 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Upper Peninsula Power Company

[Docket No. ES86-64-000]

Take notice that on September 29, 1986, Upper Peninsula Power Company (Applicant) filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204(a) of the Federal Power Act, to issue short-term notes of an aggregate principal amount of up to $6,000,000. The notes will be issued on or before October 1, 1988 and will have a final maturity date not later than October 1, 1989.

Comment date: October 26, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

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, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-23312 Filed 10-15-85; 8:45 am]

BILLING CODE 6717-01-M

Rockdale, IL. et al.; Notice of Availability of Environmental Assessment and Finding of no Significant Impact

October 9, 1986.

In the matter of Village of Rockdale, Illinois, Project No. 3944-002, City of Peru, Illinois, Project No. 4031-001, Holyoke Gas & Electric Department, Project No. 7758-000, Idaho Renewable Resources, Bonneville Pacific Corporation, & Big Wood Canal Company, Project No. 8909-000, Pacific Gas & Electric Company, Project No. 619-005.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name	State	Water body	Nearest town or county	Applicant
			Licenses		
3944-002	Brandon Road Lock and Dam	IL	DesPlaines River	Joliet	Village of Rockdale, Illinois.
4031-001	Starved Rock Lock	IL	Illinois River	Village of Utica	City of Peru, Illinois.
7758-000	Number 4 Hydro	MA	First and Second Level Canals of the Connecticut River.	Holyoke	Holyoke Gas and Electric Department.
8909-000	Dietrich Drop	ID	Big Wood River	Dietrich	Idaho Renewable Resources, Bonneville Pacific Corporation, and Big Wood Canal Company.
			Amendments		
619-005	Bucks Creek	CA	Bucks and Grizzly Creeks	Quincy and Greenville	Pacific Gas and Electric Company.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared. Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23318 Filed 10-15-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-742-000 et al.]

Natural Gas Certificate Filings; United Gas Pipe Line Co. et al.

October 9, 1986.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP86-742-000]

Take notice that on September 29, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP86-742-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission to abandon certain sales service under the blanket authorization issued in Docket No. CP82-430-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United requests authority to abandon certain industrial sales service as follows:

Customer name	Contract expiration date	Original authorization
Amerada Hess Corporation	01/01/87	G-12,322
Benton Creosoting Works, A Division of Kennedy Saw Mills, Inc.	01/01/87	N/A
Dixie Gin, Inc., Formerly Sentell Gin Inc.	01/01/87	N/A
Georgia-Pacific Corporation	01/01/87	CP70-169, CP70-44, CP66-280, CP67-310, CP83-415
Griffin Industries, Inc. of Mississippi.	01/01/87	G-8230
Jeems Bayou Production Corp, Formerly Arcadia Refining Co.	01/01/87	N/A
Kaiser Aluminum & Chemical Corp.	01/01/87	G-15,006, CP71-89
Kinder Canal Co., Inc	01/01/87	CP71-89
Marathon LeTourneau Co., Marine Division.	01/01/87	G-8230
St. Joe Brick Works, Inc	01/01/87	G-1447
Schneider Brick Co	01/01/87	G-232
Shell Chemical Co	01/01/87	CP68-88, CP84-213
Southern Coast Sugars, Inc	01/01/87	CP71-89
Teche Sugar Co., Formerly Oaklawn Sugar.	01/01/87	CP71-89
R. W. Tyson Producing Co., Inc.	01/01/87	CP62-12

United states that the abandonments have been agreed to by the affected customers. United further states that its facilities would remain in place in anticipation of future service.

Comment date: November 24, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Central Pipeline Corporation

[Docket No. CP86-740-000]

Take notice that on September 25, 1986, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP86-740-000 a request pursuant to § 157.205 of the Commisson's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap and other related jurisdictional facilities necesssary to deliver gas to A-K Holdings, Inc., (Holdings) a direct sales customer, under the certificate issued in Docket Nos. CP82-479-000 and CP82-479-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that Northwest Central proposes to constuct and operate a tap on its 12-inch pipeline in Section 18, Township 18 North, Range 2 East, Payne County, Oklahoma, together with measuring, regulating and appurtenant facilities for the direct interruptible sale of natural gas to Holdings for use in lease operations. It is further stated that the projected volume of delivery to Holdings is approximately 36,500 Mcf per year and 100 Mcf on a peak day. Northwest Central estimates the cost of the facilities to be $6,350 which would be paid from available cash.

Northwest Central states that it would not need to acquire any new gas supply to make this sale, and such sale would not have any detrimental effect on any of Northwest Central's existing customers.

Comment date: November 24, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. Mid Louisiana Gas Company

[Docket No. CP86-737-000]

Take notice that on September 23, 1986, Mid Louisiana Gas Company (Mid La), Post Office Box 2511, Houston, Texas 77002, filed in Docket No. CP86-737-000 a request pursuant to §§ 157.205 and 157.216 (18 CFR 157.205 and 157.216) of the Regulations under the Natural Gas Act for permission and approval to abandon certain pipeline facilities located in East Baton Rouge Parish, Louisiana, under authorization issued in Docket No. CP82-539-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Mid La proposes to abandon approximately 4,905 feet of 10-inch pipeline, a meter setting and appurtenant facilities, which were used to transport natural gas to a pulp mill owned by Georgia-Pacific Corporation (Georgia-Pacific) in Port Hudson, Louisiana. Mid La states that these facilities were operated pursuant to Commission order issued in Docket No. CP84-254-000 on June 5, 1984. Mid La asserts that its October 18, 1983, transportation agreement with Georgia-Pacific has terminated. Accordingly, Mid La states, it no longer requires the use of the subject facilities and proposes to abandon the lateral by sale to Louisiana Intrastate Gas Corporation (LIG). It is stated that LIG has entered into a gas transportation agreement with Georgia-Pacific and would use the facilities purchased from Mid La to provide service to Georgia-Pacific's Port Hudson plant. Mid La indicates that LIG would purchase the subject facilities for $188,217.45 on an "as is" basis.

Comment date: November 24, 1986, in accordance with Standard Paragraph G at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP86-743-000]

Take notice that on September 29, 1986, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25315, filed in Docket No. CP86-743-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate an additional delivery point to an existing wholesale customer under the blanket authorization issued by the Commission in Docket No. CP83-76-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Columbia requests authority to construct and operate an additional delivery point and appurtenant metering facilities, at an estimated cost of $153,000, near Carlisle, Nicholas County, Kentucky, for Columbia Gas of Kentucky, Inc. (CKY). Columbia states that CKY would reimburse Columbia for the construction of these facilities, which would be owned, operated, and maintained by Columbia upon their completion.

Columbia also states that natural gas deliveries to CKY at the proposed delivery point would be 17,500 Mcf per day and 2,013,000 Mcf per annum. Columbia states that it would deliver these natural gas volumes to CKY under its currently effective FERC Rate Schedule CDS. CKY would further deliver these natural gas volumes to Toyota Motor Manufacturing, U.S.A., Inc.'s new automobile production plant near Georgetown, Kentucky, beginning on or about May 1, 1987. Columbia indicates that sales through the proposed facilities would not affect the peak day and annual deliveries from Columbia to which CKY's is entitled, but would offset to an extent continued market declines that CKY has experienced.

Comment date: November 24, 1986, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to

be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23311 Filed 10-15-86; 8:45 am]

BILLING CODE 6717-01-M

ANR Pipeline Co. v. Wagner & Brown; Notice of Complaint

Issued: October 9, 1986.

Take notice that on September 8, 1986, ANR Pipeline Company (ANR) filed with the Commission pursuant to § 385.206 of the Commission's regulations (Rule 206), a complaint against Wagner & Brown, a partnership, alleging that Wagner & Brown is charging or attempting to collect rates in excess of applicable maximum lawful prices set forth in Title I of the Natural Gas Policy Act of 1978 (NGPA).

ANR states that it purchases natural gas from Wagner & Brown which is subject to the maximum lawful prices established by sections 102(c) and 107(c)(5) of the NGPA. According to ANR, its gas purchase contract with Wagner & Brown contains take-or-pay clauses which obligate ANR to pay for a certain volume of gas each year regardless of whether ANR actually purchases the gas. Under the contract ANR has an opportunity to make up the gas which it has paid for but not taken; however, make up must occur within five years of the year prepayments were made or the right is forfeited.

ANR states that for reasons beyond its control including changes in federal and state regulations, energy conservation, economic recession, and a worldwide glut of crude oil, it cannot purchase the quantities of gas specified in the contract and will likely be unable to do so for the forseeable future. ANR has informed Wagner & Brown that these unforseen events constitute *force majeure* pursuant to the contract, thereby reducing or suspending the parties' obligations thereunder. ANR states that Wagner & Brown has nevertheless demanded payment and has brought suit in a Texas state court to recover the take-or-pay deficiencies.

ANR contends that it has already paid the applicable maximum lawful prices for all gas actually purchased from Wagner & Brown under the contract for the years 1983 and forward, and that in light of its inability to recoup the take-or-pay payments demanded by Wagner & Brown, making further payments would result in Wagner & Brown receiving amounts in excess of applicable maximum lawful prices for gas actually delivered. ANR requests the commission to take jurisdiction in the matter and to issue an order finding that Wagner & Brown's demand for take-or-pay prepayments constitutes a demand for payment in excess of the maximum lawful prices established under Title I of the NGPA and is therefore unlawful.

Any person desiring to be heard or protest this complaint should file a motion to intervene or protest in accordance with Rules 214 or 211d of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, such motions or protests should be filed on or before November 10, 1986. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of this petition are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23313 Filed 10-10-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP86-55-000]

ANR Pipeline Co. et al.; Notice of Complaint

Issued: October 9, 1986.

In the matter of: ANR Pipeline Company v. Hamilton Brothers Oil Company; Hamilton Brothers Petroleum Corporation; H.B. Joint Venture (1973); and Hamilton Brothers Oil and Gas Corporation.

Take notice that on September 8, 1986, ANR Pipeline Company (ANR) filed with the Commission pursuant to § 385.206 of the Commission's regulations (Rule 206), a complaint against Hamilton Brothers Oil Company, Hamilton Brothers Petroleum Corporation, H.B. Joint Venture (1983), and Hamilton Brothers Oil and Gas Corporation (Hamilton Brothers) alleging that Hamilton Brothers are charging or attempting to collect rates in excess of the applicable maximum lawful price set forth in Title I of the Natural Gas Policy Act of 1978 (NGPA).

ANR states that it purchases natural gas from Hamilton Brothers under several natural gas purchase contracts which are subject to the maximum lawful prices established by sections 102(d) and 104 of the NGPA. According to ANR, its gas purchase contracts with Hamilton Brothers contain take-or-pay clauses which obligate ANR to take an annual contract quantity of gas each year. This annual contract quantity is then compared to the volumes of gas actually taken and if the actual takes are less than the contract quantity ANR must make a take-or-pay payment. Under the contracts ANR has an opportunity to make up the gas which it has paid for but not taken; however, make up must occur within five years of the year prepayments were made or the right is forfeited.

ANR states that for reasons beyond its control including changes in federal and state regulations, energy conservation, economic recession, and a worldwide glut of crude oil, it cannot purchase the quantities of gas specified in the contract and will likely be unable to do so for the forseeable future. ANR has informed Hamilton Brothers of its position that these unforseen events constitute *force majeure* pursuant to the contract, thereby reducing or suspending the parties' obligations thereunder. ANR states that Hamilton Brothers have nevertheless demanded payments and have brought suit in a Texas state court to recover the take-or-pay deficiencies.

ANR contends that it has already paid the applicable maximum lawful price for all gas actually purchased from Hamilton Brothers under the contracts for the years 1985 and forward, and that in light of its inability to recoup the take-or-pay payments demanded by Hamilton Brothers, making further payments would result in Hamilton Brothers receiving amounts in excess of the applicable maximum lawful price for gas actually delivered. ANR requests the Commission to take jurisdiction in the matter and to issue an order finding that Hamilton Brothers demand for take-or-pay prepayments constitutes a demand for payments in excess of the maximum lawful price established under Title I of the NGPA and is therefore unlawful. In the alternative ANR requests the Commission to determine that the provisions in the contracts which require ANR to pay unrecoupable take-or-pay charges are unjust and unreasonable pursuant to sections 4 and 5 of the Natural Gas Act.

Any person desiring to be heard or to protest this complaint should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission,

825 North Capitol Street, NE., Washington, DC 20426, such motions or protests should be filed on or before November 10, 1986. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23314 Filed 10-5-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-84-001]

Florida Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

October 10, 1986.

Take notice that on September 24, 1986, Florida Gas Transmission Company (FGT) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 3:

1st Revised Sheet No. 658
1st Revised Sheet No. 659
1st Revised Sheet No. 660

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 October 7, 1986.

By order issued June 27, 1986, in Docket No. RP86-84-000, a technical conference was convened to investigate the issue of the cost of service supporting the WDTS Rate Schedule rates. FGT provided Staff and the other parties with cost of service and other related information. FGT is advised that, based on the information supplied, there is no opposition to the WDTS Rate Schedule rates and Staff has determined that the rates are cost based. As a result of the technical conference, certain minor word changes to Rate Schedule WDTS were agreed to by FGT, Staff and the other parties. FGT submits that these revised tariff sheets to Rate Schedule WDTS are being filed to reflect such changes.

FGT states that a copy of this filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume Nos. 2 and 3 and interested state commissions.

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 October 17, 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. 86-23315 Filed 10-15-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-57-012]

Natural Gas Pipeline Co. of America; Notice of Proposed Changes to FERC Gas Tariff

October 10, 1986.

Take notice that on September 26, 1986, Natural Gas Pipeline Company of America (Natural) tendered for filing Ninth Revised Sheet No. 5E to be a part of its FERC Gas Tariff, Third Revised Volume No. 1.

Natural states that the purpose of this sheet is to set out the threshold percentages and discount rates applicable to Rate Schedule IOS for the month of October, 1986. The filing is being made in accordance with the provisions of Rate Schedule IOS which was authorized by FERC order issued March 13, 1986 at Docket No. CP85-57-003.

Natural requests waiver of the Commission's regulations to the extent necessary to permit Ninth Revised Sheet No. 5E to become effective October 1, 1986. Copies of this filing were mailed to Natural's jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or 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 October 17, 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. 86-23316 Filed 10-15-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-6-000]

Pacific Power & Light Co.; Notice of Filing

October 10, 1986.

Take notice that on October 3, 1986, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing Eleventh Revised Sheet No. 5C, superseding Tenth Revised Sheet 5C (Index of Purchasers) of Pacific's Service Agreement between Pacific and the Department of Public Utilities, County of Los Alamos, New Mexico.

Pacific states that the Service Agreement provides for the sale of nonfirm power and energy, in accordance with the rates specified in Service Schedule PPL-3 under Pacific's Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with with Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 20, 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23317 Filed 10-15-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-1002-000 et al.]

First Energy Associates et al.; Filings for Qualifying Status as Small Power Production and Cogeneration Facilities.

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. First Energy Associates

[Docket No. QF86-1002-000]

[October 9, 1986.

On August 25, 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 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 Cabot, Vermont. The facility will consist of two combustion turbine generators, a heat recovery steam generator (HRSG) and a condensing steam turbine-generator. Thermal energy recovered from the HRSG will be sold to the Cabot Cooperative Creamery for process heating and post-pasteurization product cooling and refrigeration. The primary energy source for the facility will be No. 2 fuel oil. The maximum net electric power production capacity of the facility will be approximately 16.68 MW. The installation of the facility will begin approximatley in April 1987.

2. Pasco County Board of County Commissioners

[Docket No. QF86-1096-000]

October 9, 1986.

On September 26, 1986, Pasco County Board of County Commissioners (Applicant), of 7530 Little Road, New Port Richey, Florida 33553, 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 Pasco County, Florida. The facility will consist of waterwall steam generators and a turbine-generator. The maximum electric power production capacity will be 35 megawatts. The primary energy source will be biomass in the form of municipal solid waste. Natural gas or oil may be used for start-up purposes. However, such fossil fuels uses will not exceed one (1%) percent of the total energy input in any calendar year. Installation date will be on or after March, 1988.

3. Sunlaw Energy Corporation Sunlaw-J.C. No. 1 and Sunlaw-J.C. No. 2

[Docket No. QF86-1077-000 and QF86-1078-000]

October 6, 1986.

On September 22, 1986, Sunlaw Energy Corporation (Applicant), of 8530 Wilshire Blvd., Suite 401, Beverly Hills, California, 90211 submitted for filing applications for certification of facilities as qualifying small power production facilities pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittals constitute complete filings.

Sunlaw-J.C. No. 1 and Sunlaw-J.C. No. 2 small power production facilities will be located in the southern part of the State of New Jersey, within the service territory of Jersey Central Power & Light Company. The facilities will consist of circulating fluidized bed combustor and steam turbine generators. The primary energy source is petroleum coke. The maximum net electric power prouduction capacity of each facility will not exceed 30 MW.

Standard Paragraph.

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. 86-23320 Filed 10-15-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-9-000]

Central Jersey Energy Associates, Limited Partnership; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

October 14, 1986.

On October 7, 1986, Central Jersey Energy Associates, Limited Partnership (Applicant), of 87n Elm Street, Cohasset, Massachusetts 02025, 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 Windsor, New Jersey. The facility will consists of two combustion turbine generating units, two waste heat recovery steam generators, and two extraction/condensing steam turbine generating units. Steam produced by the facility will be utilized by Cosden Oil and Chemical for production of polystyrene, heating of thermoplastic molds, cleaning of the facility and heating and cooling of the plant; L.B. Foster for plant heating and steam cleaning of fabricated steel; and by Windsor Industrial for heating and cooling. The net electric power production capacity of the facility will be 280 MW. The primary energy sources will be coal and natural gas. The installation of the facility will begin on March 1, 1989.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such petitions or protests must be filed within 15 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-23521 Filed 10-15-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

NAME: Energy Research Advisory Board (ERAB)

DATE AND TIME: November 5, 1986—8:30 a.m.–5:00 p.m., November 6, 1986—8:30 a.m.–12:00 Noon
PLACE: Department of Energy, 1000 Independence Avenue SW., Room 8E–089, Washington, DC 20585
CONTACT: Sarah Goldman, Department of Energy, Office of Energy Research, ER–6, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: 202/252–5779

Purpose of the Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda: The specific agenda items and times are subject to last minute changes. Visitors planning to attend for a specific topic should confirm the time prior to and during the day of the meeting.

Tenative Agenda

November 5, 1986

8:30 a.m. Business Items
—Approval of August Meeting Minutes
—Dates for Future Meetings
—Use of Electronic Mail
8:45 a.m. Report of the Technical Panel on Magnetic Fusion of the Energy Research Advisory Board
10:45 a.m. Break
11:00 a.m. Current Events
12:00 Noon Lunch
1:00 p.m. Report of the Review Panel on "Physics through the 1990's"
2:45 p.m. Break
3:00 p.m. Civilian Radioactive Waste Management—Overview
3:30 p.m. Civilian Radioactive Waste Management—Engineering and Geosciences
4:50 p.m. Public Comment (10 Minute Rule)
5:00 p.m. Adjourn

November 6, 1986

8:30 a.m. Convene
8:45 a.m. Discussion with Secretary
9:30 a.m. Break
9:45 a.m. Report of the Solid Earth Sciences Panel
11:50 a.m. Public Comment (10 Minute Rule)
12:00 Noon Adjourn

Public Participation: The meeting is open to the public. The Chairman of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of businesss. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Sarah Goldman at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 9, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86–23302 Filed 10–15–86; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50663; FRL–3095–9]

Issuance of Experimental Use Permits; Platte Chemical Co., et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

34704–EUP–8

Issuance. Platte Chemical Company, P.O. Box 667, Greeley CO 80632. This experimental use permit allows the use of 697.5 pounds of the insecticide malathion on cotton to evaluate the control of the boll weevil. A total of 240 acres are involved; the program is authorized only in the States of Alabama, Arizona, Georgia, Louisiana, Mississippi, and Texas. The experimental use permit is effective from September 17, 1986 to September 17, 1987. A permanent tolerance for residues of the active ingredient in or on cotton has been established. (William Miller, PM 16, Rm. 211, CM#2, (703–557–2785))

707–EUP–109

Extension. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 33 pounds of the herbicide oxyfluorfen on cotton to evaluate its effectiveness as a harvest aid. A total of 550 acres are involved; the program is authorized only in the States of Arizona and California. The experimental use permit is effective from September 11, 1986 to September 11, 1987. A permanent tolerance for residues of the active ingredient in or on cotton has been established (40 CFR 180.381). A food additive regulation for residues of the active ingredient in or on cottonseed oil has been established (21 CFR 193.325). (Richard Mountfort, PM 2, Rm. 237, CM#2), (703–557–1830))

55947–EUP–1

Extension. Sandoz Corporation, 341 East Ohio St., Chicago, IL 60611. This experimental use permit allows the use of 882.3 pounds of the herbicide prodiamine on non-bearing orchards of fruits, grapes, and nuts; woody ornamental nursery crops; and ornamental turf. A total of 707.2 acres are involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Connecticut, Florida, Georgia, Hawaii, Louisiana, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Washington, and Wisconsin and the District of Columbia. The experimental use permit is effective from September 16, 1986 to September 16, 1987. This permit is issued with the limitation that the pesticide will not be applied to fruits, tree nuts, and vineyards that will produce a harvestable crop within 1 year after application. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830))

Persons wishing to review these experimental use permit are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: October 8, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-23359 Filed 10-15-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-470; FRL-3095-5]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces amendments to, and withdrawal of, pesticide petitions previously filed and published in the **Federal Register**, proposing the establishment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-470] and the petition number, attention Product Manager (PM) named in each petition, at the following address: Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Information Services Section (TS-757C), Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

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. Written comments filed in response to this notice will be available for public inspection in the Information Services Section office 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: Registration Division (TS-767C), Attn: (Product Manager (PM) named in the petition), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/telephone number	Address
Henry M. Jacoby PM-21	Rm. 227, CM#2 703-557-1900	EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202
Richard Mountfort PM-23	Rm. 247, CM#2 703-557-2830	Do.

SUPPLEMENTARY INFORMATION: EPA has received requests to file, amend, and/or withdraw pesticide (PP) and food additive (FAP) petitions as follows proposing the establishment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural and food commodities.

1. FAP 6H5514

BASF Corp., P.O. Box 181, Parsippany, NJ 07054. Proposes amending 21 CFR 193.137 by establishing a regulation to permit the combined residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidine-dione (referred to hereafter as "vinclozolin") and its metabolites containing the 3,5-dichloroaniline moiety in or processed tomato products with a tolerance limitation of 6.0 parts per million (ppm). (PM-21).

2. PP 1F2439

EPA isued a notice, published in the **Federal Register** of August 27, 1986 (51 FR 30542), which announced that Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48640 has amended the proposed tolerances published in the **Federal Register** of July 13, 1984 (48 FR 32078) for residues of the herbicide 3,6-dichloro-2-pyridinecarboxylic acid in or on various animal meat commodities. Dow Chemical has further amended the petition as follows:

a. Increasing the tolerance levels for the following commodities:

Commodities	Proposed-51 FR 30542, Aug. 27, 1986	New level
Cattle, fat, meat, and meat byproducts (mbyp) (except kidney)	0.2	1.0
Cattle, Kidney	5.0	12.0
Goats, fat, meat, and mbyp (except kidney)	0.2	1.0
Goats, kidney	5.0	12.0
Horse, fat, meat, and mbyp (except kidney)	0.2	1.0
Horse, Kidney	5.0	12.0
Sheep, fat, meat, and mbyp (except kidney)	0.2	1.0
Sheep, kidney	5.0	12.0

b. The proposed tolerances for liver of cattle, goats, horse, and sheep were withdrawn. (PM-23).

3. PP 4F3054

EPA issued a notice, published in the **Federal Register** of April 18, 1984 (49 FR 15267), which announced that Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48640 proposed amending 40 CFR Part 180 by establishing a tolerance for the herbicide 3,6-dichloro-2-pyridinecarboxylic acid in or on the agricultural commodity forage grasses at 100 ppm. Dow Chemical U.S.A. has amended the petition by changing the commodity description to "grasses, forage and hay" and increasing the residue level to "500 ppm". (PM-23).

4. PP 4E2998

EPA issued a notice, published in the **Federal Register** of January 11, 1984 (49 FR 1422), which announced that BASF Corp., P.O. Box 181, Parsippany NJ 07054 proposed to amend 40 CFR 180.380 by establishing tolerances for the combined residues of the fungicide vinclozolin and its metabolites containing the 3,5-dichloroaniline moiety in or on certain raw agricultural commodities which included cucumber at 1.0 ppm. BASF Corp. has withdrawn the proposed tolerance for cucumber without prejudice to future filing in accordance with 40 CFR 180.8.

Authority: 21 U.S.C. 346a and 21 U.S.C. 348.

Dated: October 7, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-23357 Filed 10-15-86; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-3096-1]

Science Advisory Board Radiation Advisory Committee National Radon Survey Design Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that the second meeting of the National Radon Survey Design Subcommittee of the Science Advisory Board's Radiation Advisory Committee will be held at the U.S. Environmental Protection Agency, South Conference Area Room #2 on Friday, October 31, 1986. The Conference Area is located on the Ground Floor, near the EPA Washington Information Center, Waterside Mall, 401 M Street, SW., Washington, DC. The meeting will begin at 9:00 a.m. and adjourn no later than 5:00 p.m.

The purpose of the meeting is to continue the review of the design for EPA's planned National Radon Survey.

The Office of Radiation Programs will provide additional materials for the Subcommittee. Members of the public who would like copies of these materials should contact Mr. Daniel Egan by calling (202) 475–9605 or writing to the Office of Radiation Programs, ANR–460, Room 200, NE., Mall, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The meeting is open to the public; however, seating is limited. Any member wishing to attend, obtain further information, or submit written comments to the Subcommittee should notify Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A101–F) Radiation Advisory Committee, Science Advisory Board, by the close of business on October 28, 1986. The telephone number is (202) 382–2552.

Dated: October 9, 1984.

Kathleen Conway,

Acting Director, Science Advisory Board.

[FR Doc. 86–23356 Filed 10–15–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreements; Request for Additional Information

Agreements No.: 204–010986, 204–010986–001.

Title: United States/Peru Equal Access Agreement.

Parties:

Compania Peruana de Vapores

Naviera Neptuno, S.A.

Empresa Naviera Santa, S.A.

Lykes Bros. Steamship Co., Inc.

Coordinated Caribbean Transport, Inc.

Synopsis: Notice is hereby given that the Federal Maritime Commission pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1701–1720) has requested additional information from the parties to the agreements in order to complete the statutory review of Agreements No. 204–010986 and 204–010986–001 is required by the Act. This action extends the review period as provided in section 6(c) of the Act.

Dated: October 9, 1986.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86–23319 Filed 10–15–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

ASB Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 5, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *ASB Bancshares, Inc.*, Ashville, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Ashville Savings Bank, Ashville, Alabama.

2. *FMB Banking Corporation*, Monticello, Florida; to acquire 80 percent of the voting shares of Pavo State Bank, Pavo, Georgia. Comments on this application must be received by October 31, 1986.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Canton Bancshares, Inc.*, Canton, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Canton State Bank, Canton, Illinois.

2. *Summcorp*, Fort Wayne, Indiana; to acquire 100 percent of the voting shares of Western State Bank, South Bend, Indiana.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Cherry Valley Bancshares, Inc.*, Cherry Valley, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Bank of Cherry Valley, Cherry Valley, Arkansas.

2. *Mercantile Bancorporation, Inc.*, St. Louis, Missouri; to acquire 100 percent of the voting shares of Mercantile Acquisition Company, St. Louis, Missouri, and thereby indirectly acquire First Banchares Corporation of Illinois, Alton, Illinois, and thereby indirectly acquire First National Bank and Trust Company, Alton, Illinois, and Airport National Bank, Bethalto, Illinois.

In connection with this application, Mercantile Acquisition Company, St. Louis, Missouri, has applied to become a bank holding company by acquiring First Bancshares Corporation of Illinois, Alton, Illinois.

Board of Governors of the Federal Reserve System, October 9, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–23307 Filed 10–15–86; 8:45 am]

BILLING CODE 6210–01–M

First Bankshares, Inc., et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under section 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23 (a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefitrs to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a

hearing on this question must be accompanied by a statement of the reasons a written presentation would suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 3, 1986.

A. **Federal Reserve Bank of Richmond,** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Bankshares, Inc.,* Barboursville, West Virginia, to engage *de novo* through its subsidiary, Equitable Mortgage Company, Barboursville, West Virginia, in making and servicing loans pursuant to §225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by October 31, 1986.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Chrisman Bancorp, Inc.,* Springfield, Illinois, to engage *de novo* in acting as broker in the sale of credit life and credit accident and health insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y.

2. *First Mid-Illinois Banchares, Inc.,* Mattoon, Illinois, to engage *de novo* through its subsidiary, Mid-Illinois Data Services, Inc., Mattoon, Illinois, in providing data processing services pursuant to § 225.25(b)(7) of the Board's Regulation Y. Comment on this application must be received by October 30, 1986.

Board of Governors of the Federal Reserve System, October 9, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-23308 Filed 10-15-86; 8:45 am]

BILLING CODE 6210-01-M

Iowa National Bankshares Corp.; Correction

This notice corects a previous **Federal Register** document (FR Doc. 86-20548), published at page 32537 of the issue for Friday, September 12, 1986.

Under the Federal Reserve Bank of Chicago, the entry for Iowa National Bankshares Corp., is revised to read as follows:

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Iowa National Bankshares Corp., Waterloo, Iowa; to acquire 100 percent of the voting shares of PT&S Bancorp, Indianola, Iowa, and thereby indirectly acquire Peoples Trust & Savings Bank, Indianola, Iowa. Comments on this application must be received by November 3, 1986.

Board of Governors of the Federal Reserve System, October 9, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-23306 Filed 10-15-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Science Advisory Board to the National Center for Toxicological Research

Date, time, and place. November 3, 2:30 p.m., November 4, 9 a.m., Conference Rm., Bldg. 12, National Center for Toxicological Research (NCTR), Jefferson, AR.

Type of meeting and contact person. Open committee discussion, November 3, 2:30 p.m. to 5 p.m.; open committee discussion, November 4, 9 a.m. to 12 m.; open public hearing, 1 p.m. to 2 p.m.; open committee discussion, 2 p.m. 3 p.m.; Ronald F. Coene, National Center for Toxicological Research (HFT-10), Food and Drug Administration, Rm. 14-101, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3155.

General function of the Board. The Board advises the Director, NCTR, in establishing and implementing a research program that will assist the Commissioner of Food and Drugs in fulfilling his regulatory responsibilities. The Board provides the extra-agency review in ensuring that research programs at NCTR are scientifically sound and pertinent to its stated goals and objectives.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make a formal presentation should notify the contact person before October 20, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their comments.

Open Board Discussion. The Board will receive an update and discuss the Center's intergovernmental activities, personnel development and training activities, the fiscal yeart 1987 budget and resource allocation, and a facility tour. A final agenda will be available on October 25, by notifying the contact person.

Microbiology Devices Panel

Date, time, and place. November 19, 9 a.m., Rms. 503A-529A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 1, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss two premarket approval applications for tests to detect Hepatitis B core antibody (Anti-HB).

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour

long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committee under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to vidotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's direction.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: October 9, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

FR Doc. 86-23300 Filed 10-15-86; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BDM-039-N]

Medicare and Medicaid Programs; International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) Coordination and Maintenance Committee Meeting

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

ACTION: Notice of public meeting.

SUMMARY: This notice announces the next meeting of the ICD-9-CM Coordination and Maintenance Committee.

DATE: The meeting will be held on Wednesday, November 19, 1986 and Thursday, November 20, 1986, beginning at 9:30 a.m. to 4:00 p.m. Eastern Standard Time.

ADDRESS: The meeting will be held in Room 703A Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Betty See, (301) 594-4885.

SUPPLEMENTARY INFORMATION: The ICD-9-CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health care facilities in reporting both diagnoses and surgical procedures for Medicare, Medicaid and all other health-related HHS programs. The work of the ICD-9-CM Coordination and Maintenance Committee will allow this coding system to continue to be an appropriate reporting tool for use by Federal programs.

The Committee is composed entirely of representatives from various Federal agencies interested in the International Classification of Diseases (ICD) and its modification, updating, and use for Federal programs. It is Co-Chaired by the National Center for Health Statistics and the Health Care Financing Administration.

At this meeting, the Committee will discuss electrical stimulation therapy, biopsies, implantable infusion pump, hyperthermia treatment for cancer, multiple vessel percutaneous transluminal coronary angioplasty, tissue expander of breast and other sites, ileal J pouch-anal anastomosis, Interleukin-2, hemofiltration, parathyroidectomy, and other topics.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.774, Supplementary Medical Insurance)

Dated: October 9, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 86-23335 Filed 10-15-86; 8:45 am]

BILLING CODE 4120-01-M

[ORD-55-N]

Medicare and Medicaid Programs; Health Care Financing Research and Demonstration Cooperative Agreements and Grants; Amendment

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

ACTION: Amendment to Federal Register Notice of January 30, 1985.

SUMMARY: This notice revises the announcement of the availability of HCFA funds for certain research and demonstration cooperative agreements and grants for the Federal fiscal year 1987, by amending the descriptions of current HCFA funding priorities contained in the notice published on January 30, 1985. In addition, the closing date previously announced for applications requesting discretionary funds for fiscal year 1987 is being changed from November 3, 1986 until December 15, 1986. HCFA makes funds available for activities that will help to resolve major health care financing issues or to develop innovative methods for the administration of the Medicare and Medicaid programs. We have revised the statement of current funding priorities to reflect the major research and demonstration initiatives of HCFA and the Department.

Standard application forms and guidance for the completion of the forms are available from: Paul McKeown, Health Care Financing Administration, Office of Management and Budget, Administrative Contracts and Grants Branch, Room 364 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207-5187, (301) 594-3333.

FOR FURTHER INFORMATION CONTACT: Michael Spodnik, Health Care Financing Administration, Office of Research and Demonstrations, Office of Operations Support, 2-D-6 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207-5187, (301) 594-3825.

SUPPLEMENTARY INFORMATION: On January 30, 1985 HCFA published in the Federal Register a notice (50 FR 4480) soliciting grant and cooperative agreement applications in certain priority areas. The January 30, 1985 notice describes the application procedures, general policy considerations, criteria to be used in

reviewing applications, and selection criteria for HCFA grants and cooperative agreements. This notice amends the January 30, 1985 notice by revising the statement of current funding priorities for fiscal year 1987, as well as changing the closing date for applications requesting discretionary funds during FY 1987 from November 3, 1986 until December 15, 1986. The closing date for waiver-only applications during fiscal year 1987 remains unchanged: May 4, 1987.

This statement reflects our current priorities and emphasizes our primary interest in the following three areas:

1. Continued growth of Medicare capitated systems and increased competiton and consumer choice;
2. Continued access to quality of care under Medicare and Medicaid and how to measure it;
3. Refinement of the current Medicare hospital prospective payment system (PPS) and physician payment methodology, and study of the impact of the Medicare PPS on varied segments of the health care delivery and financing system;
4. Program analysis leading to increased efficiency in health care delivery and financing.

We are also interested in continuing our efforts in the areas of Medicaid research, State programs for long-term care, and beneficiary awareness and prevention.

After fulfilling our obligations to conduct congressionally mandated studies and reports, we plan to conduct a balanced research program focusing on short-term (0–2 years), mid-term (2–4 years), and long-term (4–8 years) research. Depending on the final FY 1987 and FY 1988 budgets, we hope to allocate approximately one-third of our funds to new programs. We are also paticularly interested in receiving proposals from individuals and institutions who might not have previously applied and who are representative of the entire country.

In our study of short-term policy issues, we will be continuing our efforts at refining the current Medicare hospital prospective payment system and physical payment methodology. We will also be continuing our assessment of the impact of the Medicare hospital prospective payment system on varied segments of the health care delivery and financing system, especially on access to the quality of care provided to Medicare beneficiaries.

For Mid-term policy issues, we will increasingly be directing our efforts to designing and beginning to test alternative payment methods for services that will increase competition in the health care marketplace, while ensuring the continued quality of care. Most notably, we will be promoting the growth of health maintenance organizations and competitive medical plans under the current capitation system, and designing demonstration projects to test different capitation systems.

We will be expanding our efforts directed toward ensuring that quality health care remains accessible to beneficiaries, particularly as the nature of the payment system changes. We will be directing our efforts at studying the impact that the provision of preventive services to individuals has on their current and future utilization of health care services. We will also be looking at the longer-range impact of program changes on segments of the health care delivery and financing system. Finally, for long-term policy issues, we will be focusing on major structural changes to the payment and delivery systems under the Medicare and Medicaid programs to promote increased competition and choice, cost-effective delivery of health care, while ensuring access to quality health care.

Current Priorities for HCFA Funding of New Grants and Cooperative Agreements

The statement of current priorities for HCFA research and demonstration grant/cooperative agreement applications set forth in the **Federal Register** notice published on January 30, 1985 is amended to read as follows:

Alternative Payment Systems

Our overall goal is to identify, develop, demonstrate, and evaluate effective alternative health care delivery and/or payment systems to control costs under the Medicare and Medicaid programs, while ensuring continued access to quality health care, and to move towards payment systems based on capitation and competition in the marketplace. In general, projects and inquiries should have the prospect of reducing costs in either the short or longer term; at a minimum, they must be budget neutral.

As part of this effort, we are interested in supporting research and demonstration projects that develop and test payment systems that provide incentives to Medicare and Medicaid beneficiaries to be informed purchasers of health care plans and services, including payment systems based on capitation and competition in the marketplace and consumer information projects that support such systems. Specific examples of these types of projects are as follows:

Refinements To Adjusted Average Per Capita Cost (AAPCC) Formula

Medicare reimbursement to Health Maintenance Organizations (HMOs) and Competitive Medical Plans (CMPs) is based on the Adjusted Average Per Capita Cost (AAPCC) formula. The formula uses age, sex, welfare status and institutional status as factors to predict the per capita amount that would be payable if Medicare services for HMO members were furnished in the local fee-for-service market. Past or current work on possible new adjustors has examined perceived health status, functional status, disability, prior use of nondiscretionary health services, causes of death, and ambulatory and hospital diagnoses. In addition, medical and social risk factors, including physiologic measures and propensity to use medical care, have been suggested as possible adjustors. In an effort to further refine the AAPCC methodology by making it a more accurate predictor and minimizing the change for bias, we are interested in projects that refine and expand the above-mentioned efforts or develop new adjustors, and in projects that test such adjustors in capitated systems. Group adjustors, in addition to individual rate factor adjustors, might also be developed when the group is well-defined (such as a retiree employment group). We also are interested in examining how disenrollment affects the pricing process.

Also, under a voucher program, how would an actuarial equivalence test work if the fee-for-service component no longer provides an adequate benchmark for pricing.

The present AAPCC formula reflects geographic variations in Medicare per capita expenses in the fee-for-service sector. We are interested in projects that examine whether alternative geographic units in determining the AAPCC would simplify the payment system and induce providers to join the HMO/CMP market; as well as projects to develop ways to pay HMOs and CMPs that would utilize alternative methods of reflecting area differences that would eliminate variance due to such factors as inappropriate utilization or excessive variance in provider treatment styles. We are also interested in projects designed to determine how to encourage HMO development in low-AAPCC areas.

- *Indemnity Insurers.* Indemnity insurers are prohibited from contracting with Medicare on a risk basis. We are interested in testing this alternative form of coverage for Medicare beneficiaries in addition to employer-at-risk models.

Indemnity insurance plans that now offer individual Medicare wrap-around coverage would be desirable applicants for a demonstration of an integrated package of Medicare and supplemental health benefits financed by a Medicare capitation payment and additional beneficiary premium payments. Presumably these plans would perform case management or introduce other efficiency-producing measures in order to offer a competitive benefit package and premium structure.

Enrollment within a given geographic area should be on an open enrollment basis, consistent with current enrollment basis, for Medicare HMOs and competitive medical plans. Within such a demonstration, insurers would have the flexibility to resturcture beneficiary cost-sharing for services covered by Medicare. Applicants should address benefit package design, cost-sharing, pricing, quality assurance and utilization control mechanisms, and marketing strategies in their proposals. It should be noted that indemnity insurers are also welcome as plan participants under the Independent Broker Model mentioned below.

• *Focused Capitation.* We are interested in testing partial capitation models where organizations such as physician groups would assume partial risk for Medicare benefits on a capitated basis. Under this system of payment, HCFA may share in the risk of certain services or categories of services for which risk exposure might be too great for such groups. For instance, HCFA could pay physician groups on a capitation basis for the provision of Medicare Part B services and for the management of care under Part A, but continue current reimbursement procedures for Part A providers. Profit and loss-sharing mechanisms for costs over or under estimated hospital utilization could be established. Under another option, a number of prepaid organizations could be charged a reinsurance premium. Those enrolling sicker individuals would have access to this risk-pool for coverage for some part of their costs. Those enrolling healthier individuals would, in effect, forfeit their premium. A stop-loss provision could be incorporated to maximize incentives to control inappropriate utilization. Proposals should clearly indicate the incentives for controlling total Medicare costs, so that Part B savings will not undermine parallel incentives under Part A (for example, avoiding cost-shifting).

Additional Pricing Issues

• *Medicaid Capitation Rates.* Capitated arrangements are becoming more prevalent as a mechanism for States to purchase and/or finance health care under the Medicaid program. Such arrangements may be with counties, health insuring organizations, or other prepaid organizations. One area of particular interest is covered of joint Medicare and Medicaid beneficiaries under Medicare-qualified capitated HMOs and CMPs. The equity of the rate-setting methodology is critical, particularly as more capitation arrangements are established. A variety of rate methodologies have been employed, and we are interested in discerning the factors and the methodologies which result in fair and accurate capitation rates. We are also interested in testing refinements in the capitation payment models developed by States.

• *Barriers to Transition.* Shifting to a prepaid capitated system may involve some one-time costs (for example, States may face a "cost bubble" of switching from a retrospective reimbursement to a prospective capitation system). We are interested in exploring innovative financing approaches which address this problem without undermining cost-effectiveness.

• *Alternative, Market-Oriented Pricing Methods for Payments in Capitated Systems.* Medicare's payment for services provided in HMOs is based on per capita costs in the fee-for-service sector. One issue we are interested in addressing is what happens to pricing mechanisms when Medicare's at-risk penetration is large and the number of fee-for-service beneficiaries is diminished. Particularly, what distortions occur in the pricing mechanisms and what alternative for pricing benefit packages exist?

Since these costs may differ from the costs to HMOs in providing care, alternative pricing systems, such as competitive bidding, may be a more cost-effective way for Medicare (and Medicaid) to set premiums. (The Federal Employees Health Benefits Program is a variant of a competitive bidding system.) HCFA is interested in projects that would develop, demonstrate, and evaluate systems for alternative, market-oriented methods to price for services (Medicare and Medicaid or both) in capitated systems.

Other Alternative Payment Systems and Issues

• *Preferred Provider Organizations.* Projects that test the cost-effectiveness of the preferred provider concept in a fee-for-service setting for Medicare beneficiaries.

Preferred provider organizations (PPOs) may offer services at a reduced cost to beneficiaries and may waive coinsurance and deductible amounts. The use of services from the non-PPOs would not be restricted. Applicants must propose a method to track and monitor reimbursement as well as quantity and type of services provided by both preferred providers and non-preferred providers. Applicants must demonstrate why their projects would not qualify as a CMP.

• *Independent Broker Model.* Projects that facilitate more informed Medicare beneficiary consumer choice through the awareness of costs and service options available in specific geographic areas. The independent broker could be responsible for a variety of tasks including marketing and enrolling beneficiaries for specific offerings. Such a model might mitigate against self-selection or HMO/CMP selection bias. Applicants should indicate the extent to which cooperation would be obtained from HMOs/CMPs and other providers offering to participate in the project. Another alternative would involve using brokers to increase utilization of providers whose fee schedules are set at lower than prevailing levels. We are interested in proposals that essentially use Medicare's potential volume in combination with discount prices as the main aspect of a project or in conjunction with other alternatives, potentially including PPOs and/or partial or full capitation. Such a proposal could also utilize differential copayments and deductibles possible by limiting or waiving them.

• *Studies of the Behavior of Health Plans and Enrollees.* Per capita health care costs in HMOs/CMPs are generally lower than in the fee-for-service sector. The capitation approach contains incentives for efficiency and resource use awareness. Recent studies have also suggested that part of the reason for lower rates in HMOs/CMPs may be favorable selection of low users of health care. We are interested in projects on how HMOs/MCPs achieve their savings, including comparisons of the types and quality of services received in HMO/CMP and fee-for-service populations.

We are interested in studies of health plan behavior (including marketing) that may result in favorable selection, as well as strategies to minimize or offset preferential selection. We are interested in the role of types of services offered by HMOs/CMPs and access to services in favorable or unfavorable selection. We are also interested in studies of factors that explain enrollment and disenrollment in HMOs/CMPs and their relation to biased selection. We are interested in studies that measure the

difference in health status among HMO/CMP and fee-for-service enrollees and analyze the difference in terms of the health status of new enrollees, disenrollees, and continuing members.

Another topic of interest is economic analyses of the behavior of health plans within the context of the local market for health care. Competitive behavior in terms of pricing, benefits, marketing, expansion, and mergers are areas of interest.

• *Long-Term Effects of Competition.* It has been argued that competition among health plans will reduce cost. However, lack of understanding of the effects of switching among plans, of possible biased selection of low cost plans by healthy persons, and of exactly how HMOs/CMPs achieve their savings make it difficult to estimate the long-term effects of competition on costs. We are interested in analyses of the competitive process among health plans to understand better what a competitive environment might lead to in terms of costs, provider behavior, organization of health services and impact on Medicare and Medicaid beneficiaries.

• *Alternative Payment Approaches for Episodes of Care.* We are also interested in projects that would develop, refine, test, and evaluate new payment approaches for episodes of care, or for a specific diagnosis, condition or illness, and which would involve packaging payment for acute and/or subacute services utilized by patients during these episodes of care. These projects might include physicians and nonphysician services during the episode or stay, skilled nursing facility services, rehabilitative services, and/or payments for home-based services. Such projects might include approaches (such as global fees) which would make a single or combined payment to the hospital when the hospital has directly provided or has arranged for the provision of the post-hospital subacute services, or payment of a fixed amount to other organizations or providers.

• *Outpatient Hospital Services.* We are interested in projects seeking to determine the factors underlying the rapid growth in Medicare outpatient hospital costs (including capital investments), and projects designed to test prospective rate systems to control inappropriate growth in hospital outpatient costs.

Quality of Care

Section 603(a)(2)(A) of the Social Security Amendments of 1983 (Pub. L. 98–21) mandated that we study and report on the impact the hospital prospective payment system has on Medicare beneficiaries. A major aspect of the potential impact on beneficiaries is the impact of PPS on the quality of care provided to beneficiaries. The decreased resource utilization resulting from this system raised the concern as to whether the quality of care provided has been affected; or whether access to needed levels of care has been limited. The rapid changes in other Medicare and Medicaid program areas make it even more critical that we ensure that the level of care provided under Medicare and Medicaid is of high quality.

In order to assess the impact of program changes on the quality of health care furnished to program beneficiaries, as well as to ensure continuation of quality care, we are interested in developing and refining reliable and valid objective quality of care measures for different payment systems and different treatment settings. Therefore, we are interested in projects which develop, demonstrate, and evaluate quality of care measures for nursing homes and home health agencies, and refined quality of care and outcome measures for inpatient hospital services; as well as in the development and demonstration of monitoring systems for quality of care, under various payment systems and in capitated environments. We are also interested in projects examining methods (such as hospital discharge planning and case management approaches) to ensure continuity of care between acute and sub-acute care settings. Careful consideration should be given in proposals submitted in this area as to the types of data that can be efficiently collected and the relationship of such data to objective measures of quality of care, as well as the underlying process of providing quality health care, particularly as it relates to effective patient outcomes.

Some Medicaid beneficiaries may have inadequate access to health care due to insufficient numbers of providers in a specific locale, frequently despite a relatively high concentration of Medicaid beneficiaries. We are interested in testing arrangements which would attract and sustain a health care entity in such an underserved area, with the entity simultaneously improving both access to and the quality of care.

Hospital Payment

The Social Security Amendments of 1983 (Pub. L. 98–21) established a prospective payment system (PPS) for most hospitals participating in the Medicare program. Section 603 of Pub. L. 98–21 and subsequent legislation (for example, Pub. L. 98–369, Pub. L. 99–272) directed the Secretary to study a number of issues relating to PPS, including the impact of PPS on the health care delivery and financing systems; the extension of prospective payment to hospitals not now subject to the system and to all other third party payors; and the refinement of case-mix (diagnosis related group (DRG)) reimbursement.

Analysis of Case-Mix Growth Among Hospitals. HCFA has supported a great deal of research and demonstration projects that would improve case-mix measurement and test alternative case-mix measurement systems for prospective payment of inpatient hospital care or other health care providers and test alternative case-specific payment systems for Medicare or other payors. We are especially interested in examining the impact of case-mix variation on different types of hospitals (for example, urban/rural hospitals, teaching hospitals, and large/small hospitals).

Refinement of Specific PPS Payment Factors. We are interested in studies which address alternative ways to recalibrate DRG relative values, the current PPS outlier payment policy, and systems which examine severity of illness within a given DRG.

Financial Impact of PPS on Other Payor Systems on Hospitals. We are interested in better understanding the impact of the Medicare PPS on different types of hospitals; with analysis using such variables as hospital size, rural/urban status, teaching status, and disproportionate share status. We are also interested in studying the effect that private and public (non-Medicare) payors have on a hospital's financial status. The study should compare Medicare revenue and resource utilization to private and public (non-Medicare) revenue and resource utilization.

We are very interested in projects which examine the effects on the continuity of care between acute hospital care and post-acute care settings. We are also interested in projects that examine both the short-and long-run effects of PPS on all providers.

Analysis of Hospital Outpatient Care. We are interested in projects that will help us better understand the rapid growth in hospital outpatient costs, especially projects examining such issues as: The specific areas of outpatient growth, the composition of services and expenditures provided in these departments, the relationship between payments in these departments and other settings, and the differences in patient characteristics between these departments and other settings.

Hospital Capital Payments. We are interested in further understanding the capital investment patterns (including an analysis of interest, principal, and depreciation) of different types of hospitals on both a historical and a projected basis. We are also interested in understanding how hospitals finance different types of investment, for example, movable (equipment) and fixed (plant and building).

Refinements of Disproportionate Share Adjustment. In the Consolidated Omnibus Budget Reconciliation Act of 1985, Congress passed legislation requiring the Secretary to pay an additional payment to hospitals that have a disproportionately high percentage of low-income patients. We are interested in projects which could refine this "disproportionate share" adjustment factor, with specific emphasis on appproaches that combine: (1) An understanding of the underlying disproportionate share issues and (2) a statistical methodology to address these issues. In particular, we are interested whether low income patients have higher Part A costs but lower Part B costs.

Analysis of Direct Medical Education Payments. We are interested in projects examining variations in direct medical education payments to hospitals, as well as appropriate refinements to the current payment system.

Examination of Indirect Medical Education Factor. We are interested in further examining the methodology to determine the underlying factors which relate to the indirect medical education teaching adjustment. We are especially interested in variations in indirect teaching costs based on geographic region and size of teaching program.

Examination of Excluded Hospital Payment Methodologies. We are interested in projects that would examine appropriate alternative payment systems for categories of hospitals currently excluded from the Medicare PPS: Rehabilitation, pediatric, and psychiatric hospitals.

Physician Payment

Our overall goal in this area is to identify, develop, demonstrate, and evaluate effective refinements and alternatives to control the costs of physician reimbursement under Medicare and Medicaid, while maintaining a high quality of care. Since 1979, Medicare payments for physician services have grown approximately 17.3 percent per year. Even with a freeze on Medicare physician payments in FY 1985, physician outlays grew at 11.4 percent. We are interested in projects that will help us understand the factors causing this rapid growth in order to continue to develop refinements to the current system. We are also interested in continuing the development of alternative payment strategies using capitation as the basic payment mechanism for physician services.

Analysis of Overpriced Procedures. We are interested in projects which study overpriced procedures, particularly those surgicial services for which Medicare spending is large. Such projects might include procedures which are overpriced due to decreasing costs, difficulty and/or risk for the procedure, but whose reimbursement rates have not been lowered; or are overpriced compared to a related procedure; or are overpriced compared with other areas; or are overpriced compared to other payors. We are also interested in studying whether global fees for surgical cases are overpriced (for example, because of decreases in lengths-of-stay).

Studying Variations in Physician Fees, Participation and Practice Patterns. We are interested in projects which would assist in the gathering and analyses of information on such subjects as:

- Variations in charges for teaching physicians and the extent to which they are involved with patient care.
- Variations among areas in the rates at which various procedures are performed, as well as the actual charges and costs for such services; and
- Variations in participation and assignment rates by geographic areas, physician specialty, site of service, etc.

Other Initiatives. We are interested in projects which develop data bases and models that will allow us to understand and estimate the redistributive impact of refinements to current physician payment methods on beneficiaries and their out-of-pocket costs, physicians and their practice revenues and, participation and assignment rates by geographic areas (carriers, states, localities, within localities), specialty, site of service, type of services, etc. We are interested in projects which analyze charge distributions within areas and among areas, for example, the percent of customary charges at and above the prevailing charge.

We also seek to gain a better understanding of whether, and how, patients treated in physician offices are medically different from patients treated in hospital outpatient or ambulatory settings, and whether (and, if so, why) the care which medically similar patients receive differs by setting. We remain interested in understanding the incentives which affect physician behavior in selecting or influencing the choice of setting for providing particular services and procedures, and the different types of arrangements physicians have to cover the costs for providing services in diverse settings.

Because of the impact of malpractice suits and awards, physician fees and costs are being increased, and some vital physician services are disappearing in some localities. State entities are invited to develop models for legislation and adjudicative processes to address the concerns arising from professional liability for malpractice, particularly under the Medicare program.

Alternative Physician Payment Systems. We are interested in projects which study and develop competitive strategies using capitation as the basic payment mechanism for physician services.

Program Efficiencies, Analyses, and Refinements

We are interested in further improving our knowledge and understanding of the potential impact of program changes and the factors influencing program performance.

In the past 5 years, Congress has enacted several legislative changes which have improved greatly the effectiveness and efficiency of the Medicare and Medicaid programs. We have planned and implemented a variety of intramural research and extramural research efforts to gauge the impact of these changes. The focus of our projects is primarily national and the projects generally rely on centrally maintained records of Medicare claims submitted for payment and central systems of aggregate level and encounter-level Medicaid statistics. Additionally, program analyses in HCFA rely on data generated from major national surveys sponsored by the Federal government.

We are specifically interested in projects that focus on fundamental issues which relate to meeting program objectives, including the following:

- Determining effectiveness and efficiency in the provision of services funded by Medicare and Medicaid, particularly in specific treatment settings. For example, we are interested in projects that study such issues as the inter-carrier variations in reimbursement rates for items and services; the composition of Medicare spending for a class of items and services such as durable medical equipment in terms of rental and purchase rates, assignment and participation rates, and cost of charge distributions; the impact of alternative payment rates for services on providers

and suppliers, and their revenues, and on beneficiaries; and the relationship between the resources used to perform or provide services and the actual payment for such services. Examples of the types of services are interested in having studies focus on include clinical laboratory services and durable medical equipment.

• Analyzing the impact of the End State Renal Disease (ESRD) composite rate on resource utilization in ESRD facilities, for example, labor inputs, dialysis reuse and use of other supplies. We are also interested in the changing role of nephrologist since the implementation of the composite rate.

• Describing and interpreting differences in patterns of care, particularly geographic variations and measurable quality differences attendant to geographic variations. Determining the extent to which inter-carrier and intermediary variation in application of coverage criteria affect patterns of care.

Beneficiary Awareness and Prevention

As part of our long-range efforts to study and move toward some form of capitation system for payment of health care services, we are interested in projects which examine the understanding beneficiaries have with respect to Medicare and/or Medicaid programs, and the impact beneficiary awareness/education efforts have on program understanding, selection of health care alternatives, and selection of treatment modalities. We are also interested in projects on the extent to which preventive services and patient education or behavior modification efforts prevent, control, delay or reduce morbidity from chronic diseases, and reduce the overall cost of health care in the Medicare and Medicaid programs.

Included in our topics of interest are projects in the following areas:

• Projects identifying added Medicare and Medicaid costs of smoking, drug abuse, and excessive alcohol consumption on aged and disabled Medicare and Medicaid beneficiaries.

• Projects concerning the financial incentives, cost effectiveness, and other economic aspects of various preventive services, including Medicaid coverage of prenatal care and preventive services for children, and coverage of preventive services for adults.

• Effect of Medicaid coverage on health of pregnant women and their newborns.

State Programs for Long Term Care

Medicaid is a principal source of funding for long term care (LTC) in the United States. Between 1973 and 1984, LTC expenditures under Medicaid increased by over $12 billion, an average annual rate of increase of about 18 percent. This growth rate is the fastest for any health service area, and is expected to continue to increase in the future, due in part to demographic trends. Medicaid is a program operated and funded by States. The Federal government shares in the funding of the Medicaid program through the Federal matching percentage rate established for each State. Since we share in the financing of this program, and in view of the anticipated growth in costs, we share the States' particular interest in State and locality-developed projects that would provide a better understanding of the current LTC delivery and financing systems under Medicaid and that would design and test alternatives to these systems.

Various researchers have conducted initial descriptive efforts concerning the design of alternative payment systems, case-mix methodologies, and other approaches that affect cost and quality of LTC. Examples of these studies are: Birnbaum, et al., Abt Associates, Inc. (1981); Grimaldi, American Enterprise Institute (1981); Spitz and Urban Institute (1981); and Shaughnessy, et al., Center for Health Services Research, University of Colorado (1980, 1982). Specifically, there is interest in the following types of State and locality-developed projects:

• State and locality-developed projects which test alternative financing schemes for LTC services, including capitation and block grants, patient-related or case-mix based prospective payment and competitive bidding systems for skilled nursing facility and intermediate care facility levels of care; State and locality-developed projects which demonstrate the integration of payment for the continuation of services; and approaches which expand private risk-sharing for LTC costs, such as private LTC health insurance models, reverse annuity programs, life care centers, and various State tax incentive programs. We are looking for State and local entities to test, over a multi-year period, innovative managed care systems with Federal funding provided under various non-traditional payment arrangements. We recognize that these programs may not meet cost effectiveness criteria in the first year, provided they are intended to be cost effective over multiple years.

• State and locality-developed projects which assess the effects of innovative State, local, and private programs to promote home care by the family or by other community support arrangements. For example, State and locality-developed research and demonstration projects which focus on LTC populations such as Alzheimer's patients, AIDS patients or institutionalized elderly, the mentally retarded and developmentally-disabled, or persons at risk of institutionalization because they have no family network, for the purpose of testing cost effective methods of providing in-home or other support services (adult day care, adult foster care or shared housing) which substitute for or deter the institutional care of such patients.

• State and locality-developed projects which design and test criteria and information systems to identify institutionalized individuals who are potential candidates for non-institutional care, and non-institutionalization.

• State and locality-developed projects which demonstrate and evaluate the effects of a single payment system for acute and subacute care on LTC institutions and networks.

(Secs. 1110, 1115(a), 1875, and 1881(f) of the Social Security Act (42 U.S.C. 1310, 1315(a), 1395, 1395rr(f); sec. 222(a) of the Social Security Amendments of 1972, as amended (42 U.S.C. 1395b–1 (note)); sec. 402 of the Social Security Amendments of 1967, as amended (42 U.S.C. 1395b–1); section 603 of the Social Security Amendments of 1983 (Pub. L. No. 98–21); sec. 605(b) of the Social Security Amendments of 1983 (42 U.S.C. 1395x(v)(1)(E)(Note)).

(Catalog of Federal Domestic Assistance Program No. 13.766 Health Financing Research, Demonstrations and Experiments)

Dated: August 22, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 86–23400 Filed 10–15–86; 8:45 am]

BILLING CODE 4120–01–M

National Institutes of Health

Notice of Reestablishment of Committees

Pursuant to the Federal Advisory Committee Act of October 6, 1972 [Pub. L. 92–463, 86 Stat. 770–776] and the Health Research Extension Act of 1985, November 20, 1985 [Pub. L. 99–158, section 402(b)(6)], the Director, National Institutes of Health, announces the reestablishment, effective November 1, 1986, of the following committees:

Biomedical Sciences Study Section
Biopsychology Study Section
Radiation Study Section
Sensory Disorders and Language Study Section
Surgery, Anesthesiology, and Trauma Study Section

The duration of these committees is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: October 14, 1986.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 86-23565 Filed 10-15-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Revision of Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise a notice describing records maintained by the U.S. Fish and Wildlife Service and the National Park Service. Except as noted below, all changes being published are editorial in nature, and reflect organization changes and other administrative revisions which have occurred since the publication of the material in the **Federal Register** on April 11, 1977 (42 FR 19021). The revised notice, published in its entirety below, is titled "Youth Conservation Corps (YCC) Recruitment Files—Interior, Office of the Secretary-29".

The notice is revised primarily to reflect recent organization changes within the Department regarding the administration of youth programs. The description of the system managers responsible for the records is changed to reflect decentralization of functions to the U.S. Fish and Wildlife Service and the National Park Service.

The statement describing the categories of records in the system is revised to clarify the types of information being maintained. Also, the existing routine disclosure statement for litigation purposes is revised to incorporate the clarification on such disclosures prescribed by the Office of Management and Budget (OMB) in its supplementary guidelines dated May 24, 1985, for implementing the Privacy Act.

Since these changes do not involve any new or intended use of the information in the system of records, the notice shall be effective on October 16, 1986. Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PIR), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240.

Dated: October 6, 1986.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources Management.

INTERIOR/OS-29

SYSTEM NAME:

Youth Conservation Corps (YCC) Recruitment Files—Interior, Office of the Secretary—29.

SYSTEM LOCATION:

Records are kept at participating field stations of the U.S. Department of the Interior's Fish and Wildlife Service and National Park Service. A listing of field locations may be obtained from the pertinent system manager noted below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Youths between the ages of 15 and 18 who file an application to attend a Department of the Interior, or State Grant YCC camp.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of application forms submitted by eligible youth and contains the following categories of information: name, address, telephone number, birthdate, sex, and name of parent or guardian.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 93-408.

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 for selection among applications of all eligible applications. Persons selected are either offered employment in a YCC camp or placed on an alternate list to be used in case of declination. Disclosures outside the Department of the Interior may be made (1) to the U.S. Forest Service, States, counties, cities and other subgrantees for employment purposes; (2) to the U.S. Department of Justice or in a proceeding before a court of 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; (5) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual.

RETRIEVABILITY:

Applications are filed alphabetically by name of individual applicant.

SAFEGUARDS:

Records are kept locked in confidential files.

RETENTION AND DISPOSAL:

Pending approval of the Archivist of the U.S.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Refuges, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240; (2) Director, Office of Youth Activities, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the appropriate system manager. A written, signed request stating that the requester seeks information concerning records pertaining to him is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the appropriate 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 appropriate System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

The records in this system originate in two ways: (1) The YCC application form prepared by the applicant and any additions or corrections thereto, also

prepared by the applicant. (2) Additional information added to the file by the State recruiter concerning the applicant's selection, nonselection, declination, etc.

[FR Doc. 86-23290 Filed 10-15-86; 8:45 am]
BILLING CODE 4310-55-M

Bureau of Land Management

[UT-040-07-4322-02]

Cedar City District Grazing Advisory Board Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Cedar City District Grazing Advisory Board will be held on Thursday, November 20, 1986. The meeting will begin at 9:30 a.m. in the Bureau of Land Management Cedar City District Office located at 176 East D.L. Sargent Drive, Cedar City, Utah.

The agenda is as follows: (1) Election of Advisory Board Officers; (2) Review of current Advisory Board Charter; (3) Review of recently completed AMPs; (4) Policy on Delinquent Grazing Bills; (5) Report on Cedar, Beaver, Garfield Resource Management Plan; (6) Report on use of FY86 Range Improvement Funds; (7) General Advisory Board business.

Grazing Advisory Board meetings are open to the public. Interested persons may make oral statements or file written statements for the Board's consideration. Oral statements will be received at 9:30 a.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 176 East D.L. Sargent Drive, Cedar City, Utah 84720, phone 801-586-2401, by November 17, 1986. Depending on the number of persons wishing to make statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meetings will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: October 7, 1986.

Morgan S. Jensen,

District Manager.

[FR Doc. 86-23291 Filed 10-15-86; 8:45 am]
BILLING CODE 4310-DQ-M

Susanville District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Managment, Interior. Susanville District Grazing Advisory Board, Susanville, California 96130.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 94-579 (FLPMA) that a meeting of the Susanville District Grazing Advisory Board will be held on November 19, 1986.

The meeting will begin at 10:00 a.m. at the Susanville District Office of the Bureau of Land Management, 705 Hall Street, Susanville, California. The agenda will include discussions of the allocation of FY87 project funds, status report on the wild horse and burro program, subleasing, unauthorized use, Grazing Advisory Board Account, Susanville District's Monitoring Policy, and other items as appropriate.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:00 and 4:40 p.m. on November 19, 1986, or file a written statement for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California, 96130, by November 13, 1986. Depending upon the the number of persons wishing to make oral statements a per person time limit may be established.

Summary minutes of the board meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Robert J. Sherve,

Acting District Manager.

[FR Doc. 86-23378 Filed 10-15-86; 8:45 am]
BILLING CODE 4310-40-M

[NV-020-07-4322-02]

Winnemucca District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Winnemucca District Grazing Advisory Board Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-163 that a meeting of the Winnemuca District Grazing Advisory Board will be held on December 4, 1986. The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management Office at 705 East Fourth Street, Winnemucca, Nevada 89445.

The agenda for the meeting will include:

1. Orientation/update of district rangeland management program by District Manager.
2. Election of Officers.
3. Public Statements.
4. Allotment Management Plans:
   (a) Delinquent fee billings
   (b) Billing flexibility
   (c) Monitoring
5. Range Betterment (range improvement) funds:
   (a) 1986 FY projects
   (b) 1987 FY projects
   (c) Maintenance of existing projects

The meeting is open to the public. Interested persons may make oral statements for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445 by November 20, 1986. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: October 7, 1986.

Frank C. Shields,

District Manager.

[FR Doc. 86-23379 Filed 10-15-86; 8:45 am]
BILLING CODE 4310-HC-M

District Boundary Changes; Alaska State Offices

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of change in the number of districts within the Bureau of Land Management-Alaska from two to five. The boundaries and office locations for the new districts are depicted on maps available to the public at locations set out below.

SUMMARY: This notice describes the action being taken by the Alaska State Office, Bureau of Land Management, to adjust district boundaries in accordance with reorganization plans. Maps of the geographic areas and specific boundaries will be available for public review at:

(1) Bureau of Land Management, State Office Public Room, First Floor (D-137), Federal Building, 701 C Street, Anchorage, AK 99513.
(2) Bureau of Land Management,

Fairbanks Support Center, Public Room, 1541 Caffney Road, Fairbanks, AK 99707.

DATE: The reorganization will be effective on November 15, 1986.

Maps depciting specific geographic boundaries of the newly-defined, five-district structure will be available for public inspection Monday through Friday 7:30 a.m. to 4:15 p.m. beginning November 15, 1986.

FOR FURTHER INFORMATION CONTACT:

South Alaska: Public Room, Branch of Land Office, Services, Bureau of Land Management, P.O. Box 13, Ancorage, Alaska 99513, (907) 271–5960.

North Alaska: Public Room, Fairbanks Support Center, Bureau of Land Management, 1541 Gaffney Road, Faribanks, Alaska 99707, (907) 356–2025.

SUPPLEMENTAL INFORMATION: The Bureau of Land Management-Alaska reorganization has created five new districts. Two districts in the south half of the state will be headquartered in Anchorage and Glennallen, Alaska. The three districts in the north half of the state, Arctic, Kobuk and Steese/White, will be headquatered in Fairbanks, Alaska.

Detailed geographic boundary maps, scale 1:250,000 and Series E, are available for purchase in the offices listed in the summary description.

Dated: October 9, 1986.

Michael J. Penfold,

State Director.

[FR Doc. 86–23330 Filed 10–15–86; 8:45 am]

BILLING CODE 4310–SA–M

Fish and Wildlife Service

Endangered Species Convention; Foreign Law Notification, Singapore

Subject: Notice of Information No. 10.

This is a Schedule I Notice: Wildlife subject to this notice is subject to detention, to refusal of clearance, or to seizure and forfeiture, if imported into the United States.

Subject: Singapore—Amends U.S. announced policy on refusal to clear import of wildlife exports and re-exports to allow clearance only of non-CITES species of live fish.

Source of foreign law information: United States through the Department of State and the Government of Singapore.

ACTION: On September 25, 1986 (51 FR 34159) the U.S. Fish and Wildlife Service published Notice of Information No. 9 advising the public that it would refuse to clear all wildlife and wildlife products imported into the United States declaring Singapore as country of origin or of export or re-export. Based upon negotiations with the Government of Singapore, and having received assurances from the Government of Singapore of its cooperation in providing authentication of export and re-export documents and information on shipments, the United States will accept export and re-export documents from Singapore to authorize clearance only of exported or re-exported live fish species not listed as endangered or threatened under United States laws or on any appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Effective immediately and until further notice, shipments of nonendangered, nonthreatened, non-CITES listed live fish exported or re-exported from Singapore or which declare Singapore as country of origin may be imported into the United States provided these shipments are otherwise legally imported and declared and are accompanied by documents meeting the requirements of the laws and regulations of the United States. The public is advised that this amendment of policy is temporary, and is a good faith gesture by the United States to encourage the cooperation and good faith of the Government of Singapore in wildlife enforcement issues. As of January 1, 1987, the performance of the Government of Singapore will be evaluated related to its cooperation with the United States. The public should be aware that unless sufficient progress by the Government of Singapore has been achieved in these areas, this amendment may be rescinded and the policy of refusing to clear any wildlife reinstituted.

Shipments of any wildlife or wildlife products other than nonendangered, nonthreatened, non-CITES listed live fish, exported or re-exported from Singapore or which declare Singapore as country of origin will continue to be refused clearance until further notice.

EFFECTIVE DATE: October 16, 1986. Expiration date: Until further notice.

FOR FURTHER INFORMATION CONTACT: Kathleen King, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20005, Telephone: 202/343–9242.

Frank Dunkle.

Director

[FR Doc. 86–23305 Filed 10–15–86; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Outer Continental Shelf Development Operations Coordination; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS 032 and 033, Blocks 18 and 19, respectively, Grand Isle Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on October 3, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: October 7, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–23292 Filed 10–15–86; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination, Document; Hall-Houston Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4103, Block 69, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on October 6, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Lousiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: October 8, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–23380 Filed 10–15–86; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf Development Operations Coordination; Mobil Oil Exploration, and Producing Southeast Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposal development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Mobil Exploration & Producing Southeast Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS 0478, Blocks 116, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on October 6, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCD's available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: October 7, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–23293 Filed 10–15–86; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf Development Operations Coordination; Shell Offshore Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0445, Block 176, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on October 3, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendents of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: October 7, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–23294 Filed 10–9–86; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 4, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior Washington, DC 20243. Written comments should be submitted by October 31, 1986.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Pulaski County

Little Rock, *Albert Pike Memorial Temple (Little Rock Main Street MRA)*, 700—724 Scott St.
Little Rock, *First Presybterian Church (Little Rock Main Street MRA)*, 123 E. Eight St.
Little Rock, *Fulk Building (Little Rock Main Street MRA)*, 300 Main St.
Little Rock, *Gus Blass Department Store (Little Rock Main Street MRA)*, 318—324 Main St.
Little Rock, *Rose Building (Little Rock Main Street MRA)*, 307 Main St.
Little Rock, *St. Andrews Catholic Catheral (Little Rock Main Street MRA)*, 617 Louisiana St.
Little Rock, *Taylor Building (Little Rock Main Street MRA)*, 304 Main St.
Little Rock, *Worthen Bank Building (Little Rock Main Street MRA)*, 401 Main St.

DELAWARE

Kent County

Clayton, *Clayton Railroad Station*, Bassett St.
Wyoming, *Wyoming Historic District*, Roughly bounded by Front St., Rodney Ave., Southern Blvd., and Mechanic St.

New Castle County

Newark vicinity, *Armstrong, A., Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Old Wilmington Rd. W of Brackenville Rd.
Newark vicinity, *Bartley—Tweed Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Foxden Rd. W of Polly Drummond Rd.
Newark vicinity, *Dixon, S.P., Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Woodale and Brackenville Rds.
Newark vicinity, *Eastburn, David, Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Corner Ketch Rd. SE of Wilmington-Landenberg Rd.
Newark vicinity, *Eastburn, J., Barn (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Pleasant Hill Rd. SW of Corner Ketch Rd.
Newark vicinity, *Lindsay, J., Barn (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Middleton Dr. near Mermaid-Stoney Batter Rd.
Newark vicinity, *Mason, J., Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* DE 82 S of Way Rd.
Newark vicinity, *McCormick Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Newport Gap turnpike N of Mill Creek Rd.
Newark vicinity, *McDaniel, J., Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Paper Mill Rd. E of Pike Creek Rd.
Newark vicinity, *McIntyre, J., Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Limestone Rd. N of Valley Rd.
Newark vicinity, *Morgan, William, Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Wilmington-Landenberg Rd. N of Corner Ketch Rd.
Newark vicinity, *Pierson, T., Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Southwood Rd.
Newark vicinity, *Springer Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Limestone Rd.
Newark vicinity, *Stinson, J., Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* 750 Corner Ketch Rd.
Newark vicinity, *Walker, J., Farm (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Mermaid-Stoney Batter Rd. W of Mill Creek Rd.
Newark vicinity, *Walker, R., Barn (Agricultural Buildings and Complexes in Mill Creek Hundred, 1800—1840 TR)* Near corner of Skyline and Foxcroft Drs.

Sussex County

Seaford, *Building at 200—200A High Street (Seaford Commercial Buildings TR)*, 200 & 200A High St.
Seaford, *Building at 218 High Street (Seaford Commercial Buildings TR)*, 218 High St.
Seaford, *Building at High and Cannon Streets (Seaford Commercial Buildings TR)*, High and Cannon Sts.
Seaford, *Cox, J. W., Dry Goods Store (Seaford Commercial Buildings TR)*, 214 High St.
Seaford, *First National Bank of Seaford (Seaford Commercial Buildings TR)*, 118 Pine St.
Seaford, *Sussex National Bank of Seaford (Seaford Commercial Buildings TR)*, 130 High St.

DISTRICT OF COLUMBIA

Washington

Asbury United Methodist Church, Eleventh and K Sts., NW.
Buildings at 1644—1666 Park Road NW, 1644—1666 Park Rd., NW.
Embassy Building No. 10, 3149 Sixteenth St., NW.
Evans—Tibbs House, 1910 Vermont Ave., NW.
McLachlen Building, 1001 G St., NW.
Southern Aid Society—Dunbar Theater Building, 1901—1903 Seventh St., NW.
Tenth Precinct Station House, 750 Park Rd., NW.

MINNESOTA

Rice County

Faribault, *Administration Building—Girls' Dormitory, Minnesota School for the Deaf*, MN 299

St. Louis County

Duluth, *Duluth Civic Center Historic District*, Fifth Ave. West and First St.

MISSISSIPPI

Smith County

Taylorsville, *Taylorsville Signal Office and Watkins General Store*, 326 Eureka St.

Warren County

Vicksburg, *Fitzhugh Hall*, 1322 Chambers St.

NEW HAMPSHIRE

Cheshire County

Harrisville, *Beech Hill Summer Home District (Harrisville MRA)*, Roughly Venable, Appleton and Old Harrisville Rds.
Harrisville, *Chesham Village District (Harrisville MRA)*, Roughly bounded by Yellow Wings, Seaver, Chesham, and Marienfield Rds.
Harrisville, *Gilchirst Homestead (Harrisville MRA)*, NH 137
Harrisville, *Glenchrest (Harrisville MRA)*, NH 137
Harrisville, *Eaton, Moses, Jr., House (Harrisville MRA)*, NH 137 at Sargent Camp Rd.
Harrisville, *Harrisville Rural District (Harrisville MRA)*, Roughly along Venable Old Harrisville, New Harrisville, and Bonds Corner Rds.
Harrisville, *Harrisville Village District (Harrisville MRA)*, Roughly Prospect, Grove, Cheshire, Main, School, Island, and Water Sts.
Harrisville, *Pottersville District (Harrisville MRA)*, Roughly intersection of Roxbury and Medow Rds., and along Brown Rd. NE of Chesham Rd.
Harrisville, *Silver Lake District (Harrisville MRA)*, Roughly along Old Nelson, Eastside, and Westside Rds.
Harrisville, *Stationmaster's House (Harrisville MRA)*, Jaquith Rd.
Harrisville, *Townsend, Jabez, House (Harrisville MRA)*, E. Harrisville and Cherry Hill Rds.

NEW JERSEY

Essex County

Montclair, *Anchorage, The (Harrisville MRA)*, 155 Wildwood Ave.
Montclair, *Bardsley, Joseph, House (Montclair MRA)*, 345 Park St.
Montclair, *Bradner's Pharmacy (Montclair MRA)*, 33 Watchung Plaza
Montclair, *Carnegie Library (Montclair MRA)*, Church St. at Valley Rd.
Montclair, *Casa Deldra (Montclair MRA)*, 35 Afterglow Way

Montclair, *Central Presbyterian Church (Montclair MRA)*, 46 Park St.
Montclair, *Chestnut Street School (Montclair MRA)*, 65 Chestnut St.
Montclair, *Christian Union Congregational Church (Montclair MRA)*, 176 Cooper Ave.
Montclair, *Cliffside Chapel (Montclair MRA)*, 583 Valley Rd.
Montclair, *Cliffside Hose Company No. 44 (Montclair MRA)*, 588 Valley Rd.
Montclair, *Congregational Church (Montclair MRA)*, 42 S. Fullerton Ave.
Montclair, *Crane, Ira, House (Montclair MRA)*, 33—35 S. Fullerton Ave.
Montclair, *DeLuce, Elizabeth, House (Montclair MRA)*, 41 S. Mountain Ave.
Montclair, *Egbert Farm (Montclair MRA)*, 128 N. Mountain Ave.
Montclair, *Erwin Park Historic District (Montclair MRA)*, Roughly bounded by Central Ave., Valley Rd., Holland Ter., Midland Ave., and Brunswick Rd.
Montclair, *Fenn, Henry, House (Montclair MRA)*, 208 N. Mountain Ave.
Montclair, *First Baptist Church (Montclair MRA)*, 23 S. Fullerton Ave.
Montclair, *First Baptist Church (Montclair MRA)*, 68 Church St.
Montclair, *First Methodist Episcopal Church (Montclair MRA)*, 24 N. Fullerton Ave.
Montclair, *First Residential District (Montclair MRA)*, Bounded by Mountain and Hillside Aves., Plymouth and Union Sts., Prospect Ter., Hawthorne Pl., Harrison and Gates Aves.
Montclair, *Free Public Library, Upper Montclair Branch (Montclair MRA)*, 185 Bellevue Ave.
Montclair, *Garrabrandt House (Montclair MRA)*, 471 Valley Rd.
Montclair, *Goodwillie, Frank, House (Montclair MRA)*, 17 Wayside Pl.
Montclair, *Greenough House (Montclair MRA)*, 340 Highland Ave.
Montclair, *Haskell's Bloomfield Villa (Montclair MRA)*, 84 Llewllyn Rd.
Montclair, *Highway (Montclair MRA)*, 120 Lloyd Rd.
Montclair, *Hinck Development House (Montclair MRA)*, 56 Christopher St.
Montclair, *House at 10 Rockledge (Montclair MRA)*, 10 Rockledge
Montclair, *House at 103 Chestnut Street (Montclair MRA)*, 103 Chestnut St.
Montclair, *House at 11 James St. (Montclair MRA)*, 11 James St.
Montclair, *House at 135 Norwood Ave. (Montclair MRA)*, 135 Norwood Ave.
Montclair, *House at 147 Park Street (Montclair MRA)*, 147 Park St.
Montclair, *House at 152 Park Street (Montclair MRA)*, 152 Park St.
Montclair, *House at 18 Brunswick Road (Montclair MRA)*, 18 Brunswick Rd.
Montclair, *House at 185 Valley Road (Montclair MRA)*, 185 Valley Rd.
Montclair, *House at 190 S. Mountain Avenue (Montclair MRA)*, 190 S. Mountain Ave.
Montclair, *House at 21 Stoneridge Road (Montclair MRA)*, 21 Stoneridge Rd.
Montclair, *House at 239 South Mountain Avenue (Montclair MRA)*, 239 S. Mountain Ave.
Montclair, *House at 275 Claremont Avenue (Montclair MRA)*, 275 Claremont Ave.
Montclair, *House at 29 Cedar Street (Montclair MRA)*, 29 Cedar St.
Montclair, *House at 30 Wayside Place (Montclair MRA)*, 30 Wayside Pl.
Montclair, *House at 40 Northview Avenue (Montclair MRA)*, 40 Northview Ave.
Montclair, *House at 44 Pleasant Avenue (Montclair MRA)*, 44 Pleasant Ave.
Montclair, *House at 50 Lloyd Road (Montclair MRA)*, 50 Lloyd Rd.
Montclair, *House at 52 Wayside Place (Montclair MRA)*, 52 Wayside Pl.
Montclair, *House at 53 Lloyd Road (Montclair MRA)*, 53 Lloyd Rd.
Montclair, *House at 580 Park Street (Montclair MRA)*, 580 Park St.
Montclair, *House at 67 Warren Place (Montclair MRA)*, 67 Warren Pl.
Montclair, *House at 68 Eagle Rock Way (Montclair MRA)*, 68 Eagle Rock Way
Montclair, *House at 80 Lloyd Road (Montclair MRA)*, 80 Lloyd Rd.
Montclair, *House at 83 Watchung Avenue (Montclair MRA)*, 83 Watchung Ave.
Montclair, *House at 97 Warren Place (Montclair MRA)*, 97 Warren Pl.
Montclair, *Huestis, C.H., House (Montclair MRA)*, 4 Duryea Rd.
Montclair, *Immaculate Conception Church (Montclair MRA)*, N. Fullerton and Munn Sts.
Montclair, *Interest Manor (Montclair MRA)*, 149 Watchung Ave.
Montclair, *King, James S., House (Montclair MRA)*, 798 Valley Rd.
Montclair, *Lamb, Joseph, Birthplace and Childhood Home (Montclair MRA)*, 111 N. Fullerton Ave.
Montclair, *Lambie Concrete House (Montclair MRA)*, 303 N. Mountain Ave.
Montclair, *Loomis, Archery H., House (Montclair MRA)*, 18 Princeton Pl.
Montclair, *Marlboro Park Historic District (Montclair MRA)*, Roughly along Fairfield St., Waterbury Rd., Montclair Ave., and Watchung Ave. between N Fullerton and Grove Sts.
Montclair, *Marsellis House (Montclair MRA)*, 190 Cooper Ave.
Montclair, *Mayes, Frederick W., House (Montclair MRA)*, 40 Bradford Ave.
Montclair, *Melcher House (Montclair MRA)*, 228 Grove St.
Montclair, *Miller Street Historic District (Montclair MRA)*, Miller and Fulton Sts. between Elmwood Ave. Elm, and New Sts.
Montclair, *Montclair Art Museum (Montclair MRA)*, 3 S. Mountain Ave.
Montclair, *Mott, Dr. John R., House (Montclair MRA)*, 75 Midland Ave.
Montclair, *Mountain District (Montclair MRA)*, Roughly bounded by Highland, Bradford, Upper Mountain, and Claremont Aves.
Montclair, *Mulford House (Montclair MRA)*, 207 Union St.
Montclair, *Munn Tavern (Montclair MRA)*, 17 Valley Rd.
Montclair, *Nason House (Montclair MRA)*, 166 Orange Rd.
Montclair, *Old Stage Coach Stop (Montclair MRA)*, 764 Bloomfield Ave.
Montclair, *Post Office Building Upper Montclair (Montclair MRA)*, 242—244 Bellevue Ave.
Montclair, *Reading, M.F., House (Montclair MRA)*, 87 Midland Ave.
Montclair, *Red Gables (Montclair MRA)*, 99 S. Fullerton Ave.
Montclair, *Sadler Place (Montclair MRA)*, 10 Euclid Pl.
Montclair, *Sigler Farm (Montclair MRA)*, 109 Alexander Ave.
Montclair, *Sigler, A.A., House (Montclair MRA)*, 51 Park St.
Montclair, *St. Luke's Church (Montclair MRA)*, 69 S. Fullerton Ave.
Montclair, *Stone Eagles (Montclair MRA)*, 60 Undercliff Rd.
Montclair, *Stone, Lucy, House (Montclair MRA)*, 118 N. Mountian Ave.
Montclair, *Varno, A.J., House (Montclair MRA)*, 387 Park St.
Montclair, *Wight, Allyn, House (Montclair MRA)*, 75 Gates St.
Montclair, *Wood, W.H., House (Montclair MRA)*, 136 Bellevue Ave.
Montclair, *Wynnewood (Montclair MRA)*, 36 Stonebridge Rd.

Morris County

Morristown, *Glanville Blacksmith Shop (Morristown MRA)*, 47 Bank St.
Morristown, *Lindenwold (Morristown MRA)*, 247 South St.
Morristown, *Mount Kemble Home (Morristown MRA)*, 1 Mount Kemble Ave.
Morristown, *Oak Dell (Morristown MRA)*, Franklin St. and Madison Ave.
Morristown, *Spring Brook House (Morristown MRA)*, 167 James St.

OREGON

Baker County

Haines vicinity, *Maxwell, James O., Farmstead*, Rt. 2, Box 82 on N side Muddy Creek Rd.

Clackamas County

Canby, *Knight, William, House*, 525 SW Fourth Ave.

Clatsop County

Astoria, *Svenson Blacksmith Shop, 1769 Exchange St.*

Deschutes County

Bend, *O'Kane Building*, 115 NW Oregon Ave.

Jackson County

Ashland, *Kane, E.C., House*, 386 B St.

Lincoln County

Newport, *New Cliff House*, 267 NW Cliff St.

Multnomah County

Portland, *Belle Court Apartments*, 120 NW Trinity Pl.
Portland, *Medical Arts Building*, 1020 SW Taylor

PENNSYLVANIA

Lancaster County

Lancaster, *Farmer's Southern Market*, 106 S. Queen St.

SOUTH DAKOTA

Brookings County

Brookings, *Caldwell, W.A., House*, 804 Sixth Ave.
Brookings, *Mathews, G.A., House*, 423 Eighth St.
Brookings, *Nick's Hamburger Shop*, 427 Main Ave.

Hutchinson County

Menno, *Schmitt, Gottlieb, House*, 150 W. Poplar

Lawrence County

Whitewood, *Selbie Building*, 1101 Meade

McPherson County

Leola, *McPherson County Courthouse*, SD 10

Minnehaha County

Sioux Falls, *Pettigrew, R.F., and Tate, S.L., Building*, 121—123 S. Main Ave.

VERMONT

Bennington County

Bennington, *Ritchie Block*, 465—473 Main St.

WASHINGTON

Clark County

Vancouver, *Vancouver Telephone Building*, 112 W. Eleventh St.

[FR Doc. 86-23285 Filed 10-15-86; 8:45 am]

BILLING CODE 9310-70-M

National Register of Historic Places; Proposed NHL Boundaries

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation, and therefore, are without a clear delineation of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations 36 CFR Part 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

Comments on the proposed boundaries will be received for 60 days after the date of this notice. Please address replies to Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, DC 20013-7127, Attention: Chief of Registration (202) 343-9536. Copies of the documentation of the landmarks and their proposed boundaries, including maps may be obtained from that same office.

Carol D. Shull,

Chief of Registration, National Register of Historic Places, Interagency Resources Division.

Zuni-Cibola Complex

New Mexico (Cibola and McKinley Counties)

Village of the Great Kivas

The site is delineated as a 160 acre polygon, drawn on the USGS 7.5 minute Horsehead Canyon NW Quadrangle, near Nutria Reservoir No. 2.

Yellow House

The site is delineated as a 60 acre polygon, drawn on the USGS 7.5 minute Horsehead Quadrangle, off State Highway 53.

Hawikuh

The site is delineated as a 180 acre polygon, drawn on the USGS 7.5 minute Ojo Caliente Reservoir Quadrangle, north of Ojo Caliente.

Kechipbowa

The site is delineated as a 270 acre polygon, drawn on the USGS 7.5 minute Ojo Caliente Reservoir Quadrangle, north of Ojo Caliente.

These geographic descriptions are deliberately general in order to protect the integrity of the archeological resources, as required by law.

Fort Concho Historic District

San Angelo, Texas (Tom Green County)

Verbal Boundary Description: The boundary begins at Point A, the south curb of the intersection of East (E.) Avenue (Ave) A, and runs east along the north curb of E. Ave A across Wool and Burgess Streets for approximately 400 yards to Point B. Point B is located on the north curb of E. Ave A, approximately 100 yards due north from the point where the railroad spur begins to curve. From Point B, the boundary turns south and proceeds across a vacant lot to its intersection with the railroad tracks; thence along the western most rail across E. Ave C and across E. Ave D to Point C, located approximately 130 yards south of E. Ave D. From Point C, the boundary extends due west across the storage yard to the east curb of Burgess Street and Point D, and then due north to Point E, a distance of approximately 400 yards. At Point E, the boundary crosses Burgess Street and runs west across vacant ground, along a partial fence line, for approximately 800 yards to Point F. Point F is located on the east curb of South Oakes Street. From Point F, the boundary turns north along the east curb of South Oakes Street, crossing E. Aves D, C, and B before terminating at Point A, a distance of 800 yards. Point A is the beginning point of the boundary.

Washington Crossing National Historic Landmark

New Jersey (Mercer County) and Pennsylvania (Bucks County)

It is composed of five, noncontiguous parcels.

(1) Washington's Crossing Lower National Historic Landmark District

Location: Along the Delaware River, partially in Hopewell Township, Mercer County, New Jersey and partially in Upper Makefield Township, Bucks County, Pennsylvania. The district includes portions of both the Pennsylvania and New Jersey Washington Crossing State Parks.

Verbal Boundary Description: Beginning at the intersection of the north curbline of PA Route 532 and the east curbline of PA Route 32, thence north along the east curbline of PA Route 32 approximately 750 feet to the first lower entrance to the area known as the "Valley of Concentration," then in a westwardly direction along the inner curbline of the lane that describes the oval area to the farthest northerly exit of that lane to PA Route 32, thence across PA Route 32 to the east curbline of that road, thence north along that curbline to a point opposite the most northerly point of the low water line of Taylors Island, thence to that point and continuing along the low water line of Taylors Island in a clockwise direction to a point that is the southeastern most point of the low water point of Taylors Island and then in a northeasterly direction across the Delaware River to a point that marks the intersection of the east curbline of NJ Route 29 and the inner curbline of the oval-shaped park access road, then along the inner curbline of the lane to a point opposite the south curbline of the park lane that is on the north of the Continental Army Trace Road and then along that south curbline to Brick Yard Road, then continuing in a straight line to the east curbline of country road 579 and then continuing to the east property line of the state park beyond the Bear Tavern/Park Office, and then along that east property line in a southeast direction to the north curbline of county road 546, then along that curbline to a point that is the imaginary extension of the north curbline of the park lane that is on the south side of the Continental Army Trace Road and then along that line to the curbline and along the curbline in a

southwest direction to the inner curbline of the oval-shaped park access road and then along that inner curbline to the north curbline of county road 546 and then in a southerly direction along that curbline across the Delaware River, but not including any portion of the Delaware River Bridge, to the north curbline of PA Route 532 and then along that curbline to the place of beginning.

(2) Washington's Crossing Upper National Historic Landmark District

Location: This district is located in both Solebury and Upper Makefield Townships, Bucks County, Pennsylvania. It lies along the Delaware River about two miles south of New Hope and in the shadow of Bowman's Hill.

Verbal Boundary Description: This district includes the entire parcel of land known as Washington's Crossing State Park "Upper Park" in Pennslyvania. The boundary, as does the park boundary, extends to the state line halfway into the Delaware River.

(3) Merrick House

Location: On road 309 near the intersection of road 09054 in Upper Makefield Township, Bucks County, PA.

Verbal Boundary Description: The acreage for the Merrick House consists of the entire legal parcel of 6.2 acres and is also known as Upper Makefield Tax Parcel number 47–4–63.

(4) Hayhurst House

Location: On road 09055 just beyond the crossroads of Woodhill in Upper Makefield Township, Bucks County, PA.

Verbal Boundary Description: The acreage for the Hayhurst House consists of the entire legal parcel of 7.4 acres and is Upper Makefield tax parcel 47–4–76, known as lot 9, Eagle Farm.

(5) Dr. Chapman House

Location: On road number 309 about .3 miles south of road 09056. Upper Makefield Township, Bucks County, PA.

Verbal Boundary Description: The entire parcel of tax map lot 47–7–11 consists of 24.4 acres. Of this total only about 6 acres is included in the nomination. That acreage includes the house and outbuildings and serves to protect the house which is the only contributing element. The boundary is as follows: beginning at the intersection of the south drive and road 309 and proceeding in a straight line along the south curbline of the south drive to its intersection with the small creek bed about 750 feet east of road 309, thence in a north direction along the stream bed about 250 feet and then in a westerly direction away from the creek bed to a point on road 309 that is 750 feet north of the place of beginning and then south along the road 309 east curbline to the place of beginning.

[FR Doc. 86–23286 Filed 10–15–86; 8:45 am]
BILLING CODE 4310–70–M

National Registry of Natural Landmarks

AGENCY: National Park Service, Interior.

ACTION: Public notice and request for comment.

The areas listed below appear to qualify for designation as National Natural Landmarks, in accordance with the provisions of 36 CFR Part 62. Pursuant to 62.4(d)(1) of 36 CFR 62, written comment concerning the potential designation of these areas as National Natural Landmarks by the Secretary of the Interior may be forwarded to the Director, National Park Service (413), U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240. Written comments should be received no later than 60 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Charles M. McKinney III, Natural Areas Survey Branch, Interagency Resources Division, (202) 343–9525.

Dated: October 6, 1986.

Denis P. Galvin,

Acting Director.

California

El Dorado County

Grass Lake—This 350-acre site is located at an elevation of 7,700 feet in the El Dorado National Forest approximately 12 miles southwest of Lake Tahoe. The site was scoured out by Pleistocene glaciers and later filled with water. Grass Lake is perhaps the best representative example of a true bog in the Sierra Nevada Natural Region and the largest floating or quaking bog known in California, an extremely rare type of peatland in the State. The site is unique for its size, quality and diversity of habitat.

Humboldt County

Lanphere-Christensen Dunes—This 603-acre northern California coastal sand pit encompasses a full range of regional coastal sand dune habitats, including beach, foredune, dune hollows, large moving dunes and old dune coniferous forest and red alder forest. Associated wetlands include salt marshes, willow swamp and brackish marsh. It is the largest undisturbed dune system in the North Pacific Border Natural Region. These habitats contain over 140 species of vascular plants, 48 bryophytes, 100 fungi, 14 mammals and 151 birds. Some of the plant communities are now extremely rare, especially the native dune ryegrass foredune and the mixed herbal community on partly stabilized dunes.

Kern County

Semitropic Ridge Area—This 20,660-acre site, located 26 miles northwest of Bakersfield, represents the last remaining example of an unbroken sequence of shrubland communities which were once widespread in the Southern Central Valley of the South Pacific Border Natural Region. These include Valley Sink habitats at the lower elevations, Valley Saltbush types at slightly higher elevations, with vernal pools scattered throughout.

Merced County

Kesterson-San Luis—This 15,500-acre area, located 25 miles west of Merced, largely within the Kesterson Wildlife Refuge, represents the last large tract of the Alkali Grassland community in the Great Valley of the South Pacific Border Natural Region, a rare community in California today. The area is marked by quality grasslands, native annuals, alkali scalds, and vernal pools. The marshy areas present quality resting areas for many species of waterfowl.

Nevada County

Sagehen Creek—This 250-acre site, located 11 miles north of Truckee, Nevada, within the Sagehen National Forest, contains fens, or mineral-rich alkaline peatlands, rare in the Sierra Nevada National Region. The fens at Sagehen Creek are particularly numerous and well-developed, and they contain a representative sample of the fen flora known from the Sierra Nevada. Nowhere else in the region does such a concentrated group of high quality fens occur.

Plumas County

Butterfly Valley—This 86-acre site, located 6 miles north of Quincy within the Plumas National Forest, is a large, wet meadow surrounded by a mid-elevation, Sierran mixed conifer forest. The meadow and other wet, seepy areas on the surrounding slopes support one of the largest populations of certain herbaceous plant species in California. The site is also distinguished by its very large number of total plant species. Although not a peatland in the strictest sense, this site supports many vascular plant species associated with the Sierran peatlands.

Solano County

Dixon Vernal Pools—This 15,200 acre site, located approximately 15 miles south of Dixon, represents the best example of the Valley Needlegrass Grassland in the Great Central Valley of the South Pacific Border Natural Region. There are only three sites of Valley Needlegrass Grassland remaining today. The site contains extensive stands of perennial needlegrasses in a mosiac with claypan vernal pools, another critically rare natural community. The rolling, hummocky topography results in a complex patchwork of grasses and native wildflowers.

Florida

Brevard, Orange, Seminole and Volusia Counties

Seminole Ranch/Tosohatchee State Reserve—This 63,841-acre site, approximately 10 miles west of Titusville, is a large, mostly intact area containing one of the most diverse mosaics of a wide range of high-quality examples of certain ecosystem types in Florida. Approximately 2,000 acres of virgin cypress swamp, approximately 40 acres of virgin slash pine flatwoods, and the best remaining examples of St. Johns River marshes occur here.

Highlands County

Archbold Biological Station—This 4,250-acre site, located approximately 7 miles south of Lake Placid, encompasses the largest known tract of contiguous natural communities characteristic of the Lake Wales Ridge still in a relatively natural condition. The full range of moisture conditions (xeric-mesic-hydric-aquatic), and most stages of plant succession, are represented by high quality examples. Lake Annie is the highest quality water supply left in the system of valley sink lakes that extends northward from the Station. A large number of endemic and rare species of plants and animals are located here.

New Hampshire

Cheshire County

Mount Monadnock—This 4,578-acre site, located within the towns of Jaffrey and Dublin about 80 miles northwest of Boston, is the type locality of a monadnock, or isolated mountain remnant. In addition, the mountain exhibits the conspicuous effects of Pleistocene glacial erosion, including striations, roche moutonnees or whalebacks, and an oversteepened profile resulting from glacial plucking.

Grafton and Carroll Counties

Nancy Brook Virgin Spruce Forest and Scenic Area—This 1,590-acre site, located approximately 6 miles northwest of Bartlett, is probably the largest virgin montane spruce forest in New England. Additionally, the diversity of the landscape is enhanced by landslides, steep valley walls, waterfalls, boulder streams, ponds, beaver clearings, mountain slopes, ridges, summits and distant views.

Oregon

Benton County

Willamette Floodplain—This 682-acre site, located approximately 15 miles south of Corvallis, represents the largest remaining native unplowed example of bottomland interior valley grasslands in the North Pacific Border Natural Region. All of these grasslands and shrubland communities have become exceedingly rare as most have been cultivated or converted to pastureland.

Tennessee

Sumner County

Taylor Hollow—This 128-acre site, located approximately 3 miles south of Westmoreland, represents the best remaining example of a forest characterized as mixed mesophytic in the Interior Low Plateaus, though this forest type is somewhat attenuated at this location relative to its main distribution. It contains many species disjunct from the Cumberland Plateau ridges.

White County

Anderson Pond—This approximately 71-acre site, located about 10 miles south of Cookeville, represents one of the few remaining karst pond swamps in the Eastern Highland Rim Subsection of the Interior Low Plateaus Natural Region, which was once a widespread landscape feature now virtually eliminated by agricultural practices. The palynological (pollen) record here dating back 20,000 years provided the first detailed pollen influx record for the Southeastern U.S., making it an extremely important site for the study of this region's vegetational history.

[FR Doc. 86-23287 Filed 10-15-86; 8:45 am]
BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the seventy-eighth meeting of the Board for International Food and Agricultural Development (BIFAD) on October 29, 1986.

The purposes of the meeting are to consider performance on Title XII projects, discussion of the proposed Fiscal Year 1988 AID budget, discuss implications for Title XII programs and to hear a presentation on the Agricultural Education Project in Indonesia.

The Meeting will be held at 9:00 a.m. and adjourn at 12:00 p.m. on October 29, 1986. The meeting will be held in the Pan American Health Organization Building, 525 23rd Street NW., Washington, DC 20037. Any interested person may attend, and may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meeting permits.

Erven J. Long, Director, Research and University Relations, Bureau for Science and Technology, Agency for International Development, is designated as AID Advisory Committee Representative at this meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, International Development Cooperation Agency, Washington, DC 20523, or telephone him at (703) 235-8929.

Dated: October 7, 1986.

Erven J. Long,

A.I.D. Advisory Committee Representative, Board for International Food and Agricultural Development.

[FR Doc. 86-23371 Filed 10-15-86; 8:45am]
BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-257]

Electronic Wall Stud Finders; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 26, 1986, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Zircon International, Inc.,

1580 Dell Avenue, Campbell, California 95008. Supplements to the complaint were filed on September 17 and September 30, 1986. The complaint as supplemented alleges unfair methods of competition and unfair acts in the importation into the United States of certain electronic wall stud finders, and in their sale, by reason of alleged (1) direct and induced infringement of claims 1 and 3–6 of U.S. Letters patent 4,099,118; and (2) trade secret misappropriation. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Ethel Lenardson Morgan, Esq., or Steven H. Schwartz, Esq., Office of Unfair Import Investigations, U. S. International Trade Commission, telephone 202–523–0113 and 202–523–4877, respectively.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's rules of practice and procedure (19 CFR 210–12).

Scope of investigation

Having considered the complaint, the U.S. International Trade Commission, on October 2, 1986, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain electronic wall stud finders into the United States, or in their sale, by reason of alleged (1) infringement of claims 1 and 3–6 of U.S. Letters Patent 4,099,118; and (2) trade secret misappropriation, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Zircon International, Inc. 1580 Dell Avenue, Campbell, California 95008.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Philips Home Products, Inc. 22790 Lake Park Boulevard, Alliance, Ohio 44601

Meyer Electronics Ltd. 35 Hung to Road, 6/F Kwun Tong, Kowloon, Hong Kong.

(c) Ethel Lenardson Morgan, Esq., and Steven H. Schwartz, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 122 and Room 124, respectively, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation of instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's rules of practice and procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR section 201.16(d) and 210.21 (a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: October 3, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–23392 Filed 10–15–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-282 and Investigations Nos. 731-TA-350-353 (Preliminary)]

Forged Steel Crankshafts From Brazil, the Federal Republic of Germany, Japan, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701–TA–282 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reasons of imports of certain forged steel crankshafts, provided for in items 660.67 and 660.71 of the Tariff Schedules of the United States, which are alleged to be subsidized by the government of Brazil.

The Commission also gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–350–353 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports from the following countries of forged steel crankshafts, provided for in items 660.67 and 660.71 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value:

Brazil—Investigation No. 731–TA–350 (Preliminary)

Federal Republic of Germany—Investigation No. 731–TA–351 (Preliminary)

Japan—Investigation No. 731–TA–352 (Preliminary)

United Kingdom—Investigation No. 731–TA–353 (Preliminary).

As provided in sections 703(a) and 733(a), the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by November 24, 1986.

For further information concerning the conduct of these investigations and rules of general application, consult the

Commission's rules of practice and procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Diana J. Mazur (202–523–7914), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed October 9, 1986 by Wyman-Gordon Company, Worcester, MA.

Participation in These Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Committee's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to these investigation must be served on all other parties to these investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on October 31, 1986 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Diane Mazur (202–523–7914) not later than October 24, 1986 to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before November 4, 1986 a written statement of information pertinent to the subject of these investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must confrom with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: October 10, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–23396 Filed 10–15–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–245]

Low-Nitrosamine Trifluralin Herbicides; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Industria Prodotti Chimici, S.p.a. (II. Pi.Ci.) and Aceto Agricultural Chemicals Corp. (Aceto).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the commission thirty (3) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on October 7, 1986.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary U.S. International Trade Commission, 701 E. Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments.

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E. Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: October 6, 1986.

By order of the Commission:

Kenneth R. Mason,

Secretary

[FR Doc. 86–23390 Filed 10–15–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337-TA-245]

Low-Nitrosamine Trifluralin Herbicides; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Agan Chemical Manufacturers Ltd. and Makhteshim-Agan (America) Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on October 7, 1986.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: October 6, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-23391 Filed 10-15-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-349 (Preliminary)]

Welded Carbon Steel Pipes and Tubes From Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-349 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of light-walled rectangular pipes and tubes[1] which are alleged to be sold in the United States at less than fair value.

As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by November 17, 1986. For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: October 2, 1986.

FOR FURTHER INFORMATION CONTACT: Judith Zeck (202-523-0339),Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contracting the Conmission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on October 2, 1986, by counsel for the Committee on Pipe and Tube Imports.

Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary of the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to an investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on October 24, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Judity Zeck (202-523-0339) not later than October 21, 1986, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

[1] For purposes of this investigation, the term "light-walled rectangular pipes and tubes" covers welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness less than 0.156 inch, provided for in item 610.4928 of the Tariff Schedules of the United States Annotated (TSUSA).

Written submissions

Any person may submit to the Commission on or before October 28, 1986 a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: October 10, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-23394 Filed 10-15-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-271 (Final) and 731-TA-318 (Final)]

Oil Country Tubular Goods From Israel

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: October 10, 1986.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-523-0282), Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION: On June 26, 1986, the Commission instituted investigation No. 701-TA-271 (Final) without establishing a schedule for its conduct (51 FR 24947, July 9, 1986). On September 2, 1986, the Commission instituted investigation No. 731-TA-318 (Final) and approved a schedule for the conduct of both the subject investigations (51 FR 32258, September 10, 1986). Subsequently, the Department of Commerce extended the date for its final determination in the investigations from November 3, 1986 to January 7, 1987. The Commission, therefore, is revising its schedule in the investigations to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: the prehearing conference will be held in room 117 of the U.S. International Trade Commission Building at 9:30 a.m. on January 8, 1987; the public version of the prehearing staff report will be placed on the public record on December 23, 1986; the deadline for filing prehearing briefs is January 8, 1987; the hearing will be held in room 331 of the U.S. International Trade Commission Building at 9:30 a.m. on January 14, 1987; and the deadline for filing all other written submissions, including posthearing briefs, is January 21, 1987.

For further information concerning these investigations see the Commission's notices of investigations cited above and the Commission's rules of practice and procedure, Part 207, Subparts A and C (19 CFR part 207), and Part 201, Subparts A through E (19 CFR part 201).

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, Title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: October 10, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-23397 Filed 10-15-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-341 Through 346 (Preliminary)]

Tapered Roller Bearings and Parts Thereof, and certain Housings Incorporating Tapered Rollers From Hungary, Italy, Japan, the People's Republic of China, Romania, and Yugoslavia

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Hungary (inv. No. 731-TA-341), Italy (Inv. No. 731-TA-342), Japan (inv. No. 731-TA-343), the People's Republic of China (inv. No. 731-TA-344), Romania (inv. No. 731-TA-345), and Yugoslavia (inv. No. 731-TA-346) of tapered roller bearings and parts thereof, provided for in Tariff Schedules of the United States (TSUS) items 680.30 and 680.39; flange, take-up, cartridge, and hanger units incorporating tapered roller bearings, provided for in TSUS item 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, provided for in item 692.32 or elsewhere in the TSUS, all of which are alleged to be sold in the United States at less than fair value (LTFV). Products subject to the outstanding dumping order covering certain tapered roller bearings from Japan (T.D. 76-227, 41 FR 34974) are not included within the scope of investigation No. 731-TA-343 (Preliminary).

Background

On August 25, 1986, petitions were filed with the Commission and the Department of Commerce by the Timken Company, Canton, OH, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of the subject merchandise. Accordingly, effective August 25, 1986, the Commission instituted preliminary antidumping investigations Nos. 731-TA-341 through 346 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 4, 1986 (51 FR 31732). The conference was held in Washington, DC, on September 16, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on October 9, 1986. The views of the Commission are contained in USITC Publication 1899 (October 1986), entitled "Tapered Roller Bearings and Parts Thereof, and Certain Housings Incorporating Tapered Rollers

[1] The record is defined in § 207.2(i) of the Commission's rules of practice and procedure (19 CFR 207.2(i)).

from Hungary, Italy, Japan, the People's Republic of China, Romania, and Yugoslavia: Determinations of the Commission in Investigations Nos. 731–TA–341 through 346 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: October 10, 1986.

By order of the Commission:

Kenneth R. Mason,

Secretary.

[FR Doc. 86–23395 Filed 10–15–86; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30880]

Delaware and Hudson Railway Co.; Discontinuance of Trackage Rights Exemption Between Greigsville and Alexander, NY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the discontinuance by the Delaware and Hudson Railway Company of trackage rights over a portion of Consolidated Rail Corporation's track, known as the Groveland Secondary Track, between milepost 341.0 at Greigsville and milepost 360.2 at Alexander, a distance of 19.2 miles in the State of New York.

DATES: This exemption is effective on November 15, 1986. Petitions to stay must be filed by October 27, 1986, and petitions for reconsideration must be filed by November 5, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30880 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Charles E. Mechem, Room 1138, Six Penn Center Plaza, Philadelphia, PA 19103–2959.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7693.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: October 6, 1986.

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

Noreta R. McGee

Secretary.

[FR Doc. 86–23325 Filed 10–15–86; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–31; Sub–No. 23]

Grand Trunk Western Railroad Co.; Abandonment in Lapeer and Oakland Counties, MI; Findings

The Commission has issued a certificate authorizing Grand Trunk Western Railroad Company to abandon its 29.5-mile rail line between milepost 13.1 and Kings Mill (milepost 42.60) in Lapeer and Oakland Counties, MI. 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 1152.27

Noreta R. McGee,

Secretary.

[FR Doc. 86–2332 Filed 10–15–86; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–31; Sub–No. 23A]

Grand Trunk Western Railroad Co.; Abandonment in Oakland County, MI; Findings

The Commission has issued a decision and certificate of Interim Trail Use authorizing Grand Trunk Western Railroad Company to discontinue (if an Interim Trail Use Agreement is reached) or abandon (if an Interim Trail Use Agreement is not reached), its 5.0-mile rail line between Orion (milepost 8.1) and milepost 13.1 in Oakland County, MI. The decision and 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 1152.27.

Noreta R. McGee,

Secretary.

[FR Doc. 86–23323 Filed 10–15–86; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–33; Sub–No. 40X—Docket No. AB–36; Sub–No. 23X]

Union Pacific Railroad Co.; Exemption; Discontinuance of Operations in Fremont County, ID; Oregon Short Line Railroad Co.; Exemption; Abandonment in Fremont County, ID

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903, *et seq.*, the discontinuance of operations by Union Pacific Railroad Company, and the abandonment by Oregon Short Line Railroad Company, of a 0.4-mile portion of a line of railroad near Ashton in Fremont County, ID, subject to standard employee protective conditions.

DATES: This exemption will be effective on November 17, 1986. Petitions to stay must be filed by October 27, 1986, and petitions for reconsideration must be filed by November 5, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB–33 (Sub-No. 40X) and AB–36 (Sub-No. 23X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's Representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S.

InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC. Metropolitan area), or call toll-free (800) 424–5403.

Decided: October 7, 1986.

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

Noreta R. McGee,

Secretary.

[FR Doc. 86–23326 Filed 10–15–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Renewal of the Mediated Rulemaking Advisory Committee on 4,4'-Methylenedianiline (MDA)

Notice is given that after consultation with the General Services Administration, it has been determined that the MDA Negotiated Rulemaking Advisory Committee whose Charter expires November 7, 1986, is hereby renewed an redesignated as the Mediated Rulemaking Advisory Committee for the period November 7, 1986, to November 7, 1987. This action is necessary and in the public interest.

The Committee will advise the Secretary of Labor regarding the building of consensus by affected interests on issues associated with a proposed OSHA standard on MDA.

The Committee consists of 15 members and proportionately includes representatives of the following affected interests: manufacturers of MDA; primary users of MDA; secondary users of MDA; trade associations; labor organizations; public interest/consumer groups; State and/or local officials; and Federal safety and health officials.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Accordingly, its Charter will be filed 15 days from the date of this notice.

Interested persons are invited to submit comments regarding the renewal of the Mediated Rulemaking Advisory Committee on MDA.

Such comments should be addressed to: Mr. Tom Hall, OSHA Division of Consumer Affairs, Room N3637, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 10th day of October 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86–23340 Filed 10–15–86; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; Dover Elevator Systems et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision if the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 27, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 27, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC, 20213.

Signed at Washington, DC, this 6th day of October 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Dover Elevator Systems (I.B.E.W.)	Cincinnati OH	9/18/86	9/12/86	TA-W-18,259	Elevators.
Diversified Products Corp. (Company)	Opelika AL	9/19/86	9/16/86	TA-W-18,260	Rowers and exercisers.
Clovis Riley, Inc. (Workers)	Pearsall TX	9/30/86	9/25/86	TA-W-18,261	Transport drilling mud.
Bell & Howell, Audio Visual Div. (Company)	Chicago IL	9/29/86	9/25/86	TA-W-18,262	Film projectors slide projectors overhead projectors.
Coastal Tank Lines (Workers)	Marysville MI	9/30/86	9/26/86	TA-W-18,263	Trucking.
Murfin Drilling, Co. (Workers)	Colby KS	9/30/86	9/26/86	TA-W-18,264	Oil drilling.
Welex, Incorp. (Workers)	Abilene TX	9/26/86	9/22/86	TA-W-18,265	Oil well services.
Amoco Production Corp. (Workers)	Farmington NM	9/26/86	9/15/86	TA-W-18,266	Oil and natural gas.
Flexcel Co. Inc. (Company)	Marshall TX	9/26/86	9/19/86	TA-W-18,267	Oil well equipment.
Dixilyn Field Drilling (Workers)	Alice TX	9/26/86	9/22/86	TA-W-18,268	Contract oil well drilling.
Cherokee Drilling and Develop. Co. (Wkrs)	Midland TX	9/26/86	9/23/86	TA-W-18,269	Contract oil well drilling.
Baker Packers (Workers)	Corpus Christi TX	8/23/86	8/19/86	TA-W-18,270	Oil well equipment.
Pool Company, North Central Region (Workers)	Abilene TX	9/26/86	9/26/86	TA-W-18,271	Oil well repair.
Red Tiger Drilling Co. (Workers)	Witchita KS	9/25/86	9/20/86	TA-W-18,272	Oil and natural gas.
Burch, Hopkins, Pham and Associates (Workers)	Corpus Christi TX	8/23/86	8/18/86	TA-W-18,273	Engineering/design services.
Banner Drilling Co. (Workers)	Scottsbluff NB	9/25/86	9/20/86	TA-W-18,274	Contract drilling.
Western Gear Machinery (IAMA)	Everette WA	9/23/86	9/22/86	TA-W-18,275	Heavy equipment.
Lovett, Incorp. (Workers)	Corpus Christi TX	8/23/86	8/19/86	TA-W-18,276	Sell and installs cementing equipment.
Gemoco (Workers)	Corpus Christi TX	8/23/86	8/19/86	TA-W-18,277	Sales and services of cementing equipment.
A.I.E. Magnetics (USWA)	Nashville TN	9/25/86	9/23/86	TA-W-18,278	Transformers.
Hanna Nickel Smelting (USWA)	Cleveland OH	9/25/86	9/23/86	TA-W-18,279	Nicklemine and melter.
Key Tronic Corp. (Workers)	Newport WA	9/22/86	8/15/86	TA-W-18,280	Electric Computer Keyboard.
Pittsburg Tube Co. (USWA)	Monaca PA	9/25/86	9/23/86	TA-W-18,281	Steel Tubing.
Hydril Co. (USWA)	Houston TX	9/25/86	9/23/86	TA-W-18,282	Threaded pipes.
Rheem Manufacturing (USWA)	Houston TX	9/25/86	9/23/86	TA-W-18,283	Steel Barrels.
Teleflex, Inc. Marine Division (UAW)	Limerick PA	9/26/86	9/23/86	TA-W-18,284	Marine cable controls.
The Western Co. (Workers)	Snyder TX	9/22/86	9/9/86	TA-W-18,285	Oilwell servicing.
Trend Exploration Ltd, (Workers)	Denver CO	9/19/86	9/9/86	TA-W-18,286	Clerical and data processing staff.
Chevron U.S.A. (Workers)	Midland TX	9/19/86	9/16/86	TA-W-18,287	Administrative staff.
W.A. Moncrief & Sons (Workers)	Kamay TX	9/19/86	9/4/86	TA-W-18,288	Oil.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Duncan Oil Inc. (Workers)	Denver CO	9/22/86	9/19/86	TA-W-18,289	Exploration and production of oil and gas.
Halliburton Services (Workers)	Artesia NM	9/19/86	9/8/86	TA-W-18,290	Oilfield services.
Halliburton Services (Workers)	Rankin TX	9/19/86	9/14/86	TA-W-18,291	Oilfield services.
N.L. Bariod (Firm)	Port Lavaca TX	9/19/86	9/14/86	TA-W-18,292	Drilling fluid and muds (distribution).
Dresser Atlas (Workers)	Laredo TX	9/19/86	9/16/86	TA-W-18,293	Wireline service.
Johnn Drilling Co. (Workers)	Odessa TX	9/19/86	9/12/86	TA-W-18,294	Contract drilling services.
Les Wilson, Incorp. (Firm)	Carmi IL	9/22/86	9/16/86	TA-W-18,295	Oilwell drilling.
Bowen Tools, Inc. (Workers)	Willsion	9/22/86	9/9/86	TA-W-18,296	Oilfield equipment.
Exxon Company-U.S.A. (Workers)	Corpus Christi TX	9/22/86	8/18/86	TA-W-18,297	Crude oil.
Domenico, Inc. (ILGWU)	Lynn MA	9/17/86	9/19/86	TA-W-18,298	Ladies sportswear.
Sperry Corp. (Workers)	St. Paul MN	8/13/86	8/13/86	TA-W-18,299	Computer systems.

[FR Doc. 86-23341 Filed 10-15-86; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-17,782]

Parker Drilling Co.; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Parker Drilling Company, Odessa, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination, Therefore, dismissal of the application was issued.

TA-W-17,782: Parker Drilling Company, Odessa, Texas (October 6, 1986)

Signed at Washington, DC, this 6th day of October 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-23352 Filed 10-15-86; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-86-30-C]

K-Lin Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

K-Lin Coal Company, Inc., Box 46, Belfry, Kentucky 41514 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15-12472) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioners' statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 1 Mine is in the Lower Cedar Grove Seam and ranges from 35 to 48 inches in height, with consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that the use of a canopy on the mine's equipment could destroy roof support and it would limit the equipment operator's visibility and his or her seating position, increasing the changes of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 17, 1986. Copies of the petition are available for inspection at that address.

Dated: October 8, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-23342 Filed 10-15-86; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-86-159-C]

Preece Energy, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Preece Energy, Inc., Box 449, Turkey Creek, Kentucky 41570 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15-09916) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 1 Mine is located in the Thacker Seam and ranges from 38 to 50 inches in height, with consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that the use of a canopy on the mine's equipment could destroy roof support and that it would limit the equipment operator's visibility.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 17, 1986. Copies of the petition are available for inspection at that address.

Dated: October 8, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-23343 Filed 10-15-86; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-86-158-C]

Webster County Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Webster County Coal Corporation, P.O. Box 45, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.507-1(a) (electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements) to its Retiki Mine (I.D. No. 15-00672) located in Henderson County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all electric equipment, other than power-connection points,

used in return air outby the last open crosscut in any coal mine be permissible.

2. As an alternate method, petitioner proposes to use a 5 h.p., 460V Franklin motor on a non-permissible Jabsco submergible pump, model 777–001, to drain water from the sump beneath the air shaft.

3. In support of this request, petitioner states that the operating electrical parts of the submergible pump are submerged in the water in the sump at all times. In the event the water level in the sump drops more than 1" below the intake point on this pump, it will discontinue to pump water from the sump. This eliminates the possibility of lowering the water level to the point of exposing the operating electrical parts of the pump. The electrical power supply to the submergible pump enters the pump at a point which is also below the water level in the sump at all times.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 17, 1986. Copies of the petition are available for inspection at that address.

Dated: October 8, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86–23344 Filed 10–15–86; 8:45 am]

BILLING CODE 4510–43–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for First Quarter CY 1986, Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licenses were determined to be abnormal occurrences (AOs) using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). These abnormal occurrences are described below, together with the remedial actions taken. These events are also being included in NUREG–0090, Vol. 9, No. 1 ("Report to Congress on Abnormal Occurrences: January-March, 1986"). This report will be available in the NRC's Public Document Room, 1717 H Street NW, Washington, DC about three weeks after the publication date of this **Federal Register** Notice.

Nuclear Power Plants

AO 86–1 Loss of Power and Water Hammer Event

One of the general abnormal occurrence criteria notes that a major degradation of essential safety-related equipment can be considered an abnormal occurrance.

Date and Place—On November 21, 1985, San Onofre Nuclear Generating Station (SONGS) Unit 1 experienced a partial loss of inplant ac electrical power while the plant was operating at 60 percent power. Following a manual reactor trip, the plant lost all inplant ac power for 4 minutes and experienced a severe water hammer in the feedwater system which caused a leak, damaged plant equipment, and challenged the integrity of the plant's heat sink. The most significant aspect of the event involved the failure of five safety-related check valves in the feedwater system, without detection, and jeopardized the integrity of safety systems. The event involved a number of equipment malfunctions, operator errors, and procedural deficiencies.

SONGS Unit 1 utilizes a Westinghouse-designed pressurized water reactor. The plant is operated by Southern California Edison Company (the licensee) and is located in San Diego County, California.

Nature and Probable Consequences—At 4:51 a.m., on November 21, 1985, the plant was operating at 60 percent power when a ground fault was detected by protective relays associated with the "C" transformer, which was supplying offsite power to one of the two safety-related 4160V electrical buses. The resulting isolation of the transformer caused the safety-related bus to de-energize, which tripped all feedwater and condensate pumps on the east side of the plant. The pumps on the west side of the plant were unaffected since their power was supplied from another bus which was being fed from the main generator.

The east feedwater pump discharge check valve (FWS–436) failed to seat as the de-energized pump coasted down. This provided a path for the discharge of the still operating high pressure (1300 psig) west feedwater pump to the low pressure (350 psig) east condensate piping and components. East flash evaporator condenser tubes became overpressured, ruptured and overpressurized the evaporator shell, causing the shell to develop a fish-mouth opening approximately 20 feet long and 2 feet wide, which relieved the pressure.

The operators, as required by emergency procedures dealing with electrical systems, tripped the reactor and turbine-generator. As a result, the plant experienced its first complete loss of steam generator feedwater and inplant electrical power since it began operation. The manual trip of the main generator caused loss of ac power to the remaining inplant loads. The subsequent 4-minute loss of inplant electric power started the emergency diesel generators (which by design did not load), deenergized all safety-related pumps and motors, significantly reduced the number of control room instrument indications available for operators to diagnose plant conditions, produced spurious indications of safety injection system actuation, and caused the NRC Emergency Notification System (ENS) phone on the operator's desk to ring spuriously. Restoration of inplant electric power was delayed by improper operation of an automatic sequencer.

The temporary total loss of steam generator feedwater was the direct result of the loss of ac power to the two main feedwater and one auxiliary feedwater pump motors, and the designed 3-minute warm-up period of the steam-powered auxiliary feedwater pump. The loss of the feedwater pumps, in combination with the failure of five feedwater check valves to close (one at the discharge of each feedwater pump and one in the feedwater line to each of the three steam generators), allowed loss of inventory from all three steam generators and the partial voiding of the long horizontal runs of feedwater piping within the containment building. The subseqent automatic start of feedwater injection by the steam-powered auxiliary feedwater pump did not result in the recovery of steam generator level because the auxiliary feedwater being injected into the feedwater lines was flowing backwards through the failed check valves to the ruptured feed heater in the condensate system.

Later, operators isolated the feedwater lines upstream of the failed check valves, as required by procedure, unknowingly initiating the process of refilling the feedwater lines in the containment building. As the auxiliary feedwater pumps refilled the feedwater

piping to the steam generators, conditions were being established for a phenomenon that can generate destructive forces greater than 150,000 pounds-force. Since the feedwater piping to the steam generators had drained because of the failed check valves, the pipes contained water and steam at high temperature and pressure from the steam generators. As the auxiliary feedwater system filled the piping with relatively cold water, an instability occurred at the steam/water interface, which created a slug of water in the steam space. The slug accelerated at great speed, as steam was condensed in front of the slug, until it encountered an obstruction or a change of direction in the piping, such as at an elbow or closed valve. Upon contact, the slug imparted its energy to the piping with the force of a hammer blow, i.e., a condensation-induced water hammer.

Because of the long (203 feet) horizontal layout of the feedwater piping to the B steam generator and other sustaining conditions, this piping experienced the water hammer. The forces from the water hammer displaced the 10-inch diameter feedwater piping, distorted its original configuration, and damaged pipe hangers and snubbers.

Outside the containment building, the forces associated with the water hammer were enough to stretch 10 one-half-inch diameter bolts holding the bonnet on a 4-inch bypass check valve by about one-half inch. All of the bolts were stretched into an hour glass shape. The steam and water from the check valve body to bonnet interface had sufficient force to blow away the insulation from all the piping located 360 degrees around the check valve. The significant steam and water leak from this check valve constituted the second leak in the event.

The design of the steam system at Unit 1 has the three steamlines joined into a common pipe (or steam header) inside the containment building without any valves to prevent simultaneous blowdown of all three steam generators should a leak in a steamline or a feedwater line occur. Hence, the leak from the B feedwater bypass check valve located outside the containment building communicated with all three steam generators, via the steam header and B feedring, and their steam inventories were vented via the leak to the atmosphere. In addition, the auxiliary feedwater flow to B steam generators escaped from this leak instead of going to the steam generator.

Despite these problems, operators succeeded in recovering water level in the two steam generators not directly associated with the feedwater piping leak. With the reestablishment of steam generator levels, the operators safely brought the plant to a stable cold shutdown condition, without a significant release of radioactivity to the environment (a preexisting primary to secondary leak was not exacerbated) and without significant additionl damage to plant equipment.

Cause or Causes—The most significant aspect of the event was that five safety-related feedwater system check valves degraded to the point of inoperability without detection by the licensee, and that their failure jeopardize the integrity of safety-related feedwater piping. The root causes of the check valve failures were a combination of inadequate maintenance, inadequate inservice testing, inadequate design, and inadequate consideration of the effects of reduced power operations.

Actions Taken to Prevent Recurrence

Licensee—The licensee has undertaken an extensive study (including testing programs) of the multiple failures associated with the event to determine root causes and effective corrective actions to preclude recurrence.

On April 8, 1986, subsequent to several meetings with NRC staff and the Commission, the licensee submitted a comprehensive report documenting the results of their investigations to that date and providing some conclusions and corrective actions being implemented. The licensee provided additional information on May 1, 1986.

The licensee concluded that the most likely cause of the cable failure which initiated the event was temperature-induced degradation due to the presence of local heat sources such as hot pipe flanges. Additionally the licensee concluded that the failure of the five check valves was caused by (1) their proximity to turbulent flow, (2) the fact that the valves were not properly sized for design flow conditions and therefore did not remain fully open in normal operation, (3) the design by which the valve disc was fastened to the valve hinge, and (4) extended reduced flow operation at 90% power which exacerbated the effects of the design deficiencies.

The licensee's actions described in the April 8, 1986 report were extensive and included examinations and corrective actions in the areas of testing, procedures development, training, maintenance, quality assurance, emergency preparedness, post-trip review and safety review programs.

The Licensee committed to and is in the process of implementing a number of corrective actions including repairs and design changes which include redesign and replacement of the damaged feedwater lines, replacement of the failed check valve design with another design, and adding an additional check valve in each feedwater line.

Additionally the licensee has committed to substantial initiatives to improve plant performance. These initiatives will systematically examine the material condition of the unit and identify and correct systems and components which deviate from defined standard conditions. The licensee has elicited the aid of recognized experts in this area and has committed to implement necessary actions prior to restart. Additional actions are being defined to maintain the material standard on an ongoing basis.

NRC—The San Onofre Resident Inspectors arrived at the site shortly after being notified of the event. They observed licensee actions to assure the plant remained in a stable condition and began an initial investigation of the circumstances associated with the event.

On November 21, 1985, the NRC Region V Regional Administrator forwarded a Confirmatory Action Letter to the licensee indicating, in part that the licensee would not perform any additional work on equipment that malfunctioned during the event until the NRC investigation could review the licensee's proposed actions. The letter also confirmed an understanding that the plant was not to be restrated until authorized by the NRC Region V Regional Administrator or his designee.

On November 22, 1985, responsibility for the incident investigation was assigned to a special NRC Incident Investigation Team (IIT) by the NRC Executive Director for Operations at the request of the Region V Regional Administrator, in conformance with an NRC staff-proposed incident Investigation Program. The Team, composed of six technical experts, was to (1) determine pertinent facts related to the event, (2) identify the probable cause, and (3) make appropriate findings and conclusions to form the basis for possible follow-on actions. The Team began their investigation at the plant site on November 23, 1985. The equipment which malfunctioned was quarantined.

The Team collected and evaluated information to determine the sequence of operator, plant, and equipment responses during the event and the causes of equipment malfunctions. The sequence of these responses was determined primarily by interviewing personnel who were at the plant during the event and by reviewing plant data

from the period immediately preceding and during the event. The Team also toured the plant to examine the equipment which malfunctioned, the equipment that was key to mitigating the transient, and the control room instrumentation and controls. The Team also interviewed plant management personnel and NRC Region V personnel who arrived at the site soon after the plant was stabilized about their knowledge of the plant response and operator actions. By correlating plant records with personnel statements on their actions and observations, the Team was able to complie a discription of the event.

The results of the Team's investigation were issued in January 1986 in NUREG–1190 ("Loss of Power and Water Hammer Event at San Onofre, Unit 1, On November 21, 1986"). Problems identified included issues specific to SONGS Unit 1 and several possible generic issues. In addition, the Team concluded that the most significant aspect of the event was that five safety-related feedwater system check valves degraded to the point of inoperability during a period of less than a year, without detection, and that their failure jeopardized the integrity of safety related feedwater piping.

The root causes of the check valve failures have been determined by the licensee and are under independent review by the NRC. Potential contributors to this problem include inadequate inservice testing (IST), inadequate design, and inadequate consideration of the effects of reduced power operations. The licensee's IST program (submitted to but not yet approved by NRC) provided for testing a sampling of the check valves each quarter, but permitted deferral of testing when plant conditions were inappropriate (e.g., plant in operation). The testing was also intended to identify valve failure, not degradation or impending failure. The IST was therefore not effective in identifying the check valve failures before the event occurred. Finally, reduced power operations at Unit 1 are now routine because of steam generator tube plugging and sleeving, and the reduced feedwater flow may have increased the susceptibility of check valve components to hydraulically-induced vibration.

The NRC continues to be involved in the resolution of this event and related matters. The event provided an opportunity for the NRC to learn from experience and to feed back the pertinent lessons into NRC and licensee activities. The NRC Executive Director for Operations has directed NRC program managers to conduct an in-depth reappraisal of effectiveness of their programs in light of the lessons of the SONGS Unit 1 event with the view of making the NRC programs more effective. An NRC action plan has been developed through a cooperative effort of the Offices of Nuclear Reactor Regulation, Inspection and Enforcement, and Region V.

This plan resulted in three basic types of actions that the staff is undertaking:

- Evaluation of licensee corrective actions and evaluations that are required for restart in accordance with the NRC's action list. Most notably, these include an assessment of the licensee's review of plant material condition and readiness for operation.
- Evaluation of generic implications of the SONGS Unit 1 event through a sampling of industry experience and technical evaluations of root causes, e.g., check valve design implementation. (Lead responsibility for resolving generic issues related to check valve failures had been assumed by industry per a meeting with the NRC Executive Director for Operations on April 7, 1986. The NRC will monitor and review industry actions.)
- Evaluation of NRC requirements and positions in light of existing implementation practices, root causes of the event, and samples of industry practices.

These actions outline a program that evaluates the SONGS Unit 1 readiness for restart and assures that generic aspects are considered.

On January 6, 1986, the NRC Office of Inspection and Enforcement issued Information Notice No. 86–01 ("Failure of Main Feedwater Check Valves Causes Loss of Feedwater System Integrity and Water Hammer Damage") to all nuclear power reactor facilities holding an operating license or a construction permit to inform them of the San Onofre event.

* * * * *

AO 86–2 Loss of Integrated Control System Power and Overcooling Transient

One of the general occurrence criteria notes that major deficiencies in design, construction, use of, or management controls for licensed facilities or material can be considered an abnormal occurrence.

Date and Place—On December 26, 1985, Rancho Seco Nuclear Generating Station, located in Sacremento County, California, experienced a loss of dc power within the integrated control system (ICS) while the plant was operating at 76 percent power. Following the loss of ICS dc power, the reactor tripped on high coolant system (RCS) pressure followed by a rapid overcooling transient and automatic initiation of the safety features actuation system on low RCS pressure. The overcooling transient continued until ICS dc power was restored 26 minutes after its loss. The significance of the event is that a nonsafety related system failure initiated a plant transient which could have been more severe under other postulated scenarios.

The Rancho Seco Nuclear Generating Station, operated by the Sacramento Municipal Utility District (SMUD), is a Babcock & Wilcox (B&W)-designed pressurized water reactor.

Nature and Probable Consequences—At 4:14 a.m. on December 26, 1985, the plant was operating at 76 percent power, when a loss of ICS dc power occurred as a result of a single failure. The loss of dc power to the ICS (nonsafety-related system) caused a number of feedwater and steam valves to reposition authomatically and also caused the loss of remote control of the affected valves from the control room. In addition, the main feedwater (MFW) pump turbines slowed to minimum speed and the auxiliary feedwater (AFW) pumps started. The immediate result was a reactor coolant system (RCS) undercooling condition that resulted in the reactor tripping on high pressure. The reactor trip was followed by an overcooling condition that resulted in safety features actuation and excessive RCS cooldown.

The transient was initiated by the failure of a single monitoring module in the nonsafety-related ICS (i.e., the spurious tripping of the power supply monitoring module that interrupted all +/−24 Vdc power). The most probable cause of this failure was a bad crimp connection in the wiring between the +24 Vdc bus and the power supply monitor which caused the module to sense undervoltage and interrupt all dc power.

The operators did not immediately recognize that the dc switches had tripped and therefore did not reset the switches to promptly restore dc power within the ICS. As a result, nonlicensed operators were sent to isolate the affected steam feedwater valves locally with handwheels. During the first 7 minutes of the incident, the excessive steam and feedwater flows resulted in a rapid RCS cooldown of over 100°F. The pressurizer emptied and a small bubble formed in the reactor vessel head. The RCS cooldown continued and the RCS depressurized to about 1064 psig and

then began to repressurize. This repressurization resulted in the RCS entering the B&W-designated pressurized themal shock (PTS) region.

The atmospheric dump valves and turbine bypass valves were isolated within 9 minutes after the reactor trip. However, the operators experienced difficulty closing the ICS-controlled AFW flow control valves. One of the flow control valves was finally shut; however, the second AFW flow control valve was damaged and failed open. The associated AFW manual isolation valves was found to be stuck open. Therefore, both AFW pumps continued to feed and overfill one steam generator. Water began to overflow into the main steam lines.

About 26 miniutes after the reactor trip, the operators restored power within the ICS by reclosing two switches in an ICS cabinet. The operators were then able to close the open AFW flow control valve from the control room, which stopped the RCS cooldown, and started stabilizing the plant. The RCS had cooled down a total of 180°F in this 26-minute period.

While changing a valve lineup in the suction of the pump used to supply RCS makeup (makeup pump), the last suction valve to the makeup pump was inadequately shut. This resulted in the overheating and destruction of the makeup pump. About 450 gallons of contaminated water were spilled on the floor. This failure did not directly affect the incident since a high pressure injection (HPI) pump avaiable to supply RCS makeup. In addition, the spilled water did not result in any signifiant onsite or offsite radioactivity release or personnel dose.

Operators later stabilized the plant and brought it to a cold shutdown without significant additional damage to plant equipment.

The December 26, 1985 overcooling incident did not seriously threaten the integrity of the Rancho Seco reactor vessel. However, the plant has had a number of overcooling incidents in its 12-year operating history. Each time this occurs the potential exists for additional operator errors and equipment failures that might exacerbate the event and threaten reactor vessel integrity. Thus, the significance of this incident lies in the fact that under alternate scenarios more serious consequences could occur.

The incident at Rancho Seco was also significant because a single failure in the ICS, which is a nonsafety-related system, subjected the plant to an undesirable overcooling transient. During the transient, the RCS cooled down 180°F in 26 minutes, the pressurizer emptied, a bubble formed in the ractor vessel head, the plant entered the licensee-defined pressurized thermal shock region, the safety features actuation system (SFAS) actuated, the water overflowed from a steam generator into the main steam lines.

Cause or Causes—The fundamental causes for this transient were design weaknesses and vulnerabilities in the ICS and in the equipment controlled by that system. These weaknesses and vulnerabilities were not adequately compensated by other design features, plant procedures or operator training. These weaknesses and vulnerabilities were largely known by the licensee and the NRC staff by virtue of a number of precursor events and through related analyses and studies. Yet, adequate plant modifications were not made so that this event would be improbable, or so that is course or consequences would be significantly altered.

Actions Taken to Prevent Recurrence

Licensee—The licensee has undertaken extensive study (including controlled disassembly, examination and testing) of the multiple failure associated with the event to determine root causes and to take corrective actions to prevent recurrence. Some specific improvements have been identified by these efforts and are being implemented prior to plant startup. These are described in the licensee's February 19, 1986 summary report to the NRC.

Plant Modifications

1. Replacement of power distribution wiring of the ICS Power Supply Monitor, to reduce the resistance in series with the voltage being monitored.

2. Provisions to ensure proper isolation and control room manual control capability for turbine bypass valves, atmospheric dump valves, and auxiliary feedwater flow control valves, under circumstances of ICS failure.

Training

Classroom and simulator training related to response to ICS power loss conditions, handling of overcooling and potential pressurized thermal shock, recovery from safety actions and implementation of emergency plan procedures.

Maintenance Program

1. Repair of damaged equipment that is required for normal and abnormal operating conditions.

2. Verification of acceptable condition of equipment in the non-nuclear systems of the plant.

3. Development of a preventive maintenance program for non-nuclear balance-of-plant equipment.

Emergency Procedures

Development of event-related procedures to complement the symptom-related emergency procedures, for ICS power loss and safety feature actuation system recovery.

NRC—Upon being notified of the event, the NRC Resident Inspectors for the plant arrived shortly thereafter. They observed licensee actions to assure the plant remained in a a stable condition and began an initial investigation of the circumstances associated with the event.

On December 26, 1985, the Regional Administrator of the NRC Region V Office forwarded two Confirmatory Action Letters to the licensee indicating that the licensee would perform a root cause analysis prior to return to power and would not perform any additional work on equipment that malfunctioned during the event until the NRC could evaluate the event.

On December 27, 1985, an NRC Augmented Inspection Team (AIT) was sent to the site by the Regional Administrator and started transcribed personnel interviews on December 28. The initial results of this investigation effort indicated that the event was complex and had potentially significant generic implications.

On December 31, 1985, the responsibility for the incident investigation was expanded to a special NRC Incident Investigation Team by the NRC Executive Director for Operations (EDO) at the request of the Region V Regional Administrator, in conformance with an NRC staff-proposed Incident Investigation Program. The Team, composed of six technical experts, was to (1) fact-find as to what happened, (2) identify the probable cause as to why it happened, and (3) make appropriate findings and conclusions to form the basis for possible follow-on actions. The Team consisted of the AIT members supplemented by additional staff. It continued the investigation started by the AIT as the plant site. The equipment which malfunctioned was quarantined.

The Team collected and evaluated information to determine the sequence of operator, plant, and equipment responses during the event and the casues of equipment malfunctions. The sequence of these response was determined primarily by interviewing personnel who were at the plant during the event and by reviewing plant data for the period immediately preceding and during the event. The Team also

toured the plant to examine the equipment which malfunctioned, the equipment that was key to mitigating the transiet, and the control room instrumentation and controls. The Team also interviewed plant management personnel and NRC Region V personnel who arrived at the site soon after the plant was stablized about their knowledge of the plant response and operator actions. By correlating plant records with personnel statements on their actions and observations, the Team was able to compile a picture of the event.

During and subsequent to their onsite activities, the Team reviewed and concurred in specific troubleshooting plans developed by the licensee for equipment disassembly, inspection and testing. Several of these activities were witnessed by NRC inspectors. The results of the Team's investigation were issued during February 1986 in NUREG-1195 ("Loss of Integrated Control System Power and Overcooling Transient at Rancho Seco on December 26, 1985"). Problems identified included issues specific to Rancho Seco and several possible generic issues.

The NRC continues to be involved in the resolution of this event and related matters. The NRC EDO had directed NRC program managers to conduct further generic and plant specific follow-up actions. Development of NRC plant specific action plans commenced while the IIT was on-site in January 1986, and have been expanded subsequently to include a review of the completeness of prior staff and licensee actions associated with the control systems.

The NRC EDO has also addressed this event in a January 24, 1986 letter to the B&W Owners Group (B&WOG) which stated that the NRC staff will reassess the overall safety of B&W plants. Following the TMI accident there has been a growing realization among the NRC staff of the sensitivity of B&W plants to operational transients. A number of recent events at B&W-designed reactors have reinforced their concerns regarding these designs and lead them to conclude that there is a need to re-examine the basic design requirements for B&W reactors. While they believe that this reassessment is needed, they also believe that B&W reactors can safely continue to operate in the interim. The B&WOG has committed to taking a leadership role in the reassessment.

The January 24, 1986 letter to the B&WOG from the NRC EDO communicated plans for the design reassessment and outlined the scope envisioned for the study. A program plan for the reassessment was subsequently developed by the NRC Office of Nuclear Reactor Regulation (NRR) Staff and transmitted to the B&WOG in a March 13, 1986, letter to the B&WOG Chairman. The plan calls for studies in the area of operating experience, transient analysis, and probabilistic risk assessment. The plan also identified those areas that the Staff expects the B&WOG to take the lead or play a major role in completing.

As outlined in a March 21, 1986 memorandum from the NRC EDO to the NRC Commissioners, the B&WOG will assume a strong leadership role in accomplishing key aspects of the overall effort, where such involvement is appropriate. In a meeting with the Staff on April 8, 1986, they presented their program plan for reducing the reactor trip frequency and improving the transient response of B&W-designed plants. This program was formally submitted on May 15, 1986. The NRR Staff is currently reviewing this plan.

In addition to addressing those issues which have arisen directly as a result of the December 26, 1985 cooldown transient, the NRC Region V Office has re-evaluated the status of prior Rancho Seco open inspection findings to identify matters which should be resolved prior to restart of the plant. The licensee and NRR have included these in restart plans. Also, the NRC Staff has encouraged the licensee to reexamine the status of all critical plant systems to assure readiness for operation and maximum reliability, so that operation of the plant may be continued with a low probability of disruption from internal causes. Some of these efforts will be observed by NRC inspectors. To supplement this, the licensee has initiated a performance improvement program which will address management, training, and maintenance issues.

These actions outline a program that evaluates the Rancho Seco restart program, and assures that generic aspects are considered.

On January 31, 1986, the NRC Office of Inspection and Enforcement issued Information Notice No. 86-04 ("Transient Due to Loss of Power to Integrated Control System at a Pressurized Water Reactor Designed by Babcock & Wilcox") to all nuclear power facilities holding an operating license or a construction permit to inform them of the Rancho Seco event.

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Fuel Cycle Facilities (Other Than Nuclear Power Plants)

AO 86-3 Rupture of a Uranium Hexafluoride Cylinder and Release of Gases

The general abnormal occurrence criterion notes that a major reduction in the degree of protection of the public health or safety can be considered an abnormal occurrence. In addition, one of the abnormal occurrence examples notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—At 11:30 a.m. on January 4, 1986, a cylinder filled with uranium hexafluoride (UF_6) ruptured while it was being heated in a steam chest at the Sequoyah Fuels Corporation's Sequoyah Facility near Gore, Oklahoma. One worker died from pulmonary edema caused by inhalation of hydrofluoric acid, a reaction product of UF_6 and airborne moisture. Much of the facility complex and some offsite areas to the south were contaminated with hydrofluoric acid, and a second reaction product, uranyl fluoride. The interval of release was approximately 40 minutes.

The licensee experienced another incident involving an overfilled uranium hexafluoride cylinder on March 13, 1986; however, in this incident the overfilled cylinder was not heated and no damage to the cylinder occurred.

Some other events involving overfilled uranium hexafluoride cylinders at Allied Chemical Company, Metropolis, Illinois, are discussed in the Annex to this abnormal occurrence. Allied Chemical Company is a division of Allied-Signal Corporation of Morristown, New Jersey.

Nature and Probable Consequences—At approximately 10:00 a.m. on January 3, 1986, the filling of a 14-ton capacity cylinder with UF_6 was commenced. This operation continued during the following work shifts. During the early morning of January 4, a chemical operator was unable to add further material into the cylinder, even though the targeted load of 27,500 pounds had not been achieved. The cylinder and its attendant cart had been placed on a scale during the filling process in order to monitor the net weight of the cylinder. At this time, the scale indicated that the cylinder contained 26,400 pounds of product.

The chemical operator inspected the cylinder and observed that the cart on which it sat has not been fully moved onto the scale platform. This condition occurred because the cylinder, being the largest design filled at the facility, was not properly positioned on the cart so as

to allow clearance at the front end of the cylinder when the cart was moved onto the scale platform. When the cart and cylinder were repositioned onto the scale platform, the scale dial indicator registered its maximum possible reading of approximately 29,500 pounds. The cylinder had been filled with a quantity of UF_6 in excess of the amount measurable with the scale and in excess of the maximum shipping weight specification of the cylinder which is 27,560 pounds.

At approximately 6:15 a.m., the chemical operator began to evacuate UF_6 from the cylinder back into plant process vessels. He was relieved by the day shift chemical operator at 8:00 a.m., and the evacuation process continued until the material began to solidify in the cylinder. The operator consulted with the assistant shift supervisor, who is the ranking production manager on site, and who instructed the operator to move the cylinder to a steam chest located outside the process building. The steam chest was to be used to heat the cylinder to approximately 210°F, thus liquefying the contained UF_6. Although some material had been removed from the cylinder, the scale indicator still registered approximately 29,500 pounds before the cylinder was removed. Heating an overfilled cylinder was later noted to be contrary to company procedures.

At approximately 11:30 a.m., the cylinder ruptured in the steam chest. The cylinder ruptured while it was being heated because of the expansion or uranium hexafluoride as it changed from the solid to the liquid phase. Liquid UF_6 flowed from the 4-foot lengthwise rupture and rapidly reacted with moisture in the air to form uranyl fluoride and hydrofluoric acid. The resulting vapor cloud was carried south by southeast by a wind gusting to 25 mph.

The cloud enveloped with process building, and the acidic vapor fatally injured the chemical operator located within a structure approximately 70 feet southwest of the cylinder. Most of the approximately 40 workers at the site were in the plant lunch room and quickly evacuated the building. The airborne release continued for about 40 minutes crossing an interstate highway one mile to the south and private residences beyond.

The licensee immediately notified various local, state, and federal officials. Four injured workers were transported to a local hospital. A private physician arrived at the site within one hour of the accident and examined plant workers. During the afternoon, downwind residents were personally notified to go to nearby hospitals and clinics for examinations.

The NRC Region IV Duty Officer was notified of the incident by the NRC:HQ Operations Officer by pager at approximately 12:25 p.m. The Region IV Incident Response Center was staffed and communication links with NRC Headquarters and the licensee began at 12:55 p.m. Six NRC personnel were immediately dispatched and began arriving at the site at 6:00 p.m. Additional NRC personnel were dispatched to the site during the following days to oversee bioassay of workers and residents, evaluation of offsite effluents, and decontamination of the plant complex. An NRC Augmented Investigation Team was formed to investiate the incident. Their findings were reported in NUREG–1179, Vol. 1, published during February 1986 ("Rupture of Model 484 UF_6 Cylinder and Release of Uranium Hexaflouride"). An assessment of the public health impact of the accident was published during March 1986 as NUREG–1189 ("Assessment of the Public Health Impact from the Accidental Release of UF_6 at the Sequoyah Fuels Corporation at Gore, Oklahoma").

After the January accident, the licensee planned to drain UF_6 remaining in plant vessels into 10-ton shipping cylinders in order to enable modification of facilities and equipment at the plant. A procedure for the work was reviewed by NRC and the work commenced on March 12, 1986. The procedure limited the filling of the cylinders to 20,000 pounds each. The maximum shipping weight specification of the cylinders was 21,030 pounds. During the draining process on March 13, 1986, a scale malfunctioned which caused UF_6 to be drained into a cylinder in excess of both of the above limits. The final net weight of the cylinder was 26,017 pounds. Most of the excess material was immediately evacuated from the cylinder before the UF_6 solidified. The final net weight of the cylinder was 21,203 pounds.

The root cause of this second incident was identified as inadvertent damage to a scale apparently when it was decontaminated after the first incident. Results of the NRC investigation of this overfilling event, together with a report of a detailed metallurgical examination performed on the cylinder damaged on January 4, 1986, were reported in NUREG–1179, Vol. 2, published during June 1986.

Cause or Census—The NRC Augmented Investigation Team (AIT) which investigated both incidents reported the following causes in NUREG–1179, Vol. 1 and Vol. 2, respectively.

January 4, 1986 Incident

1. The cylinder was overfilled because it was not placed fully on the scales. Plant facilities were not designed to accommodate a 14-ton cylinders, and associated equipment were not designed to prevent improper positioning of cylinders on the scales.

2. The time required for filling the cylinder was long enough to allow partial solidification of the UF_6, which inhibited product removal from the cylinder.

3. The precise weight of the cylinder was not readily determinable after it was overfilled.

4. There was no secondary or alternative way to measure the quantity of material in a cylinder being filled.

5. Employees violated company procedures when they heated an overfilled cylinder. Workers, including line management personnel, had not been sufficiently trained in regard to company procedures. Procedural controls such as checklists or approval points were not used.

6. Equipment for monitoring or automatically venting cylinders that are being heated was not used.

In summary, the factors can be aggregated into the following causes of the accident:

- The physical equipment and facilities used for filing and weighing UF_6 cylinders were inappropriate for safe use with 14-ton cylinders.
- The training of workers in operating procedures and ensuring the implementation of the procedures were not carried out effectively.

March 13, 1986 Incident

1. The scale used for weighing the cylinder being filled malfunctioned.

2. The procedures for draining did not include any provisions for ensuring proper scale function.

3. The supervisor in charge of the operation did not recognize early indications of malfunction. (An operator advised his management of peculiar scale behavior during the filling of the cylinder.)

Actions Taken to Prevent Recurrence—Both NRC and licensee actions to prevent recurrence are currently in progress. The following summarizes actions as of mid-April 1986.

Licensee—The licensee has committed to keep the plant shut down until equipment modifications are made, plant personnel are retrained, plant procedures are rewritten, organization changes have been implemented, and NRC approves plant restart.

NRC—A Lessons Learned Task Group reviewed regulatory practices in regard to such fuel facilities in general. The Group interviewed appropriate members of the NRC staff, licensee, State, and local authorities. A Lessons Learned Report was completed in May 1986. A request to restart the facility was received by NRC in May 1986 and is under review. NRC is monitoring licensee plant modification work. Enforcement actions are pending.

The staff is also compiling a list of followup items that need to be considered and addressed. Additional items are anticipated from the Lessons Learned Task Group and other sources. Upon completion of the list, action items will be grouped into categories and priorities assigned. Tasks will be undertaken based on priorities and resource requirements.

In the meantime, the staff is moving ahead on a number of near-term follow-on actions, such as: (1) Verification by NRC of existing emergency phone numbers; (2) requiring licensees to verify quarterly emergency numbers and availability of emergency response assistance; (3) informing DOE and other licensees, who are conducting operations involving UF_6, of the accident and providing relevant reports; and (4) conducting an independent review of the material licensing and inspection programs by a study group.

To assure that licensees have an updated list of telephone numbers to the NRC Operations Center and Regional Offices, the NRC Office of Inspection and Enforcement issued Information Notice No. 86-28 on April 24, 1986 ("Telephone Numbers to the NRC Operations Center and Regional Offices").

The event remains under review by the NRC.

Annex to AO 86-3

During the publicity associated with the Sequoyah Fuels Accident, NRC Region III (Chicago) received an inquiry from a newspaper reporter about an incident on December 7, 1984 at Allied Chemical Company, Metropolis, Illionis, involving overfilling and subsequent damage to a uranium hexafluoride cylinder. The licensee was asked about the incident and provided the following information. (The incident had not been previously reported to the NRC. The licensee stated that it had considered reporting it, but concluded that it did not meet any NRC reporting requirements).

On December 7, 1984, an overfill incident occured in which a cylinder was overfilled and the cylinder subsequently damaged during heating of the cylinder to remove the excess uranium hexafluoride. There was no release of any uranium hexafluoride to the environment associated with the incident, and there were no injuries. In the incident, a 48-inch diameter cylinder, with a maximum capacity of 26,560 pounds, was filled with 33,000 pounds of uranium hexafluoride. The weight recording device was apparently faulty and showed an incorrect weight during the filling operation. Based on the length of time the filling had been underway, licensee personnel suspected that it had been overfilled and moved it to another scale to be weighed. The second scale showed it to contain 33,000 pounds.

The cylinder was returned to the filling position and about 500 pounds of UF_6 was drawn off before the cylinder cooled and the UF_6 solidified. The cylinder was then moved to another fill location where a steam chest was placed over it to heat the cylinder. A line was attached to the cylinder to draw off the UF_6 as the cylinder was heated, but the line was blocked. Plant personnel were unable to clear to the line, and so the cylinder was heated for about 2-½ hours with the cylinder valve closed. The steam chest was then removed, and the cylinder was moved to the weighing location to draw off the UF_6.

At that time, plant personnel noted that the three stiffening rings which surround the cylinder were cracked at a welded joint. A portion of the UF_6 was then drawn off at the scale location, and then the cylinder was moved to another fill location where the remainder of the UF_6 was drawn off, while applying heat in a steam chest. It was later observed that the cylinder was slightly deformed—placing a straight edge along the cylinder wall showed a deformation of approximately ½ inch.

The licensee later provided information to the NRC on overfill incidents at the Metropolis facility for the time period 1981 through 1985. During the five-year period, there were 41 overfills—of which three were greater than 1,000 pounds. The three were 1,183 pounds in 1981, 5,448 in 1984 (described above), and 2,140 in 1985. With the exception of the December 7, 1984 event, none of the other overfill incidents involved damage to the cylinders. No releases of UF_6 occured in any of the incidents.

Another overfill incident occurred on March 23, 1986, when a cylinder was filled with 28,207 pounds (an overfill of 1,367 pounds). The excess was successfully removed without applying additional heat. This incident was attributed to the failure of an operator to "zero out" the scale to account for the empty weight of the cylinder combined with the erroneous calculation by another operator of the time required to fill the cylinder.

Subsequent to the December 1984 incident, the licensee installed new load cells (scales) at each fill location to provide clearer, more reliable weight measurements in the control room. A scale was also added to the overhead crane used to lift the cylinders to allow weighing of the cylinders without transporting them more than 50 feet to another weighing location.

After the January 1986 Sequoyah Fuels accident, the licensee installed a flow totalizer which measures the flow rate of the liquid UF_6 and has an alarm and automatic shutdown function based on total flow and data from the load scale. The licensee has also initiated improvements in its training and retraining programs, procedures, and level of supervision for cylinder filling activities.

In response to the January 1986 accident at Sequoyah Fuels, NRC Region III conducted a special inspection at the Metropolis facility on January 14-15, 1986 to observe the Allied Chemical Company cylindler handling procedures. Additional inspections were conducted to examine the circumstances of the December 7, 1984, incident, and the licensee's actions to preclude the occurrence of significant overfills.

Region III issued a Confirmatory Action Letter to the licensee on January 10, 1986 documenting the licensee's agreement that no overfilled cylinders would be heated without the review and concurrence of Region III. A second Confirmatory Action Letter was issued on March 24, 1986 documenting the licensee's planned actions in response to the March 23, 1986 overfill incident. These corrective measures include increased supervision of filling activities, prohibiting cylinder filling unless two independent methods are available to determine the amount of UF_6 in a cylinder, and completion of the installation of the new UF_6 flow readout and alarm functions by April 15, 1986.

A special NRC inspection, by a seven member team, was conducted in mid-April 1986 to extensively review the licensee's activities. The team identified two violations of NRC requirements: radiation survey instruments did not have the required sensitivity; and a procedure concerning the handling of overfilled cylinders did not have all the proper internal approvals.

An emergency planning inspection was conducted March 31-April 14, 1986, and the inspectors determined that while the licensee had an on-site emergency contingency plan, off-site

emergency response capability for the area surrounding the plant was poorly coordinated. The inspectors also found that training of off-site emergency response personnel to respond to emergencies at the plant was inadequate. These items will be reviewed during a future inspection. In addition the NRC is currently reviewing its requirements for emergency planning at fuel facilities.

Although no regulations exists for off-site emergency response, the licensee has taken the initiative to work with the appropriate off-site groups to establish a coordinated capability.

On June 27, 1986, the NRC forwarded to the Allied-Signal Corporation (parent company of Allied Chemical Company) a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $25,000. The violations included the failing to report the December 7, 1984 incident to the NRC and for three instances of failing to follow procedures during the March 23, 1986 overfill incident.

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Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

AO 86-4 Therapeutic Medical Misadministration

The general abnormal occurrence criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place—On February 7, 1986, a patient at Washington Hospital Center, Washington, DC received a cobalt-60 teletherapy treatment of 150 rads to the abdomen which was intended for another patient.

Nature and Probable Consequences—On February 6, 1986, an attending surgeon of the Renal Transplant Unit ordered radiation therapy as follows for one of his patients: 150 rads per day to be repeated every other day for a total of 600 rads. The treatment was intended to forestall rejection of the kidney implanted on the previous day. The Unit clerk, in entering the order for the treatment into the computer for transmission to the Radiation Therapy Department for scheduling purposes, ordered the treatment for the wrong patient through careless use of the computer light pen.

The wrong patient, who was also a kidney transplant recipient, was brought to the radiation therapy department on the morning of February 7. A radiation therapy physician checked her chart, noted that there was no order in the chart for radiation therapy, but, contrary to hospital policy, directed the technologist to administer the treatment, since the computer schedule showed this patient's name. The mistake was discovered that afternoon and the correct patient was subsequently treated.

The consequence of this incident was that the patient received 150 rads to the abdomen contrary to the wishes of her physician. It should be noted, however, that her physician stated later that if in the future she showed signs of rejection of the kidney that had just been implanted, he would prescribe a similar course of radiation therapy. It should also be noted that some physicians who perform renal implants routinely prescribe radiation therapy without waiting for evidence of rejection.

The licensee's medical staff has concluded that the patient should experience no clinical complications.

Cause or Causes—The cause of the event was the failure of the radiation therapy physician to follow proper procedure. The physician should have investigated why a patient presented for radiation therapy did not have an order for such therapy written in her chart.

Actions Taken to Prevent Recurrence

Licensee—The licensee voluntarily suspended patient treatment pending the results of an internal investigation, and discussion of these results with NRC Region I.

Subsequently, the licensee committed to assure that an authorized physician reviews every patient chart prior to initiation of treatment and confirms that treatment has been requested and is appropriate, and to require consultation between an authorized user and the referring physician prior to the initiation of treatment of any patient.

NRC—The licensee was inspected by an NRC Region I inspector on February 10-11, 1986. The subject event was reviewed in detail. On February 11, 1986, Region I issued a Confirmatory Action Letter documenting the licensee's commitment described above.

The incident was reviewed by an NRC medical consultant.

A Confirmatory Order Modifying License was issued on May 29, 1986. The Order required that an authorized physician user review every teletherapy patient chart to confirm that cobalt-60 teletherapy treatment has been requested and that the authorized physician user consult with the referring physician or the Chief Resident prior to the initial treatment of each teletherapy patient. In their response to the Order, Washington Hospital Center confirmed that the required procedures had been in place since February 18, 1986.

The May 29, 1986 NRC letter also forwarded a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $5,000.

AO 86-5 Overexposure to a Member of the Public from an Industrial Gauge

One of the abnormal occurrences examples notes that an exposure to an individual in an unrestricted area such that the whole-body dose received exceeds 0.5 rem in one calendar year can be considered an abnormal occurrence.

Date and Place—On February 19, 1986, while checking a licensee which had apparently ceased operations, an NRC Region III inspector determined that an industrial gauge, containing a sealed source of cobalt-60, was in an unrestricted area of the former factory site. Subsequent inspection determined that at least two members of the public received exposures to radiation as a result of the improper disposal of the gauge. The gauge had been licensed to C-E Glass, Inc., a Division of Combustion Engineering Inc. The company operated a facility in St. Louis, Missouri, until October 1981.

Nature and Probable Consequences—C-E Glass, Inc., was licensed in 1971 for the use of level measurement gauge containing 2.5 curies of cobalt-60. The source was replaced in June 1978. In October 1981, the facility and equipment at C-E Glass' site was transferred to Hordis Brothers, Inc., which continued operations until May 1982.

C-E Glass violated two NRC regulations—(1) transferring the gauge to an unauthorized organization (Hordis Brothers did not have an NRC license) and (2) failing to notify the NRC that it had ceased all operaions at the St. Louis facility.

The facility and equipment were late sold by Hordis Brothers to a salvage company. The gauge was placed near a scrap pile at the site, and a salvage company employee removed the gauge's shutter control in early December 1984. For the next two months, two employees of the salvage company handled the gauge and worked near it. It was later moved to a scrap pile where access by other individuals was limited.

The gauge was then located by the NRC inspector, assisted by salvage company employees, on February 19, 1986, and later removed from the site by representatives of Combustion Engineering Company, who took it to another Combustion Engineering facility for storage and eventual disposal.

Interviews with the two salvage company employees determined that they frequently worked or took breaks

in the vicinity of the gauge. Calculations based on the radiation level—with the shutter of the gauge open—concluded that one individual would have received a radiation exposure to his buttocks of 0.6 to 1.7 rem and to his leg of 69 to 208 rem. (A rem is a standard measure of radiation exposure.) NRC regulations do not permit radiation exposures to members of the public from licensed activities to exceed 0.5 rem.

The second individual would have received a significantly lower radiation dose. The first individual has been examined by a physician and his blood count, bone marrow, and physical condition were reported to be normal.

Cause or Causes—The uncontrolled use of the gauge and radiation exposure of at least two individuals were caused by the transfer of the gauge by the licensee to an unauthorized organization. There was therefore no control over access to the gauge, and a salvage company employee removed the shutter control, allowing the shutter of the gauge to open. (Had the shutter of the gauge remained closed, the radiation dose to persons in the area would be substantially less than with an open shutter.

Actions Taken to Prevent Recurrence

Licensee—The licensee is no longer in business and has no other guges in its possession.

NRC—An NRC inspector located the gauge and locked the shutter in its closed position. He then arranged for the licensee's corporate organization to remove the gauge to another site for storage and eventual disposal. NRC inspectors surveyed the former C–E Glass site to make certain there were no other gauges there.

A medical consultant was retained to review the circumstances of the case and to provide assistance to the exposed individuals' physicians.

On June 30, 1986, the NRC forwarded to the licensee a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $15,000, for violations associated with the handling of the gauge.

On May 5, 1986, the NRC issued Inspection and Enforcement Information Notice No. 86–31 ("Unauthorized Transfer and Loss of Control of Industrial Nuclear Gauges") to all NRC licensees authorized to possess and use industrial nuclear gauges to inform them of this event. Further information was provided to these licensees on July 14, 1986 by Supplement 1 to the Information Notice.

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AO 86–6 Breakdown of Management Controls at an Irradiator Facility

One of the abnormal occurrence examples notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—On March 3, 1986, the NRC issued an Order Suspending License (Effective Immediately) to Radiation Technology, Incorporated (RTI) of Rockaway, New Jersey. The Order was based on NRC inspections which identified a number of instances of bypassing safety interlock systems; these indicated a significant breakdown in the licensee's management control system.

Nature and Probable Consequences—RTI has been licensed to operate a large irradiator near Rockaway, New Jersey, since November 1970. The licensee's irradiator uses sealed cobalt-60 sources to produce high intensity gamma ray fields for the sterilization of medical equipment and supplies and for various other industrial and scientific applications. In addition, the licensee has long sought FDA approval to irradiate food products for routine consumption. At the time of the March 3, 1986 NRC Order, the President of the company was also the Chairman of the Board of Directors, and the Radiation Safety Officer.

RTI also owns and operates irradiators through wholly owned subsidiaries in North Carolina and Arkansas, both Agreement States. Another wholly owned subsidiary, South Jersey Process Technology, recently built in Salem, New Jersey, was licensed by Region I on March 14, 1986.

RTI has been the subject of several escalated enforcement actions in the past; the most noteworthy was in 1977 when a plant worker at the Rockaway facility was able to walk into the irradiation room while the cobalt-60 was exposed because safety interlocks on the personnel access door, designed to prevent such entry, had been made inoperable. The employee received a radiation dose of 150–300 rem, far in excess of regulatory limits. The license was temporarily suspended following this incident until the licensee took necessary corrective actions. (This incident was reported as abnormal occurrence No. 77–10 in NUREG–0090–10, "Report to Congress on Abnormal Occurrences: October–December 1977.")

The events giving rise to the most recent Suspension Order first came to light during a routine NRC inspection in September 1984. The inspector discovered that the licensee had been operating the irradiator since April 1984 with an inoperable safety interlock on one of the tow conveyor openings used to transfer product into the irradiation room. On September 26, 1984, Region I issued a Confirmatory Action Letter that documented the licensee's commitment to operate the facility only if all safety interlocks were operable and to cease operations if any safety interlock failed to function as required. Review of relevant documentation by the inspector indicated that this bypassing of interlocks was implemented by the operators under the supervision of the Operations Manager. In November 1985, the interlock was replaced with a new design without required NRC approval.

During a recent inspection on February 26, 1986, the staff determined that the licensee had been operating the facility for several days prior to the inspection in spite of the malfunction of a radiation monitor which actuates the lock that assures that the personnel door to the irradiation room cannot be opened while the sources are exposed. Rather than fix the monitor prior to continued operation, as is required by the license, the licensee chose to operate the irradiator and, when necessary, opened the door by improperly tripping the door lock when the cobalt-60 appeared to have returned to its shielded position. Following this discovery, the staff requested that the licensee cease all operations until the monitor was repaired; conducted daily inspections to assure the facility was being operated safely and that all interlocks were functioning; and prepared the previously mentioned Order Suspending the License which was issued on March 3, 1986.

Subsequently, the licensee requested lifting of the suspension by letters to the NRC dated March 4 and 5, 1986. After the Region I staff met with the licensee on March 6, a more complete submission was provided by the licensee on March 10. This latter submission proposed interim plant operations under the surveillance of an independent Third Party, reporting directly to a member of the RTI Board of Directors, who, along with the licensee, would be responsible for assuring that the facility would be operated safely and in compliance with all NRC requirements. Further, an independent Fourth Party would monitor the activities of the Third Party on a weekly basis. Both parties would provide uncensored reports directly to the NRC. Following consideration of the proposal and agreement of the licensee to additional items, the staff concluded that temporary resumption of facility operations under these conditions would not endanger the health and safety of

the public. Accordingly, a Conditional Rescinding of the Order Suspending License was issued on March 13, 1986. The licensee agreed to the terms of this Order in a leter dated March 13, 1986.

Cause or Causes—The root cause can be attributed to a serious breakdown in the licensee's management controls.

Action Taken to Prevent Recurrence

Licensee—The actions taken by the licensee are described above.

NRC—The NRC is continuing to inspect the performance of this licensee at frequent intervals.

A recent license amendment appointed an individual, who joined the company in March 1986, as the new Radiation Safety Officer. The individual who formerly held this position no longer has direct contact with, or responsibility for, this function. At a recent meeting of the Board of Directors, this same individual resigned as President, but remains Chairman of the Board. The responsibilities of President are being shared among three Vice Presidents while a new President is sought

In addition to the previously described actions taken by the NRC, on June 23, 1986 the NRC suspended the license again based on investigative findings indicating repeated and intentional violations of NRC requirements and impeding NRC inspection and investigations. The license is presently suspended pending further action by the NRC. South Jersey Process Technology, a subsidiary, has recently begun commercial operation of a more modern in-air irradiator in Salem, New Jersey. The licensee is attempting to build another irradiator in the Port of Elizabeth, New Jersey. No formal application has been received by the NRC for this facility.

* * * * *

AO 86-7 Tritium Overexposure and Laboratory Contamination

One of the abnormal occurrence examples notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place—During a routine inspection on March 12, 1986 at Ferris State College, Big Rapids, Michigan, an NRC inspector determined that, based on a review of bioassay test results, a licensee researcher had received an overexposure to tritium (hydrogen 3) during experiments on August 3, 1985, equivalent to a whole body exposure of about 21 rems.

Continuing NRC inspections showed that two laboratories were contaminated. In addition, numerous deficiencies in the licensee's use and control of byproduct radioactive material were identified.

Nature and Probable Consequences—Ferris State College had a broad scope license from the NRC for the possession and use of byproduct radioactive material for training and research purposes.

The NRC inspector found that on August 3, 1985 a researcher was performing work in a ventilated glove box using 5 curies of tritium in a laboratory at the licensee's facility. (A glove box is a sealed box with viewing windows and gloves affixed to the box, allowing hazardous materials to be normally handled safety.) After completing the work, the researcher performed a urine bioassay test, which showed a tritium level of 520,000 counts per minute per 0.2 milliliters of urine. This level of tritium would indicate an internal uptake of 10,000 MPC hours, compared to the NRC quarterly limit of 520 MPC hours for occupational radiation exposures. (An MPC hour is equivalant to one hour of exposure to the maximum permissible concentration of a specific radioactive material.) This intake would be equivalent to a whole body exposure of 21 rem. A second bioassay test, 20 hours later, showed an internal intake of 1,210 MPC hours.

A radiation exposure of 21 rems (a rem is a standard measure of radiation exposure) would not normally be expected to produce any medically observable effects.

Bioassay rest results following another 5-curie experiment on December 1, 1985, showed a level of 239 MPC hours. This exposure was within the NRC limit, but was required to be reported to the NRC because of the urine concentration.

Surveys by the NRC—and subsequently by the licensee—showed the laboratory to be contaminated. A second laboratory on a different level of the same building was also found to be contaminated. Surveys by the licensee and the NRC did not identify any contamination in the hallways or other public areas of the building.

Cause or Causes—The tritium overexposure appeared to result from the failure of the researcher to properly seal off the glove box in which the tritium was being used. The glove box was pressurized with nitrogen gas which apparently forced the tritium gas through a blower fan into the laboratory rather than through the glove box vent system. The discharge of the tritium into the laboratory caused both the exposure to the researcher and the contamination of the laboratory. A research assistant also received some exposure as a result of the experiment or the laboratory contamination, but this exposure was within the NRC limits, according to bioassay test results.

NRC inspections identified numerous violations of NRC requirements (as discussed below), some of which may have contributed to the overexposure and laboratory contaminations.

Actions Taken to Prevent Recurrence

Licensee—After being notified of the initial NRC inspection findings, the licensee removed the researcher from any work involving radioactive material, restricted access to the laboratory areas, and began decontamination of the laboratory facility. Decontamination was subsequently completed, and the facility was released for normal use.

The licensee also provided information on the contamination to students or other persons who may have used the building where the laboratories are located and offered to provide bioassay testing for any concerned individuals. No one requested the testing.

Additional actions may be necessary in response to the numerous violations identified during the NRC inspections.

NRC—The NRC issued Confirmatory Action Letters to the licensee on March 19 and 21, 1986, documenting the licensee's agreement to remove the researcher from work involving radioactive materials, to restrict access to the laboratory areas, to undertake decontamination of the facility, and to stop all licensed activities except those associated with the nuclear medicine school .

NRC inspectors inspected the facility on several occasions to gather additional information on the licensee's handling of radioactive materials and to monitor the decontamination efforts. Confirmatory radiation surverys were also performed.

NRC inspections, which began March 12, 1986 and continued through April 17, 1986, also identified a total of 20 violations of NRC requirements. These violations included failure to perform required surveys for radioactive contamination, failure to check the glove box ventilation system for proper operation, failure to perform required bioassay tests in some instances, failure to take required follow-up actions when certain bioassay results are obtained, failure to report the over exposure, and failure to restrict access to the laboratory.

On April 28, 1986, the licensee's NRC license was amended, significantly restricting the scope of the authorized activities and providing that any new

activities must be reviewed and approved by the NRC.

Enforcement action is pending on the violations identified during the NRC inspections.

Dated in Washington, DC, this 9th day of October 1986.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-23386 Filed 10-15-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-08027; License No. SUB-1010; EA 86-91; Amendment No. 4]

Sequoyah Fuels, Corp.; Order Modifying License

I

Sequoyah Fuels Corporation, P.O. Box 5801, Oklahoma City, OK 73125, (the licensee) is the holder of Source Material License No. SUB-1010 which authorizes the licensee to possess and use source material for the purpose of refining uranium from uranium ore concentrates and converting this uranium to uranium hexaflouride (UF_6) for use by enrichment facilities. The license was most recently renewed on September 20, 1985 and will expire on September 30, 1990.

II

On January 4, 1986 a cylinder containing in excess of 30,000 pounds of UF_6 ruptured while being heated in a steam chest at the Sequoyah Fuels facility in Gore, Oklahoma. The cylinder had been overfilled to the point that its contends exceeded the cylinder's maximum allowable shipping weight of 27,560 pounds. A process operator, with the consent of his supervisor, had placed the cylinder in a steam chest to heat the cylinder to facilitate removal of the excess UF_6. While the cylinder was being heated, the cylinder wall ruptured because of the expansion of UF_6 as it changed from the solid to the liquid phase. Heating of the overfilled cylinder was contrary to the licensee's operating procedures. The high pressure in the cylinder and the large size of the rupture resulted in the rapid release of much of the UF_6 into the atmosphere. One individual employed by the licensee died because of exposure to hydrogen fluoride (a hydrolysis product of UF_6). Other employees received exposures to uranium and hydrogen fluoride.

By letter dated January 9, 1986, the licensee committed not to restart the UF_6 conversion process at the Sequoyah facility without the concurrence of the NRC. In addition, the licensee made a number of commitments in meetings with the NRC Region IV staff. These commitments were confirmed in a Confirmation of Action Letter issued by Region IV to the licensee dated January 17, 1986.

Kerr-McGee Corporation promptly instituted an internal investigation of the event. (A letter from Sequoyah Fuels Corporation to the Director, Office of Inspection and Enforcement, dated September 24, 1986, summarizes the results of this investigation.) The NRC initiated a number of inspections, investigations, and reviews after the January 4 accident with the assistance of other State and Federal agencies to determine the cause and effects of the event and the efficiency and adequacy of the response of the licensee to the event. The NRC also has inspected and reviewed all of the requirements of the license.

As a result of these efforts, several violations of NRC requirements were identified. These violations will be dealth with in a separate enforcement action. On May 28, 1986, an enforcement conference was held to discuss these violations, their causes, and the licensee's corrective actions.

By letter dated May 7, 1986, the licensee requested that the Commission authorize the resumption of normal UF_6 production at the Sequoyah Fuels facility. In its May 23, 1986 response to this request, the NRC concluded that the licensee's letter did not provide an adequate basis for the NRC staff to determine that the future UF_6 production will be conducted in a manner that will properly protect the health and safety of workers and the public. The NRC states that the letter lacked sufficient detail for the NRC to assess the adequacy of the plant/equipment modifications, the revised training program, and the procedure upgrade program. Most importantly, the letter lacked sufficient detail on the management of quality assurance programs and the management oversight needed to assure safe operation in the future. By letter dated August 20, 1986, the licensee submitted a final response to the NRC's May 23 letter. Two pages dated September 3, 1986, provided corrections to the response. In this submittal, the licensee documented changes made at the Sequoyah Fuels facility since the time of the January 4, 1986 accident and committed to make improvements in its operations. The changes in the facility included numerous modifications and improvements to plant process equipment such as the cylinder filling area and the steam chests. These physical improvements form the technical bases for commitments made by the licensee, and also form a basis for certain new NRC requirements such as the conditions under which UF_6 cylinders may be heated.

On September 10, 1986, the licensee was asked for additional information including the results of its own investigation regarding instances of heating overfilled cylinders. By letter dated September 24, 1986, the licensee responded indicating that frequent heating of overfilled cylinders had occurred prior to the accident in violation of the Sequoyah Fuels Corporation plant operating procedures and regulatory requirements. Furthermore, the licensee indicated that given the number of cylinders that were apparently heated with more than the maximum net weight, it must be concluded that some supervisory personnel either acquiesced in or condoned this practive.

III

The violations which have been identified, the seriousness of the January 4 accident, and the information recently provided by the licensee demonstrate that there is a need for significant improvement in the licensee's control and supervision of licensed activities and UF_6 processing operations, especially those regarding the filling and preparation for shipment of UF_6 cylinders. The NRC has determined that implementation of the commitments made by the licensee in its August 20 submittal is essential to ensure the safe operation of the facility. In addition, other areas requiring corrective action have been identified. These include training and supervision of employees, adequacy of plant staffing, and proper followup of the health impacts of the January 4 accident on licensee personnel who were exposed to uranium. I have also concluded that further oversight of facility operations is necessary to provide reasonable assurance that the licensee will be in compliance with Commission requirements if the facility is permitted to resume operations. For this reason I have determined that the commitments made by Sequoyah Fuels Corporation as documented in its August 20, 1986 submittal to the Commission, as corrected with pages dated September 3, 1986, as well as the additional actions set forth below, are required to protect the public health, safety, and interest. Therefore, these commitments and actions must be imposed by an immediately effective Order as conditions of any continued operations at the Sequoyah Fuels facility. This Order does not authorize restart.

IV

Accordingly, pursuant to sections 63, 161(b), 161(o), and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and Part 40, It is hereby ordered, effective immediately, that

A. 1. The licensee shall, prior to restart, obtain the services of an independent oversight organization, with the qualifications described in Paragraph a below, to perform, as a minimum, the actions indicated in Paragraphs b–e below. (Independent means comprised of persons who have never been employed at the Sequoyah facility by Kerr-McGee or Sequoyah Fuels Corporation (SFC).) At least 10 days prior to proposed restart of UF_6 production at the Sequoyah Fuels facility, the licensee shall submit to the Regional Administrator, Region IV, for approval the name of the proposed independent oversight organization, including the qualifications of the individuals who will perform the oversight functions, statements from these individuals regarding the extent to which they have been previously employed by Sequoyah Fuels Corporation or Kerr-McGee Corporation, a description of a plan to accomplish the actions described below, and a copy of the licensee's proposed statement of work for the independent organization so that the NRC can verify that the organization's authority and responsibilities are in compliance with this Order. Restart shall not occur prior to approval of the plan by the Regional Administrator.

a. The independent organization shall have in-depth knowledge of chemical plant operations, radiation hazards associated with uranium processing, applicable NRC regultory requirements, and programmatic quality assurance through a combination of academic training and practical experience of its staff assigned to the task, sufficient to monitor and assess safety conditions of the Sequoyah Fuels facility and to determine that the plant is operating in conformance with NRC requirements.

b. The independent organization shall maintain a 24-hour daily surveillance (during operations) of plant processing operations to assure compliance with procedural and regulatory requirements, and shall bring to the immediate attention of the NRC Region IV Office and SFC any conditions it believes to be unsafe or not in conformance with NRC requirements.

c. The independent organization shall be given the authority to order an immediate shutdown of all or any plant operations as required to assure such compliance with procedural and regulatory requirements as is, in its independent judgment, necessary to protect the public health and safety.

d. The independent organization, in carrying out its responsibilities, shall review the following areas:

(1) The qualifications, training, commitment, and the adequacy and capability of SFC employees, including managers and supervisors, to conduct operations in accordance with license and other regulatory requirements.

(2) The adequacy and accuracy of SFC's operating procedures related to assigned chemical operations and radiation protection function.

(3) The adequacy and accuracy of SFC record-keeping necessary to demonstrate regulatory and procedural compliance.

(4) The adequacy and conduct of SFC's quality assurance program by which management at corporate and facility levels assures itself, through an independent system of checks and balances, that the chemical and radiation safety programs are adequate and are being conducted in accordance with NRC requirements.

e. Two weeks after startup, and monthly thereafter, the independent organization shall provide to the licensee with a copy, simultaneously to the Regional Administrator, Region IV, written reports summarizing the licensee's activities during the period covered by the report with special attention to the areas described in d (1)–(4) above, any problems identified, and recommendations for corrective actions.

f. Within 30 days after receipt of each of the independent organization's reports, SFC shall submit a response to the report in a letter to the Regional Administrator, Region IV, with a copy to the Director, Office of Inspection and Enforcement and the Director, Office of Nuclear Materials, Safety and Safeguards. SFC's responses shall describe how SFC will incorporate and implement any recommendations of the independent organization together with a schedule for implementation. If any recommendations are not adopted, SFC shall provide in its responses justification for not adopting the recommendations.

g. Nothing in this Order relieves the licensee of its responsibilities under the license to safely operate the facility and direct its shutdown if problems are identified.

A. 2. Licensee will develop, prior to restart, a plan for providing information to the NRC which incorporates internal coordination and review by appropriate managerial and technical personnel to assure the accuracy of such information. All information provided to the NRC shall be submitted under oath or affirmation of the President, Sequoyah Fuels Corporation.

A. 3. The Director, Office of Nuclear Materials, Safety and Safeguards or the Director, Office of Inspection and Enforcement may relax or rescind all or part of the above provisions upon demonstration of good cause.

B. Condition 9 of License No. SUB–1010 is modified to read as follows:

9. *Authorized Use:* For use in accordance with the statements, representations, and conditions contained in Chapters 1 through 8 of the license renewal application dated August 23, 1985, as supplemented with revised pages dated August 20 and September 3, 1986.

C. Condition 22 of License No. SUB–1010 is modified to read as follows:

22. The licensee shall implement, maintain, and execute the response measures of its Radiological Contingency Plan submitted to the Commission on August 20, 1986. The licensee shall also maintain Contingency Plan Implementing Procedures for its Radiological Contingency Plan as necessary to implement the Plan. The licensee shall make no change in its Radiological Contingency Plan or Contingency Plan Implementing Procedures that would decrease the response effectiveness of the Plan without prior NRC approval as evidence by a license amendment. The licensee may make changes to its Radiological Contingency Plan and Contingency Plan Implementing Procedures without prior NRC approval if the changes do not decrease the response effectiveness of the Plan. The licensee shall maintain records of changes that are made to the Radiological Contingency Plan and Contingency Plan Implementing Procedures that are made without prior NRC approval for a period of 2 years from the date of the change. The licensee shall furnish the Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and the appropriate NRC Regional Office specified in Appendix D of 10 CFR Part 20, a report containing a description of each change to the Radiological Contingency Plan and a summary of the types of changes made to the Contingency Plan Implementing Procedures within 6 months after the change is made.

D. The licensee has made a number of modifications to facility process equipment, organization, and management. These modifications are discussed in Section II of this Order. Based upon these modifications, License No. SUB–1010 is amended to include the following additional conditions:

23. The licensee shall use the printout capability of the cylinder filling scales to produce a record of final cylinder weight prior to removal of the cylinder from the cylinder filling area. This record shall be attached to the cylinder status sheet for the

cylinder and shall be made part of the permanent record for that cylinder at the facility.

24. The licensee shall implement a method to "tamper safe" UF_6 cylinder valves. UF_6 cylinders shall be "tamper safed" on or before October 1, 1988.

25. The special case-by-case analysis required by Chapter 6, License Conditions, Item 16, page I.6-3, shall be required for any cylinder containing UF_6 in excess of the weight limits specified by ORO-651. If the weight of UF_6 in the cylinder exceeds the limits specified by ORO-651 by more than 500 pounds, heating of the cylinder shall not be allowed without the specific approval of the NRC. The above condition shall be applicable only to Models 48X, 48Y, or equivalent cylinders. Heating of other cylinder types containing UF_6 in excess of the ORO-651 limits shall not be permitted without the specific approval of the NRC.

26. The licensee shall, prior to hearing any cylinder containing UF_6, verify the amount of UF_6 in the cylinder using the accountability scale. A printout of the weight shall be attached to the cylinder status sheet.

27. The Manager, Quality Assurance, shall hold a degree in science or engineering with 5 years of experience in a chemical or nuclear materials processing plant with 3 years of management experience in programs having quality assurance responsibilities.

28. The licensee shall ensure that each employee receives and understands the information necessary to safely perform his function. Each employee shall sign a statement indicating the receipt of training and committing to following corporate policy and procedures. Supervisory personnel shall document that all employees under their supervision are aware of and understand changes made in procedures affecting the performance of their job function.

29. The Manager, Health, Safety, and Environment, and the Manager, Administration and Services, or their designated representatives, shall certify that each employee's on-the-job training and module certification has been adequate and that the employee is competent and qualified to perform his or her responsibilities.

30. The licensee shall provide a comprehensive monitoring program for those employees exposed to uranium during the January 4, 1986, incident. At a minimum, the monitoring program shall consist of the following:

a. Semimonthly quantitative urine uranium bioassay.

b. Semimonthly urinanalysis for physiologic parameters including specific gravity, pH, protein, ketones, blood, and nitrate presence. A microscopic examination of the urine for the presence of formed elements such as casts and cells shall also be performed.

c. Semiannual pulmonary function testing.

d. Annual routine physical examinations.

A report of the findings of this study, including pertinent data allowing an independent analysis of results, shall be submitted to the NRC on or before July 1, 1988.

31. The minimum frequency established by the licensee for audits of operations and safety-related activities that are a part of the ongoing Quality Assurance Program shall not exceed every 12 months. A report of the areas audited shall be made quarterly to the General Manager, Sequoyah Facility.

32. The licensee shall establish a minimum surveillance frequency, commensurate with the safety function and not to exceed every 12 months, for each device covered in the maintenance surveillance program described in Chapter 2, License Conditions, section 2.7.5, pages 2-16.

33. The licensee shall maintain all documentation, records and tests required as a part of this license for a minimum of 5 years or longer if the regulations so require.

34. The licensee shall inform the NRC Region IV Office in writing of any violation of the National Pollutant Discharge Elimination System (NPDES) permit or changes in the permit, within 10 days of the determination of the event.

V

The licensee or any other person adversely affected by the Order may request a hearing on this Order. Any request for hearing shall be sent within 20 days of the date of issuance of this Order to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of any hearing request also shall be sent to the Assistant General Counsel for Enforcement at the same address, and to the Regional Administrator, Region IV at Parkway Central Plaza Building, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is requested by the licensee or any person who has an interest adversely affected by this Order, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland, this 2nd day of October 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 86-23387 Filed 10-15-86; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. A87-1; Order No. 709]

Post Office Closing, Pinero, VA; Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued: October 8, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

Docket number: A87-1

Name of affected post office: Pinero, Virginia 23136

Name(s) of petitioner(s): Mary G. Dutton

Type of determination: Closing

Date of filing of appeal papers: October 2, 1986

Categories of issues apparently raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before October 17, 1986.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

October 2, 1986—Filing of Petition.

October 8, 1986—Notice and Order of Filing of Appeal.

October 27, 1986—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

November 6, 1986—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b).

November 26, 1986—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

December 11, 1986—Petitioner's Reply Brief should petitioner choose to file one [*see* 39 CFR 3001.115(d)].

December 18, 1986—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necesary addition to the written filings [*see* 39 CFR 3001.116].

January 30, 1987—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 440(b)(5)].

[FR Doc. 86–23289 Filed 10–15–86; 8:45 am]

BILLING CODE 7715-01-M

[Order No. 711; Docket No. C86–3]

Notice and Order Permitting Intervention in Complaint Concerning Parcel Post Rates and Establishing Filing Dates

Issued: October 9, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom; Pattie Birge Tyson.

On August 28, 1986, United Parcel Service (UPS) filed a complaint with the Commission under 39 U.S.C. 3662. UPS asserts that the rates for parcel post currently do not cover attributable costs and make no contribution to nonattributable costs. UPS requests that the Commission promptly hold hearings and issue a recommended decision to increase parcel post rates to a level sufficient to cover those costs. UPS argues that the current parcel post rates constitute unfair competition, particularly in the near zones. Citing sections 403(c) and 3622(b)(1) of the Act, UPS says the current schedule constitutes an undue or unreasonable discrimination among users, as well as an undue or unreasonable preference to certain users.

UPS states that it is a competitor of the Postal Service, particularly for parcel post. UPS says that in the most recent omnibus rate case, Docket No. R84–1, the Commission found that parcel post must have a cost coverage of 116 percent to meet the requirements of the Postal Reorganization Act (Act). Citing the Commission's decision in Docket No. MC86–1, UPS asserts that, in fiscal 1985, parcel post rates did not cover their attributable costs and made no contribution to nonattributable costs. UPS predicts that the cost coverage for parcel post will continue to erode. UPS reports its understanding that a postal rate increase is unlikely for 18–24 months.

In accordance with the Commission's rules of practice (39 CFR 3001.84), the Postal Service filed an Answer on September 29, 1986. The Postal Service states that it believes the Complaint to be without merit. The Postal Service further suggests that it should be dismissed without the Commission holding the hearings requested by UPS. Generally, the Postal Service Answer denied every factual assertion UPS made with regard to parcel post rates and costs, and disagreed with every legal conclusion advanced by UPS. The Postal Service asserts that the current parcel post rates comply with the policies of the Act. The Postal Service points out that the current parcel post rates were established as a result of Docket No. R84–1, the only case where the rates were at issue and fully litigated in a proceeding affording due process to all interested parties.

Having considered the Answer to the assertions made in the Complaint, we believe further proceedings as provided for in rule 86 are warranted for the consideration and disposition of the controversy. Accordingly, the Commission invites those interested in becoming participants to file notices of intervention within 30 days of this order, under section 20 or 20a of our rules of practice. McGraw-Hill, Inc., Classroom Publishers Association and Direct Marketing Association, Inc. previously filed notices of intervention; they need not file additional ones.

In order to begin consideration of a procedural schedule, we are asking UPS to file, within 20 days, a notice stating when it anticipates having its case-in-chief ready for filing. Interested parties may comment on the proposed date for this evidence within 10 days of the scheduled time for the filing of that information.

It is ordered

(1) Notices of intervention are to be filed within 30 days of the date of this order.

(2) UPS is to file within 20 days of the date of this order a notice stating when in anticipates that it can file its evidence in support of the Complaint.

(3) Those wishing to comment on the UPS notice concerning the time for filing evidence may do so within 10 days of the scheduled date for the UPS notice.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 86–23381 Filed 10–15–86; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

October 8, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Loral Corporation
Common Stock, $.025 Par Value (File No. 7–9250)

Bernard Chaus, Inc.
Common Stock, $0.01 Par Value (File No. 7–9251)

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 October 29, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are 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. 86–23331 Filed 10–15–86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2254]

Illinois; Declaration of Disaster Area

As a result of the President's major disaster declaration on October 7, 1986, I find that the Counties of Lake, McHenry and Cook (9 townships only: Leyden, Lyons, Maine, Northfield, Norwood Park, Proviso, River Forest,

Riverside and Wheeling) constitutes a disaster loan area because of flooding beginning on September 21, 1986, and continuing. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on December 8, 1986, and for economic injury until the close of business on July 7, 1987, at: Disaster Area 2 Office, Small Business Adminstration, Richard B. Russell Federal Building, 75 Spring Street, SW, Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	7.500
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit) organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 225406 for physical damage and for economic injury the number is 645000.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Dated: October 8, 1986.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc 86-23360 Filed 10-15-86; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2253]

Wisconsin; Declaration of Disaster Area

As a result of the President's major disaster declaration on October 7, 1986, I find that the Counties of Fond du Lac, Kenosha, Milwaukee, Sheboygan and Ozaukee constitutes a disaster area because of flooding which occurred on September 10–11, 1986. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on December 8, 1986, and for economic injury until the close of business on July 7, 1987, at: Disaster Area 2 Office, Small Business Adminstration, Richard B. Russell Federal Building, 75 Spring Street SW, Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	7.500
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit) organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 225306 for physical damage and for economic injury the number is 644900.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Dated: October 8, 1986.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

FR Doc 86-23361 Filed 10-15-86; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council; Public Meeting

The U.S. Small Business Admistration Region III Advisory Council, located in the geographical area of Philadelphia, Pennsylvania, will hold a public meeting at 8:30 a.m. on Tuesday, October 28, 1986, at the Historic Strasburg Inn, Route 896, Strasburg (Lancaster County) Pennsylvania, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Willian T. Gennetti, District Director, U.S. Small Business Administration, One Bala Plaza, Suite 400-East Lobby, Bala Cynwyd, Pennsylvania 19004 (215) 596-5801.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 8, 1986.

[FR Doc. 86-23365 Filed 10-15-86; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Admistration Region VI Advisory Council, located in the geographical area of Little Rock, Arkansas, will hold a public meeting at 11:30 a.m. on Thursday, October 23, 1986, at the Riverfront Hilton Inn, #2 Riverfront Place, North Little Rock, Arkansas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Donald L. Libbey, District Director, U.S. Small Business Administration, 320 West Capitol, Suite 601, Little Rock, Arkansas 72201 (501) 378-5871.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 8, 1986.

[FR Doc. 86-23363 Filed 10-15-86; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Los Angeles, will hold a public meeting at 9:00 a.m. on Tuesday, October 16, 1986, at the Bank of America Executive Board Room, 555 South Flower Street, Los Angeles, California 90071, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call M. Hawley Smith, District Director, Small Business Administration, 350 South Figueroa Street, Suite #600, Los Angeles, California 90071. Telephone No. (213) 894-2977.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 8, 1986.

[FR Doc. 86-23364 Filed 10-15-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. S-790]

Lykes Bros. Steamship Co., Inc.; Application for Permission to Charter 20 Seabee Barges

Notice is hereby given that Lykes Bros. Steamship Co., Inc. (Lykes) by application dated October 7, 1986, has applied for written permission under section 805(a) of the Merchant Marine Act, 1936, as amended (Act), to charter at least 20 Seabee Standard Hopper Barges (Barges) to St. James Transportation Company (St. James) for operation by St. James on the inland waterways for four months. St. James intends to operate the Barges in the Mississippi River basin, its tributaries, and other inland waterways. The cargo expected to be carried in the Barges includes, among other things, bulk

commodities such as molasses, food stuffs, cement and clinker.

This application is being submitted because Lykes is a subsidized operator pursuant to ODS Contract MA/MSB–451 and the proposed operation of the Barges on the inland waterways might be considered to be operation in the "coastwise trade."

Because Lykes is not involved in the inland waterways trades, Lykes indicates that it is not aware of any competing companies.

Lykes advises that there is at present a significant shortage of barges due not only to the well-publicized demands for grain storage but also to the current flooding and other severe weather conditions in the upper Mississippi and Arkansas River basin. Because of these circumstances, St. James has experienced difficulty in obtaining the barges that it needs for its services. Consequently, there is an urgent need for the barges in order to maintain the flow of commerce.

Any person, firm, or corporation having any interest in the application for section 805(a) permission and desiring to submit comments concerning the application must file written comments in triplicate, to the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, by 5:00 p.m. on October 27, 1986. If such comments deal with section 805(a) issues, they should be accompanied by a petition for leave to intervene. The petition shall state clearly and concisely the grounds of interest and the alleged facts relied on for relief.

If no petitions for leave to intervene on section 805(a) issues are received within the specified time, or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program Nos. 20.804 Operating-Differential Subsidies (ODS)

By Order of the Maritime Administrator.

Dated: October 10, 1986.

James E. Saari,

Secretary.

[FR Doc. 86–23367 Filed 10–15–86; 8:45 am]

BILLING CODE 4910–81–M

National Highway Traffic Safety Administration

[Docket No. IP85–17; Notice 2]

American Jawa Ltd. Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by American Jawa Limited of Plainview, Long Island, New York, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.115, *Vehicle Identification Number.* The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on November 25, 1985, and an opportunity afforded for comment (50 FR 48531).

Paragraph S4.2 of Federal Motor Vehicle Safety Standard 115, *Vehicle Identification Number,* states that each vehicle identification number (VIN) shall consist of seventeen (17) characters.

Certain of American Jawa Limited's 1981 and 1982 motor driven cycles (mopeds) imported for sale in the United States, did not comply with Federal Motor Vehicle Standard No. 115, *Vehicle Identification Number.*

The "VIN" number consisted of a six digit serial number which ranged from 330,000 to 440,000 and were not received in any particular sequential order. The vehicles consisted of 2,264 units of the Jawa Supreme, a deluxe model. Also, 208 Model 210 moped manufactured late in 1983 did not conform to Standard No. 115 but American Jawa Limited inadvertently failed to include them in its inconsequentiality petition.

VINs on the remaining 1984 models and all 1985 models have the full seventeen digit number, and have been submitted to the VIN coordinator of the National Highway Traffic Safety Administration. There was no production during model year 1983.

One comment was received on the petition, which supported it.

The agency has decided to grant American Jawa's petition. Although it manufactured vehicles with an improper VIN, it has maintained records on these vehicles and in the event of notification and remedy, it could identify the vehicles concerned. Given that no performance failure with a standard is involved, that the number of vehicles is limited, that the time of production is known, the agency has concluded that the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: October 9, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86–23328 Filed 10–15–86; 8:45 am]

BILLING CODE 4910–59–M

Saint Lawrence Seaway Development Corporation

Advisory Group on Strategic Planning for the St. Lawrence Seaway; Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Advisory Group on Strategic Planning for the St. Lawrence Seaway will be meeting on October 29, 1986.

The Group will meet at 10:00 a.m. in Room 2253, Rayburn House Office Building, Washington, DC. The purpose of the meeting will be to review and adopt the Group's final report to the Secretary of Transportation.

The meeting is open to the public, however, attendance by the public will be limited to space available. Interested persons may make, subject to the approval of the Corporation's Administrator, oral statements at the meeting, or file a written statement for the Group's consideration. Persons wishing to make oral statements are requested to contact Joan C. Hall at (202) 366–0118 prior to October 24, 1986 so adequate time can be included on the agenda.

For further information contact Joan C. Hall, Advisory Group Liaison, St. Lawrence Development Corporation, 400 Seventh Street SW., Washington, DC 20590.

Issued at Washington, DC, on October 9, 1986.

Joan C. Hall,

Advisory Group Liaison.

[FR Doc. 86–23296 Filed 10–15–86; 8:45 am]

BILLING CODE 4910–61–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954]. The list is the same as the prior quarterly list published in the **Federal Register**.

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954]:

Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, Yemen, Arab Republic, Yemen, Peoples Democratic Republic of.

J. Roger Mentz,

Assistant Secretary for Tax Policy.

[FR Doc. 86-23327 Filed 10-15-86; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Privacy Act of 1974; Amendment of Systems Notice; Additional Routine Use Statement

Notice is hereby given that the VA (Veterans Administration) is considering adding a new routine use statement for the system of records entitled "Compensation, Pension, Education and Rehabilitation Records—VA" (58VA21/22/28) as set forth on pages 738–741 of the **Federal Register** Publication, Privacy Act Issuances, 1984 Comp., Vol. V and amended at 50 FR 10886 (March 18, 1985), 50 FR 26875 (June 28, 1985), 50 FR 31453 (August 2, 1985), 51 FR 24782 (July 8, 1986), 51 FR 25141 (July 10, 1986) and 51 FR 28289 (August 6, 1986) and revising a routine use statement for the system of records entitled "Veterans Assistance Discharge System (VADS)—VA" (45VA23) as set forth on pages 726–727 of the **Federal Register** Publication, Privacy Act Issuances, 1984 Comp., Vol. V and amended at 50 FR 23867 (June 6, 1985).

The Department of Defense Manpower Data Center (DMDC) has requested that the Veterans Administration provide information, including the last known address, from veterans' records in the above-mentioned systems of records. This information will be used by DMDC for four specific purposes, which are: (1) Recruiting needs for military recruiting commands, (2) Mobilization studies and mobilization information for civilian personnel offices of the Department of Defense (DOD), (3) Debt collection for DOD agencies, and (4) Locator services for Individual Ready Reserve (IRR) Units. Military recruiters occasionally try to reenlist prior military service members who have certain occupational specialties which the services now need. When asked, DMDC will identify for the recruiters individuals with prior military service who live in their recruiting area. DMDC provides the most current mailing address for the selected individuals along with information about their military service.

During a period of mobilization, DOD civilian personnel offices must be able to identify former military personnel with certain military occupational specialties who are now Federal employees working for DOD agencies and who live within certain geographical areas. DMDC is the central DOD facility that maintains such records and provides information from the individuals' military records to personnel offices. The geographical information is obtained from the address provided by the VA. The military services query DMDC for address information for former military service members who are indebted to the military service. The address information is used to advise the individual of his/her debt and to provide due process during the debt collection effort. Lastly, each military service is required by DOD to maintain current locator information for all reservists, including inactive reservists assigned to IRR units. This locator information is needed in the event these individuals must be recalled to active duty during a period of mobilization. Since inactive reservists are not required to attend regular drills, it is very easy for an IRR unit to lose track of these individuals. When requested, DMDC will provide address information to IRR units for individuals they cannot locate. There are no current routine uses which provide for the release of information for all of the purposes described above. The Veterans Administration has supported in the past, and will continue to support, the promotion of military readiness in a national emergency and the encouragement of job opportunities for veterans.

An amendment to routine use 12 of 45VA23 and a new routine use for 58VA21/22/28 are being added to provide for the four uses of information which include military recruiting command needs, Department of Defense civilian personnel offices' mobilization studies and mobilization information, Department of Defense agencies' debt collection, and Individual Ready Reserve Units' locator services.

The VA has determined that releases of information for these purposes are necessary and proper uses of information in these systems of records and that specific routine uses for transfer of this information are appropriate.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed new and amended routine uses to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All relevant material received before November 17, 1986, will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until November 18, 1986. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Service Unit in room 132.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by the Veterans Administration, the routine use statements included herein are effective November 27, 1986.

Approved: October 9, 1986.

By the direction of the Administrator.

Thomas E. Harvey,

Deputy Administrator.

Notice of Amendment of Systems of Records

1. In the system identified as 45VA23, "Veterans Assistance Discharge System (VADS)—VA" as set forth on pages 726–727 of the **Federal Register** Publication, Privacy Act Issuances, 1984 Comp., Vol. V and amended at 50 FR 23867 (June 6, 1985) the following routine use statement is amended to read as follows:

45 VA 23

System name:

Veterans Assistance Discharge System (VADS—VA.

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

* * * * *

12. Any information in this system of records may be disclosed to the Department of Defense Manpower Data Center, upon its official request, for statistical compilation of information contained on the separation documents issued by the Department of Defense. Veterans' addresses which are contained in this system of records may be disclosed to the Department of Defense Manpower Data Center, upon its official request, for military recruiting command needs, Department of Defense civilian personnel offices' mobilization studies and mobilization information, debt collection, and Individual Ready Reserve (IRR) Units' locator services.

* * * * *

2. In the system identified as 58VA21/22/28, "Compensation, Pension, Education and Rehabilitation Records—VA" as set forth on pages 738–741 of the **Federal Register** Publication, Privacy Act Issuances, 1984 Comp., Vol. V, and amended at 50 FR 10886 (March 18, 1985), 50 FR 26875 (June 28, 1985), 50 FR 31453 (August 2, 1985), 51 FR 24782 (July 8, 1986), 51 FR 25141 (July 10, 1986) and 51 FR 28289 (August 6, 1986), the following routine use statement is added to read as follows:

58 VA 21/22/28

System name:

Compensation, Pension, Education and Rehabilitation Records—VA.

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

* * * * *

50. Veterans' addresses which are contained in this sytem of records may be disclosed to the Department of Defense Manpower Data Center, upon its official request, for military recruiting command needs, Department of Defense civilian personnel offices' mobilization studies and mobilization information, debt collection, and Individual Ready Reserve (IRR) Units' locator services.

* * * * *

[FR Doc. 86–23310 Filed 10–15–86; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 200
Thursday, October 16, 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).

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Consumer Product Safety Commission	1
Federal Deposit Insurance Corporation	2
Federal Election Commission	3
Foreign Claims Settlement Commission	4
United States International Trade Commission	5-7

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 11:00 a.m., Wednesday, October 15, 1986.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

Management Review: Field Operations Reorganization

The Commission will consider issues related to reorganization options for field operations.

The Commission by majority vote decided that agency business required scheduling this meeting without normal advance notice.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

October 10, 1986.

[FR Doc. 86-23409 Filed 10-14-86; 9:08 a.m.]

BILLING CODE 6535-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act," (5 U.S.C. 552b), notice is hereby given that at 3:20 p.m. on Thursday, October 9, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for the purchase of certain assets of and the assumption of the liability to pay deposits made in Independent National Bank, Covina, California, an insured bank scheduled for closing later in the day by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type transaction is submitted, make funds available for the payment of the insured deposits of the closed bank.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven day's notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 10, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson

Executive Secretary.

[FR Doc. 86-23506 Filed 10-14-86; 3:00 p.m.]

BILLING CODE 6714-01-M

3

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, October 21, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, October 23, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings.
Correction and approval of minutes.
Draft advisory opinion 1986-36 Honorable Charles E. Bennett.
Procedures for issuing statements of reasons for the Commission's dismissal of certain administrative complaints.
Routine administrative matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86-23537 Filed 10-14-86; 3:06 pm]

BILLING CODE 6715-01-M

4

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 1-87]

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time

Tuesday, October 28, 1986 at 10:30 a.m.

Subject Matter

Consideration of claims filed under the Ethiopian Claims Program.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111—20th Street, NW., Washington, DC.

Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111—20th Street, NW., Room 409, Washington, DC 20579. Telephone: (202) 653–6155.

Dated at Washington, DC, on October 14, 1986.

Jeanette Matthews,

Administrative Assistant.

[FR Doc. 86–23538 Filed 10–14–86; 3:07 pm]

BILLING CODE 4410–01–M

5

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Monday, October 20, 1986 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain moldable/extrudable polyetheresteramide copolymers (Docket Number 1346).
5. Inv. No. 731–TA–293, 294, and 296 (Final) (Certain welded carbon steel pipes and tubes from the Philippines and Singapore)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

October 3, 1986.

[FR Doc. 86–23388 Filed 10–10–86; 4:31 pm]

BILLING CODE 7020–02–M

6

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, October 15, 1986 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Inv. No. 701–TA–281 (P) (Stainless steel pipes and tubes from Sweden)—briefing and vote.
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

October 3, 1986.

[FR Doc. 86–23393 Filed 10–10–86; 4:31 pm]

BILLING CODE 7020–02–M

7

UNITED STATES INTERNATIONAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published elsewhere in this issue (See USITC SE–86–36).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, October 15, 1986, 10:00 a.m.

CHANGE IN THE MEETING: Addition of agenda item for the meeting:

6. Matters associated with the proposed RFP for auditing services.

In conformity with 19 CFR 201.37, Commissioners Liebeler, Brunsdale, Eckes, Lodwick and Rohr determined by recorded vote that Commission business requires the change in subject matter by addition of the agenda item, and affirmed that no earlier announcement of the addition to the agenda was possible, and directed the issuance of this notice at the earliest practicable time. Commissioner Stern did not participate in the decision to add this matter to the agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

October 9, 1986.

[FR Doc. 86–23389 Filed 10–10–86; 4:55 pm]

BILLING CODE 7020–02–M

federal register

Thursday
October 16, 1986

Part II

Department of Agriculture

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 713, 770, 795, 796, 1421, 1425, 1427, 1434 and 1474

Marketing Quotas and Acreage Allotments; Feed Grain, Rice, Cotton, and Wheat; Food Security Act Implementation; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 713, 770, 795, 796, 1421, 1425, 1427, 1434 and 1474

Marketing Quotas and Acreage Allotments; Feed Grain, Rice, Cotton, and Wheat; Food Security Act Implementation

AGENCY: Commodity Credit Corporation, and Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts as final, with minor changes, four interim rules which were published in the Federal Register on March 11, 1986 (51 FR 8428), June 16, 1986 (51 FR 21730 and 21828), and August 13, 1986 (51 FR 28921). These interim rules revised the regulations found at 7 CFR Parts 713, 770, 795, 796, 1421, 1425, and 1427 to implement the provisions of the Food Security Act of 1985 (the "1985 Act") and the Food Security Improvements Act of 1986 (the "1986 Act") with respect to the production adjustment and price support programs for the 1986 and subsequent crops of wheat, feed grains, cotton, rice, and other price supported commodities. 7 CFR Parts 1434 and 1474 are also amended by this final rule to provide technical cross references to 7 CFR Part 12.

EFFECTIVE DATE: October 15, 1986.

FOR FURTHER INFORMATION CONTACT: Bill Harshaw, Program Specialist, Cotton, Grain, and Rice Price Support Division, ASCS, P.O. Box 2415, Washington, DC 20013, (202) 447-7902.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Impact Analyses were prepared with respect to the programs for the 1986 crops of wheat, feed grains, cotton, and rice. Copies of the analyses are available to the public from Director, Commodity Analysis Division, Agricultural Stabilization and Conservation Service, USDA, Room 3741, South Agriculture Building, 14th and Independence, P.O. Box 2415, Washington, DC 20013.

The titles and numbers of the Federal assistance programs to which this interim rule applies are: Commodity Loans and Purchases—10.051; Cotton Production Stabilization—10.052; Dairy Indemnity Payments—10.053; Emergency Conservation Program—10.054; Feed Grain Production Stabilization—10.055; Storage Facilities Equipment Loans—10.056; Wheat Production Stabilization—10.058; National Wool Act Payment—10.059; Beekeeper Indemnity Payments—10.060; Water Bank Program—10.062; Agricultural Conservation Program—10.063; Forestry Incentives Programs—10.064; Rice Production Stabilization—10.065; Emergency Feed Program—10.066; Grain Reserve Program—10.067; Rural Clean Water Program—10.068, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since neither the Agricultural Stabilization and Conservation Service ("ASCS") nor the Commodity Credit Corporation ("CCC") is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

A draft environmental impact statement has been prepared. Further information is available from Phillip Yasnowsky, Program Analysis Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013; (202) 447-7887.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Numbers 0560-0030, 0560-0040, 0560-0071, 0560-0091, 0560-0092, 0560-0096, and 0560-0650 have been assigned.

I. Interim Rules

The 1985 Act, enacted on December 23, 1985, amended the Agricultural Act of 1949 (the "1949 Act") to authorize price support, payment, and production adjustment programs for the 1986 through 1990 crops of rice, upland cotton, feed grains, and wheat. An interim rule was published in the Federal Register on March 11, 1986 (51 FR 8428) to amend the regulations found at 7 CFR Part 713 and 770 to set forth certain terms and conditions of these programs. The interim rule also amended the regulations found at 7 CFR Part 796 to incorporate provisions of the Act with respect to the denial of program benefits to persons convicted of violations of Federal and State controlled substance statutes. The regulations set forth at 7 CFR Parts 795, 1421, 1425, and 1427 which relate to payment limitation, price support loans and purchases, and cooperative marketing associations also were amended to conform to the provisions of the Act, to delete references to obsolete provisions, and to improve the operation of these programs for the 1986 and subsequent crop years. A 30-day comment period was provided.

The 1986 Act, enacted on March 20, 1986, further amended the 1949 Act with respect to such programs. Accordingly, a second interim rule was published in the Federal Register on June 16, 1986 (51 FR 21828) to amend the regulations found at 7 CFR Part 713 to set forth certain terms and conditions of these programs which must be changed to implement the provisions of the 1986 Act and to amend the regulations found at 7 CFR Parts 770, 795 and 1425. Because this interim rule amended provisions of the interim rule published on March 11, the comment period for the March 11 interim rule was extended to coincide with the comment period for the June 16 interim rule, which ended July 16, 1986.

An interim rule was published in the Federal Register on June 16, 1986 (51 FR 21730) which amended the Regulations Governing the Farmer-Owned Grain Reserve ("FOR") Program for 1986 and Subsequent Crops. The interim rule amended 7 CFR 1421.752 to provide an extension of the rotation period for corn and grain sorghum pledged as collateral for FOR loans from 15 to 30 days or within such a period as may be determined and announced by the Secretary. The interim rule also permits producers with wheat, barley, and oats pledged as collateral for FOR loans to replace this loan collateral with an equivalent quantity of grain of the same type that (1) has been harvested in a prior crop year by the producer; (2) is harvested in the current crop year by the producer; or (3) is purchased from another source. A comment period was provided through June 31, 1986.

An interim rule was published in the Federal Register on August 13, 1986 (51 FR 28921) to amend the regulations

found at 7 CFR 770.4(g)(2) with respect to commodity certificates (1) issued as payments to upland cotton producers who agree to forgo obtaining a price support loan and (2) which are issued as additional yield payment to upland cotton producers. Because this interim rule changed the interim rule published on March 11 and June 16, 1986, the comment periods were extended to coincide with the comment period for the August 13 interim rule, which ended August 28, 1986.

II. Summary of Comments and Substantive Changes

The written comments discussed below are on file and available for public inspection in Room 3630 South Building, 14th and Independence Avenue, SW., Washington DC 20013.

7 CFR Part 713

Written comments pertaining to the regulations at 7 CFR Part 713 were received from one individual, one producer organization, and one wildlife organization.

(a) The individual and the producer organization were both concerned with the provisions relating to haying and grazing of acreage taken out of production (acreage conservation reserve ("ACR")) and of acreage devoted to conserving uses which is designated as an acreage of the program crop for purposes of computing deficiency payments under the provisions of the 1949 Act, commonly known as "50/92" provisions. These comments were concerned about the adverse effects haying and grazing of this acreage might have upon established hay producers.

(1) The individual requested that the regulations be changed to prohibit haying of ACR acreage and haying and grazing of conserving use acreage.

(2) The organization requested that there be a hearing process at the State or National level before decisions on permitting haying and grazing were made. It requested that there be a comment period before the Secretary determines, as required by the 1949 Act, that haying and grazing would not have an adverse economic effect.

(3) The organization requested that the definition of "conserving uses" as applied to hay be changed to "grasses and crops not harvested mechanically." This definition would prohibit hay as a conserving use under the 50/92 provisions.

(4) The organization stated that State Agricultural Stabilization and Conservation ("ASC") committees needed more data and guidance in making the decision on haying and grazing.

Because of the delays in enacting the Food Security Improvements Act of 1986 and the need to provide producers with information on the benefits and restrictions connected with their contracts to participate in the 1986 production adjustment programs, it was necessary to make decisions on haying and grazing prior to the spring of 1986. Accordingly, provisions of the March 11, 1986 interim rule that were applicable to 7 CFR 713.63 delegated authority to State ASC committees to determine whether to permit haying and/or grazing on ACR and conserving use acreages. A 5 consecutive month nongrazing period was required for ACR for the 1986 crop of cotton and rice and, if haying and/or grazing was authorized for the 1986 crop of wheat and feed grains, such haying or grazing was permitted during 5 of the principal growing months as determined by the State ASC committee.

Although the Secretary is authorized to prohibit haying and grazing if it is determined that there would be an adverse economic effect, most hay is produced and consumed within a locality. Generally, there is not a national market for hay and accordingly the adverse economic effects, if any, of a decision to permit haying and grazing will occur at a local level, not a national basis. With respect to the need for increased guidance of State ASC committees, past experience with production adjustment programs has demonstrated that the State committees are familiar with conditions in the State and the effects of authorizing haying and grazing. Accordingly, it has been determined that these recommendations will not be adopted at this time.

(b) The wildlife organization offered comments that focused on the need to obtain greater conservation benefits.

(1) The organization stated that the authority included in the Food Security Act of 1985 for a multi-year set-aside program should be implemented. The organization believes that annual programs leave landowners in uncertainty over the next year's program, leading landowners to plow ACR in the fall in order to be ready to plant for next year. They also noted that with annual programs landowners make no financial commitment to establish cover crops to control erosion, improve water quality, and restore conditions for wildlife.

(2) The organization requested that § 713.62(a)(ii) be amended to prohibit plowing ACR in the fall and leaving it bare until spring.

(3) The organization asked for clarification of the phrase "noncommercial recreation" in § 713.63(c)(2) as to whether it prohibits charging fees for hiking, hunting, fishing, and similar activities.

(4) The organization recommended that county ASC committees be required to coordinate dates for clipping weeds with representatives of State wildlife agencies.

(5) The organization recommended clarifying § 713.99(b) to provide that a producer who violates rules for sodbuster and swampbuster shall be ineligible for payments on all farms in which the producer has an interest.

(6) The organization recommended that § 713.103(b) be clarified to provide that producers who fail to comply fully with program rules will cause the producer to be ineligible for payments for all farms in which the producer has an interest.

Because producers have already entered into contracts with the Commodity Credit Corporation (CCC) to participate in the 1986 production adjustment and price support programs, it would be unfair and inequitable to change the provisions of the appropriate regulations at this time. Accordingly, it has been determined that only editorial changes and clarifications will be made in the regulations in 7 CFR Part 713. An interim rule will be issued shortly which will make changes in these regulations effective for the 1987 and subsequest crop years. The comments with respect to these issues will be considered in the formulation of that interim rule.

(c) One set of comments was received from the Iowa Attorney General and from the law firm representing certain Iowa producers in an action brought to compel the Secretary to implement certain disaster programs for the relief of Iowa producers from effects of the 1983 drought. The comments noted that §§ 713.130 and 713.131 implement the mandatory disaster payments program contained in the 1949 Act, which is not available when insurance under the Federal Crop Insurance Act is available to producers. However, the regulations contained in the interim rule do not implement the provisions of the 1949 Act which authorize the Secretary to implement a discretionary disaster payment program when such insurance is available to producers. These comments pointed out that, in considering this action, the United States District Court for the Southern District of Iowa ordered the Secretary to promulgate rules to implement similar provisions of the Agriculture and Food Act of 1981 (the "1981 Act") which were applicable for the 1982 through 1985 crop years. Accordingly, the comments stated

that such rules should have been included in the interim rule.

It has been determined that regulations to implement the Secretary's discretionary authority with respect to the similar types of payments authorized by the 1985 Act are more suited to a separate rulemaking procedure since these discretionary payments may be made in limited areas and for limited times depending upon the nature of the disaster. Accordingly, the regulation applicable to these payments will be developed separately.

(d) Two oral comments were received with respect to the definition of "conserving uses" in § 713.3(d). One person pointed out that "devoted at any time during the year to [a crop]" could mean that land on which wheat is planted in the fall of 1986 for harvest in 1987 would not be considered as being devoted to a conserving use for the 1986 crop year. This was not the intent of the interim rule and, therefore, § 713.3(d) is amended in this final rule for clarification.

The other person observed that the wording "Any land subject to [the Water Bank Program, Great Plains Conservation Program, Conservation Reserve Program]" in §§ 713.3(d)(6)–(8) was vague and could be taken to include land which the respective programs did not prohibit from being devoted to crops. Accordingly, these paragraphs also have been revised for clarity.

7 CFR Part 770

One comment was received with respect to the regulations in 7 CFR Part 770 pertaining to commodity certificates which was set forth in the interim rule of March 11, 1986. The comment requested that § 770.4(b)(8) be revised to clarify that a subsequent holder of commodity certificates is not subject to State laws or regulations with respect to the transfer or exchange of such certificates.

The regulations in Part 770 were revised in the interim rule of June 16, 1986. The revision included a provision that the provisions of § 770.4 take precedence over any state statutory or regulatory provisions which are inconsistent with the provisions of the section or with the provisions of the commodity certificates. The revised regulations also clarify, as requested by the commenter, that the provisions of § 770.4(b) apply without regard to the identity of the holder of the certificate.

7 CFR Part 795

No comments were received with respect to the regulations in Part 795.

7 CFR Part 796

No comments were received with respect to the regulations in Part 796. However, § 796.3(c) has been amended to delete the requirement that a corporation's or a limited partnership's payment be reduced if a shareholder or partner is denied benefits in accordance with § 796.1 because of a conviction with respect to the violation of a Federal or State law for the planting, cultivating, growing, producing, harvesting, or storing of a controlled substance. Since the major basis for the establishment, under State law, of a corporation or a limited partnership is the benefit of limited liability and the related concept that the entity be considered separate from its shareholders or partners, it has been determined that such entities will receive the entire program payment authorized to be made regardless of the conviction of one of its shareholders or partners for such violations.

In addition, § 796.2(a)(1) has been amended for clarity.

7 CFR Part 1421

No comments were received with respect to the regulations in Part 1421.

7 CFR Part 1425

The Department received comments with respect to the interim rules from two cotton marketing associations.

The comments discussed the increased net worth requirement for cotton cooperatives contained in § 1425.10(b)(3)(ii) of the regulations. The cooperatives offering the comments took the position that the $6.40 per bale net worth requirement would be a financial burden on each cooperative's members, and that the amount should be changed back to the previous $5.00 per bale requirement or that the increase should be deferred for one year.

The cooperative net worth requirements for all authorized commodities were increased to insure that cooperatives approved to participate in price support programs on behalf of their members are financially able to make financial advances to their members. Because of increased price support levels, CCC has made larger price support payments to cooperatives on behalf of their members. The increased payments means the cooperatives have greater financial responsibility to their members. In addition it would not be equitable to increase the net worth requirements for all authorized commodities except cotton. Accordingly, the equity unit rate for cotton will be $6.40 per bale.

7 CFR Part 1427

No comments were received with respect to the regulations in Part 1427.

III. Technical Changes

7 CFR Part 713

Section 713.1(b)(6) has been amended to add a reference to § 713.56.

The second sentence of § 713.3(a) has been clarified, and § 713.3(e)(2)(vii) has been amended to refer to "approved nonprogram crops."

An interim rule was published in the **Federal Register** on June 27, 1986 which contained regulations implementing sections 1201–1223 of the Food Security Act of 1985 commonly known as "sodbuster and swampbuster" provisions. Sections 713.3(s)(3) and 713.99 have been amended to refer specifically to these regulations.

Section 713.4(b)(10) has been amended to include rice along with wheat, barley, and oats, as a crop which may be left standing under certain conditions and still not be considered as acreage planted to a program crop.

Erroneous references to §§ 713.120–713.127, which were reserved for future use, have been removed from §§ 713.4(b)(3) and 713.6(c).

Section 713.6(a)(1) has been amended to clarify that, although separate irrigated and nonirrigated yields for wheat and feed grains may be established for 1986 or subsequent crop years, there shall not be an increase in the farm program payment yield established for a crop produced on the farm.

Section 713.6(a)(3)(ii)(B) has been added to state that the farm program payment yield for the 1986 crop year which shall be used to compute the farm program payment yield for 1988 and subsequent crops shall be the higher of the farm program payment yield for the 1986 crop year determined in accordance with Part 713 or 90 percent of the 1985 farm program payment yield. This incorporates a provision of the Food Security Improvements Act of 1986 which was omitted in the March 11 interim rule.

Section 713.60 has been amended to refer to § 713.51 instead of § 531.51.

Section 713.61(b)(1) has been amended for overall clarity and to correct an erroneous omission in order to provide that orchards that were planted before the fall of the previous year are not eligible for designation as ACR.

Section 713.62(c)(4) has been amended for clarity.

In § 713.101(c), the following words, which were omitted in the interim rule,

have been inserted after the word "operator:", "shall assure that on any other farm in which the landlord, landowner, or operator" to clarify the meaning of this section.

The heading *"Reporting"* has been added to § 713.103(a).

Section 713.105(d) has been amended to refer to "doublecropping practices" rather than "established practices of doublecropping" to recognize that a producer may begin to doublecrop in the current year.

Section 713.108(a)(1)(i)(B) has been amended for clarity.

The first sentence in § 713.108(c)(3) is corrected to read "The 1988 through 1990 crop years . . . ." to clarify that the paragraph does not apply to the 1986 or 1987 crop years.

The cross-reference to § 713.11 in § 713.109(b)(2) is corrected to refer to § 713.111. The cross-reference to § 713.132 in the second sentence of § 713.109(c) is corrected to refer to § 713.152.

7 CFR Part 770

The last sentence in § 770.4(g)(2) is amended to correct a grammatical error. Accordingly, this sentence states: "Certificates issued as payments which are determined to be necessary to make raw cotton in inventory on August 1, 1986 available at competitive prices as determined by CCC in accordance with section 103A(a)(5)(D)(ii) of the Agricultural Act of 1949, as amended, may be exchanged for CCC-owned upland cotton only during such period or periods as may be determined and announced by CCC."

7 CFR Parts 1421, 1434, and 1474.

An interim rule was published in the **Federal Register** on June 27, 1986 which contained regulations implementing sections 1201–1223 of the Food Security Act of 1985 commonly known as "sodbuster and swampbuster" provisions. Producers who violate the "sodbuster and swampbuster" provisions will be ineligible for program benefits, including price support loans and purchases for the crop year. Parts 1421, 1434, and 1474 are amended to provide that compliance with these provisions is a condition of eligibility for price support loans and purchases.

7 CFR Part 1425

The title of § 1425.8(c) is changed to "Control."

Sections 1425.10(b)(3)(ii), 1425.14, 1425.17(a)(2) and (b)(4), and 1425.18(a)(2) and (3) have been revised for clarity by correcting grammatical errors or erroneous paragraph references.

List of Subjects

7 CFR Part 713

Cotton, Feed grains, Price support programs, Wheat, Rice.

7 CFR Part 770

Cotton, Feed grains, Price support programs, Wheat, Rice.

7 CFR Part 795

Price support programs.

7 CFR Part 796

Agriculture, Marihuana.

7 CFR Part 1421

Grains, Loan programs-agriculture, Price support programs, Surety bonds, Warehouses.

7 CFR Part 1425

Cooperatives, Price support programs, Reporting and recordkeeping requirements.

7 CFR Part 1427

Cotton, Loan programs-agriculture, Price support programs, Packaging and containers, Surety bonds, Warehouses.

7 CFR Part 1434

Honey price support programs, Warehouse.

7 CFR Part 1474

Agricultural commodities, Loan programs-agriculture, Warehouses.

Final Rule

Accordingly, the regulations of Chapters VII and XIV of Title 7 of the Code of Federal Regulations are amended as follows:

1. The interim rule published at 51 FR 21730, which amended 7 CFR Part 1421, is hereby adopted as a final rule without change.

2. The interim rule published at 51 FR 21828 is hereby adopted as a final rule without change with respect to the regulations found at 7 CFR Part 795.

3. The interim rule published at 51 FR 8428 is hereby adopted as a final rule without change with respect to the regulations found at 7 CFR Part 795, 1421, and 1427.

4. The interim rule published at 51 FR 28921 is hereby adopted as a final rule without change with respect to the regulations found at 7 CFR Part 770.

5. The interim rule published at 51 FR 8428 and the interim rule published at 51 FR 21730 are adopted as final rules with respect to the regulations found at 7 CFR Parts 713, 770, 796 and 1425 with changes as described above. The complete text of these parts is set forth below:

A. Part 713 of Chapter VII of Title 7 of the Code of Federal Regulations is revised to read as follows:

PART 713—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

Sec.

713.1 Applicability.
713.2 Administration.
713.3 Definitions.
713.4 Determining crop acreages.
713.5 [Reserved]
713.6 Farm program payment yields.
713.7 Crop acreage bases.
713.8 Farm acreage bases.
713.9 Normal crop acreages.
713.10 Notice of crop and farm acreage bases, yields, and NCA.
713.11 Reconstitution of farms.
713.12 Adjusting crop acreage bases.
713.13–713.48 [Reserved]
713.49 Nature of contract.
713.50 Contracting procedures.
713.51 Required acreage reduction.
713.52 Required set-aside.
713.53 Land diversion.
713.54 Wheat grazing and hay.
713.55 Loan deficiency program.
713.56 Inventory reduction program.
713.57 Reduction in acreage to be devoted to conservation uses.
713.58–713.59 [Reserved]
713.60 Basic rules for ACR acreage.
713.61 Eligible land.
713.62 Approved cover crops and practices.
713.63 Use of ACR acreage.
713.64 Control of erosion, insects, weeds, and rodents on ACR acreage.
713.65 Orchards.
713.66 Land going out of agricultural production.
713.67 Emergency grazing or harvesting.
713.68 Wildlife food or habitat.
713.69 Noncrop uses or practices.
713.70 Insufficient ACR acreage.
713.71 Destroyed crop acreage.
713.72 Provisions applicable to certain small grains.
713.73 Late harvesting.
713.74 Skip rows.
713.75–713.96 [Reserved]
713.97 Ineligible land.
713.98 Participation in Conservation Reserve Program.
713.99 Compliance with sodbuster and swampbuster provisions.
713.100 Cross compliance on the farm.
713.101 Offsetting compliance between farms.
713.102 Determination of farm program acreage.
713.103 General payment provisions.
713.104 Advance payments.
713.105 Disaster credit.
713.106 Established (target) prices.
713.107 National program acreage.
713.108 Deficiency payments.
713.109 Division of program payments.
713.110–713.129 [Reserved]
713.130 Eligibility for regular prevented planting and reduced yield payments.

Sec.

713.131 Regular disaster payment computations.
713.132–713.149 [Reserved]
713.150 Provisions relating to tenants and sharecroppers.
713.151 Successors-in-interest.
713.152 Misrepresentation and scheme or device.
713.153 Setoffs and assignments.
713.154 Payments by commodities and commodity certificates and refunds.
713.155 Appeals.
713.156 Performance based upon advice or action of county or State committee.
713.157 Paperwork Reduction Act assigned numbers.

Authority: Secs. 101A, 103A, 105C, 107C, 107D, 107E, 109, 113, 401, 403, 503, 504, 505, 506, 507, 508, and 509 of the Agricultural Act of 1949, as amended; 99 Stat. 1419, as amended, 1407, as amended, 1395, as amended, 1444, 1383, as amended, 1448; 91 Stat. 950, as amended, 63 Stat. 1054, as amended, 99 Stat. 1461, 1461: as amended, 1462, 1463, 1463, 1464, 1464 (7 U.S.C. 1441–1, 1444–1, 1444b, 1445b–2, 1445b–3, 1445b–4, 1445d, 1445h, 1421, 1423: and 1461 through 1469); sec. 1001 of the Food Security Act of 1985, as amended, 99 Stat. 1444 (7 U.S.C. 1308); sec. 1001 of the Food and Agriculture Act of 1977, as amended, 91 Stat. 950, as amended (7 U.S.C. 1309).

§ 713.1 Applicability.

(a) The regulations in this part, which are applicable to the feed grain, rice, upland and extra long staple ("ELS") cotton, and wheat programs for the 1986 and subsequent year crops, set forth the terms and conditions under which producers of these commodities who enter into contracts with the Commodity Credit Corporation ("CCC") and comply with the contracts and the provisions of this part may qualify for program benefits.

(b) In accordance with section 1001 of the Food Security Act of 1985, and the regulations in Part 795 of this chapter, the total amount of payments (excluding disaster payments) which a person shall be entitled to receive annually under the rice, upland and ELS cotton, feed grain, and wheat programs shall not exceed § 50,000. The term "payments" does not include:

(1) Loans or purchases;

(2) Any part of any payment that represents compensation for resource adjustment (excluding land diversion payments) or public access for recreation;

(3) Any gain realized by a producer for repaying a loan for a crop of rice, upland cotton, feed grains, or wheat under a marketing loan program;

(4) Any deficiency payment received for a crop of wheat or feed grains as the result of a reduction of the loan level for the crop and the resulting increase in established "target" price payments in accordance with § 713.108(a)(4);

(5) Any loan deficiency payment received for a crop of wheat, feed grains, upland cotton, or rice in accordance with a program established under § 713.55;

(6) Any inventory reduction payment for a crop of rice, upland cotton, feed grains, or wheat in accordance with a program established under § 713.56; and

(7) Any benefit received as a result of any cost reduction action taken in accordance with section 1009 of the Food Security Act of 1985.

(c) In accordance with the regulations in Part 796 of this chapter, payments shall not be made for a period of 5 crop years to program participants who are convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance such as marihuana.

(d) The programs are applicable throughout the United States, including Puerto Rico.

§ 713.2 Administration.

(a) The programs will be administered under the general supervision of the Administrator, Agricultural Stabilization and Conservation Service ("ASCS") and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees (herein called "State and county committees").

(b) State and county committees, and representatives and employees thereof, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also (1) correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this part, or (2) require a county committee to withhold taking any action which is not in accordance with the regulation of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the program.

§ 713.3 Definitions.

(a) *Applicability.* The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in Part 719 of this chapter governing the reconstitution of farms shall also be applicable except where those definitions conflict with the definitions set forth in this section.

(b) *"Annual nonconserving crop"* means any annual crop intended for harvest or use in any feed form except for the following:

(1) Grasses regardless of use, including sweet sorghum, millet, and sudan grass;

(2) Legumes, including peas, beans or soybeans for seed, grain, or processing where planting of such crops was delayed beyond the normal planting period by a disaster and the crop is too poor to be used for seed, grain, or processing. In all other cases, soybeans produced for seed, grains, or processing are a nonconserving crop; and

(3) Small grains that are disposed of before the disposal deadline and excluded by the operator.

(c) *"Base period"* means the five crop years immediately preceding the current crop year.

(d) *"Conserving uses"* shall mean all uses during a year of cropland as defined in Part 719 of this chapter except for:

(1) Acreage of crops for harvest or use during the current crop year. These crops shall include:

(i) A crop of rice, upland cotton, feed grains, wheat, or ELS cotton;

(ii) A crop of soybeans;

(iii) Any nonprogram crop; and

(iv) Any crop for which Price support is available through loans and purchases in accordance with chapter XIV of this title.

(2) Acreage which is not available to be cropped in the current year because:

(i) Of a contract under the Water Bank Program in accordance with Part 752 of this chapter;

(ii) Of an agreement under the Great Plains Conservation Program in accordance with Part 631 of this title;

(iii) Of a contract under the Conservation Reserve Program in accordance with Part 704 of this chapter; or

(iv) The acreage is designated as acreage conservation reserve ("ACR") acreage for the current year.

(3) Any land which the producer was prevented from planting to a crop of rice, upland or ELS cotton, feed grains, or wheat and which is considered as planted to such crop for the purpose of computing crop acreage bases;

(4) Any acreage which is determined to be ineligible in accordance with § 713.97; and

(5) Any other acreage which is not available to be cropped in the current year and which is excluded in accordance with instructions issued by the Deputy Administrator.

(e) *"Considered planted acreage"* means for a crop the following:

(1) With respect to the 1981 through 1985 crop years, the acreage of a program crop determined to be considered as planted in accordance with the regulations in this part which were applicable for such crop year; and

(2) With respect to the 1986 and subsequent crop years, the sum of the following except that for farms participating in a set-aside, acreage reduction, or diversion program for the crop, the sum of the planted acreage and considered planted acreage for the crop shall not exceed the crop acreage base for the crop for the crop year:

(i) Any acreage devoted to ACR for the crop under a set-aside, acreage reduction, or diversion program as set forth in this part or any other part;

(ii) For wheat, any acreage eligible for payment in accordance with the wheat grazing and hay program;

(iii) The acreage determined to be intended to be planted to the crop but which was prevented from being planted to the crop because of drought, flood, or other natural disaster, quarantine, or other conditions beyond the control of the producer in accordance with § 713.105;

(iv) For farms on which producers are participating in an acreage reduction program for the crop, the acreage of nonprogram crops and conserving uses credited to the crop in accordance with § 713.102;

(v) For farms on which the acreage required to be devoted to conservation uses has been reduced in accordance with § 713.57, the smaller of the following, as determined in accordance with instructions issued by the Deputy Administrator:

(A) The amount of the reduction in acreage required to be devoted to conservation uses; or

(B) The acreage of cropland on the farm which is devoted to conserving uses, nonprogram crops, soybeans, or peanuts and which is not considered as being planted to a program crop under any other provision of this part;

(vi) For farms for which there is a Conservation Reserve Program contract in effect, an acreage equal to the amount by which any crop acreage base is reduced in accordance with § 713.98 due to participation in the Conservation Reserve Program in accordance with Part 704 of this chapter.

(vii) For farms for which the acreage report filed in accordance with Part 718 of this chapter reflects zero acreage of the crop, the acreage of approved nonprogram crops and conserving uses credited to the crop in accordance with § 713.102.

(f) *"Corn"* means field corn or sterile high-sugar corn. Popcorn, sweet corn, and corn varieties grown for decoration uses are excluded.

(g) *"Cotton"* means upland cotton and ELS cotton.

(h) *"Crop"* or *"Commodity"* means barley, corn, grain sorghum, oats, rice, upland cotton, ELS cotton, or wheat ("Crop" is used when the reference is to a specific year or to growing plants; "Commodity" is used when the reference is general and abstract).

(i) *"Current year"* means the calendar year in which the crop with respect to which payment may be made under this part would normally be harvested.

(j) *"Disposal deadline"* means the date or time by which an acreage of barley, wheat, or oats must be disposed of in order that such acreage will not be considered as barley, wheat or oats for harvest or by which an acreage of rye or similar grain must be disposed of in order for the acreage to qualify as ACR acreage in accordance with § 713.62 or as a conserving or conservation use.

(k) *"Doublecropping"* means the planting and harvesting of two or more different crops on the same acreage during a crop year, as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

(l) *"Farm program acreage"* means the acreage used to compute deficiency payments for the crop for the farm as determined in accordance with § 713.108(b).

(m) *"Farm program payment yield"* means the yield for the farm which is determined by the county committee in accordance with § 713.6 adjusted to reflect any determinations made with respect to such yield in accordance with Part 780 of this chapter.

(1) *"1985 farm program payment yield"* means:

(i) The yield for the farm which was determined by the county committee in accordance with the regulations in this part which were applicable for the 1985 crop year; or

(ii) The yield for the farm which is determined in accordance with instructions issued by the Deputy Administrator if no yield was determined for the farm for the 1985 crop year.

(n) *"Extra Long Staple (ELS) cotton"* means any of the following varieties of cotton which is ginned on a roller gin and is grown in counties specified by the Deputy Administrator: American-Pima; Sea Island; Sealand; all other varieties of the Bardadense species of cotton and any hybrid thereof; and any other cotton in which one or more of these varieties predominate.

(o) *"Grain sorghum"* means grain sorghum of a feed grain or dual purpose variety (including any cross which, at all stages of growth, has most of the characteristics of a feed grain or dual purpose variety). Sweet sorghum is excluded regardless of use.

(p) *"Marketing year"* means the 12-month period beginning in the current year and ending the next year as follows:

(1) Barley, oats, and wheat. June 1–May 31.

(2) Cotton and rice. August 1–July 31.

(3) Corn and grain sorghum. September 1–August 31.

(q) *"NCA crops"* means the crops which are so designated by the Secretary of Agriculture for any crop year in an announcement which establishes a normal crop acreage requirement.

(r) *"Nonprogram crop"* means any crop other than a crop of rice, upland or ELS cotton, feed grains, wheat, or soybeans as determined in accordance with instructions issued by the Deputy Administrator.

(1) *"Approved nonprogram crop"* means:

(i) Any nonprogram crop, including any crop which is grown for experimental purposes, which is approved by the Administrator, or a designee of the Administrator, after determining: (i) That the production of such crop is not likely to increase the cost of the price support program, and will not affect farm income adversely, and (ii) the production is needed to provide an adequate supply of the commodity, or, in the case of commodities for which no substantial domestic production or market exists but that could yield industrial raw materials, the production is needed to encourage domestic manufacture of such raw material and could lead to increased industrial use of such raw material to the long-term benefit of United States industry.

(ii) With respect only to the 1986 crop, any nonprogram crop which the producer has, after December 23, 1985, and before February 26, 1986, planted or contracted to plant, as determined by the State committee or its representative

in accordance with instructions issued by the Deputy Administrator.

(2) *"Other nonprogram crop"* means any nonprogram crop except approved nonprogram crops.

(s) *"Person"* means an individual, joint stock company, corporation, estate or trust, association, or other legal entity, except that two or more entities shall be combined as one person in accordance with:

(1) The regulations found at Part 795 of this chapter for the purpose of administering maximum payment limitations;

(2) The regulations found at Part 796 of this chapter for the purpose of administering the provisions of the Food Security Act of 1985 with respect to the production of controlled substances; and

(3) The regulations found at Part 12 of this title pertaining to the highly erodible land and wetland provisions (commonly known as "sodbuster and swampbuster" provisions).

(t) *"Planted acreage"* for a crop means the total of:

(1) The acreage planted for harvest as determined under the guidelines set forth in § 713.4; and

(2) The volunteer acreage of the crop except that acreage which is determined not to be economically practical to harvest.

(u) *"Producer"* means a person who, as owner, landlord, tenant, or sharecropper, shares in the risk of producing the crop, or would have shared had the crops been produced.

(v) *"Rice"* means rice excluding sweet, glutenous, or candy rice such as Mochi Gomi.

(w) *"Small grains"* means barley, oats, wheat, and rye.

(x) *"Soybeans"* means any variety of soybeans which is planted regardless of the intended use.

(y) *"Upland cotton"* means planted cotton and stub cotton other than ELS cotton.

§ 713.4 Determining crop acreages.

(a) The county committee shall apply the guidelines in paragraphs (b) and (c) of this section in determining crop acreages planted for harvest, as well as any further instructions which may be issued by the Deputy Administrator.

(b) The county committee shall include as crop acreage planted for harvest any of the following:

(1) The acreage harvested;

(2) The acreage of small grains which was not disposed of before the disposal deadline; and

(3) The acreage of small grains which was disposed of before the disposal deadline if such acreage qualified for a reduced yield disaster payment in accordance with the provisions of §§ 713.130 and 713.131 or failed acreage credit in accordance with the provisions of § 713.105.

(c) The county committee shall exclude as crop acreage planted for harvest any of the following:

(1) The acreage which failed and could have been replanted by the final planting date established for the crop, as determined by the Deputy Administrator, but which was not replanted;

(2) The acreage that is approved as ACR acreage in accordance with the provisions of §§ 713.60–713.74;

(3) The acreage which was disposed of without feed or other benefit (including lint benefit for cotton) and excluded by the operator on the report of acreage as provided in Part 718 of this chapter;

(4) The acreage of barley, oats, or wheat disposed of with feed benefit before the disposal deadline;

(5) The acreage which was approved for wildlife food plots or planted for wildlife in accordance with instructions issued by the Deputy Administrator;

(6) The acreage approved for grazing and hay payments in accordance with the provisions of § 713.54; and

(7) The acreage that was planted so late that it could not mature and produce grain or lint and, with respect to corn and grain sorghum, was not harvested for silage;

(8) Any acreage which is planted for experimental purposes under the direct supervision of a State experimental station or a commercial company and which meets other requirements as prescribed by the Deputy Administrator;

(9) The acreage of barley, oats or wheat which is determined by the county committee to be not economically practical to harvest because of a low yield and which is excluded as crop acreage by the operator;

(10) The acreage of barley, oats, wheat or rice which is left standing as a cover crop past the disposal deadline determined by the Deputy Administrator if the producer: (i) Requests from the county committee, in writing, permission to allow such crop to be left standing before the crop reporting date; (ii) destroys the crop mechanically if the crop does not deteriorate before the end of the nongrazing period so that no benefit can be derived from the grain; (iii) does not obtain feed benefit from the crop; and (iv) pays the cost of a farm visit by a representative of the county committee to determine compliance with program requirements for disposal of the crop; and

(11) Any acreage designated under the Conservation Reserve Program in accordance with Part 704 of this chapter.

(d) The county committee shall consider mixtures of crops to be the crop that is predominant in the mixture, except as follows:

(1) When a crop of barley, oats, or wheat is the first seeded crop in a mixture of small grains seeded or volunteered at different times, the mixture is considered to be the crop of barley, oats, or wheat which is first seeded.

(2) When corn or grain sorghum is mixed with another crop in the same row, the mixture shall be considered to be corn or grain sorghum, as applicable.

§ 713.5 [Reserved]

§ 713.6 Farm program payment yields.

(a) *Rice, upland cotton, barley, corn, grain sorghum, oats, and wheat yields.* (1) The bushel or pound per acre farm program payment yield for the 1986 and 1987 crop years shall be established in accordance with instructions issued by the Deputy Administrator and shall be the average of the farm program payment yields for the farm for the 1981 through 1985 crop years, excluding the year in which such yield was the highest and the year in which such yield was the lowest.

(2) If no farm program payment yield for a crop was established for any of the 1981 through 1985 crop years, the county committee may assign a yield in accordance with instructions issued by the Deputy Administrator for any such year based upon the farm program payment yields for similar farms in the county or other surrounding area.

(3) The bushel or pound per acre farm program payment yield for the 1988, 1989, and 1990 crop years shall, as announced by CCC:

(i) Be equal to the farm program payment yield established for the farm in the 1986 and 1987 crop years; or

(ii) Be established in accordance with instructions issued by the Deputy Administrator. Such instructions shall provide that the farm program payment yield shall equal the yield per harvested acre for the crop for each of the five immediately preceding crop years, excluding the crop year with the highest yield per harvested acre, the crop year with the lowest yield per harvested acre, and any crop year in which the crop was not planted on the farm. For purposes of this paragraph, the yield per harvested acre shall mean:

(A) With respect to the 1983 through 1985 crop years, the farm program payment yield for the crop;

(B) With respect to the 1986 crop year, the larger of the farm program payment yield for the crop or 90 percent of the 1985 farm program payment yield for the crop; and

(C) With respect to the 1987 and subsequent crop years:

(*1*) The actual yield per harvested acre; or

(*2*) If the actual yield per harvested acre is not available, the county committee may assign the farm a yield for the farm on the basis of actual yields for the crop for such crop year on similar farms in the area.

(b) *ELS Cotton.* The yield in pounds per acre for the current year shall be the average of the actual yields per harvested acre for the farm for the 3 preceding years, adjusted as follows:

(1) If no acreage of the crop was grown on the farm for a year, a yield for the crop shall be assigned by the county committee for the farm for such year based upon the actual yields for similar farms in the county or surrounding area;

(2) If any yield in the 3-year period preceding the current year is affected adversely as the result of a natural disaster or other condition beyond the producer's control, the county committee may adjust the yield for any such year upward to the simple average of the highest 4 actual yields of the most recent 5 years; and

(3) The Deputy Administrator may prescribe a limitation on the amount by which an ELS cotton yield may be reduced from one year to the next year.

(c) *Yield reduction.* For the purpose of determining the amount of any deficiency payment as provided in § 713.108 or the amount of any disaster payment as provided in §§ 713.130 and 713.131, the farm program payment yield for a farm shall be reduced in accordance with instructions issued by the Deputy Administrator to reflect:

(1) Any reduction in the current year's yield for such farm which is the result of causes other than a natural disaster or other condition beyond the producer's control, such as a change in farming practice; or

(2) The inclusion in the farm program acreage of an acreage of nonprogram crops or conserving uses in accordance with § 713.108(b)(2) provided that such acreage would not normally produce the farm program payment yield for the applicable crop of rice, upland cotton, feed grains, or wheat.

(d) *Reports of production and supporting evidence.* A report of production is required to determine the actual yield per harvested acre for ELS cotton for the 1986 through 1990 crop years and, if applicable in accordance with paragraph (a) of this section for rice, upland cotton, feed grains, and wheat for the 1987 through 1990 crop years. Such report shall be made in accordance with instructions issued by the Deputy Administrator and on forms prescribed by the Deputy Administrator. When production has been disposed of through commercial channels, the county committee may require the operator or other producers to furnish documentary evidence in order to verify the information provided on the report. Acceptable evidence may also include such items as the original or a copy of commercial receipts, gin records, CCC loan documents, settlement sheets, warehouse ledger sheets, elevator receipts or load summaries. The county committee may also verify the evidence submitted by the producer with the warehouse, gin, or other entity which received production. If the evidence is not furnished or the information provided on the report cannot be verified, the county committee may disapprove the report of production.

(e) *Unrepresentative acreage.* If the crop acreage for a year is less than 50 percent of the acreage base for the crop, the county committee may determine, in accordance with instructions issued by the Deputy Administrator, that the actual yield for the year is unrepresentatively high and reduce the yield accordingly. Such reduced yield shall be used to compute actual harvested yields in accordance with paragraph (a)(3) of this section or for ELS cotton yields in accordance with paragraph (b) of this section.

§ 713.7 Crop acreage bases.

(a) An acreage base shall be established for a farm for each year beginning with 1986 for barley, corn, grain sorghum, oats, rice, upland cotton, ELS cotton, and wheat.

(b) Except as provided in paragraphs (e) and (f) of this section, the crop acreage bases for any farm for the 1986 and subsequent crops of barley, corn, grain sorghum, oats, and wheat shall be the average of the acreage planted and considered planted to such program crop on the farm in the base period.

(c) For upland cotton and rice, except as provided in paragraphs (d), (e), and (f) of this section, the crop acreage base shall be equal to the average of the acreages planted and considered planted in the base period, excluding years in which no planted and considered planted acreage has been determined for the farm.

(d) Any crop acreage base established in accordance with paragraph (c) of this section shall not exceed the average of the acreages planted and considered planted to the crop in the two crop years of the base period immediately preceding the current crop year, if an acreage of the crop was not planted or considered planted during one or more years of the base period.

(e) If the county committee determines that a crop is grown on a farm in a clearly established crop-rotation pattern for 2 or more years, the acreage base established for such crop will be determined by using the average of the planted and considered planted acreages for the 3 immediately preceding crop years in the rotation cycle that correspond to the current year and in accordance with instructions issued by the Deputy Administrator.

(f) The sum of the crop acreage bases for a farm for a crop year shall not exceed the cropland for the farm, except to the extent that such excess is due to an established practice of doublecropping as determined in accordance with instructions issued by the Deputy Administrator. If the sum of such crop acreage bases exceeds the cropland, the operator will be given the opportunity to reduce one or more crop acreage bases. If the operator fails to make such a reduction, such a reduction shall be made in accordance with instructions issued by the Deputy Administrator.

(g) The crop acreage base established for a crop of ELS cotton on a farm shall be the average of the planted and considered planted acreages for ELS cotton for the 3 years immediately preceding the year prior to the current year.

§ 713.8 Farm acreage bases.

(a) For the 1986 crop year, a farm acreage base shall not be established for any farm.

(b) For 1987 and subsequent crop years, a farm acreage base shall be established for each farm for each such crop year when one or more crop acreage bases are established for the farm for crops of wheat, feed grains, upland cotton, and rice. Such farm acreage base shall equal the sum of:

(1) The crop acreage bases established for such crop year for wheat, feed grains, upland cotton, and rice;

(2) The average of the acreages planted to soybeans for harvest in 1986 and subsequent crop years; and

(3) The average of acreages devoted to a conserving use in 1986 and subsequent crop years, excluding acreages considered in computing crop acreage bases.

(c) In no case may the farm acreage base for a farm for a crop year exceed the cropland for the farm for such crop

year, except to the extent that such excess is due to an established practice of doublecropping as determined in accordance with instructions issued by the Deputy Administrator.

§ 713.9 Normal crop acreages.

The normal crop acreage (hereinafter called "NCA") is the average of the sum of the acreages for the farm during a period of the NCA crops as designated by the Secretary of Agriculture in an announcement which establishes an NCA requirement for the crop year.

§ 713.10 Notice of crop and farm acreage bases, yields, and NCA.

The operator of a farm shall be notified in writing of the crop acreage bases, yields, and, if applicable, the farm acreage base and/or NCA which are established for the farm. However, no such notice shall be mailed to any producer who has on file in the county office a request in writing thst such producer not be furnished with the notice. Such a producer shall be considered as having been notified timely and correctly of the contents of the notice.

§ 713.11 Reconstitution of farms.

(a) Farms shall be reconstituted in accordance with Part 719 of this chapter.

(b) The actual yield established and the yield established by the county committee for any crop for a farm resulting from a combination of farms or portions of farms shall not, except for rounding, exceed the weighted average of the applicable yields established for the component portions of such farm.

(c) The weighted average of the actual yield established and the yield established by the county committee for any crop for a farm resulting from a division of a farm shall not, except for rounding, exceed the applicable yields established for the parent farm before the division of such farm.

(d) In determining the weighted average yields determined in accordance with paragraphs (b) and (c) of this section, the crop acreage base for the farm for the current year shall be used.

§ 713.12 Adjusting crop acreage bases.

(a) *Adjustments using farm acreage base.* (1) With respect to the 1987 and subsequent crop years, an operator of a farm may adjust acreage bases established for crops of wheat, feed grains, upland cotton, and rice in accordance with paragraphs (a)(2)–(4) of this section.

(2) Within 15 days from the day the county committee issues a notice of the crop and farm acreage bases established for the farm for such crop year, the operator must file with the county committee a request for an adjustment of such bases.

(3) Any upward adjustment in the acreage base established for one crop must be offset by an equivalent total downward adjustment in the acreage bases established for such crop year for one or more other crops produced on the farm.

(4) Any increased adjustment of a crop acreage base established for a farm shall not exceed 10 percent of the farm acreage base. If more than one crop acreage base is increased, the total of such increases shall be limited to 10 percent of the farm acreage base.

(5) A crop acreage base of zero shall not be increased under this section.

(b) *Other adjustments.* The acreage base established for a crop of a commodity produced on the farm may be adjusted in accordance with instructions issued by the Deputy Administrator:

(1) If, in accordance with the regulations set forth at Part 780 of this chapter, it is determined that the acreage base previously established for a crop of a commodity produced on the farm is not representative of the current operator's normal farming operations on the farm; or

(2) When the county committee approves a recomputation of the acreage base established for the crop of a commodity produced on the farm in an amount not to exceed the planted and considered planted acreages for the farm for 1 or more previous years.

(c) *Changes from rotation to regular or vice versa.* The operator of a farm may request that the acreage base for a crop of a commodity produced on a farm be established in accordance with either § 713.7(e) or § 713.7(b)–(d). Such a request shall not increase the acreage base for such crop in the current year. The county or State committee may approve an increase in the acreage base established for such crop in future crop years in accordance with instructions issued by the Deputy Administrator.

(d) *ELS cotton adjustments.* An acreage base reserve is established for the 1986 crop of ELS cotton that equals 5 percent of the total of the acreage bases established for such crop in accordance with paragraph (b) of this section. Such reserve is in addition to the total of the acreage bases established for such crop in accordance with paragraph (b) of this section and shall be used by the county committee, after approval by and in accordance with instructions issued by the Deputy Administrator, for the purpose of adjusting the 1986 ELS crop acreage bases established for farms to correct for inequities and prevent hardship, and for the purpose of establishing ELS cotton acreage bases for farms on which no ELS cotton was planted during the period 1982–1985. The operator shall file a written request, in such manner as is prescribed by the Deputy Administrator, for an adjustment using the acreage base reserve. Such adjustments shall be in addition to, and not in lieu of, adjustments approved under paragraphs (b) and (c) of this section.

(e) *Reductions.* If the county committee determines that an adequate supply of irrigation water is a prerequisite for growing the crop of a commodity produced on the farm, the county committee shall reduce the acreage base established for such a crop for a crop year to the extent that irrigation water is not available.

§ 713.13–713.48 [Reserved]

§ 713.49 Nature of contract.

(a) The contract shall provide that the operator and each producer on the farm shall agree to limit the acreage of the crop planted for harvest and devote an eligible acreage of land to approved conservation uses as may be required by the commodity program for the crop as announced by the Secretary and as provided in this part. The contract shall provide for recording the shares for division of payments for the crop. The operator shall agree to file timely a report of acreage on Form ASCS–578 accurately listing the ACR acreage and the planted acreage of the program crop(s) planted for harvest on the farm, and such other acreages as are subject to the terms and conditions of the contract.

(b) CCC shall agree that harvested production of the crop shall be eligible for loans and purchases in accordance with Parts 1421 and 1427 of this title. CCC shall also agree that deficiency payments, if it is determined that a final deficiency payment will be greater than zero, and any applicable diversion payments, disaster payments, or wheat grazing and hay payments shall be made to such operator and producers.

(c) The contract shall contain such other provisions as CCC determines appropriate to carry out programs established by this part.

(d) The contract shall provide for the payment of liquidated damages in the event that the operator or any other producers fail to comply with their obligations under the contract. The purpose of an acreage reduction, set-aside, land diversion, or wheat grazing and hay program is to obtain a reduction of acreage from the production of the

applicable crops of commodities in order to adjust the total national acreage of such commodities to desirable goals. Once a contract has been entered into between CCC and producers, the Department and other segments of the agricultural community act based upon the assumption that the contract will be fulfilled and the reduction in acreage will be obtained. The actions of CCC include budgeting and planning for programs in subsequent crop years. A producer's failure to comply with a contract undermines the basis for these actions, damages the credibility of the Department's programs with other segments of the agricultural community, and requires additional expenditures in subsequent crop years to offset the effect of the increased production in the current crop year. While the adverse effects on CCC of the producer's failure to comply with a contract are obvious, it would be impossible to compute the actual damages suffered by CCC.

§ 713.50 Contracting procedures.

(a) *Signup.* Eligible producers may offer to enter into a contract with CCC by executing a contract and submitting it to the county ASCS office where the records for the farm are maintained not later than a date specified in the announcement of the program.

(b) *Producer eligibility.* (1) The producer must be a person who shares in the risk of producing the program crop produced in the current year, or shares in the proceeds therefrom, on the farm for which the contract is submitted, or would have shared in the crop if it had been produced on such farm in the current year. The county committee shall determine who is a person in accordance with Part 795 of this chapter and instructions issued by the Deputy Administrator.

(2) A minor will be eligible to participate in the program only if one of the following conditions exists:

(i) The right of majority has been conferred upon the minor by court proceedings;

(ii) A guardian has been appointed to manage the minor's property and the applicable documents are signed by the guardian; or

(iii) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

§ 713.51 Required acreage reduction.

(a) The Secretary will announce:

(1) Whether an acreage reduction program is in effect for a crop year for a specific crop;

(2) The percentage reduction to be applied to the crop acreage base to determine the amount of required reduction; and

(3) Other requirements of the program for the year.

(b) Producers of the applicable crop or crops shall:

(1) Not knowingly exceed the permitted acreage, which is the acreage base established for the crop minus the sum of the acreage required to be devoted to ACR in accordance with an acreage reduction program and minus any acreage which is required to be devoted to ACR in accordance with a land diversion program;

(2) Devote to conservation uses as prescribed in §§ 713.60–713.74 an acreage equal to the reduced acreage, or, as determined in accordance with instructions issued by the Deputy Administrator, a proportionately smaller acreage if the planted acreage is smaller than the permitted acreage; and

(3) Otherwise comply with all program requirements.

§ 713.52 Required set-aside.

(a) The Secretary will announce:

(1) Whether a set-aside requirement is in effect for s crop year for a specific crop of feed grains or wheat;

(2) The percentage of the planted crop acreage that is required to be set aside; and

(3) Whether producers on a farm are required not to exceed the NCA established for the farm, less any acreage which is devoted to conservation uses under any program and any wheat grazing and hay acreage; and

(4) Other requirements of the program for the year.

(b) Producers of the applicable crop or crops shall:

(1) Not knowingly exceed the NCA requirements, if applicable;

(2) Devote to conservation uses as prescribed in §§ 713.60–713.74 an acreage equal to the set-aside requirement, and

(3) Otherwise comply with all program requirements.

§ 713.53 Land diversion.

(a) The Secretary will announce:

(1) Whether a land diversion program is in effect for a crop year for a specific crop;

(2) The percentage of the planted crop acreage or of the crop acreage base that producers are required to divert from the production of the crop under the program;

(3) The payment rate;

(4) Whether advance program payments will be available;

(5) Whether compliance with the land diversion requirement is required in order for the producer on the farm to be eligible for loans, purchases and payments for the crop; and

(6) Other requirements of the program.

(b) In order to be eligible for any land diversion payment, producers of the applicable crop or crops shall:

(1) Comply with all other program requirements for the crop;

(2) Devote to conservation uses as prescribed in §§ 713.60–713.74 an acreage which is equal to the required diverted acreage.

§ 713.54 Wheat grazing and hay.

(a) The Secretary will announce whether a wheat grazing and haying program is offered for a crop year and the applicable payment rate.

(b) In order to be eligible for payment under the wheat grazing and hay program for a crop year, producers of wheat shall do all of the following:

(1) Graze or cut for green chop, hay, or silage, immature wheat that was planted for harvest as grain;

(2) Report the acreage for grazing and hay on Form ASCS–477;

(3) Complete the cutting or grazing to the point that the wheat is substantially destroyed by the disposal deadline; and

(4) Comply with all other program requirements for the crop.

(c) In no event can producers receive a payment under the wheat grazing and hay program on more than the larger of:

(1) 50 acres; or

(2) 40 percent of the total acreage on the farm of barley, corn, grain sorghum, oats, upland cotton, and wheat which is intended for harvest in the current year.

§ 713.55 Loan deficiency program.

(a) The Secretary will announce whether loan deficiency payments will be made to producers on a farm for a specific crop for a crop year. In order to be eligible for any loan deficiency payments if such payments are made available, the producer must:

(1) Comply with all of the program requirements to be eligible to obtain loans or purchases in accordance with Parts 1421 or 1427 of this title, as applicable;

(2) Agree to forego obtaining such loans or purchases; and

(3) Otherwise comply with all program requirements.

(b) The loan deficiency payment shall be computed by multiplying the loan payment rate, determined in accordance with paragraph (c) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a price support loan in accordance with Parts

1421 and 1427 of this title but not to exceed the product obtained by multiplying:

(1) The individual farm program acreage for the crop determined in accordance with § 713.108 by

(2) The farm program payment yield for the farm provided in § 713.6.

(c) The loan payment rate for a crop shall be the amount by which the level of price support loan originally determined for the crop exceeds the level at which CCC has announced, in accordance with Parts 1421 and 1427 of this title, that producers may repay their price support loans.

(d) With respect to upland cotton, an amount not to exceed one-half of such payment may be made and, with respect to rice, an amount not to exceed one-half of such payments shall be made in accordance with Part 770 of this chapter.

§ 713.56 Inventory reduction program.

(a) The Secretary will announce whether an inventory reduction program is in effect for a crop year for a specific crop for producers on a farm.

(b) In order to be eligible for any inventory reduction payments, the producer must:

(1) Comply with all of the program requirements to be eligible to obtain a loan or purchase agreement in accordance with Parts 1421 or 1427 of this title, as applicable;

(2) Agree to forego obtaining such loans or purchases;

(3) Agree to forego receiving deficiency payments made in accordance with § 713.108;

(4) Limit the acreage of the crop planted for harvest to the crop acreage base reduced by one-half of the acreage required to be diverted from production in accordance with any acreage reduction and/or land diversion program for the crop; and

(5) Otherwise comply with all program requirements.

(c) Inventory reduction payments shall be computed in the same manner as set forth in § 713.55 (b) and (c). Such payments shall be made in accordance with Part 770 of this chapter.

§ 713.57 Reduction in acreage to be devoted to conservation uses.

(a) A producer whose payments under the feed grain, rice, upland and ELS cotton, or wheat programs may be reduced because of the application of the provisions with respect to the payment limitation as specified in accordance with Part 795 of this chapter may request a downward adjustment in the amount of acreage which is otherwise required to be devoted to conservation uses on the farm. The request shall be in writing and shall be filed with the county committee on a form and by a date prescribed by the Deputy Administrator. If such a producer is sharing in program payments with respect to farms in two or more counties, it shall be the producer's responsibility to furnish information concerning the producer's participation in the other counties to the county committee with which the application for the downward adjustment is filed.

(b) Any reduction in ACR acreage required under this section shall be computed by: (1) estimating the producer's total payments which would be received under the feed grain, rice, upland and ELS cotton, and wheat program on all farms, (2) determining the percentage by which the estimated total payments must be reduced in order to comply with the payment limitation, and (3) multiplying such percentage by the number of acres in the producer's portion of the ACR acreage which is required for the farm or farms participating in the programs. When both land diversion and acreage reduction or set-aside programs are in effect, the acreage required to be devoted to ACR in accordance with the acreage reduction or set-aside programs shall be reduced to zero before the acreage to be devoted to ACR in accordance with the land diversion acreage is reduced.

(c) If the producer is participating in the acreage reduction or set-aside program on two or more farms, the producer may elect to have the reduction in ACR acreages under these programs, but not under the land diversion programs, divided among the farms in such proportion as the producer may designate.

§§ 713.58–713.59 [Reserved]

§ 713.60 Basic rules for ACR acreage.

Except as set forth in §§ 713.65–713.74, or as announced by the Secretary, ACR acreage which is designated in accordance with the provisions of §§ 713.51–713.53 must:

(a) Be eligible land in accordance with § 713.61;

(b) Meet minimum size and width requirements as specified in Part 718 of this chapter;

(c) Be devoted to approved cover or practices in accordance with the provisions of § 713.62;

(d) Not be grazed or harvested, except as provided in § 713.63; and

(e) Be cared for in accordance with the provisions of § 713.64.

§ 713.61 Eligible land.

(a) For 1986 and subsequent crop years, land designated as ACR acreage must:

(1) Meet one of the provisions of paragraph (b) of this section, and

(2) Meet all provisions of paragraph (c) of this section.

(b) ACR acreage must be cropland that:

(1) Is not in a summer fallow rotation and was devoted to small grains, row crops, or other crops planted annually in 2 of the 3 immediately preceding years. Land that was designated as ACR acreage or conservation use acreage under a production adjustment program will be considered as planted acreage in the year designated, except that land which is designated in accordance with paragraph (b)(3) of this section and which was not devoted to small grains or row crops in the immediately preceding year, land on which water storage systems are installed, and land on which orchards were planted may not be so considered;

(2) Is in a summer fallow rotation as shown by the past history of crops produced on the farm if the land was devoted to small grains, row crops, or other crops planted annually in 1 of the 2 immediately preceding years, or was considered to have been so cropped;

(3) Is currently devoted to, and in at least 2 of the 3 immediately preceding years was devoted to, grasses or legumes for the production of hay, seed, or pasture in rotation with small grains or row crops if the acreage devoted to such grasses or legumes and designated as ACR equals or exceeds acreage newly seeded to such grasses or legumes:

(i) In the summer or fall of the preceding year or seeded in the spring of the current year; and

(ii) On cropland that would have been eligible for designation as ACR acreage under paragraph (b)(1) of this section; or

(4) Does not meet the requirements of paragraph (b)(1) of this section if the ACR acreage requirement exceeds the total of all of the cropland, including the cropland planted in the current year which is eligible to be designated according to paragraph (b)(1) of this section, and such cropland is designated as ACR acreage in the following order:

(i) All cropland eligible under paragraph (b)(1) of this section even though such cropland may already have been planted in the current year;

(ii) All cropland that was devoted to small grains or row crops in 1 of the last 3 years; and

(iii) All cropland that was not devoted to small grains or row crops in the last 3 years.

(c) Land designated as ACR acreage may not be land:

(1) That is designated:

(i) Under the Water Bank Program in accordance with Part 752 of this chapter;

(ii) Under the Great Plains Conservation Program in accordance with Part 631 of this title;

(iii) Under the Conservation Reserve Program set forth in accordance with Part 704 of this chapter;

(iv) As ACR acreage for another program crop;

(2) For which a deficiency payment is or could be made for the program crop;

(3) That is acreage credited to the crop in accordance with § 713.102;

(4) Used as turn areas, except that these areas may be designated if both of the following apply:

(i) Minimum size requirements as specified in Part 718 of this chapter are met; and

(ii) The county committee determines that the areas are normally planted to a crop;

(5) That is determined to be ineligible in accordance with § 713.97; or

(6) That is flooded or under water at any time during the year unless one of the following applies:

(i) Before any flooding occurred, the land was planted or could have been planted to a crop for harvest in the current crop year;

(ii) After being flooded, such land could be planted in the current year by no later than the final reporting date for spring-seeded crops.

§ 713.62 Approved cover crops and practices.

(a) *Establishing and maintaining cover crops or practices.* (1) An approved cover crop or practice shall be established on acreage which is designated as ACR acreage by the end of the planting season for spring-seeded crops. Such cover crop or practice shall be maintained through the end of the calendar year except as follows:

(i) The ACR acreage may be seeded in the fall to crops which are of a type that when seeded in the fall in the county in which the farm is located normally attain maturity in the next calendar year;

(ii) The ACR acreage may be tilled in the fall for spring planting and left bare only if approved in accordance with paragraph (c) of this section; and

(iii) If the ACR acreage is used for nonagricultural purposes, the cover crop or practice must be maintained through the end of the nongrazing period established for ACR acreage.

(b) *Nationally approved cover crops and practices.* The following are nationally approved cover crops and practices for ACR acreage:

(1) Annual, biennial, or perennial grasses and legumes, excluding soybeans, corn, popcorn, sweet corn, grain sorghum, cotton, and vegetables.

(2) Barley, oats, rice, wheat, and other small grains planted and disposed in accordance with instructions issued by the Deputy Administrator.

(3) Crop residue from using "no till" or "minimum till" practices.

(c) *Locally approved cover crops.* Cover crops and practices that will protect the ACR acreage from wind and water erosion throughout the calendar year may be approved on a State or local basis as follows:

(1) The county committee, in consultation with the district conservationist of the Soil Conservation Service ("SCS"), may recommend the cover crop or practice. The State committee shall consult with appropriate wildlife agencies and organizations and other interested groups to determine whether additional practices that further the goals of such organizations and groups can be developed.

(2) The cover crops or practices recommended shall not include:

(i) The growing of soybeans, corn, popcorn, sweet corn, grain sorghum, cotton, and vegetables.

(ii) Control measures which are more costly to the producer than other similar alternatives normally accepted for the area.

(iii) Control measures which are inconsistent with erosion control measures normally used on other cropland in the area.

(3) Residue and stubble of destroyed program crops may be recommended, provided that the crop residue, as opposed to regrowth, shall not be grazed after the end of the nongrazing period announced by the county committee in accordance with § 713.63(b).

(4) The State committee shall approve the cover crops or practices after consulting the SCS State Conservationist as to whether the practices will sufficiently protect the land from wind and water erosion.

§ 713.63 Use of ACR acreage.

(a) *State committee determination.* The State committee may authorize grazing of ACR acreage for the 1986 through 1990 crops and haying for the 1986 crop, except that:

(1) With respect to ACR designated for the 1986 crop of upland cotton, ELS cotton, and rice, haying and/or grazing shall not be permitted during any 5-consecutive month period, as determined by the State committee, during the 1986 calendar year;

(2) With respect to ACR designated for the 1986 crops of wheat and feed grains, haying and/or grazing shall, if authorized, be permitted during at least 5 of the principal growing months as determined by the State committee; and

(3) With respect to ACR designated for the 1987 through 1990 crops of rice, upland cotton, ELS cotton, feed grains, and wheat, grazing shall not be permitted during any 5-consecutive-month period, as determined by the State committee, during the applicable calendar year.

(b) *Harvesting.* Except as provided in paragraphs (a) and (d) of this section and § 713.72, harvesting on ACR acreage is prohibited for all crops:

(1) In the current year; and

(2) After December 31 of the current year if the crop would normally mature and be harvested in the current year.

(c) *Other uses.* (1) Removing catfish, crayfish, and other fish for commercial purposes is prohibited during any period during which haying and/or grazing is prohibited in accordance with paragraph (a) of this section.

(2) The ACR acreage may be used for noncommercial recreation, temporary location of beehives, or for home gardens.

(d) *Emergency Uses.* Notwithstanding the provisions of § 713.63 (a)–(c), the Deputy Administrator may authorize, on a county by county basis, the use of the ACR acreage for haying or grazing under such conditions as may be prescribed when abnormal weather conditions cause a critical shortage of hay and forage in the county.

§ 713.64 Control of erosion, insects, weeds, and rodents on ACR acreage.

(a) The farm operator shall use needed control measures in a timely manner to control erosion, insects, weeds, and rodents on the ACR acreage.

(b) Control measures for weeds need only be sufficient to prevent the spread of weeds. These measures must be consistent with control practices normally carried out on similar cropland in the area. It is not intended that control practices be more costly to the producer than what is normal for the area.

(c) The county committee shall prescribe and require additional control measures upon a determination that those used by the producer are inadequate. When clipping or mowing to control weeds is prescribed, the county committee shall specify a time for clipping or mowing which is compatible

with wildlife practices, but such time must be before the time such weeds form seeds.

§ 713.65 Orchards.

Unless the State committee determines otherwise, the entire area of an orchard or nursery meeting the minimum size requirements specified in Part 718 of this chapter is eligible to be designated as ACR if the trees were planted in the current year or fall of the previous year. The land also must meet the eligibility requirements of § 713.61.

§ 713.66 Land going out of agricultural production.

If the county committee determines that the designated ACR acreage may be devoted to a nonagricultural use during the current year, the operator must establish that the land, in the absence of the program, would have been planted to a program crop.

§ 713.67 Emergency grazing or harvesting.

ACR acreage may be hayed or grazed in emergency conditions in accordance with guidelines issued by the Deputy Administrator.

§ 713.68 Wildlife food or habitat.

(a) Land devoted to wildlife food plots that meets requirements determined by the State committee, in consultation with wildlife agencies, is eligible to be designated as ACR acreage. Program crops may be grown on such acreage and small grains need not be disposed of by the disposal deadline. However, there must also be compliance with the requirements of § 713.61.

(b) Land which is owned or operated by State or Federal agencies and which is planted to grain for wildlife for the agency is not eligible to be designated as ACR acreage.

§ 713.69 Noncrop uses or practices.

(a) The uses and practices listed in paragraph (b) of this section are eligible for ACR acreage if:

(1) Such uses and practices are installed on acreage that is otherwise eligible as provided in § 713.61; and

(2) The requirements in §§ 713.62 and 713.63 are met.

(b) The following uses and practices are eligible on ACR acreage:

(1) Trees or shrubs planted for any purpose other than orchards or vineyards;

(2) Terraces and sod waterways;

(3) Water storage developed for any purpose, including fish or wildlife habitat; or

(4) Filter strips used to reduce siltation in a stream or ditch.

§ 713.70 Insufficient ACR acreage.

Before the final date for reporting crop acreage as provided in Part 718 of this chapter, producers may destroy crops on an acreage to do one of the following:

(a) Decrease the amount of program crop so that the ACR acreage available is sufficient; or

(b) Designate all or part of the destroyed acreage as ACR acreage. The acreage must be eligible land as provided in § 713.61. The acreage shall be devoted to an approved cover or practice in accordance with the provisions of § 713.62 as soon as practicable after destruction of the crop.

§ 713.71 Destroyed crop acreage.

(a) Operators may substitute for the ACR acreage already designated and reported on Form ASCS–578 acreages of small grains or row crops that were destroyed. However, with respect to such substitution of acreages, the following conditions are applicable.

(1) The operator must request the substitution in writing and agree that there will be no deficiency payment made with respect to the production from the substituted acreage;

(2) The land must be determined to be eligible as provided in § 713.61; and

(3) The land must be devoted to an approved cover or practice in accordance with the provisions of § 713.62 as soon as practicable after the substitution.

(b) The substitution of acreages cannot be used to offset a payment reduction as a result of the application of the failure to comply fully provisions of Part 791 of this chapter.

§ 713.72 Provisions applicable to certain small grains.

The following provisions are applicable with respect to 1986 ACR acreage only:

(a) Acreage which was devoted to wheat, barley, or oats and was growing before announcement by the Secretary of the 1986 programs for such crops may be designated as ACR acreage and may be harvested or grazed in accordance with the provisions of this section and § 713.63. This provision shall be applicable only as specified in an announcement by the Secretary.

(b) The acreage shall be subject to the requirements for minimum size as specified in Part 718 of this chapter and the requirement for the care of ACR acreage as set forth in § 713.64.

§ 713.73 Late harvesting.

Harvesting of a crop on ACR acreage may be permitted when all of the following apply:

(a) The crop matured in the preceding year; and

(b) The county committed determines that:

(1) The crop was not harvested because of adverse weather or other conditions beyond the producer's control; and

(2) Harvesting will be completed as soon as practicable.

§ 713.74 Skip rows.

The acreage between rows of the crop is eligible ACR acreage if:

(a) The skip is at least the larger of 4 normal rows or 160 inches from plant to plant, and

(b) The land meets the requirements for eligible land as set forth in § 713.61 and use and care of the acreage as set forth in §§ 713.63 and 713.64.

§§ 713.75—713.96 [Reserved]

§ 713.97 Ineligible land.

(a) Land described in paragraphs (b)–(f) of this section shall not be eligible for the following purposes:

(1) Payments under any program in accordance with this part;

(2) Designation as ACR; or

(3) Consideration as being planted to a crop in accordance with § 713.102.

(b) Land which the producer does not own, lease or sharecrop.

(c) Land which the producer does not have authority to use for program crops, such as highway, railroad, or other right of way, airport buffer strips and other similar areas.

(d) Land which is subject to a restrictive easement on behalf of the Farmer's Home Administration which prohibits its use for program crops.

(e) Land that is flooded or under water at any time during the year unless one of the following applies:

(1) Before any flooding occurred, the land was planted or could have been planted to a crop for harvest in the current crop year, or

(2) After being flooded, such land could be planted in the current year by no later than the final reporting date for spring planted crops.

(f) Land that is going out of agricultural production during the current year unless the county committee determines that the land could have been planted to a program crop and that such crop could have been harvested.

§ 713.98 Participation in Conservation Reserve Program.

(a) Whenever the owner or operator of a farm signs a contract to participate in the Conservation Reserve Program formulated in accordance with sections

1231–1245 of the Food Security Act of 1985:

(1) The farm acreage base, if applicable, and the total of the crop acreage bases, acreage allotments, and marketing quotas established for the farm for the first crop year for which such contract is applicable shall be reduced in the same proportion as the ratio of the cropland taken out of production under the conservation reserve contract to the total cropland on the farm. If acreage bases, acreage allotments, and marketing quotas were established for more than one crop, the owner or operator shall determine which acreage bases, acreage allotments, or marketing quotas shall be reduced to achieve the total reduction required.

(2) The crop acreage bases established for the farm for each succeeding crop year for which the conservation reserve contract is in effect shall be:

(i) Computed in accordance with § 713.7; and

(ii) Then reduced in accordance with instructions issued by the Deputy Administrator.

(3) The amount of the reduction made in accordance with paragraphs (a) (1) and (2) of this section shall be considered as planted to the applicable crop for the purpose of establishing future crop acreage bases.

(4) If there is a contract in effect between CCC and the producers with respect to the annual program for one or more of the crops for which the acreage base is reduced in accordance with paragraph (a) (1) of this section, the operator and producers shall have the option of:

(i) Complying with the contract using the acreage base for the crop after such reduction is determined; or

(ii) Canceling such contract without liability for liquidated damages.

(b) After the end of the period of a conservation reserve contract, the farm acreage base and crop acreage bases for the next crop year shall be computed in accordance with §§ 713.7 and 713.8.

§ 713.99 Compliance with sodbuster and swampbuster provisions.

(a) Whenever a producer, or a person affiliated with a producer, is determined to be ineligible in accordance with part 12 of this title, such producer shall be ineligible for any payments under this part and shall refund any payments already received in accordance with § 713.103(e).

(b) Notwithstanding any other provisions of this part, any acreage of highly erodible land or converted wetland that is planted to crops in violation of the provisions of part 12 of this title shall be disregarded in determining acreages planted for harvest, considered planted acreages, acreages devoted to nonprogram crops, and acreages devoted to conserving uses.

§ 713.100 Cross compliance on the farm.

(a) Whenever an acreage reduction program is announced by the Secretary with respect to a crop of rice, upland cotton, wheat, or feed grains, and the Secretary announces that cross compliance is in effect with respect to such a crop, as a condition of eligibility for loans, purchases, and payments with respect to such a crop, producers on a farm shall not plant an acreage of rice, upland cotton, ELS cotton, feed grains, or wheat in excess of the acreage base established for the crop for the farm if an acreage reduction program is in effect for such crop of rice, upland cotton, ELS cotton, feed grains, or wheat.

(b) With respect to feed grains and wheat, whenever a set-aside program is announced by the Secretary for one or more of such crops, compliance on the farm with any one commodity program (i.e., wheat or feed grains) may be required as a condition of eligibility for loans, purchases and payments made in accordance with the other commodity programs.

§ 713.101 Offsetting compliance between farms.

(a) Whenever offsetting compliance requirements are made applicable to a crop program for the current year as announced by the Secretary the provisions of paragraphs (b) through (g) of this section shall be applicable.

(b) To be eligible for loans, purchases, and payments authorized for a crop when an acreage reduction or set-aside program is in effect for a crop of feed grains, ELS cotton, or wheat, the landlord, landowner, or operator shall assure that on any other farm in which the landlord, landowner, or operator has an interest as landlord, landowner, or operator, the total acreage of the crop on the farm does not exceed the crop acreage base established for such crop.

(c) To be eligible for loans, purchases, and payments authorized for an NCA crop when compliance with the NCA is required for a crop of wheat or feed grains, the landlord, landowner, or operator shall assure that on any other farm in which the landlord, landowner, or operator has an interest as landlord, landowner, or operator that the total acreage of NCA crops on the farm does not exceed the NCA for such farm.

(d) A landowner or landlord is subject to paragraphs (b)–(c) of this section even if the landowner or landlord leases for cash or other consideration all or part of a farm when the lease is executed after the Secretary announces any offsetting compliance requirement.

(e) Any executor, trust officer, or farm manager responsible for the management of a farm shall be considered as the operator of the farm for purposes of paragraphs (b) or (c) of this section if such person receives a percentage of the gross or net farm income exceeding 10 percent of the crops or proceeds thereof for such management service.

(f) For purposes of paragraphs (b) or (c) of this section, all persons or entities in each category listed below shall be considered as the same producer and shall be fully responsible for the action of any person or entity in that category:

(1) Husband and wife, except that the husband and wife may be considered as separate producers if the spouse receiving benefits does not share to any degree in crops or proceeds thereof from the other farm, ownership or managerial control of the other farm is not shared by such spouse, and there have been no changes in the ownership, operation, or managerial control of the other farm which would tend to defeat the purposes of paragraphs (b) or (c) of this section.

(2) Minor children and the parent, guardian, or other person legally responsible for the minor unless the person legally responsible for the minor does not occupy the same household as the minor and shares no interest in the farming operations of the minor.

(3) A partnership and a member of the partnership with over 50 percent interest in the partnership.

(4) A corporation and a stockholder with over 50 percent of the stock of such corporation.

(5) An estate and the sole heir of the estate.

(6) A trust and the sole beneficiary of the trust.

(7) Two or more corporations, estates, trusts, or any combination of such entities which have common stockholders, beneficiaries or heirs who own more than a combined 50 percent interest in each corporation, estate, or trust.

(g) Notwithstanding the foregoing:

(1) Any person who places land in a trust the beneficiary of which is such person's parent, brother, sister, spouse, child or grandchild shall be considered the same producer as the trust for purposes of paragraphs (b) or (c) of this section if such person acts as the trustee or trust officer for the trust or in any

other way retains any management responsibility for the land subject to the trust even though such person does not receive any share of the crops or proceeds thereof from such land.

(2) When the State committee, or the county committee with the approval of the State committee, determines that a corporation, partnership, or trust was formed, modified or used for the purpose of circumventing paragraphs (b) or (c) of the section, the corporation and any stockholder of the corporation, the partnership and any member of the partnership, or the trust and any beneficiary of the trust shall be considered as the same producer and shall be fully responsible for the actions of the corporation, partnership, or trust.

(3) A landowner, landlord, or operator may be exempted from complying with paragraphs (b) or (c) of this section with respect to a crop if the county committee determines that a lease which prevents compliance was executed prior to the time that the Secretary announced that offsetting compliance is a requirement of the program for such crop.

(4) A landowner may be exempt from complying with paragraphs (b) or (c) of this section if the landowner has an undivided interest in the farm that does not exceed 50 percent.

(5) A landowner, landlord, or operator may be exempt from complying with paragraphs (b) or (c) of this section for the current year if that person assumed ownership or control of the land after the crop was planted for the current year.

§ 713.102 Determination of farm program acreage.

(a) *Reporting.* As a condition of eligibility for loans, purchases and payments in accordance with the provisions of this part, the operator must submit a report of acreage in accordance with Part 718 of this chapter that lists all crops and land uses which are subject to the contract for all cropland on the farm for the crop year. Except as otherwise provided in this part, all acreage determinations shall be made in accordance with Part 718 of this chapter.

(b) *Designation to a program crop.* The operator shall designate on the report of acreage filed in accordance with Part 718 of this chapter whether the acreage of approved nonprogram crops and conserving uses on the farm shall be credited to one or more of the crops of wheat, feed grains, upland cotton, and rice. The operator shall also designate the acreage of other nonprogram crops to one or more of the crops of wheat, feed grains, upland cotton, and rice. If the operator fails to so designate such acreages to such crops by the final reporting date established for the farm, the county committee shall allocate the acreage of approved nonprogram crops and conserving uses and the acreage of other nonprogram crops in accordance with instructions issued by the Deputy Administrator.

(c) *Irrigated acreage.* In accordance with instructions issued by the Deputy Administrator, an acreage of approved nonprogram crops and conserving uses may be credited as an irrigated acreage of wheat or feed grains if: (1) Both irrigated and nonirrigated yields have been established for such crop of wheat or feed grains; (2) all or part of the acreage actually planted to wheat or feed grains for harvest is irrigated; and (3) the acreage of approved nonprogram crops and conserving uses is irrigated or considered to be irrigated in the current crop year.

(d) *Limitation.* The sum of the acreage of approved nonprogram crops and conserving uses and the acreage of other nonprogram crops credited to the crop shall not exceed the difference between the acreage base for the crop for the crop year and the sum of:

(1) The acreage of the crop planted for harvest;

(2) The acreage which the county committee determines, in accordance with § 713.105, the producer was prevented from planting to the crop due to a natural disaster or similar condition beyond the producer's control; and

(3) The acreage which is designated as ACR for the crop.

(e) *Other nonprogram crops.* An acreage of other nonprogram crops, excluding peanuts, shall be credited to a crop of rice, upland cotton, feed grains, or wheat only as follows:

(1) Producers on the farm must be participating in the acreage reduction program for such program crop;

(2) The acreage of the program crop planted for harvest must equal at least 50 percent of the permitted acreage for such crop;

(3) The amount of acreage of other nonprogram crops to be credited shall be limited to: (i) 50 percent of the permitted acreage of the program crop for each of the 1986 and 1987 crop years; (ii) 35 percent of the permitted acreage of the program crop for the 1988 crop year; and (iii) 20 percent of the permitted acreage of the program crop for the 1989 crop year; and

(4) No acreage of other nonprogram crops shall be credited to a crop of rice, upland cotton, feed grains, or wheat if the farm program acreage for the crop determined in accordance with § 713.108(b) includes any acreage of approved nonprogram crops or conserving uses.

(f) *Haying and grazing.* Haying and grazing of approved nonprogram crops and conserving uses credited as the program crop shall only be permitted if haying and/or grazing is requested by the State committee and the Secretary approves such a request.

§ 713.103 General payment provisions.

(a) *Issuance.* The payment of any amount which is due the operator or other producers on a farm shall be made only after the producers are determined to be in full compliance with the contract and applicable regulations.

(b) *Failure to comply fully.* Except as otherwise provided herein and in Part 791 of this chapter, no payment shall be made for a farm or to a producer when there is failure to comply fully with the regulations set forth in this part.

(c) *Payment due producer.* Subject to the provisions of the maximum payment limitation in accordance with § 713.1 and the payment limitation regulations found at Part 795 of this chapter, the total earned payment due each eligible producer under the program shall be determined by multiplying the total earned payment for the farm by the producer's share of such payment.

(d) *Payment declined or producer ineligibility.* If a producer declines to accept, or is determined to be ineligible for all or any part of the producer's share of the payment computed for the farm in accordance with the provisions of this section, such payment or portions thereof shall not become available for any other producer on the farm.

(e) *Unearned payments and overpayments.* A person shall refund to CCC any amounts representing payments that exceed the payments determined by CCC to have been earned under the program authorized by this part. A late payment charge may be assessed in accordance with the provisions of Part 1403 of this title.

(f) *Combined entities.* Whenever two or more individuals or entities are considered to be one person in accordance with the maximum payment limitation regulations found at Part 795 of this chapter, the controlled substance regulations found at Part 796 of this chapter, or the sodbuster and swampbuster regulations found at Part 12 of this title:

(1) Any payment issued to one such individual or entity in accordance with this part shall be considered a payment to all such individuals and entities; and

(2) Each individual or entity shall be jointly and severally liable for refunding the amounts of any unearned payments or overpayments in accordance with paragraph (e) of this section and for

paying any liquidated damages applicable under the contract.

(g) *Making payments.* When diversion or deficiency payments computed for two or more crops on a farm result in a determination that a payment is due to a producer for one crop but a refund of an unearned payment is due from the producer under the program for another crop, CCC shall, without regard to the regulations on setoffs and withholdings found at Part 13 of this title:

(1) Deduct the amount of the refund from the amount of the payment due;

(2) Pay the producer the remaining amount of the payment due, if any; and

(3) Provide the producer with an explanation of the payment computations and the basis for the reductions.

§ 713.104 Advance payments.

(a) *General.* In order to receive an advance deficiency or diversion payment authorized for a crop:

(1) The operator and other producers on a farm must:

(i) Enter into a contract with CCC to participate in the acreage limitation, set-aside, and land diversion program, if applicable;

(ii) Request the advance payment; and

(2) The farm must not have been determined to be out of compliance with any of the requirements of the contract or the program at the time of payment.

(b) *Advance deficiency payments.* Advance deficiency payments will be made for crops as announced by the Secretary. The announcement will specify the rates, manner, and time of payment.

(c) *Advance diversion payments.* Advance diversion payments will be made for crops as announced by the Secretary. The announcement will specify the rates, manner, and time of payment.

(d) *Refunds.* (1) The provisions of § 713.103(e) are applicable to the amounts of any advance diversion or deficiency payments which are not earned by the producer. However, no late payment charge shall be assessed with respect to producers who have otherwise complied with the requirements of the program for the crop but have failed to refund to CCC the amount of the advance deficiency payments before the end of the marketing year for the crop when the final deficiency payment rate determined under § 713.108(a) is zero or is less than the advance deficiency payment rate.

(2) In addition to the provisions of § 713.103(e), interest shall be charged on the amount of the advance payment if a producer obtains an advance deficiency or land diversion payment, or both, for a crop on a farm but does not comply with the requirements for any acreage limitation, set-aside, or land diversion program required for the crop on the farm for the year. Interest shall be computed from the date of issuance of the payment to the date such payment is refunded. The rate of interest shall be the rate of interest in effect for CCC commodity loans on the date of the issuance of the payment.

§ 713.105 Disaster credit.

(a) In order to obtain failed acreage or prevented planting credit, the operator must file an application for disaster credit on a form prescribed by the Deputy Administrator. Such application shall be filed with the county committee by a date prescribed by the Deputy Administrator.

(b) In cases of prevented planting, the county committee shall approve prevented planting credit for the acreage which the committee determines that the producer intended to plant to the crop and a natural disaster or other condition beyond the producer's control prevented the planting of the crop.

(c) In cases of failed acreage, the county committee shall approve failed acreage credit for the acreage which the committee determines was planted to the crop with the reasonable expectation of producing a crop and was damaged or destroyed by a natural disaster or other condition beyond the producer's control such that harvesting the crop is not feasible or economical.

(d) When prevented planting or failed acreage credit for a crop is approved for an acreage:

(1) And producers on the farm are participating in the production adjustment program for such crop, such credit shall be limited to the permitted acreage for such crop.

(2) Except for established practices of doublecropping as prescribed by the Deputy Administrator, any later crop planted on such acreage shall not be considered to be planted for any purpose under the programs authorized by this part and Parts 1421 and 1427 of this title regardless of the permitted acreage for such crop.

§ 713.106 Established (target) prices.

The established prices for each crop of a commodity will be announced by the Secretary.

§ 713.107 National program acreage.

Whenever an acreage reduction requirement is not in effect for a crop, a national program acreage shall be established and announced by the Secretary. The national program acreage shall equal the number of harvested acres the Secretary estimates will produce the quantity (less imports) that will be used domestically and for export during the marketing year for such crop. The national program acreage which is established for any crop may later be revised if the Secretary determines that an adjustment is necessary, based upon the latest information available, for the purpose of determining an allocation factor for use as provided for in § 713.108.

§ 713.108 Deficiency payments.

(a) *Basis for payment rate.* Except as provided in paragraphs (a)(2) and (4) of this section:

(1) The deficiency payment rate shall be the amount by which the established (target) price exceeds the higher of:

(i) The national average loan rate established for the crop; or

(ii) The national weighted average market price received by producers for the crop during:

(A) The first 5 months of the marketing year for wheat, feed grains, and rice;

(B) The calendar year that includes the first 5 months of the marketing year for upland cotton; and

(C) The first 8 months of the marketing year for ELS cotton.

(2) For each of the 1986 through 1988 crops of wheat and feed grains, the Secretary may announce that, if the national weighted average market price received by producers for the crop during the first 5 months of the marketing year exceeds the amount specified in paragraph (a)(3) of this section, the deficiency payment rate for such crop shall be the amount by which the established "target" price for such crop exceeds the higher of the amount specified in paragraph (a)(3) of this section and the loan rate determined for such crop before any adjustment made by the Secretary to maintain a competitive market position.

(3) The amounts applicable with respect to paragraph (a)(2) shall be:

(i) For wheat, $2.55 per bushel for the 1986 crop; $2.65 per bushel for the 1987 crop; and $2.82 per bushel for the 1988 crop; and

(ii) For corn, $2.04 per bushel for the 1986 crop; $2.19 per bushel for the 1987 crop; and $2.24 per bushel for the 1988 crop, and for grain sorghum, oats, and, if applicable, barley, such amounts as are determined to be fair and reasonable in relation to the amount which is determined for corn.

(4) For wheat and feed grains, whenever the Secretary announces a reduction in the loan and purchase level

for a crop in order to maintain a competitive market position for such crop, the deficiency payment rate shall be increased by such amount as is determined necessary to provide the same total return to producers as if the loan and purchase level had not been reduced, taking into consideration payments made in accordance with paragraph (a)(2) of this section. In accordance with section § 713.1, payments made as a result of such increase shall not be subject to the $50,000 maximum payment limitation. In such case, the amount of the deficiency payment rate shall be the smaller of:

(i) The difference between the national average loan rate for the crop before the reduction by the Secretary and the national weighted average market price received by producers during the entire marketing year, or

(ii) The difference between the national average loan rate before reduction and the national average loan rate after reduction by the Secretary.

(b) *Farm program acreage.* (1) If no acreage reduction requirement is in effect for a crop, the farm program acreage shall be the acreage of the crop planted for harvest for the current year multiplied by an allocation factor. The allocation factor shall be determined by dividing the national program acreage for the crop, as specified in § 713.107, by the estimated national current year acreage for harvest of the crop. However:

(i) The allocation factor shall not be less than 80 percent for each of the crops of barley, corn, grain sorghum, oats, rice, and wheat nor more than 100 percent for such crops and upland and ELS cotton;

(ii) The farm program acreage shall not be reduced by the allocation factor if the current year acreage of the crop on the farm is reduced voluntarily from the acreage base for the crop by a percentage announced by the Secretary; and

(iii) The allocation factor shall be adjusted in accordance with instructions issued by the Deputy Administrator to provide equity for a farm for which the reduction in the current year's acreage is insufficient to exempt the farm from the application of the allocation factor.

(2) If an acreage reduction program or required land diversion program is in effect for the crop, the farm program acreage shall be the acreage of the crop planted for harvest for the current year, not to exceed the permitted acreage. However, for wheat, feed grains, upland cotton, and rice, if an acreage reduction program is in effect and the acreage of the crop planted for harvest is less than 92 percent of the permitted acreage for the crop, the farm program acreage may be increased, but not to exceed 92 percent of the permitted acreage of the crop, as follows:

(i) If the acreage of the crop planted for harvest is less than 50 percent of the permitted acreage of the crop, the farm program acreage shall not be increased.

(ii) If the acreage of the crop planted for harvest is at least 50 percent of the permitted acreage of the crop for the year, the farm program acreage shall be the sum of:

(A) The acreage of the crop planted for harvest, plus

(B) The amount by which the sum of the acreages of approved nonprogram crops and conserving uses credited to the crop in accordance with § 713.102 exceeds 8 percent of the permitted acreage for the crop; and

(iii) If a State or local agency has imposed in an area of the State or county a quarantine on the planting for harvest of any crop for which price support is available, the Deputy Administrator, based upon a recommendation of the State committee, may allow the acreage subject to the quarantine to be considered as eligible for purposes of program payments as follows:

(A) Acreage subject to the quarantine may be credited to a crop in accordance with § 713.102, and

(B) The farm program acreage on a farm where such acreage is credited to the crop shall be the sum of the acreage of the crop planted for harvest and the sum of the acreages of approved nonprogram crops and conserving uses credited to a crop in accordance with § 713.102 which is in excess of 8 percent of the permitted acreage for such crop.

(c) *Payment computation.* Deficiency payments shall be determined for:

(1) The 1986 crop year, for each crop by multiplying the farm program acreage by the higher of the farm program payment yield as provided for in § 713.6 or 97 percent of the 1985 farm program payment yield by the deficiency payment rate. However, no deficiency payment shall be made for any quantity of a crop with respect to which a reduced yield payment is made.

(2) The 1987 crop year, for each crop by multiplying the farm program acreage by the higher of the farm program payment yield as provided for in § 713.6 or 95 percent of the 1985 farm program payment yield by the deficiency payment rate. However, no deficiency payment shall be made for any quantity of a crop with respect to which a reduced yield payment is made.

(3) The 1988 through 1990 crop years for each crop by multiplying the farm program acreage by the farm program payment yield as provided for in § 713.6 by the deficiency payment rate. However, no deficiency payment shall be made for any quantity of a crop with respect to which a reduced yield payment is made.

(d) *Date of payment.* Deficiency payments will be made to producers as soon as practicable after the following dates:

(1) *Barley, oats and wheat.* December 1 of the current year.

(2) *Upland cotton and rice.* February 1 following the current year.

(3) *Corn and grain sorghum.* March 1 following the current year.

(4) *ELS cotton.* May 15 following the current year.

(5) *Increased payments.* If applicable, the increased payments for feed grains and wheat prescribed in paragraph (a)(4) of this section shall be made as soon as practicable after the following dates:

(i) *Wheat, barley, and oats.* July 1.

(ii) *Corn and grain sorghum.* October 1.

(e) *Additional yield payments.* If, with respect to the 1986 crop of any commodity, 97 percent of the 1985 farm yield exceeds the farm program payment yield for the 1986 crop or, with respect to the 1987 crop of any commodity, 95 percent of the 1985 farm yield exceeds the farm program payment yield for the 1987 crop, the portion of the deficiency payment which is attributable to such difference shall be made in commodity certificates in accordance with Part 770 of this title. Such payments shall be made no later than the dates specified in paragraph (d) of this section. Advance payments may be made as announced by the Secretary.

§ 713.109 Division of program payments.

(a) *General.* Each person on a participating farm shall be given the opportunity to participate in the program for a crop in proportion to such person's interest in the program crop or the interest such person would have had if the crop had been produced. The name of such person shall be listed on the contract. Federal agencies can earn no program payments, but any shares to which such agencies would otherwise be entitled shall also be shown on the contract as though the agencies were earning them. The sum of the percentage shares of the program payment shall equal 100 percent.

(b) *Division of program payment.* Each producer's share of the farm program payment for a crop shall be based on the following:

(1) The producer's share of the crop or the proceeds thereof, or

(2) If no crop is produced, the share which the producer would have received had the crop been produced. Notwithstanding the preceding sentence: a different division of payment which is fair and equitable may be approved by the county committee if all of the producers who would otherwise share in the payment agree to the different division in writing. Such different division of payments may also be approved by the county committee, with the concurrence of a representative of the State committee, even though all of the producers do not agree with respect to the division of payment. In addition, a different division of payments may be approved by the county committee when required by § 713.111.

(c) *Refund of payments not properly divided.* Payments which producers receive with respect to which they are determined not to be entitled shall be refunded to CCC as required by § 713.103. In the event of fraud, the producers shall be subject to the provisions relating to fraudulent representation as set forth at § 713.152.

§§ 713.110–713.129 [Reserved]

§ 713.130 Eligibility for regular prevented planting and reduced yield payments.

(a) Prevented planting payments are authorized to be made to producers of wheat, feed grain, upland cotton, and rice only if such producers comply with the requirements of this part and if prevented planting crop insurance offered in accordance with the Federal Crop Insurance Act is not available with respect to the producer's acreage of such commodity.

(b) Reduced yield payments are authorized to be made to producers of wheat, feed grain, upland cotton, and rice only if such producers comply with the requirements of this part and reduced yield crop insurance offered in accordance with the Federal Crop Insurance Act is not available with respect to the producer's acreage of such commodity.

(c) Prevented planting payments and reduced yield disaster payments are authorized to be made to producers of wheat, feed grains, upland cotton and rice only if:

(1) Such a producer has entered into a contract with CCC for the applicable crop of the commodity on a farm;

(2) The operator and all producers have been determined to be in compliance with such contract; and

(3) The operator of the farm submits a Form ASCS–574, Application for Disaster Credit, in accordance with instructions issued by the Deputy Administrator, and also submits a report of production and disposition in accordance with § 713.6(d).

(d) In addition to the requirements of paragraph (c) of this section, the county committee must also determine that the operator and other producers were prevented from planting an eligible commodity or that the production of an eligible commodity on an acreage resulted in a reduced yield of such commodity because of a drought, flood, other natural disaster or other condition beyond the control of the operator or other producer.

(e) Regular disaster payments shall be computed in accordance with § 713.131.

§ 713.131 Regular disaster payment computations.

(a) *Prevented planting*—(1) *Payment rate.* The payment rate is one-third of the established (target) price as provided for in § 713.106.

(2) *Acreage eligible for payment.* The acreage eligible for payment equals the smallest of the following:

(i) The acreage of the crop intended for harvest, but which could not be planted to the crop or other nonconserving crops because of a drought, flood or other natural disaster of other condition beyond the producer's control;

(ii) The result obtained by subtracting the acreage of the crop planted in the current year from the acreage of the crop that was planted or prevented from being planted in the previous year;

(iii) For crops for which an acreage reduction or set-aside requirement is in effect or on farms participating in a land diversion or wheat grazing and hay program, the amount by which the permitted acreage of the crop for the current year exceeds the acreage of the crop planted in the current year; or

(iv) The acreage for which crop insurance under the Federal Crop Insurance Act is not available.

(3) *Payment computation.* Prevented planting payments for each crop shall be the result of multiplying the acreage eligible for payment times 75 percent of the farm program payment yield as provided in § 713.6 times the prevented planting payment rate.

(b) *Reduced yield*—(1) *Payment rate.* The reduced yield payment rate is one-third of the established (target) price for upland cotton and rice and one-half of the established (target) price for barley, corn, grain sorghum, oats, and wheat as provided in § 713.106.

(2) *Payment computation.* Reduced yield payments shall be determined for each crop by multiplying the reduced yield payment rate times the smaller of the following computations:

(i) The result determined by multiplying the acreage of the crop on the farm by 60 percent (75 percent for upland cotton and rice) of the farm program payment yield as provided in § 713.6, and subtracting the determined production for the farm therefrom; or

(ii) The result determined by multiplying the acreage of the crop on the farm for which crop insurance under the Federal Crop Insurance Act was not available by 60 percent (75 percent for upland cotton and rice) of the farm program payment yield as provided in § 713.6, and subtracting the determined production for the eligible acreage therefrom.

(3) *Determining production.* The production from any acreage shall be determined as follows:

(i) The production from acreage which is not harvested shall be appraised in accordance with instructions issued by the Deputy Administrator and shall be added to the actual production for the purpose of determining eligibility for and the amount of reduced yield disaster payments; and

(ii) The farm program payment yield shall be used with respect to any acreage for which the production cannot be determined. However, if the county committee determines that the acreage was affected by a natural disaster, the farm program payment yield with respect to such acreage shall be the larger of 60 percent (75 percent for upland cotton and rice) of the farm program payment yield as provided in § 713.6 or the actual average yield from the harvested acreage of the crop.

§§ 713.132–713.149 [Reserved]

§ 713.150 Provisions relating to tenants and sharecroppers.

(a) Program payments shall not be approved for the current year if it is determined that any of the conditions specified below exist:

(1) The landlord or operator has not given the tenants and sharecroppers on the farm an opportunity to participate in the program;

(2) The number of tenants and sharecroppers on the farm is reduced by the landlord or operator below the number on the farm in the year before the current year in anticipation of or because of participating in the program, except that this provision shall not apply to the following:

(i) A tenant or sharecropper who leaves the farm voluntarily or for some reason other than being forced off the farm by the landlord or operator in anticipation of or because of participating; or

(ii) A cash tenant, standing-rent tenant, or fixed-rent tenant unless: (A) Such tenant was living on the farm in the year immediately preceding the current year, or (B) at least 50 percent of such tenant's income was received from farming in the immediately preceding year;

(3) There exists between the operator or landlord and any tenant or sharecropper, any lease, contract, agreement, or understanding unfairly exacted or required by the operator or landlord which was entered into in anticipation of participating in the program the effect of which is:

(i) To cause the tenant or sharecropper to pay to the landlord or operator any payments earned by the person under the program,

(ii) To change the status of any tenant or sharecropper so as to deprive the person of any payments or other right which such person would otherwise have had under the program,

(iii) To reduce the size of the tenant's or sharecropper's producer unit, or

(iv) To increase the rent to be paid by the tenant or decrease the share of the crop or its proceeds to be received by the sharecropper;

(4) The landlord or operator has adopted any other scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program. If any of such conditions occur or are discovered after payments have been made, all or any such part of the payments as the State committee may determine shall be refunded to CCC.

(b) Notwithstanding any other provision of this section, landlords or operators who in the past had tenants or sharecroppers on their land for purposes of producing the program crop and such individuals are not classified as employees subject to the minimum wage provisions under the Fair Labor Standards Act, may pay these individuals on a wage basis and will not be considered as reducing the number of tenants or sharecroppers.

§ 713.151 Successors-in-interest.

(a) In the case of death, incompetency, or disappearance of any producer whose name appears on the contract, the payment due such producer shall be made to such producer's successor, as determined in accordance with the regulations found at Part 707 of this chapter.

(b) When any person who had an interest as producer of the crop or would have had an interest in the crop as a producer if the crop had been planted (the "predecessor") is succeeded on the farm by another producer (the "successor") after a contract has been executed, any payment which is due and owing shall be divided between the predecessor and successor on such basis as the predecessor, successor, and the county committee agree is fair and equitable, the contract shall be revised accordingly, and the successor shall sign the revised contract. If the predecessor and successor fail to agree on a revised contract and the predecessor has become unable to carry out the producer's responsibilities under the contract, CCC may terminate the contract with respect to the predecessor and enter into a new contract with the successor.

(c) In any case in which the amount of any payment due any successor producer has been paid previously to another producer, such payment shall not be paid to the successor unless it is recovered from the producer to whom it has been paid or payment to the successor is authorized by the Deputy Administrator.

§ 713.152 Misrepresentation and scheme or device.

(a) A producer who is determined by the county committee or the State committee to have erroneously represented any fact affecting a program determination shall not be entitled to payments under the crop program with respect to which the representation was made and shall refund to CCC all payments received by such producer with respect to such farm and such crop program and shall be liable for liquidated damages in accordance with the contract.

(b) A producer who is determined by the State committee, or the county committee with the approval of the State committee, to have knowingly: (1) adopted any scheme or device which tends to defeat the purpose of the program, (2) made any fraudulent representation, or (3) misrepresented any fact affecting a program determination shall refund to CCC all payments received by such producer with respect to all farms and shall be liable for liquidated damages in accordance with the contract.

§ 713.153 Setoffs and assignments.

(a) *Producer indebtedness and claims.* Except as provided in paragraph (b) of this section, any payment or portion thereof due any person shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing setoffs and withholdings found at Part 13 of this title shall be applicable to such payments.

(b) *Assignments.* Any producer entitled to any payment may assign any such payments which are made in cash in accordance with regulations governing assignment of payment found at Part 709 of this chapter.

§ 713.154 Payments by commodities and commodity certificates and refunds.

(a) Payments under the programs authorized by this part may be made in the form of commodities or commodity certificates in accordance with Part 770 of this chapter.

(b) Whenever it is determined in accordance with § 713.103 that a producer was overpaid or received payments that were not earned, and such payments were in the form of commodities or commodity certificates, the producer shall refund the amount of the overpayment either by returning commodity certificates in an amount equal to the overpayment or by making cash payments to CCC.

§ 713.155 Appeals.

A producer, an assignee of a cash payment, or a holder of a commodity certificate issued in accordance with § 713.154 may obtain reconsideration and review of any determination made under this part in accordance with the appeal regulations found at Part 780 of this chapter. .

§ 713.156 Performance based upon advice or action of county or State Committee.

The provisions of Part 791 of this chapter with respect to performance based upon action or advice of any authorized representative of the Secretary shall be applicable to this part.

§ 713.157 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR Part 713) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Numbers 0560–0092, 0560–0650, 0560–0091, 0560–0030, and 0560–0071.

B. Part 770 of Chapter VII of Title 7 of the Code of Federal Regulations is revised to read as follows:

PART 770—COMMODITY CERTIFICATES, IN KIND PAYMENTS, AND OTHER FORMS OF PAYMENT

Secs.

770.1 Applicability.
770.2 Payments in lieu of cash payments.
770.3 Payments to persons with outstanding CCC loans.
770.4 Commodity certificates.
770.5 In kind payments.
770.6 Assignments.
770.7 Miscellaneous provisions.

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); secs. 101A, 103A, 105C, 107C, 107D, 107E, and 405 of the Agricultural Act of 1949, as amended; 99 Stat 1419, as amended, 1407, as amended, 1395, as amended, 1446, 1383, as amended, 63 Stat. 1054, as amended (7 U.S.C. 1441–1, 1444–1, 1444b, 1444b–2, 1444b–3, 1444b–4, 1445d, and 1425).

§ 770.1 Applicability.

This part shall be applicable to payments and loans made in accordance with the programs administered by the Commodity Credit Corporation (CCC) or the Agricultural Stabilization and Conservation Service (ASCS) as determined and announced by the Secretary of Agriculture or a designee of the Secretary. The definitions of the terms applicable to 7 CFR Part 713 set forth at § 713.3 also shall be applicable to this part, except that the term "commodity" shall mean any agricultural commodity.

§ 770.2 Payments in lieu of cash payments.

(a) CCC will, in accordance with applicable program provisions, make payments in a form other than in cash to persons who otherwise are eligible to receive a cash payment from CCC. Further, subject only to statutory prohibition and notwithstanding any provisions of the contract to participate in a program administered by CCC or ASCS, CCC may: at its option, make payments in a form other than in cash.

(b) As determined by CCC, payments in a form other than in cash may be made in the following manner:

(1) By delivery of a commodity to a person at a warehouse or other similar facility;

(2) By transfer of negotiable warehouse receipts;

(3) By the issuance of certificates which CCC shall redeem in accordance with this part;

(4) By the acquisition and use of commodities pledged as collateral for CCC price support loans;

(5) By the use of commodities owned by CCC; and

(6) By such other methods as CCC determines appropriate, including methods to enable the producer to receive payments in order to assure that the producer receives the same total return as if the payments had been made in cash.

(c) The value of the payments made in any manner set forth in paragraph (b) shall be determined by CCC.

(d) Notwithstanding any other provision of this part, CCC may, with respect to producers who are members of a cooperative marketing association which has been determined in accordance with Part 1425 of this title to be eligible to receive price support on behalf of its producer-members, enter into agreements with such producers and such cooperatives to facilitate the making of payments to such producers. Such agreements may include a provision which allows a producer to make available for the use of the cooperative the value of the non-cash payment which would otherwise be made to the producer.

§ 770.3 Payments to persons with outstanding CCC loans.

(a) Persons with outstanding CCC loans who are eligible to receive payments from CCC, including a person authorized to receive a payment on behalf of another person, may be required to liquidate such loans in accordance with this section in order to be eligible to receive a payment authorized by § 770.2.

(b) A person with an outstanding CCC loan must, unless otherwise agreed upon by the person and CCC, redeem and sell to CCC a quantity of the commodity pledged as collateral for a CCC loan, as determined by CCC, in an amount equal in value to the value of the payment which would otherwise be made to such person. If the person has more than one outstanding CCC loan, CCC may, by contract or otherwise, prescribe which loan collateral the person shall be required to redeem in order to receive payment. The purchase price shall be equal to the cost of liquidating the loan or the portion of the loan for which the quantity of the commodity sold to CCC is pledged as collateral, except that, in the case of a special producer storage loan or a farmer-owned reserve loan, the purchase price will not include the amount of any unearned advance storage payments received with respect to the redeemed collateral. After redemption and the subsequent sale to CCC of the commodity pledged as collateral for such CCC loan, CCC shall make available to the person a like quantity of the commodity.

§ 770.4 Commodity Certificates.

(a) *General.* CCC may issue commodity certificates as a form of payment. Commodity certificates will bear a dollar denomination. Such certificate may be transferred, exchanged for the inventory of CCC (including the receipt in accordance with paragraph (e) of this section of loan collateral by a person to whom a loan secured by such collateral is made); or exchanged for cash, as provided for in this section. Commodity certificates shall be subject to the provisions of this part, and to any terms, conditions and restrictions provided on the certificate, which are incorporated by reference herein.

(b) *Liens, encumbrances, and State law.* (1) The provisions of this section or the commodity certificates shall take precedence over any state statutory or regulatory provisions which are inconsistent with the provisions of this section or with the provisions of the commodity certificates.

(2) Commodity certificates shall not be subject to any lien, encumbrance, or other claim or security interest, except that of an agency of the United States Government arising specifically under Federal statute.

(3) The provisions of this paragraph (b) shall apply without regard to the identity of the holder of the certificate.

(c) *Transferability.* Except as provided in paragraph (f) of this section, any person may transfer a commodity certificate to any other person. However, any such transfer must be in the full amount of the certificate, and can be effected only by restrictive endorsement on the back of the certificate, showing the name of the transferee and the date of the transfer, and signed by the transferor. CCC will not honor any certificate bearing any endorsement to "bearer" or any other nonrestrictive endorsement, or otherwise transferred in a manner contrary to the regulations contained in this section. The person who submits a commodity certificate to CCC shall endorse the certificate to CCC.

(d) *Exchange of commodity certificate for CCC-owned commodities.* (1) *General.* Except as otherwise provided in this paragraph and in paragraphs (f) and (g) of this section, any holder of a commodity certificate may exchange such certificate, by itself or together with other commodity certificates, for such commodities as are made available by CCC by endorsing and submitting the certificate to CCC. If a person submits commodity certificates for exchange in order that the person would be eligible to receive a quantity of a commodity

which includes less than an entire unit in which the commodity is stored (e.g., less than an entire bale of cotton or an entire barrel of honey): (i) Such person may forfeit the partial unit of the commodity to CCC, or (ii) CCC may issue a check to such person for the partial unit of the commodity or permit such person to purchase the remainder of such unit at a price determined by CCC. A person may obtain information regarding commodities available for exchange and the procedure for exchange from Kansas City Commodity Office, ASCS–USDA, Kansas City: MO 64141–0205.

(2) *Minimum quantities.* A holder of an amount of commodity certificates sufficient to acquire a carload lot, or other quantity as may be determined by CCC, may present such amount for exchange at any time on or before the expiration date of such certificates. A holder who is permitted to exchange the certificate for CCC-owned commodities but who does not possess commodity certificates in the amount specified in the preceding sentence may, not to exceed once during a calendar month, submit such certificates to CCC. CCC will, at CCC's option, pay such holder by check in the amount of the certificate or transfer to such holder title to commodities owned by CCC.

(3) *CCC-owned commodities stored by a person who submits commodity certificates to CCC.* CCC may require or permit holders of commodity certificates to exchange such certificates for commodities owned by CCC which are stored by such holder, without making such commodities or kinds of commodities available to other holders of commodity certificates.

(4) *Valuation.* Except as otherwise may be announced by CCC, CCC will determine the value of CCC-owned commodities made available to holders of commodity certificates.

(5) *Transfer of title.* Title to commodities owned by CCC which are transferred to a person who submits commodity certificates to CCC shall be transferred in store, except as may be determined and announced by CCC. The person who submits certificates to CCC shall be responsible for all costs incurred in transferring title to the commodity, except as specifically provided by CCC. The transfer of title to such commodities shall occur without regard to any State law or any claim of lien against the commodity or proceeds thereof which may be asserted by any creditor except agencies of the U.S. Government whose lien arises specifically under Federal statute.

(6) *Expiration date.* CCC may, at its option, disccunt or refuse to accept any commodity certificate presented for exchange after the expiration date stated on the certificate.

(e) *Use of commodity certificates to receive loan collateral.*

(1) *General.* Except as otherwise provided in this paragraph and in paragraphs (f) and (g) of this section, any holder of a commodity certificate may use such certificate to receive commodities pledged as collateral for CCC loans made to such person, at any time on or before the expiration date stated on the certificate. A holder of a commodity certificate who wishes to receive a quantity of a commodity pledged by such person as collateral for a CCC loan in exchange for a certificate shall redeem and sell to CCC a quantity of the commodity equal in value to the dollar denomination of the certificate, as determined by CCC. The purchase price shall be equal to the cost of liquidating the loan or the portion of the loan for which the quantity of the commodity sold to CCC is pledged as collateral, except that, in the case of a special producer storage loan or a farmer-owned reserve loan, the purchase price will not include the amount of any unearned advanced storage payments received with respect to the redeemed loan collateral. Upon submission of the certificate, which is endorsed to CCC, to the county ASCS office which issued the loan, the holder of a commodity certificate will receive the quantity of the commodity which has been sold to CCC. Except as otherwise determined by CCC, if the holder of such certificate does not have commodities pledged as collateral for CCC loans equal in value to the dollar denomination of the certificate, as determined by CCC, CCC will, at CCC's option and after the producer has submitted the certificate, pay the difference to the person by check or in the form of a new commodity certificate.

(2) *Ineligible commodities.* No person may use a commodity certificate to receive a quantity of tobacco, peanuts, or extra long staple cotton pledged as collateral for a CCC loan. No person may, before August 1, 1986, use a commodity certificate to receive a quantity of upland cotton pledged as collateral for a CCC loan.

(f) *Certificates bearing a first transfer deadline.* If a commodity certificate bears a "first transfer deadline" date, the person to whom the certificate is issued may not transfer such certificate to another person after such date. Further, the person to whom such a certificate is issued may not exchange the certificate for commodities owned by CCC. Nor after the "first transfer deadline" may such person use such a certificate to receive a quantity of a commodity pledged as collateral for a CCC loan. However, such person may, but only during the ten business days immediately following the first transfer deadline date, submit such certificate, endorsed to CCC, at the issuing county ASCS office in exchange for payment by check in the amount of the commodity certificate.

(g) *"Generic" and commodity-specific commodity certificates.*

(1) *General.* If a commodity certificate indicates that it is a "generic" certificate, such certificate may, subject to the provisions of paragraphs (a) through (f) of this section, be exchanged for any commodity made available by CCC or, as appropriate, used to receive a quantity of any commodity which serves as collateral for a CCC loan. If a certificate is not a "generic" certificate, such certificate may be exchanged for or used to receive only a quantity of the commodity or commodities indicated on the face of the certificate.

(2) *Payments to first handlers, payments to producers who agree to forego obtaining loans, additional yield payments and inventory protection payments.* Notwithstanding any other provision of this section, a certificate issued as payment to first handlers of cotton, as payment to upland cotton producers who agree to forego obtaining price support loans, or as an additional yield payment to producers of upland cotton, as determined by CCC, in accordance with sections 103A(a)(5)(D)(ii), 103A(b), and 506(b)(2), respectively, of the Agricultural Act of 1949, as amended, may not be exchanged for CCC-owned upland cotton until after the expiration of five months following the month in which such certificate is issued. Certificates issued as payments which are determined to be necessary to make raw cotton in inventory on August 1, 1986 available at competitive prices as determined by CCC in accordance with section 103A(a)(5)(D)(ii) of the Agricultural Act of 1949, as amended, may be exchanged for CCC-owned upland cotton only during such period or periods as may be determined and announced by CCC.

(3) *Commodities not available in CCC inventory.* Notwithstanding any other provision of this section, if a person submits a commodity specific certificate to CCC in exchange for a quantity of such commodity and CCC determines it is not possible to make such commodity available, CCC may: (i) Require such person to exchange the commodity specific certificate for a generic certificate; or (ii) refuse to accept

submission of such certificate until CCC is able to make available a quantity of the commodity specified on such certificate.

(h) CCC, at its option, may discount or refuse to accept any certificate made, transferred, or submitted in violation of this section.

§ 770.5 In kind payments.

(a) Subject to the provisions of §§ 770.2 and 770.3, CCC may make payments in the form of commodities. Quantities of commodities made available as payment shall be based upon the value of the commodity, as determined by CCC. Such quantity may be adjusted by CCC to reflect the location, quality, and other similar factors which CCC determines to affect the value of the commodity.

(b) The transfer of title to commodities made available in accordance with paragraph (a) of this section shall be in store, except as determined by CCC, and shall be made without regard to any State law or any claim of lien against the commodity, or proceeds thereof, which may be asserted by any creditor except agencies of the U.S. Government whose lien arises specifically under Federal statute. The recipient of such commodities shall be responsible for all costs incurred in transferring title to the commodity, except as specifically provided by CCC.

§ 770.6 Assignments.

Notwithstanding any other provision of this chapter, a payment made under this part may not be the subject of an assignment, except as determined and announced by CCC.

§ 770.7 Miscellaneous provisions.

Except as determined by CCC, the following provisions of this title shall apply to this part:

(a) Part 13, Setoffs and Withholding.

(b) Part 707, Payments Due Persons Who Have Died, Disappeared, or Been Declared Incompetent.

(c) Part 718, Determination of Acreage and Compliance.

(d) Part 780, Appeal Regulations.

(e) Part 790, Incomplete Performance Based Upon Actions or Advice of an Authorized Representative of the Secretary.

(f) Part 791, Authority to Make Payments When There has been a Failure to Comply Fully with the Program.

(g) Part 795, Payment Limitation.

(h) Part 796, Denial of Program Eligibility for Controlled Substance Violations.

(i) Part 1403, Interest on Delinquent Debts.

(j) All other parts of the Code of Federal Regulations which are made applicable to this part.

C. Part 796 of Chapter VII of Title 7 of the Code of Federal Regulations is revised to read as follows:

PART 796—DENIAL OF PROGRAM ELIGIBILITY FOR CONTROLLED SUBSTANCE VIOLATION

Sec.

796.1 Definitions.
796.2 Prohibition against payments to producers or participants.
796.3 Protecting the interests of landlords, tenants, and sharecroppers and special rule for corporations, partnerships and trusts.

Authority: Sec. 1764 of the Food Security Act of 1985, 99 Stat. 1652 (21 U.S.C. 881a); and Annual Agricultural Appropriation Acts.

§ 796.1 Definitions.

In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the masculine gender include the feminine as well, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

(a) "Controlled Substances" means the term as set forth in accordance with 21 CFR Part 1308.

(b) "Person" means an individual, joint stock company, corporation, association, trust, estate, or other legal entity. In order to be considered a separate person for the purpose of this part, the individual or other legal entity must:

(1) Have a separate and distinct interest in the land or the crop involved,

(2) Exercise separate responsibility for such interest, and

(3) Be responsible for the cost of farming related to such interest from a fund or account separate from that of any other individual or entity.

(c) "State" means each of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

§ 796.2 Prohibition against payments to producers or participants.

(a) Any person who, on or after December 23, 1985, is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year shall be ineligible for:

(1) As to any commodity produced by such person during that crop year, and during the four succeeding crop years:

(i) Any price support or payments, including price support loans and purchase agreements, made available under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*), the Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*), or any other Act;

(ii) A farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h));

(iii) A disaster payment made under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*); and

(2) A payment made under section 4 or 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b or 714c) for the storage of an agricultural commodity that is:

(i) Produced during that crop year, or any of the four succeeding crop years, by such person; and

(ii) Acquired by the Commodity Credit Corporation.

(b) Notwithstanding any other provision of Title 7 of the Code of Federal Regulations, with respect to all programs set forth in such title administered by the Agricultural Stabilization and Conservation Service under which production or other payments, including wheat marketing certificates, are made to program participants, no such payment for any crop year through the 1985 crop year shall be made after August 10, 1971, to any producer or program participant who, after August 10, 1971, harvests or knowingly permits to be harvested for illegal use, marihuana, or other such prohibited drug-producing plants on any part of the lands owned or controlled by such producer or participant. Prohibited plants include marihuana (*cannabis satiua*), opium poppies (*papauer somniferum*), coca bushes (*erythroxylum coca*), cacti of the genus *lophophora*, and other drug producing plants, the planting or harvesting of which is prohibited by Federal or State law.

§ 796.3 Protecting the Interests of Landlords, Tenants, and Sharecroppers, and Special Rule for Corporations, Partnerships, and Trusts.

The tenant, sharecropper, landlord, or any producer on the farm separate from the person determined to be ineligible for program benefits in accordance with § 796.2 shall remain eligible for any or all of the program benefits listed in § 796.2 unless such tenant, sharecropper, landlord, or any such producer on the farm:

(a) Is also convicted of planting, cultivating, growing, producing, or storing a controlled substance; or

(b) Is otherwise determined to be ineligible to receive any or all of the benefits listed in § 796.2.

(c) Notwithstanding any other provision of this section, if any person denied benefits under this part is beneficiary of a trust, benefits for which the trust is eligible shall be reduced, for the appropriate period, by a percentage equal to the total interest of the beneficiary in the trust.

D. Part 1425 of Chapter XIV of Title 7 of the Code of Federal Regulations is amended as follows:

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

Sec.

1425.1 General provisions.
1425.2 Administration.
1425.3 Definitions.
1425.4 Approval.
1425.5 Confidentiality.
1425.6 Approved cooperatives.
1425.7 Suspension and termination of approval.
1425.8 Ownership and control.
1425.9 Charter and bylaw provisions.
1425.10 Financial condition.
1425.11 Operations.
1425.12 Conflict of interest.
1425.13 Uniform marketing agreement.
1425.14 Member business.
1425.15 Vested authority.
1425.16 Eligible commodity and pooling.
1425.17 Distribution of proceeds.
1425.18 Member cooperatives.
1425.19 Nondiscrimination.
1425.20 Records required.
1425.21 Inspection and investigation.
1425.22 OMB control number assigned pursuant to Paperwork Reduction Act.
1425.23 Appeals.

Authority: Secs. 4, 5, and 12 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072, 1073 (15 U.S.C. 714b, 714c and 714j); secs. 101, 201, 203, 301, and 401 of the Agricultural Act of 1949, as amended, 63 Stat. 1051, as amended, 1052, as amended, 70 Stat. 212, 63 Stat. 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1446, 1446d, 1447, 1421).

§ 1425.1 General provisions.

This part sets forth the terms and conditions which a cooperative marketing association ("cooperative") must meet in order to be approved to obtain from the Commodity Credit Corporation (CCC) price support on behalf of its members for the 1986 and subsequent crops of a commodity. A cooperative meeting such terms and conditions may obtain price support with respect to any crop of a commodity for which a price support program is in effect if regulations issued with respect to such price support program incorporate the provisions of this part or permit a cooperative which meets the provisions of this part to participate in the price support program for a crop of such commodity.

§ 1425.2 Administration.

On behalf of CCC, the Agricultural Stabilization and Conservation Service (ASCS) will administer the provisions of this part under the general direction and supervision of the Deputy Administrator, State and County Operations, ASCS. In the field, the provisions of this part will be administered by the State and county ASC committees.

§ 1425.3 Definitions.

(a) *Active member* means a member who has utilized the services offered by a cooperative in one of the three preceding cooperative fiscal years or such shorter period as may be provided in the cooperative's articles of incorporation or bylaws.

(b) *Approved cooperative* means a cooperative that has been approved by CCC to participate in price support programs authorized with respect to one or more authorized commodities.

(c) *ASCS* means the Agricultural Stabilization and Conservation Service, an agency of the U.S. Department of Agriculture.

(d) *Authorized commodity* means those commodities for which an approved cooperative may apply for price support, including barley, corn, cotton, honey, oats, rice, rye, seed cotton, sorghum, soybeans, and wheat.

(e) *CCC* means the Commodity Credit Corporation.

(f) *Close relative* means a spouse or a person related as child, parent, brother, or sister, by blood, adoption, or marriage, and shall include in-laws within such categories of relationship.

(g) *Eligible commodity* means a commodity which meets the eligibility requirements applicable to such commodity set forth in Chapter XIV of this title which is delivered to, or which is acquired by, a cooperative.

(h) *Member* means a person who is a member of an agricultural cooperative or an agricultural cooperative member of another cooperative. A person applying for membership in an agricultural cooperative must have: (1) fully paid for the membership stock or earned equity credits; (2) be accepted by the cooperative; and (3) be entitled to all membership rights including voting and holding office except where the law of the State in which the cooperative is incorporated provides for stock subscribers as members but does not allow them to hold office.

(i) *Person* means such term as defined in the regulations governing the Reconstitution of Farms and Allotments, Part 719 of this title.

(j) *Producer* means such term as defined in the regulations governing the Reconstitution of Farms and Allotments, Part 719 of this title.

§ 1425.4 Approval.

(a) *Application.* In order for a cooperative to obtain price support with respect to the 1986 and subsequent crops of authorized commodities, a cooperative must submit an application for approval with respect to such authorized commodities to CCC.

(b) An application must include:

(1) A completed Form CCC–846;

(2) The latest financial audit of the cooperative including any accompanying notes, schedules, or exhibits, certified by a certified public accountant from the books of original entry as fairly representing the financial condition of the cooperative;

(3) A copy of the cooperative's articles of incorporation or articles of association, bylaws, all marketing agreements for eligible commodities and any other document which is requested by CCC with respect to the cooperative's methods of conducting business which an official of the cooperative has certified as being current;

(4) A conflict of interest statement (Form CCC–846–2) for each director, officer, and principal employee;

(5) Resolutions made by the cooperative's board of directors which provide that the cooperative will abide by provisions of this part and the nondiscrimination provisions thereof;

(6) A statement of any cooperative transactions that either have occurred in the preceding year before the initial application for approval is submitted or are contemplated by the cooperative as provided in § 1425.12;

(7) A detailed description of the method by which proceeds from a pool of eligible commodities for which price support is obtained will be distributed as provided for in § 1425.17.

(8) Other information requested by CCC concerning the organizational, operational, financial or any other aspect of the cooperative determined by CCC to be necessary to act upon the application for approval.

(c) *Annual recertification.* An approved cooperative must submit the following information to CCC:

(1) A completed Form CCC–846–1;

(2) The cooperative's latest complete financial audit;

(3) The numbers of active and inactive members;

(4) A statement showing the allocated equity in the cooperative owned by active members, inactive members, and others, and the unallocated equity in the cooperative;

(5) The names of any members who own in excess of 10 percent of the equity of the cooperative and the amount owned by each;

(6) The quantity of each eligible commodity delivered to the cooperative for marketing and the portion of such commodities received from active members during the prior year;

(7) The quantity of each eligible commodity tendered by the cooperative to CCC as security for a price support loan and the quantity of such commodities redeemed during the prior year;

(8) The quantity of each commodity tendered to CCC for price support purchase during the prior year; and

(9) A statement of any cooperative transactions that either have occurred in the cooperative's prior fiscal year of operations or are contemplated to occur in the cooperative's current fiscal year as provided for in § 1425.12.

(d) *Changes.* An approved cooperative shall promptly furnish to CCC:

(1) Any changes in the articles of incorporation, bylaws, and marketing agreements of the cooperative;

(2) Any resolutions affecting price support operations;

(3) Any changes in officers, directors, or principal employees and conflict of interest statements in accordance with § 1425.12(d);

(4) Any change in pooling operations with an explanation of the change and why such change was necessary; and

(5) Additional information as may be requested by CCC at any time with respect to the continued approval by CCC of the cooperative as an approved cooperative in accordance with this part.

§ 1425.5 Confidentiality.

Information submitted to CCC with respect to trade secrets or financial or commercial operations or information concerning the financial condition of a cooperative, whether for initial approval or continued approval, shall be kept confidential by the officers and employees of CCC and the Department of Agriculture except to the extent CCC determines such disclosures are necessary for the conduct of a price support program or such information is required to be disclosed by law.

§ 1425.6 Approved cooperatives.

(a) *Determination of approval.* CCC shall, in accordance with the provisions of this part, approve a cooperative marketing association to obtain price support.

(b) *Type of approval.* CCC may approve a cooperative to participate in a price support program with respect to the 1986 or subsequent crop of a commodity as:

(1) Unconditionally approved; or

(2) Conditionally approved. A cooperative may be conditionally approved if it has not met all of the requirements of this part but has substantially met all such requirements. Such a cooperative must agree in writing to meet all of the requirements for approval set forth in this part within the time period specified by CCC. Board resolutions in which the cooperative agrees to comply with provisions of this part may be accepted by CCC as substantial compliance with the requirements for approval for purposes of this section.

(c) *Term of approval.* A cooperative is approved to participate in a price support program for an authorized commodity until such time as the cooperative's approval is suspended or terminated by CCC.

§ 1425.7 Suspension and termination of approval.

(a) *Suspension.* A cooperative may be suspended by CCC from further participation in a price support program if it is determined that the cooperative has not operated in accordance with representations made in the cooperative's application for approval, has not complied with applicable regulations, or has failed to correct deficiencies noted during an administrative review or an audit of the cooperative's operations with respect to a price support program. Such suspension may be lifted upon the receipt of documents indicating that the cooperative has complied with all of the requirements for approval. If such documents are not received within one year from the date of the suspension, the cooperative's approval for participation in a price support program shall be terminated.

(b) *Termination.* (1) CCC may terminate the approval of the cooperative marketing association's ability to pledge commodities as collateral for CCC price support loans by giving the cooperative written notice of such termination. Ten days after the termination date, or at anytime thereafter, CCC may on demand call all outstanding CCC price support loans made to the cooperative. The commodities pledged as collateral for such loans may be redeemed not later than the date specified by CCC. If redemption is not made by such date, title to the commodity shall vest in CCC and CCC shall have no obligation to pay for any market value the commodity may have in excess of the principal amount of such loans.

(2) An approved cooperative may at any time, upon written notice to CCC, voluntarily terminate the cooperative's approval to participate in a price support program, provided, that the cooperative does not have any outstanding price support loans at the time of voluntary termination.

§ 1425.8 Ownership and control.

(a) *Active members.* All approved cooperatives must be owned and controlled by active members of the cooperative.

(b) *Allocated equity.* The cooperative must establish that its active members own equity in the cooperative in an amount constituting more than 50 percent of the allocated equity of the cooperative. Such ownership equity shall be in the form of stock, revolving fund certificates, capital retains, book credits, or other capital interests issued by the cooperative. In determining the requisite equity held by active members, the following shall be deducted from the amount of equity allocated to such active members:

(1) The allocated equity held by any active member who owns more than 10 percent of the cooperative's total equity; and

(2) The allocated equity of any active member that has acquired equity as a result of a loan from the cooperative unless such member is obligated to repay the loan within a reasonable period of time.

(c) *Control.* The organization and operation of the cooperative shall be under the control of its active members. A cooperative shall be considered to be under the control of its active members if more than 50 percent of its membership consists of active members.

(d) *Directors.* (1) All directors must be: (i) Active members of the cooperative; (ii) representatives of such active members who are also employed as a farm manager or its equivalent (including an officer of a corporation and a partner in partnership); or (iii) officers, employees, or active members of an active member cooperative.

(2) A director shall be nominated and elected by members except when selected to fill the unexpired term of a director so elected.

(e) *Approved plan.* An applicant or an approved cooperative not under the ownership or control, or both, of its active members, may be approved by

CCC to participate in a price support program if the cooperative is able to establish that, by retiring the equity of its inactive members or by obtaining new members, the cooperative can vest ownership and control in its active members, as required by this section, by a date specified by CCC.

§ 1425.9 Charter and bylaw provisions.

The articles of incorporation, articles of association, or the bylaws of the cooperative shall provide for each of the following requirements:

(a) *Annual meeting.* The cooperative shall hold an annual meeting of members or delegates at one or more locations within its operating area which will afford a reasonable opportunity for all members or their delegates to attend and participate.

(b) *Notice of meeting.* The cooperative shall give written notice to each member or delegate, of the time, place, and purpose of all regular and special meetings of members or delegates.

(c) *Open membership.* The cooperative shall admit to membership every applicant who (1) applies for admission for the purpose of participating in the activities of the cooperative, and (2) is eligible for membership under the statute incorporating the cooperative. The cooperative may, however, refuse membership to an applicant if the cooperative bases the refusal on reasonable grounds that the applicant's admission would prejudice, hinder, or otherwise obstruct the interests or purposes of the cooperative.

(d) *Nominations.* (1) Nominations for election of delegates and directors shall be made by members.

(2) Nominations for officers shall be made by elected directors.

(3) Nominations may be made by balloting, nominating committee, petition of members, or from the floor, provided that nominations from the floor shall be requested in addition to nominations made by a nominating committee or by petition.

(e) *Balloting.* The election of directors, delegates, and officers shall be by balloting when there are two or more nominees for a position to be filled, or there are more nominees than there are positions to be filled.

(f) *Voting rights.* Each member of the cooperative shall have a single vote regardless of the number of shares of stock owned or controlled by such member except that CCC may approve another voting method which will adequately protect the ownership and control interests of the members of the cooperative.

(g) *Proxy or power of attorney.* (1) Except as provided in paragraph (2) of this section, voting by proxy or under a power of attorney shall not be permitted.

(2) Voting by proxy or under power of attorney may be permitted if a cooperative: (i) Determines that it is necessary to amend the cooperative's articles of incorporation, articles of association, or bylaws, and (ii) establishes to the satisfaction of CCC that the law of the State in which the cooperative is incorporated permits voting by proxy or power of attorney, but does not permit members to vote by mail, with respect to such issue.

(h) *Financial statement.* Annually, each member of the cooperative shall be given a summary financial statement of the cooperative which is based on an annual audit conducted by a certified public accountant of the recordkeeping books and accounts of the cooperative.

§ 1425.10 Financial condition.

(a) *Financial ability.* An approved cooperative must be financially able to make financial advances to its members and to market commodities of such members.

(b) *Factors to consider.* The factors which will be considered in determining the financial condition of a cooperative include the following:

(1) The ability of the cooperative to meet current obligations, including the expenses of marketing the commodities on behalf of its members;

(2) The ability of the cooperative to make advance payments to its members, either from its own funds or through arrangements with financial or other institutions; and

(3)(i) The net worth of the cooperative. The cooperative shall be considered to have a sufficient net worth if such net worth is equal to the product of an amount per unit for a commodity (as set forth in Table 1) multiplied by the total number of units of such commodity handled by the cooperative during the preceding marketing year, or, if the cooperative is in its first full marketing year of operations, the estimated quantity of such commodity that it will handle during such year. If a cooperative has not been approved to participate in a price support program for each of the three crop years immediately preceding the crop year for which approval is being considered, CCC may establish the unit total of a commodity to be used in determining the sufficiency of the cooperative's net worth.

(ii) If the amount of the net worth of the cooperative is between 34 and 99 percent of the amount computed in accordance with paragraph (b)(3)(i) and the cooperative is determined by CCC to be otherwise financially sound, CCC may determine that the operation of the cooperative is being carried out in a financially sound basis. Such a determination by CCC may be made if (A) the board of directors of the cooperative agrees to make a capital retain in the amount set forth in Table 2 with respect to each unit of the commodity delivered to the cooperative until the net worth of the cooperative is at least equal to the amount computed in accordance with paragraph (b)(3)(i) and (B) the cooperative agrees to deduct the full amount of the estimated expenses of handling the commodities received by the cooperative. The failure to carry out such agreements shall be grounds for terminating a cooperative's approval.

TABLE 1

Commodity	Unit	Amount per unit
Barley	Bushel	.13
Corn	Bushel	.13
Cotton	Bale	6.40
Honey	Hundredweight	1.90
Oats	Bushel	.13
Rice	Hundredweight	.52
Rye	Bushel	.13
Seed Cotton (lint basis)	Pounds	.008
Sorghum	Hundredweight	.19
Soybeans	Bushel	.43
Wheat	Bushel	.15

TABLE 2

Commodity	Unit	Amount per unit
Barley	Bushel	$0.07
Corn	Bushel	.07
Cotton	Bale	3.20
Honey	Hundredweight	.95
Oats	Bushel	.07
Rice	Hundredweight	.26
Rye	Bushel	.07
Seed Cotton (lint basis)	Pounds	.004
Sorghum	Hundredweight	.10
Soybeans	Bushel	.22
Wheat	Bushel	.08

(c) For the purposes of paragraph (b) of this section, the net worth of the cooperative shall be reduced by the value of the amount of any assets or funds which are not reflected as a liability of the cooperative in the financial statement of the cooperative and which are: (1) Pledged as security, deposited, or otherwise used to secure or guarantee any indebtedness of the cooperative, or (2) deposited in a restricted account or otherwise used to guarantee the performance of an obligation of the cooperative.

§ 1425.11 Operations.

(a) A cooperative shall establish to the satisfaction of CCC, with respect to the commodity for which approval is requested, that the cooperative is so

organized and staffed by individuals employed directly by the cooperative that it is able to perform contracts with its members and to provide an effective marketing operation for its members.

(b) If a cooperative cannot satisfactorily establish that it can provide an effective marketing operation for its members, the cooperative may enter into a marketing agreement with another cooperative marketing association to market the commodity only if:

(1) Such marketing agreement is permitted by law;

(2) The articles of incorporation, articles of association, or bylaws of the cooperative acquiring the marketing service and the marketing agreement such cooperative has entered into with its members provide the necessary authority to enter into such agreement;

(3) The cooperative acquiring the marketing service is a member of the cooperative which will provide the marketing service; and

(4) The cooperative which will provide the marketing service has been approved under this part to obtain price support for such commodity.

(c) Any marketing agreement entered into by a cooperative in accordance with the provisions of paragraph (b) of this section, must, as determined by CCC: (1) Adequately protect the ownership and control interests of the cooperative members; (2) be in the best interest of the members of the cooperative acquiring the service; and (3) require that all proceeds from the marketing operation be distributed as provided in § 1425.17.

§ 1425.12 Conflict of interest.

(a) *Transactions detrimental to members.* The cooperative shall not be approved for participation in price support programs unless CCC determines that the cooperative's transactions, if any, which are of a kind described in this section have not operated and will not operate to the detriment of members of the cooperative.

(b) *Cooperative transactions.* The cooperative shall submit with the initial application for approval, and with each recertification, a detailed report concerning all of the transactions (including transactions involving purchases, sales, handling, marketing, insurance, transportation, warehousing, and related activities) of the cooperative with the following persons which differ from transactions entered into by the cooperative with its general membership:

(1) Any director, officer, or principal employee of the cooperative, or any of their close relatives;

(2) Any partnership from which any person is entitled to receive a percentage of the gross profits;

(3) Any corporation in which any person owns stock;

(4) Any business entity from which any person receives fees for transacting business with or on behalf of the cooperative; or

(5) Any business entity in which an agent, director, officer or employee of the cooperative was an agent, director, officer or employee of such business entity.

(c) *Contemplated transactions.* The cooperative shall also submit a statement as to whether any transactions of the kind described in paragraph (b) of this section are contemplated between the date of the application, or the date such information is requested to be submitted in accordance with § 1425.4, as applicable, and the end of the next marketing year for the authorized commodity. If any transactions are contemplated, the cooperative shall submit a detailed explanation of such contemplated transactions and a statement of the reasons for such transactions.

(d) *Directors, officers, and employees.* The cooperative shall furnish information, as requested, showing the interest or relationship of its directors, officers, and principal employees and their close relatives with persons who engage in any business relating to a commodity for which the cooperative is approved to obtain price support. Such information shall be revised to reflect any change in any such interest or relationship.

§ 1425.13 Uniform marketing agreement.

(a) The cooperative must enter into a uniform marketing agreement with each member who delivers a commodity to an eligible pool for which price support is obtained on any quantity of the commodity in such pool.

(b) A cooperative may provide alternative methods of marketing commodities to its members, in addition to the methods set forth in its marketing agreement, if the terms and conditions thereof are reasonable to its members, and information concerning the use of such methods of marketing are made available to all members.

(c) An approved cooperative, when authorized by CCC, may offer additional marketing methods to its members on a limited membership basis for a period not to exceed two crop years before making such marketing method available to all members. If such limited marketing method is adopted as a permanent marketing method by the cooperative, information concerning such method and participation in such method shall be made available to all members. Such information may be published in the cooperative's membership publication or included in other written notice mailed to members.

§ 1425.14 Member business.

At least 80 percent of a crop of a commodity that is acquired by, or delivered to, the cooperative for marketing must be produced by its members in order for the cooperative to obtain price support for such crop. CCC may, for a period not to exceed two years, waive such requirement for a cooperative if: (a) The quantity of such crop acquired by the cooperative for marketing from its members has a value greater than the value of the quantity acquired or received from nonmembers for marketing; (b) the cooperative can establish to the satisfaction of CCC that such authorization is necessary for the efficient operation of the cooperative; and (c) the cooperative has a plan approved by CCC which will bring the cooperative into compliance with the provisions of this section. Commodities purchased or acquired from CCC and processed products acquired from other processors or merchandisers shall not be considered in determining the volume of member or nonmember business.

§ 1425.15 Vested authority.

An approved cooperative shall have the authority to pledge as collateral for a price support loan the commodity delivered to it by its members, to place a lien on such commodity, and to market the commodity on behalf of its members even though the individual members retain the right, in effect, to determine the price at which the commodity can be marketed by the cooperative.

§ 1425.16 Eligible commodity and pooling.

(a) *Pools.* (1) A cooperative may establish separate pools as needed for quantities of a commodity.

(2) Price support will be made available to the cooperative with respect to a quantity of an eligible commodity included in an eligible pool as provided in paragraph (c) of this section.

(b) *Eligible pool.* (1) A pool shall be eligible for price support if: (i) except as provided in paragraph (b)(2) of this section, all of the commodity included in the pool is eligible for price support; (ii) the eligible commodity in such pool was (A) delivered to the cooperative for marketing for the benefit of the members

of the cooperative and (B) delivered by members who retain the right to share in the proceeds from the marketing of the commodity in accordance with § 1425.17; and (iii) all of the commodity placed in such pool was delivered by members who have agreed to accept a payment of the initial advances made available to such producers by the cooperative with respect to such commodity in accordance with § 1425.17(a).

(2) A quantity of a commodity in a pool which is ineligible for price support because of grade or quality or, in the case of cotton because of bale weight or repacking, shall not make the pool ineligible for price support.

(c) *Availability of price support.* (1) Price support will be available to the cooperative for the quantity of a commodity stored commingled in an approved warehouse equal to the smaller of: (i) the quantity of an eligible commodity received from members of the cooperative, or (ii) the quantity of commodity which is in the cooperative's inventory. The cooperative must have in inventory a quantity of commodity of each class and grade at least equal to the quantity of that commodity of each class and grade pledged as loan collateral.

(2) Price support will be available as provided in §§ 1421.3(g) and 1434.3(d) for farm-stored commodities that have been delivered to the cooperative.

(3) Except as provided in paragraph (c)(2) of this section, price support will be available to the cooperative for the quantity of the eligible commodity stored identity preserved in an approved warehouse which was received from members of the cooperative and which is in the cooperative's inventory at the time such commodity is pledged as collateral for a price support loan or is offered to CCC for purchase.

(4) Price support eligibility for commingled commodities stored on a farm or in a warehouse may be transferred to an approved warehouse.

(d) *Allocation of costs and expenses.* If price support is obtained with respect to any quantity of a crop of a commodity which has been pooled, allocations by the cooperative of costs and expenses among separate pools for the crop of the commodity in a pool shall be made in accordance with sound accounting principles and practices.

(e) *Losses.* (1) Any losses incurred by the cooperative in the marketing of a crop of a commodity for which price support has not been obtained shall not be assessed against the proceeds from tne marketing of a crop of a commodity included in a pool for which price support was obtained.

(2) Except as provided in paragraph (e)(3) of this section, losses incurred by the cooperative in the marketing of a crop of a commodity included in a pool for which price support has been obtained may not be carried forward and applied against subsequent crops of commodities included in a pool for which price support is obtained.

(3) (i) CCC may authorize an approved cooperative to carry forward losses incurred by the cooperative in the marketing of a crop of a commodity included in a pool for which price support has been obtained when CCC determines that such action will result in the equitable treatment of all members participating in comparable eligible pools in the period needed to offset losses and is not contrary to the purposes of the price support program.

(ii) The authorization referred to in paragraph (e)(3)(i) of this section will be approved on the basis of a plan, subject to the approval of CCC, for the carrying forward of losses submitted by an approved cooperative and will be continued on the condition that the approved cooperative remains in substantial compliance with the approved plan, as reflected in periodic progress reports.

(A) Factors which will be considered in determining whether to approve such a plan include, but are not limited to, the following: (I) The stability of the membership and participation between affected pools; (II) the financial condition of the cooperative; and (III) whether the loss can reasonably be expected to be amortized and recovered from future earnings over the proposed time period.

(B) The plan submitted by the cooperative must include the following: (I) A provision for notifying existing and new members of the cooperative of the plan to deduct eligible pool losses from subsequent eligible pool gains; and (II) a procedure for maintaining necessary data and records needed to generate periodic progress reports as directed by CCC.

(iii) Any losses incurred subsequent to those contained in the approved plan may only be carried forward against subsequent eligible pools in accordance with a revised plan which has been approved by CCC under the criteria specified in paragraph (e)(3) of this section.

§ 1425.17 Distribution of proceeds.

(a) *CCC loans and purchases.* (1) If CCC makes available price support loans or purchases with respect to any quantity of the eligible commodity in a pool, the proceeds from such loans or purchases shall be distributed to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member which is included in the pool less any authorized charges for services performed or paid by the cooperative which are necessary to condition the commodity or otherwise make the commodity eligible for price support. Such proceeds shall be distributed within 15 days from the date the cooperative receives the proceeds from CCC.

(2) Any advances by the cooperative to its members who have a quantity of the commodity in the eligible pool for which advances are made prior to the pledging of the commodity as security for a CCC loan or prior to entering into a purchase agreement with CCC may be credited by the cooperative against the distribution required in paragraph (a)(1) of this section.

(b) *Pool proceeds.* (1) If price support is obtained from CCC for any quantity of the eligible commodity in a pool, all proceeds of such pool shall be distributed only to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member which is included in such pool.

(2) Except as provided in paragraph (b)(3) of this section, all proceeds from an eligible pool for which price support has been obtained shall not be combined with proceeds from ineligible pools for distribution and final settlement, and the method of distribution of proceeds shall be as specified in the information provided to CCC in accordance with § 1425.4(b)(7).

(3) Sales proceeds from an eligible pool may be combined with sales proceeds from ineligible pools or other eligible pools if the proceeds from such pools are allocated among the pools according to the quantity and quality of the commodity included in such pools.

(4) Pool proceeds obtained from price support made by CCC shall not be combined with proceeds from other eligible or ineligible pools.

(c) *Unclaimed funds.* If a cooperative has attempted to distribute to its members a part of its equity, as defined in § 1425.8, in accordance with the articles of incorporation, articles of association or the bylaws of the cooperative and has given notice of distribution both by publication and personal letter addressed to such members, the cooperative may provide, to the extent permitted by the law of the State applicable to such distribution, for reallocation of such undistributed equity to its members and patrons on an equitable basis if:

(1) The period of limitation for the payment of debts has run, such period to begin on the date the equity to be distributed was declared to be payable by the cooperative;

(2) The cooperative, 30 days prior to the lapse of the period of limitation specified in paragraph (c)(1) of this section, has given the affected member notice (by certified mail, return receipts requested, at the member's last known address as reflected on the books of the cooperative) of the amount of equity payable to such member(s) and notice that such equity may be distributed to other members and patrons if the affected member does not make a claim for such equity within the period of limitation specified in paragraph (c)(1) of this section; and

(3) No claim for payment of the equity to be distributed has been made within the period of limitation described in paragraph (c)(1) of this section.

§ 1425.18 Member cooperatives.

(a) *Obtaining price support.* Except as provided in paragraph (c) of this section, in order for a cooperative to obtain price support for any quantity of an eligible commodity delivered by a member cooperative or for a cooperative to obtain price support for any quantity of an eligible commodity included in the same pool with the commodity delivered by a member cooperative, the cooperative and such member cooperative must meet the requirements of this paragraph.

(1) The eligible commodity delivered by the member cooperative must be produced by the members of such member cooperative.

(2) The member cooperative must be authorized to: (i) Sell the commodity; (ii) pledge such commodity as collateral for a price support loan; (iii) place a lien on such commodity; and (iv) deliver such commodity to the cooperative for marketing.

(3) The cooperative must either: (i) In its articles of incorporation, articles of association, bylaws, or marketing agreement, require each such member cooperative to meet the requirements of this part; or (ii) determine and certify annually to CCC that each such member cooperative meets the requirements of this part.

(b) *State law.* The cooperative shall determine and certify annually to CCC that its member cooperatives which are not subject to paragraph (a) of this section are in compliance with the producer ownership, membership meeting, and voting requirements of applicable State law.

(c) *Exception.* An approved cooperative is required to meet only the provisions contained in paragraphs (a) (1) and (2) of this section with respect to a member cooperative for whom the member cooperative markets the production of the member cooperative's members in accordance with § 1425.11(b).

§ 1425.19 Nondiscrimination.

The cooperative shall not, on the ground of race, color, age, sex, religion, national origin, or physical or mental handicap, deny any producer participation in, or otherwise subject any producer to discrimination with respect to any benefits resulting from its approval to obtain price support and shall comply with the provisions of Title VI of the Civil Rights Act of 1964 and the Secretary's regulations issued thereunder, appearing in §§ 15.1–15.12 of this title (29 FR 16274 and 38 FR 16966), and any amendments thereto; section 504 of the Rehabilitation Act of 1973, as amended by the Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978; and provisions of the Age Discrimination Act of 1975 as amended. The cooperative shall not discriminate against employees under Title VII of the Civil Rights Act of 1964, as amended, or the Equal Pay Act of 1963 or Title VI of the Civil Rights Act of 1964 as administered by the Equal Employment Opportunity Commission, and will handle employee discrimination complaints as provided for in 28 CFR Part 42 and 29 CFR Part 1691. The United States shall have the right to enforce compliance with such statutes and regulations by suit or by any other action authorized by law. The cooperative shall submit a certification with its application that the above cited regulations and rules have been read and understood and that the cooperative will abide by them.

(c) An approved cooperative, when authorized by CCC, may offer additional marketing methods to its members on a limited membership basis for not to exceed two crop years before making such marketing method available to all members. If such limited marketing method is adopted as a permanent marketing method by the cooperative, information concerning such method and participation in such method shall be made available to all members. Such information may be published in the cooperative's membership publication or included in other written notice mailed to members.

§ 1425.20 Records required.

(a) *Acquisitions.* An approved cooperative and its member cooperatives shall maintain a record which shows the quantity of commodity which is received from each of its members and nonmembers, the date received, the eligibility status for price support of each such quantity, the quality factors specified in the applicable regulations for the commodity (including class, grade, and quality, where applicable), and the quantity to which each applicable quality factor applies.

(b) *Dispositions.* The cooperative shall maintain a record which shows each quantity of commodity which is disposed of; and, if sold, the date sold and the price received; and the date removed for processing or shipped. Except as provided in paragraph (c) of this section, inventory shall be allocated in the following manner until the entire inventory in a particular pool is depleted:

(1) *Commodities which are processed.* The inventory of an eligible pool or ineligible pool or both eligible and ineligible pools shall be adjusted at the time the commodity is withdrawn from inventory for processing.

(2) *Commodities not processed.* The quantity of a commodity to be shipped shall be allocated to an eligible pool, an ineligible pool, or a combination of eligible and ineligible pools and the pool inventories shall be adjusted accordingly when the commodity is shipped.

(c) Records of eligible and ineligible pool dispositions need not be maintained separately so long as sales proceeds from such pools are allocated among the pools according to the quantity and quality of commodity included.

§ 1425.21 Inspection and investigation.

(a) *Retention of records.* The books, documents, papers, and records of the approved cooperative, member cooperatives, and subsidiaries, shall be maintained for a period of five years and shall be made available to CCC for inspection and examination at all reasonable times.

(b) *Examination.* CCC shall have the right at any time after an application is received, to examine all books, documents, papers, and determine whether the cooperative is operating or has operated in accordance with the regulations in this part, its articles of incorporation or articles association, bylaws, and agreements with producers, the representations made by the cooperative in its application for approval, and, where applicable, its agreements with CCC.

§ 1425.22 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR 1425) have been approved by the Office of Management (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0560–0040.

§ 1425.23 Appeals.

A cooperative may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth at Part 780 of this title.

5. Part 1421 of Chapter XIV of Title 7 of the Code of Federal Regulations is amended as follows:

PART 1421—[AMENDED]

A. Part 1421 is amended by removing the following Subparts and sections:

Subpart—1978 and Subsequent Crops of Flaxseed Purchase Program Regulations (§§ 1421.150–1421.158); Subpart—Regulations Governing the Wheat Reserve Program for 1981 and Subsequent Crops and Alternative Program for 1981 and Prior Crops of Wheat (§§ 1421.700–1421.714); and Subpart—Regulations Governing the Feed Grain Reserve Program for 1981 and Subsequent Crops and Alternative Program for 1980 and Prior Crops (§§ 1421.720–1421.734).

§ 1421.3 [Amended]

B. The first sentence of § 1421.3(a) is amended by removing the word "and" in paragraph (1) and inserting a semicolon in its place; and by removing the period in pargraph (2) and inserting in its place the following: "; and (3) which meets the eligibility requirements prescribed in 7 CFR Parts 12, 713, 718, 770, and 791."

PART 1434—[AMENDED]

6. Part 1434 of Chapter XIV of Title 7 of the Code of Federal Regulations is amended by revising § 1434.3(a) to read as follows:

§ 1434.3 Eligible producers.

(a) *Producer.* An eligible producer shall be a person (i.e., an individual, partnership, association, corporation, estate, trust, or other legal entity) who: (1) Extracts honey produced by bees owned by the producer; (2) meets the eligibility requirements prescribed in 7 CFR Part 12.

* * * * *

PART 1474—[AMENDED]

7. Part 1474 of Chapter XIV of Title 7 of the Code of Federal Regulations is amended by adding paragraph (c) to § 1474.4 to read as follows:

§ 1474.4 Eligible borrowers.

* * * * *

(c) The applicant meets the eligibility requirements prescribed in 7 CFR Part 12.

* * * * *

Signed at Washington, DC, on October 7, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation and Acting Administrator, Agricultural Stabilization and Conservation Service.

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Part III

Nuclear Regulatory Commission

10 CFR Parts 30, 31, 32, 35, and 40
Medical Use of Byproduct Material; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 31, 32, 35, and 40

Medical Use of Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its regulations to modify the process for licensing and regulating the medical use of radioactive byproduct material. The revision will primarily affect hospitals, clinics, and individual physicians.

By clarifying and consolidating all the essential radiation safety requirements that are now contained in the regulations, license conditions, regulatory guides, and staff positions, the regulation provides a single source of requirements related specifically to the medical use of byproduct materials. The regulation also provides flexibility for licensees by allowing them to update their day-to-day radiation safety procedures without applying for and receiving a license amendment. The revised regulations provide for a more efficient method of regulating the medical use of byproduct material.

EFFECTIVE DATE: April 1, 1987. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 1, 1987.

ADDRESSES: Copies of the regulatory analysis, analysis of major issues, environmental impact assessment, and the comments received on the proposed rule may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, DC. Single copies of the regulatory analysis, analysis of major issues, and environmental impact assessment are available from Norman L. McElroy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 427–4108.

FOR FURTHER INFORMATION CONTACT: Norman L. McElroy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 427–4108.

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I. Byproduct Material in Medicine

Use for Patient Care

Radioactive materials are used in drugs in the field of nuclear medicine. Drugs labeled with radioisotopes are known as radiopharmaceuticals. In diagnostic nuclear medicine, patients receive these materials by injection, inhalation, or oral administration. Physicians use radiation detection equipment to visualize the distribution of a radioactive drug within the patient. Using this technology, it is possible to locate tumors, assess organ function, or monitor the effectiveness of a treatment. In therapeutic nuclear medicine, larger quantities of radiopharmaceuticals are administered to treat hyperactive thyroid conditions and certain forms of cancer. An estimated 10 million nuclear medicine procedures are performed in this country annually.

Sealed radioactive sources that produce high radiation fields are used in radiation therapy to treat cancer. A radioactive source in a teletherapy machine can be adjusted to direct a radiation beam to the part of the patient's body to be treated. An estimated 100,000 patients receive cobalt-60 teletherapy treatments from NRC licensees each year. Smaller, less radioactive sealed sources are designed to be implanted directly into a tumor area or applied on the surface of an area to be treated. This procedure is known as brachytherapy. NRC licensees perform approximately 10,000 brachytherapy treatments annually.

Sealed radioactive sources can also be used in machines that are used for diagnostic purposes. The source provides a beam of radiation that is projected through the patient. A device on the other side of the patient detects the amount or spatial distribution of radiation that goes through the patient. This can provide information about tissues within the patient. This is a relatively new development in the field of medicine and the NRC has no estimate of the number of these diagnostic procedures performed annually.

State and Federal Regulation

Twenty-eight States, known as Agreement States, have assumed responsibility for regulating certain radioactive materials within their respective borders by agreement with the NRC. (This kind of agreement is authorized by the Atomic Energy Act.) They issue licenses for the medical use of byproduct material, and currently regulate about 5,000 licensees. In non-Agreement States, the NRC issues licenses to medical institutions (mostly hospitals and clinics) and to individual physicians. These licenses authorize certain diagnostic and therapeutic uses of radioactive materials.

II. NRC's Regulatory Program

Policy Regarding the Medical Use of Byproduct Material

In a policy statement published February 9, 1979 (44 FR 8242), the NRC noted that it regulates the medical use of byproduct material as necessary to provide for the radiation safety of workers and the general public, regulates the radiation safety of patients where justified by the risk to patients, and minimizes its intrusion into medical judgments affecting patients and into other areas traditionally considered to be the practice of medicine. The NRC does have the authority to regulate the medical use of byproduct material to protect the health and safety of patients, but also recognizes that physicians have the primary responsibility for the protection of their patients. NRC regulations are predicated on the assumption that properly trained and adequately informed physicians will make decisions in the best interest of their patients.

This revision retains NRC's current balance between adequate controls and undue interference in medical judgments. Too much regulation could result in poorer health care delivery to patients. Insufficient regulation could

result in the unwarranted or unsafe use of radiation.

Current Licensing Practice

The current regulations in 10 CFR Part 35, "Human Uses of Byproduct Material," provide for licensing medical institutions and physicians for medical use. A license may be issued for one or more of six types of medical use. The types of use are defined in Groups I–VI in the current § 35.100. Each group is comprised of a number of diagnostic or therapeutic procedures that have been grouped together because they require similar physician training and radiation safety precautions for safe use. A separate specific license may also be issued for use of a teletherapy unit. Applications for a specific license are very detailed and contain the applicant's step-by-step radiation safety procedures, which are reviewed and approved individually by NRC.

NRC currently has about 2500 specific medical licensees (2200 hospitals and 300 physicians in private practice). Each year the NRC receives about 100 new applications, 500 license renewal applications, and 2,000 license amendment requests.

To help licensees design their radiation safety programs, the NRC has published many NUREG reports and regulatory guides that contain radiation safety guidance. These publications address three general areas: radiological health and safety, personnel training and experience, and facilities and equipment. Experience has shown that if licensees follow the guidance in the publications, the medical use of byproduct material generally poses no hazard to workers and the public.

Because of the potential radiation hazard to workers and the public, the specific license program that NRC uses to regulate medical use incorporates three regulatory features: case-by-case review of applications, on-site inspections, and periodic license renewals.

A major problem with the current licensing program is that radiation protection requirements are not located in one document. Requirements are scattered in the regulations, Inspection and Enforcement (IE) orders that modify a license or group of licenses, and in conditions attached to individual licenses. Suggestions for good practice are contained in NRC regulatory guides and technical reports (NUREG's). For example, Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Programs," [1] and NUREG–0267, "Principles and Practices for Keeping Occupational Radiation Exposure at Medical Institutions As Low As Reasonably Achievable," [2] contain many recommendations that the NRC believes are important for the safe use of byproduct material. The revision of Part 35 incorporates those recommendations, and also corrects the piecemeal fashion in which the regulations have been amended over the years to address specific problems.

When preparing a specific license application for review under the current licensing program, the applicant must include sufficient information to assure NRC reviewers that byproduct material will be used safely. Applicants include, as an integral part of the application package, copies of their proposed step-by-step radiation safety procedures. In many cases, the procedures are edited versions of procedures described in Regulatory Guide 10.8.

When NRC receives the application, a licensing reviewer evaluates the applicant's training and experience, facility, equipment, and radiation safety procedures in detail. If the application is found to be incomplete or inadequate, a "deficiency letter" is sent to the applicant explaining what additional information is needed. Review of the application is not resumed until a written response from the applicant has been received. Staff studies indicate that about 40 percent of all applicants receive either a deficiency letter or a phone call for additional information. The need for deficiency letters stems from two sources. Guidance on what submissions are required to get a license is unclear and scattered in various documents. Application review practice must be conservative because the application and license comprise the basis for regulatory control. Deficiency letters are costly for the NRC and the applicant and greatly increase the time needed to complete licensing actions.

When the application, including any additional submitted information, is approved, the NRC issues a specific license that grants the authority for medical use of byproduct material in accordance with the program described in the application. Requirements in addition to those contained in the regulations are frequently incorporated in the license as conditions of use. Since the licensee must comply with conditions specified in the license, the license, rather than the regulations, is frequently used to regulate radiation safety in the day-to-day use of byproduct material.

The specific license is valid for five years. The license must be amended before methods of use or procedures may be added or changed, or before permitting additional physicians to use materials. Amendments to a specific license involve an application, review, and approval process similar to that for new licenses. Renewals are treated in the same manner as new license applications.

This regulatory process was appropriate during the evolution of the use of byproduct material in medicine. Radiation safety problems were not well defined, regulatory requirements had not caught up with developing technology, physician training curricula had not been established, and there were no formal training programs for nuclear medicine technologists. Therefore, it was necessary to regulate by reviewing each individual radiation safety program to ensure that the applicant had adequate personnel, facilities, and equipment.

III. Revision of the Regulatory Program

Overview

NRC is modifying its regulation of the medical use of byproduct material. The Commission has revised the regulations to provide a single source of requirements specifically related to medical use of byproduct materials. Within the boundaries set by the regulations, NRC will allow medical licensees to make minor changes in their radiation safety procedures that are not potentially important to safety. Such changes are sometimes needed so licensees can make prompt use of new safety methods and also meet new needs caused by changes in the demand for various patient care services or changes in the number of patients served by the licensee. The revision of 10 CFR Part 35 is consistent with the Commission's general policy on medical use of byproduct material issued February 9, 1979 (44 FR 8242). As stated

[1] Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington DC. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

[2] Copies of NUREGs may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and copying for a fee in the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

in the policy statement, "NRC will continue to regulate the medical uses of radioisotopes, as necessary, to provide for the radiation safety of workers and the general public."

Codification of Requirements in the Regulations

The proposed revision was published for public comment on July 26, 1985 (50 FR 30616). In the proposal, the NRC said it would simplify regulation of medical licensees by incorporating all medical use requirements into 10 CFR Part 35. These regulations would become the primary means of regulating the medical use of byproduct material. General safety requirements for worker instruction, worker safety, noncompliance reports, and materials licensing that are in Parts 19, 20, 21, and 30 will also continue to apply to Part 35 licensees.

The current license application process will be unchanged. The applicant still will complete Form NRC–313, which asks for the following information: the name and mailing address of the applicant; the location of use; a person who can be contacted about the application; what materials are requested; the purpose (in this case, "medical use"); the training and experience of the authorized users and Radiation Safety Officer; the worker radiation safety training program; facilities and equipment; the radiation safety program; and waste management.

Licensees will not face significant new regulatory burdens in their radiation safety programs because, in most cases, the information submitted on Form 313 is transformed into license conditions. Under the revised regulations the license authorizes medical use of byproduct materials for specified types of use. A licensee's use of byproduct material is controlled by the regulations and by license conditions for sitespecific circumstances that can not be generically covered by regulations. This simplifies inspections for NRC because inspectors need only be familiar with one set of regulations rather than a different set of license conditions and radiation safety procedures at each facility.

License Application, Issuance, and Authority and Responsibility Radiation Safety Programs.

New revisions of Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Programs," and Draft Regulatory Guide TM 608–4,[3] "Guide for the Preparation of Licenses in Medical Teletherapy Programs," which were distributed to licensees for comment, contain instructions on the type and extent of information that must be submitted based on the byproduct materials for which the applicant has requested a license. The regulatory guides also contain model procedures that the applicant can use to develop site-specific procedures. (Consistent with current practice, applicants will alternatively be allowed to simply certify that they will follow a model radiation safety procedure developed by NRC staff with public comment and published in a regulatory guide. This method significantly reduces the amount of time NRC must spend reviewing radiation safety procedures.) The applicant mails the completed license application, with application fee, to the NRC office identified on the form.

The NRC staff will continue to review the application to determine whether the applicant's radiation safety program is sufficient to comply with the regulations. After completing the review, if the applicant's program appears incomplete or inadequate, NRC will issue a deficiency letter that describes the apparent shortcomings in the applicant's program and requests clarification or correction. If the applicant's response to the deficiency letter is satisfactory, or if no deficiency letter was needed, the license will be issued.

In most cases license conditions will only be used to identify authorized users for each type of use, the Radiation Safety Officer, a teletherapy physicist if required, types of material authorized, possession limits for teletherapy units and brachytherapy sources, and areas set aside for byproduct material use. This regulatory scheme will not incorporate the current license condition requirement that licensees use byproduct material in accordance with the statements made in the application.

Major radiation safety program changes that are clearly potentially important to safety are listed in §§ 35.13 and 35.605 of the final rule; they will require a license amendment. This is required because such changes could significantly affect the public health and safety. Licensees will be free to make minor changes in their radiation safety programs that are not potentially important to safety after conducting an internal review and approval process. This will allow each licensee to make prompt use of new safety methods and to adjust radiation safety procedures to meet new needs caused by changes in demand for patient care services or patient load. A list of radiation safety topics that should be considered when reviewing proposed changes appears in the new revision of Regulatory Guide 10.8. The right to make minor changes does not relieve the licensee from the requirement to comply with the regulations. For example, requirements to have certain equipment on hand and to conduct certain surveys at a certain frequency are required by regulation and cannot be changed. See the analysis of comments on § 35.31 for further discussion of this matter.

The regulations require specific training and experience for each type of use. Proposed authorized user physicians, teletherapy physicists, and Radiation Safety Officers will have to submit summaries of their training and experience. The NRC will review those individuals' training and experience against the standards in the regulation before authorizing them to work under the license. Consistent with current practice, any individual who does not meet the standards may ask for an exemption from the training and experience requirements. The NRC staff will review the individual's training and experience with the assistance of its Advisory Committee on the Medical Uses of Isotopes, and may issue the exemption as a license condition.

Training and Experience Criteria

The NRC notes that, as a separate project, it is reviewing its physician training and experience criteria. If it decides that changes might be in order, the proposed changes will be published for public comment as a separate rulemaking action.

Enforcement

Licensees will be cited for failure to meet the requirements of the regulations or license conditions (which will list, for example, authorized users, address of use, types of use, byproduct material and inventory limits, and site-specific limitations), failure to have on hand the written procedures required by the regulations, failure to follow the procedures on hand, failure to have the records required by the regulations, or failure to follow technically valid radiation safety procedures (examples: using an instrument that doesn't work, not determining instrument detection efficiency, not allowing an instrument enough time to respond, or making

[3] Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

unsubstantiated assumptions in calculations). Use of material can be authorized either by license or by virtue of working under the supervision of an authorized user. Use without authorization would be a violation of the regulations and the Act, which would subject the licensee and individual to enforcement action.

Amendments

Under current regulatory policy, the application coupled with the licensee condition requirement to use material in accordance with the statements made in the application usually provides the basis for inspection citations. Now the regulations will contain sufficient prescriptive and performance criteria on which to base enforcement actions. Therefore, the NRC will allow a licensee to make minor changes in its radiation safety procedures that are not potentially important to safety after making an internal review to assure that the change complies with the regulations in Part 35 and in other parts of 10 CFR Chapter I.

However, amendments still will be required for some changes. The NRC will review the training and experience of each proposed authorized user, Radiation Safety Officer, and teletherapy physicist before the individual is listed on a license. A licensee's request to add a type of use (for example, adding radiopharmaceutical therapy to a license that authorizes radiopharmaceuticals for imaging) to an existing license will be handled as a new application. The authorized user's training and experience and the procedures needed in support of the request will be reviewed for completeness and adequacy with respect to the new type of use before the amendment is issued.

A request to leave one location of use and begin working in a new location, for example when moving a private practice to a new office or when moving into a new hospital building, will have to be supported by a complete new license application package.

Licensees that are already allowed to receive packages, prepare radiopharmaceuticals, and package waste at a central facility, but use the byproduct material at satellite locations, will only have to identify the new location. (Due to the training, space, and equipment commitments needed for safety during therapy procedures, the NRC will generally not authorize licensees to perform therapies, except low-level iodine therapies, outside medical institutions. This type of request will be handled on a case-by-case basis.)

Renewals

The NRC license is valid for five years. If a person wants to continue using byproduct material after the five-year license period the license must be renewed. The renewal application must completely describe the entire radiation safety program just as a new application does. If a radiation safety procedure, facility description, or equipment list that was submitted in the application or an approved amendment still accurately reflects that part of the licensee's program, the renewal applicant may simply make a clear reference to the previous submission. If the licensee has changed a procedure, or is using different equipment, a complete new description of the particular procedure or equipment must be submitted. The licensee may also take this opportunity to identify new authorized users or request wider authorization.

Summary of Changes in the Regulatory Program

In summary, the new regulation will require that licensees meet standards that are currently imposed by license conditions. The NRC will continue to review user training and experience. The NRC will review applicants' radiation safety programs, including the site-specific radiation safety procedures, for completeness and adequacy and issue deficiency letters if necessary, but will allow licensees to make minor changes in their radiation safety procedures that are not potentially important to safety after conducting an internal radiation safety review of each change. However, the right to change procedures does not relieve the licensee from the requirement to comply with the regulations. Amendment requests will generally be reviewed just as new applications are reviewed, but they may include by reference material contained in the original application and any previous amendments.

Transition Policy For General Licensees

The General License for Medical Use. The general license program is based on the fact that the quantities and forms of material that are authorized by a general license present a very low health risk. The NRC believes it is no longer efficient to issue medical general licenses that allow the administration of byproduct material to humans. The tests authorized under § 35.31 have been superseded by newer procedures with greater diagnostic accuracy. These developments have been reflected by a significant decrease in applications for general licenses.

To determine the status of general license use, the staff performed a telephone survey of 10 percent of the current registrants. The survey results indicated that less than 9 percent of all the current registrants still use material for medical use under a general license. Many general licensees are now using byproduct material under a specific license. Because of the low level of use of the general license, the NRC has concluded that it no longer serves a useful role in licensing the medical use of byproduct material.

The in vivo general license contained in current § 35.31 has been eliminated from the regulations. In the future, all medical use will be authorized by a specific license. Current general licensees, all of whom are physicians, will receive a specific license that will be incorporated into NRC's filing system for keeping track of specific licensees. However, these licensees will be limited to the clinical procedures described in the current § 35.31, and relieved, by license condition on a pre-printed license, from the requirements that are more burdensome than current requirements under the general licensee. The only action they will need to take is to respond affirmatively to an NRC notice that asks if they want to continue to have an NRC license that is limited to the clinical procedures authorized by the current general license.

The Commission will, under § 170.11(b), exempt these licensees from application and renewal fees as long as their programs are limited to the material uses described in current § 35.31. Under the new specific licensing system, former general licensees that want to make any changes in their programs, amend their licenses, or transfer them to other physicians, will have to apply for a specific license and will be subject to all the fees that apply to other specific licensees.

The Commission has decided to waive fees to former general licensees for the following reasons. General licensees do not now pay fees. About 90% of the 1,100 or so general licensees are inactive. Each year NRC receives only a very few requests for general licenses under § 35.31. There would be no NRC review time needed and only a minor NRC administrative cost to process these licenses. It would be unfair to charge these licensees the fees listed in 10 CFR Part 170, and it would be more costly for NRC to alter that fee structure than to grant the exemption.

The General License for in vitro use. The current Part 35 also grants a general

license for in vitro work described in § 31.11 to group licensees without requiring that they submit an in vitro registration form. The NRC will continue this program unchanged.

Transition Policy for Specific Licensees

Under the current regulatory program, the license document with the appended application is used to regulate each individual licensee. Because the requirements in the revision were taken from commonly used topical license conditions and from regulatory guidance that most licensees have incorporated into their applications, the Commission does not expect any significant inconsistencies between current licensee radiation safety programs and radiation safety programs of applicants that apply after the effective date of the regulations. Therefore, current licensees will normally be cited if they do not comply with the new regulations. However, because each current licensee's radiation safety program was reviewed individually and license conditions were tailored to meet the licensee's individual needs, there may be an occasional inconsistency between a license condition and the regulation (for example, a license may require survey instrument calibration biennially, but the proposed regulation would require calibration annually). There is no health and safety reason to undo these licenses to effect compliance with the regulation. To impose the regulation in addition to or in lieu of the license conditions would not provide for significant additional protection for the public health and safety. The Commission has decided to resolve possible temporary inconsistencies between license conditions and the regulation by providing in the regulation a transition period between the effective date of the rule and the expiration date of each license. During this transition period, if there is an inconsistency between a provision in a license (issued prior to the regulation) and the regulation, the license condition takes precedence over the regulation. Because the license conditions were reviewed from the perspective of overall safety and approved by the NRC, the inconsistency would not result in an increased risk to workers or the public.

In addition to the topical license conditions mentioned above (for example, sealed source leak test requirements, special bioassay requirements, radioactive patient surveys and release limits, or waste disposal restrictions), each specific license has an encompassing license condition that requires each licensee to possess and use licensed material in accordance with the statements, representations, and procedures contained in the license application and in letters of clarification. Despite this encompassing condition, licensees would be allowed to make minor changes in their radiation safety procedures that are not potentially important to safety; permissible changes would be restricted to those identified in § 35.31, and the licensee would have to conduct the internal review required by that section.

In the case of record retention, the regulation will take precedence because, in the past, the Commission has not offered much guidance on this topic. If a record is substantively the same as a record described in the proposed regulation and the licensee has not stated a retention period for that specific record, licensees may adopt the retention period stated in the final rule. However, during the transition period, licensees still will have to comply with any record retention period required by a license condition that deals with a specific topic, or by another Part of 10 CFR Chapter I (for example Part 20). For example, surveys that provide the basis for occupational dose records or measurements of effluent release are governed by Part 20. A license condition that requires retention of a particular record would only have been imposed for a specific public health and safety reason.

NRC does not currently review teletherapy physicist credentials, and does not identify the Radiation Safety Officer on the license. NRC will begin to review the credentials of the Radiation Safety Officer and Teletherapy Physicist and identify both of them just as it does now for authorized users. To add current licensees to this new scheme, licensees must submit the credentials for review and approval when the next amendment or renewal request is required. These individuals will be identified on the next license amendment.

IV. Analysis of Comments

Overview

The NRC analyzed all 113 comment letters that were received prior to drafting the final rule. Comments came from many different sources. A tally is provided in Table 1.

TABLE 1

Source [1]	PP	H	A	C	I	S	O	M
Comments submitted	18	42	8	10	6	22	2	5
ALARA	1	6	0	2	0	1	1	0
Minor changes	0	6	0	1	0	20	2	0
Misadministration reports	1	10	2	1	1	0	2	0
Technical comments	2	31	5	10	6	16	3	4

[1] PP-private practioner; H-hospital., A-professional association; C-radiation safety consultant; I-individual; S-state regulatory program; 0-Scientific organization; M-manufacturer.

Twenty-nine of the letters addressed training and experience criteria for diagnostic radiopharmaceuticals, an issue which the NRC stated in the Notice of Proposed Rulemaking was being handled as a separate project that will be published for public comment separately. Thirty-three complimented the agency on the completeness and clarity of the rule.

Many commenters addressed the three major issues raised by the proposed rule: the requirement to have an ALARA program, misadministration reporting requirements, and the provision that allows licensees to make minor changes in their radiation safety programs. Nine of the 11 comments received on the ALARA program requirement recommended that the requirement be placed on private practitioners as well as medical institutions. Two recommended either no change or lessening of the requirement. Of those that addressed the provision for minor changes in licensees' radiation safety programs, individuals associated with state regulatory programs were unanimous in recommending that all program changes require license amendment. The other comments indicated satisfaction with the provision. Of the 17 letters that addressed the misadministration reporting requirement, 13 recommended deletion of the diagnostic misadministration reporting requirement, and 4 recommended no change.

The NRC mailed notices to all 1,100 general medical licensees that are licensed under the current § 35.31. Ten requested more information, and 5 indicated that they wanted a license that would allow them to continue their work. The Postal Service returned 141 of the notices as undeliverable.

General Comments

1. *Consolidation and clarification.* Commenters were almost unanimous in complimenting the agency for publishing

the proposed consolidation of requirements. Many endorsed the NRC's view that noncompliance is frequently born of ignorance rather than negligence, and that this problem is best dealt with by putting all requirements in one place. Furthermore, the timing of the revision is appropriate given the growth over the past two decades of the professional literature and various professional organizations.

2. *Word use.* In the notice of proposed rulemaking, the NRC clarified several terms of art that it proposed to use when dealing with medical licensees. Several comments were received.

Licensee. Several commenters noted that the regulations should be revised to allow contractors to do certain chores, noting that the regulation requires "the licensee" to perform certain tasks, while in practice licensees frequently hire outsiders to perform these tasks. The NRC stated in the Notice of Proposed Rulemaking, "The person (individual, partnership, corporation, or agency) listed on the license as the 'licensee' is responsible for compliance with regulations and license conditions. The licensee may effect compliance through full-time or part-time employees, contracts with consultants or service organizations, or other business arrangements. The word 'licensee' is used throughout the regulation to stress the fact that, no matter which method is used, the licensee is legally responsible in case of noncompliance." Therefore, there is no need to revise the regulations in this regard.

Operable. Some commenters suggested that the word "operable" should be inserted "where appropriate to obviate the need, in the future, to constantly explain to licensees that meters must, in fact, *be* operable." The NRC can only repeat what was stated in the notice of proposed rulemaking. "The word 'operable' is not used in the proposed regulation because every piece of equipment must be operable. If a piece of equipment is not operable or reliable, whether due to old or absent batteries, incomplete or improper maintenance, damage, inappropriate use, or improper use, it cannot be used to meet a regulatory requirement because there is no assurance that it accomplished the task for which it was used." The NRC repeats: Every piece of equipment used to meet a regulatory requirement must be operable.

Teletherapy physicist. The current Part 35 uses the term "qualified expert," which is usually used to denote an individual with special training and experience in a field determined in context by the reader. The proposed Part 35 used the term of art "qualified teletherapy calibration expert" to denote the field of special expertise. The final regulation uses the less unwieldy term of art "teletherapy physicist." Although the terminology was changed, the functions of the individual have not.

Roentgen, rad, and rem. These base units are used to measure three different quantities: exposure, dose, and dose equivalent respectively. The NRC notes in 10 CFR 20.4(c) that a dose of one rem is equal to an exposure of one roentgen of x or gamma radiation or a dose of one rad of x, gamma, or beta radiation. In this final rule the NRC has used the base unit rem throughout.

Dose and dosage. In pharmacy, the word "dose" is used to indicate the amount of chemical administered; in radiation biology it is used to indicate the amount of ionizing energy absorbed per unit mass; and in radiation safety it is used as a shorthand term to indicate a worker's exposure to radiation. In order to avoid confusion, the word "dosage" is used in the revised Part 35 to indicate quantities of radioactivity that are measured with the base unit Curie. The word dose is used to indicate quantities of radiation absorbed dose or dose equivalent that are measured with the base unit rad or rem.

Record and report. A record is a user-retrievable notation or complete document. It may consist of something as small as a check-mark on a form or something as extensive as a survey of a newly installed teletherapy unit with appended calculations to demonstrate compliance with the limits on exposure in unrestricted areas. A report is a transfer of information which might be made face to face, by telephone, telegram, computer link, or hard copy transmittal.

Test and check. For many pieces of equipment, drafting committees comprised of industry experts have prepared standards of performance and complete calibration protocols. If a piece of equipment is subjected to the protocol in the calibration laboratory and meets all the standards, then the ability of the equipment to perform as expected in normal field use is assured. In the revised Part 35, this concept of complete examination is referred to as a "test." During field use it is common practice to subject a piece of equipment to a quick examination to determine whether it is working. This procedure does not examine all parameters of equipment performance. In the revised Part 35, this perfunctory examination is referred to as a "check."

Address of use, facility, and area of use. The phrase "address of use" is used to describe the building or buildings (typically identified by a single street address) where byproduct material is used. The word "facility" connotes a room or contiguous rooms where byproduct material is used, such as a nuclear medicine clinic comprised of an office, an imaging room, and a dosage preparation and waste storage room. The phrase "area of use" connotes the space used by a worker when performing a specific task connected with receiving, handling, or storing byproduct material.

Dedicated check source. A long-lived radioactive source can be used to check the day-to-day constancy of an instrument. The *same* source (a "dedicated" source) must be used every day so that the user knows what reading to expect from the instrument. The source may also be used for other purposes.

3. *Instruction.* Several commenters asked if instruction for workers had to be in classroom lecture format. The NRC recognizes that instruction can be in the form of lectures, laboratory exercises, audiovisual packages, printed handouts, preceptorials, or apprenticeships. The important point here is not the format of the instruction, but rather that the instruction be retained and used by the worker. To help correct misunderstandings, an opportunity for questions and answers should be an integral portion of each instruction module.

The NRC did not address the frequency of review sessions because that judgment must be made on-site. If employees are performing all their assigned tasks correctly, there is no need to spend time reviewing procedures with the employees. If instruction has not been followed by regular use of the procedures taught, then review instruction is probably necessary. If an employee is unable to do things correctly, then review and continued close supervision, or re-assignment, is necessary.

4. *Signatures on records.* Several commenters stated that the requirement that a certain individual sign a record or report implicitly required that individual to perform the survey, check, or test that is documented by the record or report. No such implication was or is intended. The NRC realizes that technicians, students, and residents do many of the tasks required by the regulations. The purpose of having a particular individual sign a report is to assure that someone with special training or radiation safety program oversight responsibilities has reviewed the document for correctness, completeness, and need for follow-up action.

5. *Temporary absence.* Several commenters asked if a license amendment or notification was required if an authorized user, Radiation Safety Officer, or Teletherapy Physicist was absent for illness, vacation, sabbatical, or continuing education. Because the specific facts and circumstances would dictate the appropriate action by the licensee, it would be impossible for the NRC to make generic determinations in advance of the situation.

The point can not be reiterated sufficiently that the licensee, despite the absence of personnel, remains responsible for assuring continued compliance with NRC radiation safety requirements.

6. *Deletion of the general medical license in § 35.31.* As noted in the discussion of the transition policy for general licensees for medical use, the general medical license, which authorizes a few radiopharmaceuticals for a few listed clinical procedures, is not frequently used and therefore no longer an efficient way of regulating the medical use of byproduct material. Thus, it has been deleted. However, current general medical licensees will be allowed to continue using materials under specific licenses that the NRC will issue.

7. *Fees.* One licensee said NRC should reduce its medical license fees when applicants propose to use radiation safety procedures that are published in regulatory guides because that reduces the time NRC needs to review the application. The comment can not be addressed in this rulemaking because the proposed rulemaking did not propose any changes to the fee schedule in 10 CFR Part 170. A petition for rulemaking to change Part 170 may be submitted.

8. *Records.* A few commenters said the detailed nature of some recordkeeping requirements ran counter to the philosophy of flexibility on which the revision is based, and may require a change in other administrative procedures. The NRC has retained the detailed prescriptive requirements that describe the information that must be included in each record. The NRC has carefully reviewed each element of data required and believes each is an important part of the record or indicates completion of an important step in a procedure.

Some commenters said a certain record requirement duplicated other records kept elsewhere—for example, diagnostic radiopharmaceutical dosages may be listed in a clinical procedures manual. There is no need to duplicate that information unless the regulation specifically requires that the information be posted or recorded in a certain place.

The NRC notes that, as a separate rulemaking, it is reviewing *all* of its record retention requirements. Some of the retention periods in this final rulemaking may be changed as a result of that project, which will be published for public comment.

9. *SI Units.* A few commenters recommended that the newer International System of Units (SI), which has new units for amount of radioactivity, radiation exposure, radiation dose, and dose equivalent, be used in place of the special radiation units because the SI system is now being used more frequently. The NRC believes that, if indicated, such a change should be made through all NRC regulations at one time, not where it would affect only one group of licensees.

10. *Specialty certification.* Some commenters questioned whether certain physicians who have successfully completed an examination in a medical speciality (diplomates) should be authorized to serve as Radiation Safety Officer, and some recommended that other additional certifications be recognized. The NRC compared the examination criteria applied to diplomates to the responsibilities shouldered by certain individuals and made a judgment that the certifications identified for certain individuals provide an appropriate demonstration of adequate training and experience. Thus, some certifications have been added that were not listed in the proposed rule: American Board of Nuclear Medicine or Board of Pharmaceutical Specialties in Nuclear Medicine for Radiation Safety Officer; and American Board of Radiology for therapeutic use of radiopharmaceuticals.

11. *Training and experience criteria.* Several commenters recommended changes in the training and experience criteria the NRC applies to physicians who want to use radiopharmaceuticals for diagnostic clinical procedures. In the notice of proposed rulemaking the NRC noted that it had "received and is reviewing suggested alternative training standards for some methods of use. The review is being handled as a separate project. If any changes in training standards come out of that project, they will be published for public comment. . . ." The NRC is continuing to review recommendations for alternative training criteria; they will be published for public comment at a later date.

A few commenters said authorized users and Teletherapy Physicists should be at least "board eligible," meaning that they have training and experience sufficient to allow the individual to apply for the certification examination. The NRC notes that most boards do not use this term (instead saying an individual is certified, not certified, or in the examination process), and believes the use of the term might create more confusion than it would resolve.

A few commenters said the required hour-by-hour distribution of content in the classroom and laboratory portions of the training and experience sections was overly restrictive, and would not recognize differences in students or programs. The NRC agrees, and has simply listed required topics, but has retained the *total time* requirements.

12. *Effect on medical broad licensees.* A few commenters said the NRC should indicate which sections apply to broad licensees authorized for medical use under Part 33; some are allowed to name authorized users and some are also allowed to develop new byproduct materials for medical use. The NRC has retained the solution to this question that was in the notice of proposed rulemaking, "These licensees would be required to comply with the proposed prescriptive and performance criteria of Part 35, but would be exempted from the training and experience requirements of Subpart J and the authorized materials and authorized use restrictions in proposed §§ 35.49, 35.100, 35.200, 35.300, 35.400, and 35.500." These changes will not limit broad licensees' authority to conduct medical research and identify authorized users.

13. *Therapy patients.* One commenter suggested that requirements be drafted regarding the handling of deceased patients who had been administered therapeutic radiopharmaceuticals or implants. The NRC notes that § 35.404 requires that the licensee retrieve temporary implants. The regulations, in §§ 35.315 and 35.415, require prompt notification of the Radiation Safety Officer in case of the patient's death, who then is responsible for taking steps to ensure compliance with requirements in Part 20. In case of death after release from confinement for radiation safety purposes, the NRC expects licensees to take steps to reduce doses to pathologists, morticians, and other individuals, but also recognizes the licensee may no longer have control over the remains. Therefore, the NRC can not expect that the licensee is able to take appropriate action.

14. *Voluntary submission of economic data.* Several commenters noted that the application form asks applicants to indicate their annual receipts, number of employees, number of beds, and willingness to furnish additional cost information on the economic impact of

NRC regulations, and said this has nothing to do with NRC's responsibility to assure the public health and safety. The NRC notes that the Regulatory Flexibility Act of 1980 requires Federal agencies to fit requirements to the scale of the entity being regulated. That Act requires that each agency consider the economic effect of its regulations on small entities and that, if a proposed regulation will have a "significant economic impact on a substantial number of small entities," the agency prepare an analysis of the impact. Thus, the NRC requests voluntary submission of economic data to determine what portion of affected licensees are small entities, how they are affected, and whether the regulation could be changed to alleviate adverse effects.

Comments on Specific Sections

Section 35.14 Notification.

Comment: There is no need for a licensee with several authorized users to notify the NRC when one of them leaves. The collective expertise is still sufficient to assure the public health and safety.

Response: The NRC believes this notification is important because high turnover in professional staff may indicate inadequate management of the radiation safety program. The requirement has been retained.

Section 35.20 ALARA program.

Comment: All medical licensees should have such a program because the hazards are the same, whether in a hospital or a clinic. Although it may be burdensome, the private practitioners' programs should be reviewed by an outside consultant.

Comment: "It appears that the principle of ALARA is replacing maximum permissible dose as a standard in matters of radiation exposure. This means that an objective standard with a widely recognized and approved set of limits can no longer be relied upon in quality control and risk management. Instead, radiation exposure will be weighed, *post hoc*, by the 'reasonable man.' "

Response: The NRC agrees that individuals may have difficulty defining what is reasonable, although most can offer "reasonable" solutions to hypothetical problems. However, ALARA is an operating philosophy or principle on which safety programs should be based. It does not prescribe permissible exposure limits.

The NRC has broadened the requirement to apply to all medical licensees. Although on occasion this may result in a private practitioner having a "one-participant conversation," the NRC believes that reviewing a radiation safety program from the perspective of worker protection rather than from clinical or business need may allow for insight or alternative methods that provide for increased safety. Moreover, the requirement for an ALARA program may help inculcate the philosophy of reducing unnecessary exposure in operating procedures.

The NRC agrees that an independent outside review may be helpful, but believes there is inadequate basis for imposing such a requirement. It is beyond the ken of a federal agency to know whether an outsider is needed to review the program managed by the Radiation Safety Officer.

Comment: There is no need for two trigger levels that initiate investigation of higher than usual worker doses; one is sufficient.

Response: The lower level initiates a timely investigation into the cause of a worker dose; the higher level initiates a prompt investigation *and* a review of viable mitigating actions because the investigation may indicate possibility of high worker dose or likelihood of unnecessary worker dose.

Section 35.21 Radiation Safety Officer.

Comment: It is unlikely that an authorized user/Radiation Safety Officer will have the time or inclination to do all the required tasks.

Response: The assigned responsibilities are essential elements of a radiation safety program. Because its inspection program has indicated a high degree of voluntary compliance, the NRC does not foresee adequate motivation as a problem. The NRC repeats that tasks, but not responsibility, can be delegated.

Section 35.22 Radiation Safety Committee.

Comment: The requirement that a licensee's Radiation Safety Committee approve each clinical procedure is unnecessarily burdensome. The NRC has acknowledged that physicians are motivated to act in the best interest of their patients, yet, because of the time needed to conduct the approval process, the physician may not be able to offer services needed by the patient. It is difficult to conceive of radiation safety issues that warrant this requirement.

Response: The NRC agrees that physicians need latitude to provide care for their patients. Once a physician has demonstrated training and experience adequate to safely use a group of materials with similar radiation hazards, an additional internal review is unnecessarily burdensome. The requirement has been withdrawn.

However, to allow the Radiation Safety Committee to meet its oversight responsibilities, the authorized user should report these new diagnostic clinical procedures so they may be incorporated as part of the annual Radiation Safety Program review.

Comment: To avoid potential conflicts, the regulation should identify who should chair the Radiation Safety Committee.

Response: It is beyond the ken of a Federal agency to know which individual or officer in each of 2500 local organizations is best suited to chair a committee.

Comment: NRC should require that a radiopharmacist sit on each committee because medical use includes the use of new radiopharmaceuticals.

Response: FDA's review of new radiopharmaceuticals and package inserts provides adequate assurance that materials distributed for medical use can be used safely. Furthermore, diagnostic radiopharmaceuticals do not present a credible risk to the patient. Therapy radiopharmaceuticals are not compounded or reconstituted by medical licensees.

Comment: The proposed regulation would allow several committees to share the responsibilities of the Radiation Safety Committee. This may cause coordination problems.

Response: The NRC believes that allowing more than one committee to oversee the radiation safety program may lead to misunderstandings about jurisdiction and responsibility that result in incomplete oversight of the program. The section has been changed to call for a single committee. That committee may of course consult with other committees and individuals.

Comment: The Radiation Safety Committee should be allowed to name authorized users. Other committees in a hospital are allowed to confer certain medical privileges.

Response: The NRC considered this, but believes that an independent review of training and experience credentials is necessary to assure the public health and safety.

Section 35.23 Statements of authority and responsibilities.

Comment: The NRC should clarify the regulation to indicate that the Radiation Safety Committee and the Radiation Safety Officer should have not only technical responsibilities, but authority to assure that the policy is adhered to and that the radiation safety program is

managed in a businesslike and efficient way.

Response: The section has been modified to indicate that both must have the authority to manage the program so as to assure that materials are used in accordance with NRC regulations.

Section 35.25 Supervision.

Comment: There may be only one authorized user on a hospital's license. If the authorized user is absent, the hospital has to hire an authorized user from another area to care for the patients. There may be capable residents at a nearby medical college who cannot be hired only because they are not listed as authorized users on a license. Yet, they may have been supervised by the authorized user before and found capable of delivering proper care for patients.

Comment: The NRC should require that each physician authorized user and technologist be certified by the appropriate board. This would help assure that individuals have been trained.

Comment: Requiring the authorized user to be physically present on one hour's notice is arbitrarily stringent. Choose a more reasonable time.

Comment: There should be a time limit on use of the supervision clause with respect to a physician-in-training in order to avoid use of the supervision clause in lieu of licensure.

Response: The purpose of supervision is to provide assurance that technologists and physicians do not use byproduct materials in a manner that is contrary to the requirements of the license, the regulations, or that is hazardous to the public health and safety. The proposed requirement that the authorized user be immediately available by telephone and physically present on one hour's notice was an attempt at a prescriptive definition of supervision in the medical setting.

NRC recognizes that medical practice is regulated differently in each state, but that, in the end, the physician is responsible for providing quality medical care. A prescriptive definition that describes delegable tasks, timely response in case of untoward events, and training requirements that are suited for one setting may hinder the delivery of medical care in another setting. The authorized user physician identified on the license is responsible for delivering quality medical care, and is best situated to determine what tasks a certain physician or technologist is capable of performing and the amount of personal supervision that each needs.

Under the final regulation, a licensee may delegate to unnamed individuals performance of any task associated with the medical use of byproduct material from package receipt through quality control, prescription, administration, interpretation or follow-up for individual clinical procedures, and radioactive waste disposal. The delegations must be consistent with other institutional requirements and the state's regulation of medicine. The NRC did not retain the "immediately available by telephone and physically present on one hour's notice" clause.

The licensee can not delegate *responsibility* to supervised individuals. If a supervised individual, through misunderstanding, negligence, or commission, acts contrary to the requirements of the license, the regulations, or an order, the *licensee* remains responsible.

The NRC believes this strikes the best balance between its responsibility to assure the public health and safety and a physician's responsibility to deliver quality medical care.

Section 35.29 Administrative requirements that apply to the provision of mobile nuclear medicine service.

Comment: The proposed requirement that mobile service not be provided to NRC-licensed hospitals because of clouded responsibilities eliminates an option a hospital needs for delivery of medical care in case of prolonged nuclear medicine department downtime. There could be significant delay in providing necessary clinical procedures and patients may have to be transported to another hospital. The regulation could result in inferior health care delivery to patients and could be counterproductive to health care cost containment.

Response: To respond to its charge to protect the public health and safety, it is appropriate for NRC to place restrictions on where and by whom byproduct material may be used. These restrictions make compliance more likely and corrective action simpler in case of hazards or noncompliance.

In this case, however, commenters properly pointed out that the regulation could have an adverse impact on the public health by making certain clinical procedures unavailable or inconvenient. The NRC's responsibility to assure public safety must be balanced with the responsibility of the NRC-licensed hospital-client of a mobile nuclear medicine service to provide care for its patients.

The regulation has been changed to allow mobile nuclear medicine services to provide service to NRC-licensed hospitals because they may need this option to provide timely medical care. However, when an NRC-licensed hospital exercises its authority to invite a mobile nuclear medicine service to provide medical service, the NRC will deal with this as though the hospital has delegated tasks to another licensee. The NRC-licensed hospital, not the mobile nuclear medicine service, will normally be held responsible for items of noncompliance that occur at the hospital.

The same considerations and decision apply to NRC-licensed private practitioners who invite a mobile nuclear medicine service to provide service.

Comment: Can a mobile nuclear medicine service receive byproduct material at a client's address of use.

Response: This is not allowed because there is no assurance that the client knows what safety measures to initiate. The section has been clarified by adding a paragraph that clearly forbids such practice.

Section 35.31 Radiation Safety Program Changes.

Comment: Although the proposed section will relieve the licensing staff of some casework, the responsibility to assure that new radiation safety procedures are adequate will fall on the inspector's shoulders. An inspector does not have time to review procedures in the field, and will not have the opportunity to consult reference works or colleagues if necessary.

Comment: Many licensees do not have the expertise needed to properly review a proposed change. A licensee may unwittingly degrade a radiation safety procedure or the Radiation Safety Officer may be pressured into changing it; the degraded procedure could be in effect for years before an NRC inspection triggers its correction.

About 40 percent of amendment requests are deficient. This demonstrates that many licensees are not capable of making an adequate safety review of a proposed change. The NRC should reduce the scope of the term "minor change" or continue to review all changes.

Comment: The NRC is shirking its responsibility. Why is the NRC bothering to require applicants to submit radiation safety procedures if licensees won't be required to follow them?

Comment: A licensee should earn the authority to make minor changes. NRC should grant this authority case-by-case after examining a licensee's inspection history and radiation safety staff. Perhaps only those with certified physicists would be allowed to make changes.

Comment: Although the proposed policy will give management the opportunity to promptly implement new or better safety procedures, it may also allow for increased productivity at the expense of safety. Committee members might be removed without cause. This could be precluded by requiring licensees to notify the NRC of membership changes.

Comment: The Joint Commission on the Accreditation of Hospitals states that "The service of a health or radiation physicist should be available, at least on a consultant basis, for educational purposes and for safety evaluations of all equipment and storage and handling practices." This negates the argument made by some that inadequately trained hospital staff will make changes in radiation safety procedures without guidance.

While accreditation of hospitals is a voluntary system, it is important to note that if a hospital does not volunteer for accreditation, it cannot be reimbursed by Federal programs such as Medicare and Medicaid, and other insurance organizations will not reimburse that hospital either. Although this is a carrot and stick system, the stick is so large that very few hospitals are not accredited.

Therefore, national voluntary standards and business considerations provide alternative assurance that hospital licensees will not make untoward changes in their radiation safety programs.

Private practitioners and small medical institutions do not look for ways to change procedures so frequently because they are disinclined to change things if their most recent inspection was favorable and business is running smoothly.

Comment: NRC should clarify the distinction between major and minor changes. The examples given are extreme.

Response: Changes that require a license amendment are listed in §§ 35.13 and 35.606, License amendments. Before publishing the proposed rule, the NRC analyzed 5 percent of the requests for medical license amendments received in a one year period. A summary of the analysis appears in Table 1. The NRC believes the list of major changes that are potentially important to safety provides adequate guidance regarding those cases in which an amendment request must be submitted.

Table 1. Analysis of Medical License Amendment Requests

Number of completed actions that were analyzed	[1] 100
Number of requests that included a major change which would require an amendment under the proposed revision of 10 CFR Part 35	69
Users	51
Type of use	15
Address of use	5
Inventory	2
Number of requests for an administrative change, e.g., name change, change of address but not location, short-term extension, etc.	6
Number of requests that included a minor change which would not require an amendment under the proposed revision of 10 CFR Part 35	37
Area of use [2]	21
Replacement equipment	5
Equipment quality assurance procedures	11
Service contractor	8
Handling procedure	6

[1] Some requests contained both Major and Minor changes and therefore were tallied twice; thus the division by Major, Administrative and Minor does not add up to 100.

[2] The proposed rule would have allowed licensees to use byproduct material in areas of use that were not identified in the application. On further consideration the Commission believes that such changes are potentially important to safety and should be reviewed by the staff.

The NRC has clarified the concept of "minor change" by using a new word and providing a list of examples. Minor changes should be ministerial in nature. As used by NRC in this section, a ministerial change is one that is made, after ascertaining the applicable requirements, by persons in authority in conformance with the requirements and without making a discretionary judgment about whether those requirements are needed in the case at hand to assure the public health and safety. A licensee may not make discretionary judgments about things such as survey frequencies, minimum detectable amounts of radioactivity or dose rates, or what information constitutes a minimally adequate record of an action. The NRC has already made a discretionary judgment about such matters.

The examples provided in the regulatory text were taken from recently submitted amendment requests and staff suggestions. They are not the only kinds of minor changes that may be made. There will undoubtedly be unclear cases in which the licensee is not certain whether an amendment request should be submitted. In unclear cases, licensees may consult the licensing staff.

Before selecting a course, NRC reviewed its inspection and enforcement record for medical licensees. In 1985, the NRC took escalated enforcement action against 35 byproduct materials licensees. Only eight involved medical licensees, and none of those eight involved overexposures to workers or the public. In 1982, NRC conducted 1,568 inspections of medical licensees. Almost all of the 1,240 line items that were cited were for minor safety infractions that did not represent a worker or public safety hazard. More recent data are similar. The NRC believes that its inspection findings demonstrate a high level of voluntary compliance with its requirements, whether they be couched in terms of regulations or site-specific license conditions.

The NRC believes the deficiency rate in the current application process is caused by having requirements scattered in several documents and not caused by ignorance of basic radiation safety practice. Thus, the deficiency rate is not a valid measure of a licensee's ability to design and operate a radiation safety program.

The NRC does not believe that administrators will pressure Radiation Safety Officers into compromising their programs. The impact of the adverse publicity that accompanies an escalated enforcement action far outweighs the potential short-term savings of a compromised program.

The NRC will provide, in Regulatory Guide 10.8, a list of questions that should be considered when a licensee makes an internal review of a proposed change. The NRC notes that many licensees use the services of radiation safety consultants to periodically review their programs now, and assumes that, in many cases, these consultants will also be asked to provide an independent review before a change is made. However, even absent an independent review, the NRC is convinced that safety will not be endangered by permitting licensees to make minor changes that are not potentially important to safety in their radiation safety programs.

The NRC notes that it currently receives about 800 requests for amendment each year from its 2,500 medical licensees for license amendments that are characterized as "minor changes" under this rule. This represents a minor radiation safety program change about once each three years for each licensee. The NRC does not believe it likely that licensees will make frequent changes in their radiation safety programs, even when spared the amendment fee.

The requirement to submit a detailed radiation safety program as part of the application process provides assurance that the licensee will have a program in place when byproduct materials are received. However, the NRC recognizes that a licensee's needs and resources change with time. At issue here is

whether a regulatory agency must approve minor changes in a licensee's day-to-day radiation safety program. Does a desk review of minor operational changes contribute significantly to public health and safety? The NRC is convinced that it does not.

The NRC believes the essential elements of a medical licensee's radiation safety program are well defined and have been consolidated in the regulation. The present review policy is resource intensive, causes backlogs due to the bulk of material submitted for review and the number of license amendments needed, and results in a different set of radiation safety requirements for each licensee. Inspectors may occasionally review changes to assure that the process required for making changes was followed. However, inspectors will examine the working day-to-day radiation safety program for compliance with the regulations.

The NRC believes this change in licensing policy provides both necessary flexibility by permitting licensees to make minor changes in their radiation safety programs and yet provides for NRC oversight of changes that might affect the public health and safety.

The NRC notes that the proposed rule would have allowed licensees to use byproduct material in areas of use that were not described in the application for license. The NRC now believes that such a change should require a license amendment because physical structures often provide features that are potentially important to safety. Such a change might also compromise NRC's ability to conduct an unannounced inspection.

Section 35.33 Records and reports of misadministrations.

Comment: The level of public emphasis that NRC has placed on misadministrations has proven to be an effective mechanism to limit their number. No change is needed.

Comment: At least to the extent that it deals with diagnostic clinical procedures, the misadministration rule should be deleted or substantially modified. The case for its deletion is made by the misadministration reports submitted to the NRC.

The misadministration rate for radiopharmaceuticals is much less than for non-radioactive drugs. The hazard to the patient is much less than that associated with the misadministration of physiologically active drugs or with other medical mistakes. In virtually all instances, the patient sustains neither actual nor theoretically significant potential injury. The hazard to workers and the public is almost non-existent.

Misadministrations are precipitated by human error, such as momentary distraction or miscommunication, not radiation safety program deficiencies. Although a fail-safe system might be achieved through multiple levels of checking and cross-checking, the added costs would far outweigh the marginal benefit that would accrue to society.

Response: The NRC is well aware that the misadministration rate for radiopharmaceuticals is much lower than for other drugs, that there is no reporting requirement for misadministrations of cyclotron-produced radiopharmaceuticals, x-rays, and nonradioactive drugs, and that the risk to patients, workers, and the public is small. None of the assertions are at issue.

The fact that there are other greater potential hazards found in the medical arena does not relieve NRC of its responsibility to assure public health and safety as it may be affected by material under its jurisdiction. Rather, at issue is whether there is a safety problem, and, if so, can it be corrected at an expense that is reasonable compared to the hazard.

Therapy clinical procedures, in the view of the NRC, present a greater risk to the public and patients than diagnostic clinical procedures. Given the increased risk to the public health and safety, the reasoned judgment of the NRC requires the maintenance of the current misadministration rule for therapy uses of byproduct material. The NRC will continue to carefully review therapy misadministration reports. The NRC staff is also considering an advance notice of proposed rulemaking that would request public comment on regulations regarding quality assurance in radiation therapy as well as other NRC actions resulting from therapy misadministrations. This request for early public comment will be published at a later date.

The NRC believes that misadministrations that result in a dose to the patient greater than a dose to a member of the public permitted under § 20.105(a) should require a report to the NRC and the referring physician. Furthermore, licensees should keep records of all misadministrations. As a result, the diagnostic administration reporting requirement has been changed to require reports for misadministrations when such misadministrations result in a whole body dose greater than 500 millirem or an organ dose greater than 2 rem. (Licensees may use dosimetry tables in package inserts, corrected only for administered millicuries, to determine whether a report is required.)

In order to assure that diagnostic misadministrations are not occurring in a particular licensee's program with excessive frequency, the NRC believes that there should be an internal investigation and report by the Radiation Safety Officer. The NRC will review these reports during its field inspections. In addition, the reports will assist the licensee in carrying out the ALARA principles of Parts 20 and 35.

Because of the public health and safety nature of the reporting requirement, the NRC will require Agreement States to implement compatible requirements.

Comment: While it should be retained, the therapy misadministration report trigger should be relaxed from 10 percent error to 20 percent error. That range better reflects the diversity of medical opinion on the optimum dose for a particular patient.

Response: The NRC has not changed its requirements that apply to therapy misadministrations because of their importance to public health and safety. The NRC reiterates that the 10 percent trigger level is *not* based on the diversity of medical opinion regarding the optimum radiation dose for a certain disease stage. Rather, the NRC recognizes there are uncertainties in the measurement and administration of radiation that make it impossible to demonstrate that the exact radiation dose that was prescribed was delivered. However, when the dose delivered is more than 10 percent different than the dose prescribed, it is clear that a mistake has been made. The mistake should be investigated and steps should be taken to prevent its recurrence.

Comment: NRC should take enforcement action against licensees who administer radioactive material when it might have serious consequences for the patient.

Comment: Enforcement actions may reduce compliance with the misadministration reporting requirement.

Response: The diagnostic misadministration reporting requirement will continue to require reports to the NRC for certain diagnostic misadministrations that are listed in the regulations. The reporting requirement for all therapy misadministrations has been retained.

The NRC deals with misadministrations case-by-case. Various levels of enforcement are available. It does not appear that NRC's enforcement program has caused

noncompliance in any area of its jurisdiction.

Section 35.50 Possession, use, calibration, and check of dose calibrators.

Comment: Does this possession and use requirement mean that even small licensees that use only precalibrated unit dosages of radiopharmaceuticals will have to buy a dose calibrator?

Response: The NRC believes that requiring licensees to ensure that the desired dosage has been prepared is essential to fulfilling its statutory responsibilities. The NRC recognizes that the overwhelming majority of its licensees use a dose calibrator to meet this requirement, and therefore, in the regulations, directly addresses their use. This does not prevent an applicant from proposing an alternative method for measuring dosages and requesting an exemption in the application. If the applicant is able to demonstrate that the alternative provides adequate accuracy and reliability, the licensee will be allowed, by license condition, to use the alternative method.

Comment: Is a volumetric determination of a dosage from a calibrated multi-dose vial an acceptable alternative method for measuring dosages?

Response: No. Any alternative must provide for the measurement of the amount of radioactivity in the individual dosage.

Comment: Sealed sources that are used for dose calibrator accuracy tests should be traceable to the National Bureau of Standards.

Response: The NRC reviews proposed label wording and traceability assertions before a manufacturer is authorized to distribute sealed sources. This provides adequate assurance of accuracy.

Comment: The regulation requires mathematical correction or repair if the dose calibrator shows inaccuracy greater than 10 percent; Regulatory Guide 10.8 has a 5 percent trigger level. Which is the requirement?

Response: The regulation imposes the requirement; the Regulatory Guide provides a method for meeting the requirement. The guide has a more stringent trigger level so the licensee can take action *before* the regulatory limit is passed instead of *after*. However, the licensee is not required to follow the Regulatory Guide. The licensee can specify an alternative method in the application. The NRC will review the alternative method to determine whether it provides adequate assurance of public health and safety.

Section 35.51 Calibration and check of survey instruments.

Comment: Not all survey instruments have a built-in check source. If an instrument is shipped to a calibration laboratory, the check source reading that is required at the time of calibration could be made instead when the instrument is returned.

Response: The NRC believes the check source reading made at the time of calibration is important to demonstrate that the instrument has not stopped operating properly since it was calibrated. Thus the source should accompany the instrument to the calibration laboratory. For instruments that do not have a built-in check source, the NRC notes that uncalibrated 10 microcurie Cs–137 sources are available for only $25.

Comment: This requirement will increase personnel dose from handling the check source, and takes time. A daily or weekly check is sufficient.

Response: The NRC does not believe the check source presents a significant exposure source when compared to other sources in the laboratory, but agrees that a requirement to check instruments before and after each period of use may be unnecessarily burdensome. The section has been changed to require a daily check.

Comment: With all the errors inherent in measuring radiation, there is no need to calibrate a survey instrument within 20 percent; a factor of 2 would suffice.

Response: The NRC believes that a range of 20 percent provides adequate leeway in the calibration process. This is consistent with the recommendation in ANSI N323–1978, Radiation Protection Instrumentation Test and Calibration, section 4.2.2.1.[4]

Section 35.53 Measurement of radiopharmaceutical dosages.

Comment: Clarify when the measurement should be made.

Response: The NRC has purposefully not specified when the measurement must be made so as to allow for different licensees' procedural needs.

Comment: It is difficult to remove iodine-131 therapy dosage containers from their radiation shields and they should therefore be exempted from the measurement requirement.

Response: It is very important to assure that the manufacturer has supplied the prescribed therapy dosage so the patient will receive the prescribed radiation dose. The requirement to measure therapy dosages remains. The majority of commenters did not mention difficulty making the measurement.

Comment: The NRC should allow the licensee to use the trade name or abbreviation in place of the generic name in the dosage measurement record. These alternative identifications are equally well-recognized.

Response: The alternative has been allowed.

Comment: The need for verifying the activity of manufacturer-supplied unit dosages is unclear.

Comment: Dose calibrators are too expensive to require their use for small programs.

Response: The NRC believes it is necessary to require an independent measurement, to the extent possible, to assure that the patient is receiving the prescribed dosage. Licensees that believe the expense of acquiring a dose calibrator is unwarranted may request permission to use an alternative method of assuring that the prescribed dosage is being administered.

Comment: The rule should not require the measurement of radiopharmaceuticals that emit only beta radiation. Such measurements are difficult when made in a calibration laboratory and tenuous when made in the clinical setting.

Response: The rule has been clarified only to require the measurement of photon-emitting radiopharmaceuticals.

Comment: It is not clear whether the proposed rule applies to brachytherapy sources.

Response: The proposed rule only applies to radiopharmaceuticals. The NRC recognizes that there are special problems associated with the measurement of brachytherapy source activity that must be worked out before a measurement requirement could be proposed.

Comment: It is not clear whether NRC expects licensees to suspend operations if the dose calibrator breaks.

Response: The NRC expects each licensee to measure dosages before administering them. Licensees may want to make arrangements that provide alternative measurement procedures in case of equipment breakdown.

Comment: The requirement to measure each dosage will increase technologist finger exposure.

Response: Any time radioactive material is handled there is the potential for exposure. The magnitude of the exposure must be balanced against the need to handle the material. NRC believes that the measurement is important because if the incorrect amount of radiopharmaceutical is administered to the patient, the

[4] This report is available from American National Standards Institute, 1430 Broadway, New York, NY 10018.

diagnosis or therapy may be compromised. The NRC believes its calculations and dose records of workers who measure dosages indicate that the amount of exposure is small compared to the benefit that comes with assurance that the correct amount of activity is being administered.

Section 35.57 Authorization for calibration and reference sources.

Comment: You should raise the sealed source design limit from 6 millicuries to 15 millicuries. These reference and calibration sources are needed by nuclear medicine clinics for quality assurance checks and do not pose a significant radiation hazard when used in that setting.

Response: The change has been made.

Section 35.60 Syringe shields and labels.

Comment: NRC should recommend, but not require, that licensees use syringe shields when drawing individual dosages. In some cases experience has revealed that only a leaded-glass syringe shield permits viewing the miniscus when drawing dosages—these syringe shields are expensive and fragile.

Response: No change has been made. However, the section has been reworded to clarify that syringe shields are only required when preparing radiopharmaceutical kits.

Comment: The open literature is ambiguous on the effectiveness of syringe shields.

Response: The NRC disagrees. Syringe shields may dramatically reduce finger dose ("Efficacy of various syringe shields for 99mTc," NL McElroy, *Health Physics*, v41 n3 pp 535–542, September 1981).

Comment: In some hospitals one individual draws a dosage and then immediately administers it. In this case a syringe label is not needed.

Response: The NRC does not believe this is an unreasonably burdensome requirement for the few licensees that fit that description. The NRC considered drafting criteria that addressed clinics with one technician but notes that, even in that case, some misadministrations have been caused by accidentally transposing syringes after drawing two dosages. Therefore, the benefits from avoiding misadministrations outweigh the costs to the licensee.

Comment: More information, such as amount of activity and time of syringe preparation, should be included on the label.

Response: The NRC believes the required information supplies sufficient information to those handling the syringes.

Comment: The NRC should allow color coding of syringes with different radiopharmaceuticals rather than requiring the name or abbreviation.

Response: Different manufacturers use different color schemes for the same radiopharmacuetical. Allowing the use of color coding in place of labeling may lead to misadministrations. Therefore labeling is required.

Section 35.61 Vial shields and labels.

Comment: This label should also include the lot number, activity, and expiration time.

Response: This information may be included in the dosage measurement records, but is not required by NRC because these are matters of pharmacy.

Section 35.70 Surveys for contamination and ambient radiation exposure rate.

Comment: A licensee may occassionally administer a dosage in the patient's room. Is a survey necessary there?

Response: No. However, employees should be reminded to take care to collect all potentially contaminated material.

Comment: The regulation allows a licensee flexibility in setting removable contamination levels, then removes that flexibility by arbitrarily setting a sensitivity limit of 200 disintegrations per minute. Can't wipe samples be evaluated by holding them next to the GM tube of a survey instrument?

Response: The purpose of setting a sensitivity limit is to ensure that samples are not simply compared to the background counting rate of the measurement system; that comparison does not provide a measure of the amount of radioactivity on the sample. Action levels indicate when mitigating action should be taken. The regulation allows the Radiation Safety Officer to set different trigger levels for different areas of use because different levels of contamination are to be expected in different areas of use.

Comment: The sensitivity limit of 200 disintegrations per minute is unnecessarily restrictive.

Response: The NRC agrees. For most of the radionuclides used in medical use, a sensitivity limit of 2000 disintegrations per minute provides adequate assurance of public health and safety. (The NRC has retained the 200 disintegrations per minute limit for radiopharmaceutical therapy rooms. See § 35.315 Safety Precautions.)

Section 35.75 Release of patients containing radiopharmaceuticals or permanent implants.

Comment: The NRC should require that patients released with residual radiopharmaceutical or permanent implants be provided information regarding the activity of the byproduct material so that special precautions can be taken if the patient is re-hospitalized elsewhere.

Response: The NRC believes the release criteria, which are similar to criteria recommended by NCRP (NCRP Report No. 37, "Precautions in the Management of Patients Who Have Received Therapeutic Amounts of Radionuclides," Chapter 4 [5]) provide adequate assurance of safety. Although the suggestion is well taken, it seems most likely that the patient would visit a physician familiar with the patient's medical history. In case of emergency treatment there is no assurance the patient would be capable of reporting the information to the attending physician.

Comment: The proposed rule stated that the 30-millicurie release limit is based on NCRP guidance. In fact, NCRP provides a range of limits.

Response: The NRC meant to imply that the limit was based on considerations addressed in the subject chapter, not that it was adopting an NCRP recommendation.

Release limits are based on approximate dose rates emanating from the source-patient and time-at-a-distance assumptions for household members. Although the calculations are straightforward, the validity of the assumptions (biological half-life of the radioactive material in the patient for the radiopharmaceutical used, physical size of the patient, duration of proximity and exact distance of household members) for a specific case is tenuous. The NRC believes that a 30-millicurie release limit provides an adequate measure of public health and safety.

The alternative 6 millirem per hour criterion has been reduced to 5 millirem per hour to provide a more conservative and more easily remembered criterion. It is the approximate dose rate that would be expected from a patient with a 30-millicurie burden of I–131, the most radiotoxic byproduct material used for medical use.

[5] This report is available from NCRP Publications, 7910 Woodmont Avenue, Suite 1016, Bethesda, MD 20814.

Section 35.80 Technical requirements that apply to the provision of mobile nuclear medicine service.

Comment: A ban on the mobile use of generators seems unnecessary.

Response: The NRC considered this when drafting the proposed regulation, but believed the greater public benefit accrued from the present system under which generators are received, stored, and eluted only at a base station. There were no commenters who demonstrated that this system deprives some members of the public of the benefits of diagnostic nuclear medicine, or that the requirement to use generators only in a base station is unduly burdensome.

Comment: Mobile service licensees should be allowed to reconstitute radiopharmaceuticals at a client's facility.

Response: The NRC recognizes that many radiopharmaceuticals should be used within six hours after reconstitution, and in some cases within one hour. Thus, it is possible that the proposed requirement for mobile diagnostic nuclear medicine services to transport only prepared radiopharmaceuticals may adversely impact the delivery of services because the licensee may not be able to reach all the day's patients within a few hours after reconstituting the radiopharmaceuticals at the base station. Therefore, the section has been reworded to allow licensees to transport radiopharmaceutical kits in addition to prepared radiopharmaceuticals.

Comment: You should not require quality assurance programs for imaging equipment. Quality assurance is the responsibility of the user.

Response: Nuclear medicine equipment is generally not designed for daily highway transportation (some nuclear medicine imaging equipment is designed to be transported within a hospital). The possibility of damage to the equipment during transportation might lead to useless administration of byproduct material. Thus, the NRC believes an equipment performance check prior to the administration of radiopharmaceuticals is indicated and is not unduly burdensome. No change has been made.

Section 35.90 Storage of volatiles and gases.

Comment: There is no apparent need for additional containment systems when storing xenon. The manufacturer's original packaging is sufficient. The ventilation posting requirement should take care of any problems.

Comment: Clarify what is meant by storing these materials "in a container with two barriers against release."

Response: The NRC has re-examined this proposed requirement and agrees with the comments. The NRC has determined that storage in the original shipping container will provide adequate control. This does not require retention of the entire package, but rather just the radiation shields and containers.

Section 35.92 Decay-in-storage.

Comment: The requirement to store waste for ten half-lives is unduly burdensome. The requirement that the container surface dose rate be at background is sufficient.

Response: This section allows for uncontrolled release of material that was contaminated with large amounts of radioactivity. Given that, the NRC believes that the storage requirement, which reduces the amount of radioactivity in the container by radioactive decay, coupled with a confirmatory survey is not unduly burdensome.

Sections 35.100 Use of radiopharmaceuticals for uptake, dilution, and excretion studies, and 35.200 Use of radiopharmaceuticals, generators, and reagent kits for imaging and localization studies.

Comment: The requirements to use diagnostic radiopharmaceuticals in accordance with the FDA-approved package insert should be removed. The risk associated with the administration of diagnostic radiopharmaceuticals is too small to justify a regulation that denies nuclear medicine practitioners the latitude needed to provide up-to-date medical care for their patients.

The package insert represents a summary of available scientific evidence indicating that a drug is safe and effective for a particular indication when used in accordance with the directions in the package insert. The FDA does not intend for the package insert to be a restrictive document; a physician may use any drug in any fashion deemed to be in the best interest of the patient. This is predicated on the assumption that physicians are motivated to act in the best interest of their patients.

New uses of approved radiopharmaceuticals are developed at medical research institutions and reported, along with safety and effectiveness information, in the scientific literature. However, the package insert is usually not updated because the process for revising a package insert is expensive and slow. Manufacturers are not inclined to shoulder this burden because the additional sales that would result would not justify the expense of the revision.

Response: NRC's concern for worker and public health and safety must be balanced by the physician's need to provide proper medical services to the patient. The NRC believes that diagnostic radiopharmaceuticals have proven to be safe when handled by individuals with appropriate training. For diagnostic radiopharmaceuticals, the requirement to follow the package insert may have an adverse impact on the public health and safety because it prevents physicians from performing diagnostic clinical procedures needed by their patients, and is therefore withdrawn.

Comment: The NRC should not allow licensees to change the chemical form of a radiopharmaceutical.

Response: If a licensee altered the chemical form of a radiopharmaceutical, the modified radiopharmaceutical would be a new radiopharmaceutical that would not be the subject of an FDA acceptance or approval. Therefore it would not be authorized for use.

Comment: Why does NRC list approved radiopharmaceuticals in the regulations? It is only necessary to have a list available.

Response: The list has been deleted from the regulation; it will be available from NRC's regional offices.

Sections 35.120, 35.220, 35.320, 35.520, 35.620 Possession of survey instruments, and 35.420 Availability of survey instrument.

Comment: A low level survey meter cannot be used to survey around a stuck teletherapy source.

Comment: The NRC should require a low level meter for brachytherapy programs.

Response: Quoting at length from NCRP Report No. 57, Instrumentation and Monitoring Methods for Radiation Protection, Chapter 5, Instrumentation:

"If the dose equivalents are small compared to the maximum permissible value, then measurement errors by a factor of 2 are acceptable . . . For dose equivalents close to the maximum permissible value, an accuracy of about 30 percent is desirable . . . Most of the x-ray and gamma-ray *exposure* rate measurements . . . are made with small, portable ionization chambers . . . G–M counters are used in surveys for the detection of x- and gamma-ray fields. This generally limits their use to *exposure* rates in the range from background up to a few mR/h. . . . The counters respond to the number of

ionizing events within them and give no information about the energy associated with the events. Therefore, they do not respond with equal count rates to equal *exposure* rates from photons of different energies. . . . They are generally used only for detection rather than measurement . . . G–M counters are sometimes used to estimate *exposure* rates where the rate is low enough for the resulting inaccuracy of its measurement to be unimportant. . . ."

The NRC has reviewed its rationale as stated in the notice of proposed rulemaking for requiring certain licensees to have certain survey instruments on hand or available. The only change that has been made is to require that brachytherapy licensees have a detection instrument on hand because it might be needed to find a lost brachytherapy source. The wording of each section has been revised to better indicate the range of dose rates the instrument must be capable of detecting or measuring.

Section 35.200 Use of radiopharmaceuticals, generators, and reagent kits for imaging and localization studies.

Comment: The NRC should not list xenon-133 in a group with radiopharmaceuticals that are administered by injection. The regulations should require agency approval of areas of use because there are special ventilation needs for its safe use.

Response: The training and experience needed for safe use and the radiological hazard of all the materials permitted under each subpart are similar. The NRC realizes that special ventilation is necessary for the safe use of gases and aerosols, and therefore placed additional requirements in § 35.205 Control of aerosols and gases.

Section 35.204 Permissible molybdenum-99 concentration.

Comment: The NRC notes that dose calibrators cannot measure accurately below 10 microcuries, yet proposes that radiopharmaceuticals not have more than 0.15 microcurie of Mo-99 per millicurie of Tc-99m. How is this to be measured?

Response: The amount of Mo-99 in an elution of Tc-99m is usually measured, and recorded as a concentration of microcuries of Mo-99 per millicurie of Tc-99m, before using the elution. If the fresh elution has as little as 200 millicuries of Tc-99m, then the licensee need only demonstrate that there is less than 15 microcurie of Mo-99 in the elution. Note that this is one-half the allowed concentration; for sake of this explanation the NRC assumes that the freshly eluted Tc-99m is administered over the next six hours, at which time, due to the radioactive decay of the Tc-99m, the Mo-99 concentration would be about doubled.

Comment: The NRC should require licensees to notify the NRC in case of excessive Mo-99 concentration. This could indicate a widespread manufacturing defect.

Response: Notification is required under 10 CFR 21.21(b).

Section 35.205 Control of aerosols and gases.

Comment: The need for negative pressure in a room where aerosols and gases are used is not apparent given the other safety measures that are required.

Response: The NRC disagrees. A patient who is having trouble breathing, is under mental stress, or is disoriented may remove the breathing mask that is used to administer the xenon gas and spill the dosage. Dispersion of a spill throughout the workplace, which would result if the room were at positive pressure, is not an acceptable cleanup method. The requirement has been retained.

Comment: Trapping units should be checked more frequently.

Response: The NRC notes that there has not been much study of breakthrough rates of collection systems that are used in the clinical setting. Given the simplicity of the procedure used to check for breakthrough. The NRC believes that a more frequent check may be beneficial and is not unduly burdensome.

Section 35.315 Safety precautions, and § 35.415 Safety precautions.

Comment: It is not necessary for the Radiation Safety Officer and authorized user to authorize each visit by an individual under age 18 on a case-by-case basis.

Comment: Visits by individuals under age 18 should only be allowed in special cases.

Response: The NRC did not mean to imply that each individual visit need be approved. Rather, the NRC recognizes that the benefits that might be derived by the patient must be balanced against the radiation dose incurred by the visitor. If the physician determines that the greater benefit derives from allowing visits, then a notation on the patient's chart or door that visits are allowed is all that is needed. No changes have been made.

Comment: The patient release criteria in § 35.75 may cause unnecessary radiation dose to members of the patient's household and the public from patients who still have radioactivity.

Response: The sections have been modified to require the licensee to provide radiation safety guidance to the patient prior to release. "Guidelines for Patients Receiving Radioiodine Treatment,[6] published by the Society of Nuclear Medicine, and NCRP Report No. 37, "Precautions in the Management of Patients Who Have Received Therapeutic Amounts of Radionuclides," [7] provide appropriate guidance.

Section 35.315 Safety precautions.

Comments: The proposed rule appears to require that extensive safety precautions be taken when caring for *any* patient receiving radiopharmaceutical therapy while hospitalized. This does not differentiate between patients who receive low dosages and patients who receive high dosages.

Response: The wording has been revised to clarify that the safety precautions are only required when patients must be hospitalized until the amount of radioactivity in them is low enough to allow their release.

Comment: It is not necessary to measure the thyroid burden of personnel who administer encapsulated iodine-131.

Response: The NRC disagrees. It has been observed ("Contamination from Therapeutic I–131 Capsules," by D. R. Shearer, et al., *Health Physics* v49 p81, July 1985) that individuals who handle encapsulated iodine-131 may be exposed to levels of surface contamination for which thyroid monitoring is indicated. No change has been made.

Comment: Does the 2000 dpm/100cm ^{2} removable contamination requirement apply to patient rooms that are released for unrestricted patient use?

Response: No. Because of its greater radiotoxicity, the removable contamination limit for iodine-131 in patient rooms following completion of high level radiopharmaceutical therapy is 200 dpm/100cm ^{2}.

Comment: This section should require a survey of the ambient dose rate in contiguous restricted and unrestricted areas to demonstrate compliance with the requirements of Part 20.

Response: The requirement has been added.

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[6] This publication is available through the Society of Nuclear Medicine, 136 Madison Avenue, New York, NY 10016.

[7] This publication is available through NCRP Publications, 7910 Woodmont Avenue, Suite 1016, Bethesda, MD 20814.

Comment: We administer several dosages of I–131 each week. A weekly measurement of the technician's thyroid burden would be sufficient.

Response: The regulation assumes administration of a therapeutic dosage is an occasional event. Those licensees who frequently administer I–131 may propose an alternative monitoring program that would be approved by license condition.

Comment: There is no need to quarter a radiopharmaceutical therapy patient in a private room. These patients can be quartered safely with teletherapy patients.

Response: The NRC disagrees. This would unnecessarily expose patient care staff and visitors for the teletherapy patient to removable contamination from the radiopharmaceutical therapy patient.

Section 35.400 Use of sources for brachytherapy.

Comment: The NRC should require source intensity checks for brachytherapy sources.

Response: The NRC considered this but is not convinced that the requisite equipment and procedures are readily available. The NRC may address this matter at a later date in a separate rulemaking proceeding.

Section 35.406 Brachytherapy sources inventory.

Comment: The requirement to count all the sources after returning to storage the few that were used will increase personnel dose.

Response: The licensee need only count the number of sources returned to storage, and add that to the number on hand to determine the total number in storage. There is no need to count each source that remained in storage.

Section 35.415 Safety precautions.

Comment: A hospital may have a radiation-shielded room designed for two brachytherapy patients. The proposed requirement to provide a private room for each patient would not allow it to efficiently use this resource.

Comment: Because the dose rate around an I–125 implant patient is only about 0.2 millirem per hour at one meter, there is no need for a private room.

Response: In the past, most licensees ensured low dose rates in uncontrolled areas by providing brachytherapy patients with private rooms. The NRC notes that some licensees have gone to the expense of shielding a room for these patients. Portable radiation shields specifically designed for brachytherapy use are now commercially available. Therefore, shielding is available and provides an acceptable method of keeping doses in uncontrolled areas within limits. The section has been changed to allow quartering more than one radiation therapy patient in a room. Licensees are reminded that, for patient care staff and visitors, dose limits in Part 20 for workers and the public apply.

Because the dose rate around these I–125 implant patients is very low, the section has been revised to allow a licensee to quarter an implant patient with a patient who is not receiving radiation therapy if the licensee can show compliance with criteria for dose rates in unrestricted areas.

Comment: This section should require a survey of the ambient dose rate in contiguous restricted and unrestricted areas to demonstrate compliance with the requirements of Part 20.

Response: The requirement has been added.

Comment: The NRC should also prescribe radiation safety procedure requirements for cases in which the sources are loaded in other than the patient's room.

Response: The dose rate limits in Part 20 apply. In this case, the NRC cannot prescribe safety measures specifically suited to each licensee's needs.

Section 35.500 Use of sealed sources for diagnosis.

Comment: This subpart should also allow the use of bone mineral analyzers that use gadolinium-153.

Response: When the proposed regulation was drafted the NRC did not foresee the extent of medical interest that would develop regarding the gadolinium-153 scanner. However, several commenters recommended it be included here. The NRC has determined that the training and experience and radiation safety procedures needed for use of gadolinium-153 in a bone mineral analyzer are similar to those for other devices in this subpart. The NRC has added this device to this subpart.

Section 35.632 Full calibration measurements, and § 35.633 Periodic spot-checks.

Comment: Timer accuracy is not important because the same timer that is used in source calibration is used in patient treatments. Timer constancy is important and is indirectly checked each month by measuring the output. However, timer linearity need not be checked under the proposed regulation but is important because many dosimetry systems can only measure about 70 rads, while a single treatment dose may be much higher than this.

Response: The requirement to measure timer accuracy has been changed to timer constancy and linearity. The NRC agrees that constancy is indirectly checked by measuring the output, but believes that the additional assurance of accuracy that is provided by an independent check far outweighs the minimal cost.

Section 35.900 Radiation Safety Officer.

Comment: Authorized users have sufficient training and experience to oversee the management of a radiation safety program. To require an authorized user to be authorized for all of the types of use authorized by the license before being designated as the Radiation Safety Officer is unduly burdensome.

Response: The requirement has been modified to allow any authorized user listed on the license to serve as Radiation Safety Officer.

Comment: Revise the wording regarding the one year of full time experience you require so that a consultant who gets experience by working at several institutions over a year can be listed as Radiation Safety Officer.

Response: The NRC believes that the experience should be gained working full time at one institution because an individual serving as a consultant is not likely to be exposed to the day-to-day business management problems that must be effectively dealt with in a radiation safety program.

Comment: The grandfather clause in § 35.901 would require a Radiation Safety Officer to get additional training and experience if only one new material is added to a license.

Response: The NRC recognizes that new developments in medical care require changes in radiation safety procedures for which formal training of experienced individuals is unnecessary. Similarly, Radiation Safety Officers are capable of determining what requirements apply to the receipt, use, storage, and disposal of new byproduct material that comes under their jurisdiction. The requirement has been relaxed.

Section 35.930 Training for therapeutic use of radiopharmaceuticals.

Comment: The proposed rule requires that authorized users who are not certified have experience using soluble phosphorus-32 and colloidal intracavitary radiopharmaceuticals. These clinical procedures are not frequently performed, so it may not be possible for physicians to get the

required clinical experience. Furthermore, physicians who only want to treat hyperthyroidism do not need experience treating thyroid carcinoma.

Response: The infrequently performed clinical procedures have been removed from the clinical experience requirement because experience with them would be difficult to obtain and they no longer reflect the current state of medical practice. New sections have been added delineating training and experience criteria for physicians who only want to treat either hyperthyroidism or thyroid carcinoma.

Section 35.961 Training for Teletherapy Physicist.

Comment: One cannot become expert in teletherapy physics after doing just one full calibration and working for just one year. The criteria should be more stringent.

Response: The NRC notes that the proposed regulation required one year of full time training *and also* one year of supervised full time experience. The NRC's training criteria are not designed to provide assurance of clinical expertise, but rather adequate assurance of public health and safety. The NRC believes this assurance can be gained with two years of full-time training and experience.

Section 31.11 General license for use of byproduct material for certain in vitro clinical or laboratory testing.

Comment: The requirement to list in vitro use on the medical application will cause more confusion than letting the current system stand. It has proven adequate to assure protection of public health and safety.

Response: The NRC agrees that the current method is adequate. The section has been revised to reflect current drafting conventions but is, for practical purposes, unchanged.

Sections 32.72 Manufacture and distribution of radiopharmaceuticals containing byproduct material for medical use under group licenses, 32.73 Manufacture and distribution of generators or reagent kits for preparation of radiopharmaceuticals containing byproduct material, and 32.74 Manufacture and distribution of sources or devices containing byproduct material for medical use.

Comment: The NRC should not require manufacturers to pay an amendment fee to request approval of word changes on package inserts that are necessitated solely because of NRC's change in nomenclature. The NRC should also provide a transition period during which manufacturers may continue to use package inserts that are in stock.

Response: The NRC agrees. The final regulation simply prescribes the necessary wording. NRC expects manufacturers to incorporate this ministerial change in their programs, and will check for compliance during its inspections. A transition period has been added.

Comment: Because some of the old Part 35 groups were divided and some were amalgamated, you should provide a table that clarifies what a manufacturer can deliver to a medical licensee whose license is drafted in terms of the old Groups I–VI.

Response: A manufacturer may only deliver to a licensee the byproduct material authorized by the license. If a license only lists some of the materials in a subpart, the licensee is not authorized to receive the other materials in the subpart.

V. Derivation Table

The following derivation table identifies the origin of each section of the regulation. Origins of sections include current 10 CFR Parts 19, 20, 30, and 35, Federal Register Notices (FR), frequently used license conditions, licensing staff policy, current regulatory guides (RG), Office of Inspection and Enforcement bulletins, the United States Pharmacopeia, and new text prepared by staff.

Final section No.	Proposed section No.	Topic	Origin
		Subpart A—General Information	
35.1	35.1	Purpose and scope	35.1 revised.
35.11	35.2	License required	35.2 revised.
35.8	35.8	Reporting, recordkeeping, and application requirements: OMB Approval	New text.
35.2	35.15	Definitions	
		Address of use	New term.
		Agreement State	20.3.
		ALARA	Acronym.
		Area of use	New term.
		Authorized users	Term used on licenses.
		Brachytherapy source	New term.
		Dedicated check source	New term.
		Dental use	New term.
		Dentist	New term.
		Management	New term.
		Medical institution	New term.
		Medical use	35.3(a) revised.
		Misadministration	35.41.
		Mobile nuclear medicine service	New term.
		Output	New term.
		Physician	35.3(b) revised.
		Podiatric use	New term.
		Podiatrist	New term.
		Teletherapy physicist	New term.
		Radiation Safety Officer	Term used on licenses.
		Sealed source	30.4(r) verbatim.
		Visiting authorized user	New term; similar to "visiting authorized user" license condition.
35.12	35.16	Application for license, amendment, or renewal	35.4 revised.
35.13	35.17	License amendments	New text; compare 30.38
35.14	35.18	Notifications	New text.
35.18	35.28	License issuance	New text, compare 30.36
35.19	35.29	Specific exemptions	New text; compare 30.11.

Final section No.	Proposed section No.	Topic	Origin
		Subpart B—General Administrative Requirements	
35.20	35.30	ALARA Program	New text; see RG 10.8 Appendix O revised.
35.21	35.31	Radiation Safety Officer	RG 10.8.
35.22	35.32	Radiation Safety Committee	35.11(b) revised.
35.23	35.33	Statements of authority and responsibilities	New text.
35.27	35.34	Visiting authorized user	License condition.
35.29	35.35	Mobile nuclear medicine service administrative requirements	Licensing policy.
35.31	35.36	Radiation safety program changes	New text.
35.33	35.37	Records and reports of misadministrations	35.42.
35.25	35.38	Supervision	Expanded from RG 10.8 p. 3.
35.49	35.49	Suppliers	35.14 revised.
		Subpart C—General Technical Requirements	
35.50	35.50	Possession, use, calibration, and check of dose calibrators	RG 10.8 Appendix D2 revised, and new text.
35.51	35.51	Calibration and check of survey instruments	RG 10.8 Appendix D1 revised and new text.
35.53	35.53	Measurement of radiopharmaceutical dosages	Proposed rulemaking 35.15 (46 FR 43840; Sept. 1, 1981).
35.58	35.58	Authorization for calibration and reference sources	35.14(d) revised.
35.59	35.59	Requirements for possession of sealed sources	35.14(e)(1)(i), 35.14(f) revised.
35.60	35.60	Syringe shields	Inspection and Enforcement letter Apr. 16, 1979.
35.61	35.61	Vial shields	Inspection and Enforcement letter Apr. 16, 1979.
35.60	35.62	Syringe labels	New text.
35.61	35.63	Vial shield labels	New text.
35.70	35.70	Surveys for contamination and ambient radiation exposure rate	RG 10.8 Appendix I revised.
35.75	35.75	Release of patients containing radiopharmaceuticals or permanent implants	New text.
35.80	35.80	Mobile nuclear medicine service technical requirements	Licensing policy.
35.90	35.90	Storage of volatiles and gases	RG 10.8 Appendix M revised.
35.92	35.92	Decay-in-storage	License condition.
		Subpart D—Uptake, Dilution, and Excretion	
35.100	35.100	Use of radiopharmaceuticals, for uptake, dilution, and excretion studies	35.31 and 35.100(a) (Group I) revised.
35.120	35.120	Possession of survey instrument	RG 10.8 page 5.
		Subpart E—Imaging and Localization	
35.200	35.200	Use of radiopharmaceuticals, generators, and reagent kits for imaging and localization studies	35.100 (b) and (c) (Groups II and III) revised.
35.204	35.204	Permissible molybdenum-99 concentration	US Pharmacopeia.
35.205	35.205	Control of aerosols and gases	RG 10.8 Appendix M revised.
35.220	35.220	Possession of survey instruments	RG 10.8 page 5.
		Subpart F—Radiopharmaceuticals for Therapy	
35.300	35.300	Use of radiopharmaceuticals for therapy	35.100 (d) and (e) (Groups IV and V) revised.
35.310	35.310	Safety instruction	19.12 revised.
35.315	35.315	Safety precautions	RG 10.8 Appendix K.
35.320	35.320	Possession of survey instruments	RG 10.8 page 5.
		Subpart G—Sources for Brachytherapy	
35.400	35.400	Use of sources for brachytherapy	35.100(f) (Group VI) revised.
35.404	35.404	Release of patients treated with temporary implants	35.14(b)(5)(vii) revised.
35.406	35.406	Brachytherapy sources inventory	RG 8.18 page 8.
35.410	35.410	Safety instruction	19.12 revised.
35.415	35.415	Safety precautions	RG 10.8 Appendix L.
35.420	35.420	Possession of survey instruments	New text.
		Subpart H—Sealed Sources for Diagnosis	
35.500	35.500	Use of sealed sources for diagnosis	New text.
35.520	35.520	Availability of survey instrument	New text.
		Subpart I—Teletherapy	
35.600	35.600	Use of a sealed source in a teletherapy unit	New text.
35.605	35.605	Maintenance and repair restrictions	License condition.
35.606	35.606	Amendments	New text.
35.610	35.610	Safety instruction	License condition and new text.
35.615	35.615	Safety precautions	License condition.
35.620	35.620	Possession of survey instrument	New text.
35.615	35.621	Radiation monitoring device	35.25 (48 FR 2115; January 18, 1983).
35.615	35.622	Viewing system	License condition.
35.630	35.630	Dosimetry equipment	35.22, 35.23 revised.
35.632	35.632	Full calibration measurements	35.21 revised.
35.634	35.633	Periodic spot-checks	35.22 revised and license condition.
35.641	35.641	Radiation surveys for teletherapy facilities	License condition.
35.636	35.642	Safety checks for teletherapy facilities	License condition.
35.643	35.643	Modification of teletherapy unit or room before beginning a treatment program	New text.
35.645	35.644	Reports of teletherapy surveys, checks, tests and measurements	license condition.
35.647	35.645	Five-year inspection	License condition.

Final section No.	Proposed section No.	Topic	Origin
		Subpart J—Training and Experience Requirements	
35.900	35.900	Radiation Safety Officer	New text.
35.901	35.901	Training for experienced Radiation Safety Officer	New text.
35.910	35.910	Training for uptake, dilution, and excretion studies	New text.
35.920	35.920	Training for imaging and localization studies	Revision of **Federal Register** Notice (47 FR 53476; December 2, 1982).
35.930	35.930	Training for therapeutic use of radiopharmaceuticals	Revision of **Federal Register** Notice (47 FR 53476; December 2, 1982).
35.932	(New)	Training for treatment of hyperthyroidism	Recommended by commenters.
35.934	(New)	Training for treatment of thyroid carcinoma	Recommended by commenters.
35.940	35.940	Training for use of brachytherapy sources	Revision of **Federal Register** Notice (47 FR 53476; December 2, 1982).
35.941	35.941	Training for ophthalmic use of strontium-90	Revision of **Federal Register** Notice (47 FR 53476; December 2, 1982).
35.950	35.950	Training for use of sealed sources for diagnosis	New text.
35.960	35.960	Training for teletherapy	Revision of **Federal Register** Notice (47 FR 53476 December 2, 1982).
35.961	35.961	Training for teletherapy physicist	35.24 revised.
35.970	35.970	Training for experienced authorized users	New text.
35.971	35.971	Physician training in a three month program	New text.
35.972	35.972	Recentness of training	Revision of **Federal Register** Notice (47 FR 53476 December 2, 1982).
		Subpart K—Enforcement	
35.990	35.990	Violations	New text.
35.999	35.999	Resolution of conflicting requirements during transition period	New text.

VI. Administrative Statements

Finding of No Significant Environmental Impact: Availability

The Commission is revising the regulations governing the medical use of byproduct material. The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that promulgation of this regulation is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The radiation levels and release of byproduct material authorized by this regulation are consistent with the Commission's other regulations and internationally accepted standards. Most radiation experts agree that levels and releases that are within these regulations and standards will not have a significant effect on the quality of the human environment. The assessment analyzes the possible impact of release of radioactive patients, the transportation of byproduct material for medical use, storage and control of aerosols and gases, waste disposal by decay-in-storage, and dose rates outside teletherapy rooms. The environmental assessment and finding of no significant impact on which this determination is based are available for public inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Mr. McElroy (see "**FOR FURTHER INFORMATION CONTACT:**" heading).

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget under OMB Number 3150–0010.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from Mr. McElroy (see "**FOR FURTHER INFORMATION CONTACT:**" heading).

Regulatory Flexibility Certification

In accordance with section 605(b) of the Regulatory Flexibility Act of 1980, the Commission certifies that this rule, will not have a significant economic impact on a substantial number of small entities. The NRC has issued approximately 2500 medical licenses under 10 CFR Part 35. Of these, approximately 2200 are held by institutions, and approximately 300 by individual physicians. Most of the institutional licensees are community hospitals. The NRC has adopted size standards that classify a hospital as a small entity if its average gross annual receipts do not exceed $3.5 million, and a private practice physician as a small entity if the physician's annual gross receipts are $1 million or less. Under these size standards, some NRC medical licensees could be considered "small entities" for purposes of the Regulatory Flexibility Act.

The number of medical licensees that would fall into the small entity category does not constitute a substantial number for purposes of the Regulatory Flexibility Act.

The primary objective of the rule is to simplify the medical licensing process by consolidating requirements without lessening the protection necessary for public health and safety. This has been accomplished by incorporating frequently used license conditions into the regulations and eliminating or modifying requirements that are not essential to the protection of public health and safety. These steps will make it easier for persons to determine what is required to obtain a license and what is required of licensees. Therefore, there should not be a significant economic impact on these small entities.

The Commission has prepared a regulatory analysis for this regulation which contains information concerning the anticipated economic effect of this regulation on licensees and presents the basis for the Commission's belief that the regulation will not result in

significant additional costs to any licensees. It is available for public inspection in the NRC Public Document Room at 1717 H Street NW., Washington, DC. Single copies are available from Mr. McElroy (see "**FOR FURTHER INFORMATION CONTACT:**" heading).

Resolution of Petition for Rulemaking PRM 35–2

The American Association of Physicists in Medicine filed a petition regarding dosimetry equipment calibration frequency (Petition Docket No. PRM 35–2; see 47 FR 4311, January 29, 1982). This rulemaking resolves that petition in § 35.630 Dosimetry equipment. The petition is granted essentially as recommended by the petitioner.

List of Subjects

10 CFR Part 30

Byproduct material, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 31

Byproduct material, Labeling, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

10 CFR Part 32

Byproduct materials, Labeling, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 35

Byproduct material, Drugs, Health devices, Health professions, Incorporation by reference, Medical devices, Nuclear materials, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

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

Under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553 the NRC is adopting the following revision of 10 CFR Part 35 and the following amendments to 10 CFR Parts 30, 31, 32, and 40.

VII. Text of Final Regulations

1. 10 CFR Part 35 is revised to read as follows:

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

Subpart A—General Information

Sec.
35.1 Purpose and scope.
35.2 Definitions.
35.8 Information collection requirements: OMB approval.
35.11 License required.
35.12 Application for license, amendment, or renewal.
35.13 License amendments.
35.14 Notifications.
35.18 License issuance.
35.19 Specific exemptions.

Subpart B—General Administrative Requirements

35.20 ALARA program.
35.21 Radiation Safety Officer.
35.22 Radiation Safety Committee.
35.23 Statements of authority and responsibilities.
35.25 Supervision.
35.27 Visiting authorized user.
35.29 Administrative requirements that apply to the provision of mobile nuclear medicine service.
35.31 Radiation safety program changes.
35.33 Records and reports of misadministrations.
35.49 Suppliers.

Subpart C—General Technical Requirements

35.50 Possession, use, calibration, and check of dose calibrators.
35.51 Calibration and check of survey instruments.
35.53 Measurement of radiopharmaceutical dosages.
35.57 Authorization for calibration and reference sources.
35.59 Requirements for possession of sealed sources and brachytherapy sources.
35.60 Syringe shields and labels.
35.61 Vial shields and labels.
35.70 Surveys for contamination and ambient radiation exposure rate.
35.75 Release of patients containing radiopharmaceuticals or permanent implants.
35.80 Technical requirements that apply to the provision of mobile nuclear medicine service.
35.90 Storage of volatiles and gases.
35.92 Decay-in-storage.

Subpart D—Uptake, Dilution, and Excretion

35.100 Use of radiopharmaceuticals for uptake, dilution, and excretion studies.
35.120 Possession of survey instrument.

Subpart E—Imaging and Localization

35.200 Use of radiopharmaceuticals, generators, and reagent kits for imaging and localization studies.
35.204 Permissible molybdenum-99 concentration.
35.205 Control of aerosols and gases.
35.220 Possession of survey instruments.

Subpart F—Radiopharmaceuticals for Therapy

35.300 Use of radiopharmaceuticals for therapy.
35.310 Safety instruction.
35.315 Safety precautions.
35.320 Possession of survey instruments.

Subpart G—Sources for Brachytherapy

35.400 Use of sources for brachytherapy.
35.404 Release of patients treated with temporary implants.
35.406 Brachytherapy sources inventory.
35.410 Safety instruction.
35.415 Safety precautions.
35.420 Possession of survey instrument.

Subpart H—Sealed Sources for Diagnosis

35.500 Use of sealed sources for diagnosis.
35.520 Availability of survey instrument.

Subpart I—Teletherapy

35.600 Use of a sealed source in a teletherapy unit.
35.605 Maintenance and repair restrictions.
35.606 License amendments.
35.610 Safety instruction.
35.615 Safety precautions.
35.620 Possession of survey instrument.
35.630 Dosimetry equipment.
35.632 Full calibration measurements.
35.634 Periodic spot-checks.
35.636 Safety checks for teletherapy facilities.
35.641 Radiation surveys for teletherapy facilities.
35.643 Modification of teletherapy unit or room before beginning a treatment program.
35.645 Reports of teletherapy surveys, checks, tests, and measurements.
35.647 Five-year inspection.

Subpart J—Training and Experience Requirements

35.900 Radiation Safety Officer.
35.901 Training for experienced Radiation Safety Officer.
35.910 Training for uptake, dilution, and excretion studies.
35.920 Training for imaging and localization studies.
35.930 Training for therapeutic use of radiopharmaceuticals.
35.932 Training for treatment of hyperthyroidism.
35.934 Training for treatment of thyroid carcinoma.
35.940 Training for use of brachytherapy sources.
35.941 Training for ophthalmic use of strontium-90.
35.950 Training for use of sealed sources for diagnosis.
35.960 Training for teletherapy.
35.961 Training for teletherapy physicist.
35.970 Training for experienced authorized users.
35.971 Physician training in a three month program.
35.972 Recentness of training.

Subpart K—Enforcement

35.990 Violations.

35.999 Resolution of conflicting requirements during transition period.

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 35.11, 35.13, 35.20(a) and (b), 35.21(a) and (b), 35.22, 35.23, 35.25, 35.27(a), (c) and (d), 35.31(a), 35.49, 35.50(a)–(d), 35.51(a)–(c), 35.53(a) and (b), 35.59(a)–(c), (e)(1), (g) and (h), 35.60, 35.61, 35.70(a)–(f), 35.75, 35.80(a)–(e), 35.90, 35.92(a), 35.120, 35.200(b), 35.204(a) and (b), 35.205, 35.220, 35.310(a), 35.315, 35.320, 35.400, 35.404(a), 35.406(a) and (c), 35.410(a), 35.415, 35.420, 35.500, 35.520, 35.605, 35.606, 35.610(a) and (b), 35.615, 35.620, 35.630(a) and (b), 35.632(a)–(f), 35.633(a)–(i), 35.636(a) and (b), 35.641(a) and (b), 35.643(a) and (b), 35.645(a) and (b), 35.900, 35.910, 35.920, 35.930, 35.932, 35.934, 35.940, 35.941, 35.950, 35.960, 35.961, 35.970, and 35.971 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 35.14, 35.21(b), 35.22(b), 35.23(b), 35.27(a) and (c), 35.29(b), 35.33(a)–(d), 35.36(b), 35.50(e), 35.51(d), 35.53(c), 35.59(d) and (e)(2), 35.59(g) and (i), 35.70(g), 35.80(f), 35.92(b), 35.204(c), 35.310(b), 35.315(b), 35.404(b), 35.406(b) and (d), 35.410(b), 35.415(b), 35.610(c), 35.615(d)(4), 35.630(c), 35.632(g), 35.634(j), 35.636(c), 35.641(c), 35.643(c), 35.645, and 35.647(c) are issued under sec. 161o, 68 Stat. 950 as amended (42 U.S.C. 2201(o)).

Subpart A—General Information

§ 35.1 Purpose and scope.

This part prescribes requirements and provisions for the medical use of byproduct material and for issuance of specific licenses authorizing the medical use of this material. These requirements and provisions provide for the protection of the public health and safety. The requirements and provisions of this part are in addition to, and not in substitution for, others in this chapter. The requirements and provisions of Parts 19, 20, 21, 30, 71, and 170 of this chapter apply to applicants and licensees subject to this part unless specifically exempted.

§ 35.2 Definitions.

"Address of use" means the building or buildings that are identified on the license and where byproduct material may be received, used, or stored.

"Agreement State" means any State with which the Commission or the Atomic Energy Commission has entered into an effective agreement under subsection 274b of the Atomic Energy Act of 1954, as amended.

"ALARA" (as low as reasonably achievable) means making every reasonable effort to maintain exposures to radiation as far below the dose limits as is practical:

(1) Consistent with the purpose for which the licensed activity is undertaken,

(2) Taking into account the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and

(3) In relation to utilization of nuclear energy in the public interest.

"Area of use" means a portion of an address of use that has been set aside for the purpose of receiving, using, or storing byproduct material.

"Authorized user" means a physician, dentist, or podiatrist who is identified as an authorized user on a Commission or Agreement State license that authorizes the medical use of byproduct material.

"Brachytherapy source" means an individual sealed source or a manufacturer-assembled source train that is not designed to be disassembled by the user.

"Dedicated check source" means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years.

"Dental use" means the intentional external administration of the radiation from byproduct material to human beings in the practice of dentistry in accordance with a license issued by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"Dentist" means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice dentistry.

"Management" means the chief executive officer or that person's delegate or delegates.

"Medical Institution" means an organization in which several medical disciplines are practiced.

"Medical use" means the intentional internal or external administration of byproduct material, or the radiation therefrom, to human beings in the practice of medicine in accordance with a license issued by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"Ministerial change" means a change that is made, after ascertaining the applicable requirements, by persons in authority in conformance with the requirements and without making a discretionary judgment about whether those requirements should apply in the case at hand.

"Misadministration" means the administration of:

(1) A radiopharmaceutical or radiation from a sealed source other than the one intended;

(2) A radiopharmaceutical or radiation to the wrong patient;

(3) A radiopharmaceutical or radiation by a route of administration other than that intended by the prescribing physician;

(4) A diagnostic dosage of a radiopharmaceutical differing from the prescribed dosage by more than 50 percent;

(5) A therapy dosage of a radiopharmaceutical differing from the prescribed dosage by more than 10 percent; or

(6) A therapy radiation dose from a sealed source such that errors in the source calibration, time of exposure, and treatment geometry result in a calculated total treatment dose differing from the final prescribed total treatment dose by more than 10 percent.

"Mobile nuclear medicine service" means the transportation and medical use of byproduct material.

"Output" means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a teletherapy unit for a specified set of exposure conditions.

"Physician" means a medical doctor or doctor of osteopathy licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to prescribe drugs in the practice of medicine.

"Podiatric use" means the intentional external administration of the radiation from byproduct material to human beings in the practice of podiatry in accordance with a license issued by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

"Podiatrist" means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice podiatry.

"Radiation Safety Officer" means the individual identified as the Radiation Safety Officer on a Commission license.

"Sealed source" means any byproduct material that is encased in a capsule designed to prevent leakage or escape of the byproduct material.

"Teletherapy physicist" means the individual identified as the teletherapy physicist on a Commission license.

"Visiting authorized user" means an authorized user who is not identified as an authorized user on the license of the licensee being visited.

§ 35.8 Information collection requirements: OMB approval.

(a) The Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). OMB has approved the information collection requirements in this part under control number 3150–0010.

(b) The approved information collection requirements contained in this part appear in §§ 35.12, 35.13, 35.14, 35.21, 35.22, 35.23, 35.27, 35.29, 35.31, 35.33, 35.50, 35.51, 35.53, 35.59, 35.60, 35.61, 35.70, 35.80, 35.92, 35.204, 35.205, 35.310, 35.315, 35.404, 35.406, 35.410, 35.415, 35.606, 35.610, 35.615, 35.630, 35.632, 35.634, 35.636, 35.641, 35.643, 35.645, and 35.647.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved as follows:

(1) In § 35.12, Form NRC–313 is approved under control number 3150–0120.

§ 35.11 License required.

(a) A person shall not manufacture, produce, acquire, receive, possess, use, or transfer byproduct material for medical use except in accordance with a specific license issued by the Commission or an Agreement State, or as allowed in paragraph (b) of this section.

(b) An individual may receive, possess, use, or transfer byproduct material in accordance with the regulations in this chapter under the supervision of an authorized user as provided in § 35.25, unless prohibited by license condition.

§ 35.12 Application for license, amendment, or renewal.

(a) If the application is for medical use sited in a medical institution, only the institution's management may apply. If the application is for medical use not sited in a medical institution, any person may apply.

(b) An application for a license for medical use of byproduct material as described in §§ 35.100, 35.200, 35.300, 35.400, and 35.500 of this part must be made by filing an original and one copy of Form NRC–313, "Application for Materials License." For guidance in completing the form, refer to the instructions in the most current versions of the appropriate Regulatory Guides. A request for a license amendment or renewal may be submitted as an original and one copy in letter format.

(c) An application for a license for medical use of byproduct material as described in § 35.600 of this part must be made by filing an original and one copy of Form NRC–313. For guidance in completing the form, refer to the instructions in the most current version of the appropriate Regulatory Guide. A request for a license amendment or renewal may be submitted as an original and one copy in letter format.

(d) For copies of regulatory guides, application forms, or to submit an application or an amendment request, refer to § 30.6 of this chapter.

§ 35.13 License amendments.

A licensee shall apply for and must receive a license amendment:

(a) Before it receives or uses byproduct material for a clinical procedure permitted under this Part but not permitted by the license issued pursuant to this part;

(b) Before it permits anyone, except a visiting authorized user described in § 35.27, to work as an authorized user under the license;

(c) Before it changes Radiation Safety Officers or Teletherapy Physicists;

(d) Before it orders byproduct material in excess of the amount, or radionuclide or form different than authorized on the license; and

(e) Before it adds to or changes the areas of use or address or addresses of use identified in the application or on the license.

§ 35.14 Notifications.

A licensee shall notify the Commission by letter within thirty days when an authorized user, Radiation Safety Officer, or Teletherapy Physicist permanently discontinues performance of duties under the license or has a name change, or when the licensee's mailing address changes. The licensee shall mail the report to the appropriate address identified in § 30.6 of this chapter.

§ 35.18 License issuance.

The Commission shall issue a license for the medical use of byproduct material for a term of five years if:

(a) The applicant has filed Form NRC–313 "Application for Materials License" in accordance with the instructions in § 35.12;

(b) The applicant has paid any applicable fee as provided in Part 170 of this chapter;

(c) The Commission finds the applicant equipped and committed to observe the safety standards established by the Commission in this Chapter for the protection of the public health and safety; and

(d) The applicant meets the requirements of Part 30 of this chapter.

§ 35.19 Specific exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. The Commission will review requests for exemptions from training and experience requirements with the assistance of its Advisory Committee on the Medical Uses of Isotopes.

Subpart B—General Administrative Requirements

§ 35.20 ALARA program.

(a) Each licensee shall develop and implement a written radiation protection program that includes provisions for keeping doses ALARA.

(b) To satisfy the requirement of paragraph (a) of this section:

(1) At a medical institution, management, the Radiation Safety Officer, and all authorized users must participate in the program as requested by the Radiation Safety Committee.

(2) For licensees that are not medical institutions, management and all authorized users must participate in the program as requested by the Radiation Safety Officer.

(c) The program must include notice to workers of the program's existence and workers' responsibility to help keep dose equivalents ALARA, a review of summaries of the types and amounts of byproduct material used, occupational doses, changes in radiation safety procedures and safety measures, and continuing education and training for all personnel who work with or in the vicinity of byproduct material. The purpose of the review is to ensure that licensees make a reasonable effort to maintain individual and collective occupational doses ALARA.

§ 35.21 Radiation Safety Officer.

(a) A licensee shall appoint a Radiation Safety Officer responsible for implementing the radiation safety program. The licensee, through the Radiation Safety Officer, shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's byproduct material program.

(b) The Radiation Safety Officer shall:

(1) Investigate overexposures, accidents, spills, losses, thefts, unauthorized receipts, uses, transfers, disposals, misadministrations, and other deviations from approved radiation safety practice and implement corrective actions as necessary;

(2) Establish, collect in one binder or file, and implement written policy and procedures for:

(i) Authorizing the purchase of byproduct material;

(ii) Receiving and opening packages of byproduct material;

(iii) Storing byproduct material;

(iv) Keeping an inventory record of byproduct material;

(v) Using byproduct material safely;

(vi) Taking emergency action if control of byproduct material is lost;

(vii) Performing periodic radiation surveys;

(viii) Performing checks of survey instruments and other safety equipment;

(ix) Disposing of byproduct material;

(x) Training personnel who work in or frequent areas where byproduct material is used or stored;

(xi) Keeping a copy of all records and reports required by the Commission regulations, a copy of these regulations, a copy of each licensing request and license and amendments, and the written policy and procedures required by the regulations.

(3) Brief management once each year on the byproduct material program;

(4) Establish personnel exposure investigational levels that, when exceeded, will initiate an investigation by the Radiation Safety Officer of the cause of the exposure;

(5) Establish personnel exposure investigational levels that, when exceeded, will initiate a prompt investigation by the Radiation Safety Officer of the cause of the exposure and a consideration of actions that might be taken to reduce the probability of recurrence;

(6) For medical use not at a medical institution, approve or disapprove minor changes in radiation safety procedures that are not potentially important to safety with the advice and consent of management; and

(7) For medical use at a medical institution, assist the Radiation Safety Committee in the performance of its duties.

§ 35.22 Radiation Safety Committee.

Each medical institution licensee shall establish a Radiation Safety Committee to oversee the use of byproduct material.

(a) Each Committee must meet the following administrative requirements:

(1) Membership must consist of at least three individuals and must include an authorized user of each type of use permitted by the license, the Radiation Safety Officer, a representative of the nursing service, and a representative of management who is neither an authorized user nor a Radiation Safety Officer. Other members may be included as the licensee deems appropriate.

(2) The Committee must meet at least quarterly.

(3) To establish a quorum and to conduct business, at least one-half of the Committee's membership must be present, including the Radiation Safety Officer and the management's representative.

(4) The minutes of each Radiation Safety Committee meeting must include:

(i) The date of the meeting;

(ii) Members present;

(iii) Members absent;

(iv) Summary of deliberations and discussions;

(v) Recommended actions and the numerical results of all ballots; and

(vi) ALARA program reviews described in § 35.20(c).

(5) The Committee must promptly provide each member with a copy of the meeting minutes, and retain one copy for the duration of the license.

(b) To oversee the use of licensed material, the Committee must:

(1) Review recommendations on ways to maintain individual and collective doses ALARA;

(2) Review, on the basis of safety and with regard to the training and experience standards in Subpart J of this part, and approve or disapprove any individual who is to be listed as an authorized user, the Radiation Safety Officer, or a Teletherapy Physicist before submitting a license application or request for amendment or renewal;

(3) Review on the basis of safety, and approve with the advice and consent of the Radiation Safety Officer and the management representative, or disapprove minor changes in radiation safety procedures that are not potentially important to safety and are permitted under § 35.31 of this Part;

(4) Review quarterly, with the assistance of the Radiation Safety Officer, a summary of the occupational radiation dose records of all personnel working with byproduct material;

(5) Review quarterly, with the assistance of the Radiation Safety Officer, all incidents involving byproduct material with respect to cause and subsequent actions taken; and

(6) Review annually, with the assistance of the Radiation Safety Officer, the radiation safety program.

§ 35.23 Statements of authority and responsibilities.

(a) A licensee shall provide the Radiation Safety Officer, and at a medical institution the Radiation Safety Committee, sufficient authority, organizational freedom, and management prerogative, to:

(1) Identify radiation safety problems;

(2) Initiate, recommend, or provide corrective actions; and

(3) Verify implementation of corrective actions.

(b) A licensee shall establish and state in writing the authorities, duties, responsibilities, and radiation safety activities of the Radiation Safety Officer, and at a medical institution the Radiation Safety Committee, and retain the current edition of these statements as a record until the Commission terminates the license.

§ 35.25 Supervision.

(a) A licensee that permits the receipt, possession, use, or transfer of byproduct material by an individual under the supervision of an authorized user as allowed by § 35.11(b) of this part shall:

(1) Instruct the supervised individual in the principles of radiation safety appropriate to that individual's use of byproduct material;

(2) Require the supervised individual to follow the instructions of the supervising authorized user, follow the procedures established by the Radiation Safety Officer, and comply with the regulations of this chapter and the license conditions with respect to the use of byproduct material; and

(3) Periodically review the supervised individual's use of byproduct material and the records kept to reflect this use.

(b) A licensee that supervises an individual is responsible for the acts and omissions of the supervised individual.

§ 35.27 Visiting authorized user.

(a) A licensee may permit any visiting authorized user to use licensed material for medical use under the terms of the licensee's license for sixty days each year if:

(1) The visiting authorized user has the prior written permission of the licensee's management and, if the use occurs on behalf of an institution, the institution's Radiation Safety Committee;

(2) The licensee has a copy of a license issued by the Commission or an Agreement State, or a permit issued by a Commission or Agreement State broad licensee that is authorized to permit medical use, that identifies the visiting authorized user by name as an authorized user for medical use; and

(3) Only those procedures for which the visiting authorized user is specifically authorized by the license or permit are performed by that individual.

(b) A licensee need not apply for a license amendment in order to permit a visiting authorized user to use licensed material as described in paragraph (a) of this section.

(c) A licensee shall retain the records specified in this section for two years after the visiting authorized user's last use of licensed material, but may discard the records if the visiting authorized user has been listed as an authorized user on the licensee's license.

§ 35.29 Administrative requirements that apply to the provision of mobile nuclear medicine service.

(a) The Commission will license mobile nuclear medicine service only in accordance with Subparts D, E and H of this part and § 31.11 of this chapter.

(b) Mobile nuclear medicine service licensees shall obtain a letter signed by the management of each client for which services are rendered that authorizes use of byproduct material at the client's address of use. The mobile nuclear medicine service licensee shall retain the letter for two years after the last provision of service.

(c) If a mobile nuclear medicine service provides services that the client is also authorized to provide, the client is responsible for assuring that services are conducted in accordance with the regulations in this chapter while the mobile nuclear medicine service is under the client's direction.

(d) A mobile nuclear medicine service may not order byproduct material to be delivered directly from the manufacturer or distributor to the client's address of use.

§ 35.31 Radiation safety program changes.

(a) A licensee may make minor changes in radiation safety procedures that are not potentially important to safety, i.e., ministerial changes, that were described in the application for license, renewal, or amendment except for those changes in §§ 35.13 and 35.606 of this part. Examples of such ministerial changes include: editing of procedures for clarity or conformance with local drafting policy or updating names, telephone numbers, and addresses; adoption of model radiation safety procedures published in NRC Regulatory Guides; replacement of equipment; reassignment of tasks among employees; or assignment of service contracts for services such as personnel dosimetry, radiation safety equipment repair or calibration, waste disposal, and safety surveys. A licensee is responsible for assuring that any change made is in compliance with the requirements of the regulations and the license.

(b) A licensee shall retain a record of each change until the license has been renewed or terminated. The record must include the effective date of the change, a copy of the old and new radiation safety procedures, the reason for the change, a summary of radiation safety matters that were considered before making the change, the signature of the Radiation Safety Officer, and the signatures of the affected authorized users and of management or, in a medical institution, the Radiation Safety Committee's chairman and the management representative.

§ 35.33 Records and reports of misadministrations.

(a) When a misadministration involves any therapy procedure, the licensee shall notify by telephone the appropriate NRC Regional Office listed in Appendix D of Part 20 of this chapter. The licensee shall also notify the referring physician of the affected patient and the patient or a responsible relative (or guardian), unless the referring physician agrees to inform the patient or believes, based on medical judgment, that telling the patient or the patient's responsible relative (or guardian) would be harmful to one or the other, respectively. These notifications must be made within 24 hours after the licensee discovers the misadministration. If the referring physician, patient, or the patient's responsible relative or guardian cannot be reached within 24 hours, the licensee shall notify them as soon as practicable. The licensee is not required to notify the patient or the patient's responsible relative or guardian without first consulting the referring physician; however, the licensee shall not delay medical care for the patient because of this.

(b) Within 15 days after an initial therapy misadministration report to NRC, the licensee shall report, in writing, to the NRC Regional Office initially telephoned and to the referring physician, and furnish a copy of the report to the patient or the patient's responsible relative (or guardian) if either was previously notified by the licensee under paragraph (a) of this section. The written report must include the licensee's name; the referring physician's name; a brief description of the event; the effect on the patient; the action taken to prevent recurrence; whether the licensee informed the patient or the patient's responsible relative (or guardian), and if not, why not. The report must not include the patient's name or other information that could lead to identification of the patient.

(c) When a misadministration involves a diagnostic procedure, the Radiation Safety Officer shall promptly investigate its cause, make a record for NRC review, and retain the record as directed in § 35.33(d). The licensee shall also notify the referring physician and the appropriate NRC Office specified in § 30.6 of this part in writing on Form NRC———[1] within 15 days if the misadministration involved the use of byproduct material not intended for medical use, administration of a dosage five-fold different from the intended dosage, or administration of byproduct material such that the patient is likely to receive an organ dose greater than 2 rem or a whole body dose greater than 500 millirem. Licensees may use dosimetry tables in package inserts, corrected only for amount of radioactivity administered, to determine whether a report is required.

(d) Each licensee shall retain a record of each misadministration for ten years. The record must contain the names of all individuals involved in the event (including the physician, allied health personnel, the patient, and the patient's referring physician), the patient's social security number or identification number if one has been assigned, a brief description of the event, the effect on the patient, and the action taken, if any, to prevent recurrence.

(e) Aside from the notification requirement, nothing in this section affects any rights or duties of licensees and physicians in relation to each other, patients, or responsible relatives (or guardians).

§ 35.49 Suppliers.

A licensee may use for medical use only:

(a) Byproduct material manufactured, labeled, packaged, and distributed in accordance with a license issued pursuant to the regulations in Part 30 and §§ 32.72, 32.73, or 32.74 of this chapter or the equivalent regulations of an Agreement State;

(b) Reagent kits that have been manufactured, labeled, packaged, and distributed in accordance with an approval by the Commission pursuant to § 32.73 or an Agreement State under equivalent regulations for the

[1] The staff is developing this form and will make it available before the effective date of this regulation. A notice of its availability will be published in the **Federal Register.**

preparation of radiopharmaceuticals for medical use; and

(c) Teletherapy sources manufactured and distributed in accordance with a license issued pursuant to Part 30 of this chapter or the equivalent regulations of an Agreement State.

Subpart C—General Technical Requirements

§ 35.50 Possession, use, calibration, and check of dose calibrators.

(a) A medical use licensee authorized to administer radiopharmaceuticals shall have in its possession a dose calibrator and use it to measure the amount of activity administered to each patient.

(b) A licensee shall:

(1) Check each dose calibrator for constancy with a dedicated check source at the beginning of each day of use. To satisfy the requirement of this paragraph, the check must be done on a frequently used setting with a sealed source of not less than 10 microcuries of radium-226 or 50 microcuries of any other photon-emitting radionuclide;

(2) Test each dose calibrator for accuracy upon installation and at least annually thereafter by assaying at least two sealed sources containing different radionuclides whose activity the manufacturer has determined within 5 percent of its stated activity, whose activity is at least 10 microcuries for radium-226 and 50 microcuries for any other photon-emitting radionuclide, and at least one of which has a principal photon energy between 100 keV and 500 keV;

(3) Test each dose calibrator for linearity upon installation and at least quarterly thereafter over the range of its use between the highest dosage that will be administered to a patient and 10 microcuries; and

(4) Test each dose calibrator for geometry dependence upon installation over the range of volumes and volume configurations for which it will be used. The licensee shall keep a record of this test for the duration of the use of the dose calibrator.

(c) A licensee shall also perform appropriate checks and tests required by this section following adjustment or repair of the dose calibrator.

(d) A licensee shall mathematically correct dosage readings for any geometry or linearity error that exceeds 10 percent if the dosage is greater than 10 microcuries and shall repair or replace the dose calibrator if the accuracy or constancy error exceeds 10 percent.

(e) A licensee shall retain a record of each check and test required by this section for two years unless directed otherwise. The records required in paragraphs (b)(1) through (b)(4) of this section must include:

(1) For paragraph (b)(1), the model and serial number of the dose calibrator, the identity of the radionuclide contained in the check source, the date of the check, the activity measured, and the initials of the individual who performed the check;

(2) For paragraph (b)(2), the model and serial number of the dose calibrator, the model and serial number of each source used and the identity of the radionuclide contained in the source and its activity, the date of the test, the results of the test, and the signature of the Radiation Safety Officer;

(3) For paragraph (b)(3), the model and serial number of the dose calibrator, the calculated activities, the measured activities, the date of the test, and the signature of the Radiation Safety Officer; and

(4) For paragraph (b)(4), the model and serial number of the dose calibrator, the configuration of the source measured, the activity measured for each volume measured, the date of the test, and the signature of the Radiation Safety Officer.

§ 35.51 Calibration and check of survey instruments.

(a) A licensee shall calibrate the survey instruments used to show compliance with this part before first use, annually, and following repair. The licensee shall:

(1) Calibrate all scales with readings up to 1000 millirem per hour with a radiation source;

(2) Calibrate two separated readings on each scale that must be calibrated; and

(3) Conspicuously note on the instrument the apparent exposure rate from a dedicated check source as determined at the time of calibration, and the date of calibration.

(b) When calibrating a survey instrument, the licensee shall consider a point as calibrated if the indicated exposure rate differs from the calculated exposure rate by not more than 20 percent, and shall conspicuously attach a correction chart or graph to the instrument.

(c) A licensee shall check each survey instrument for proper operation with the dedicated check source each day of use. A licensee is not required to keep records of these checks.

(d) A licensee shall retain a record of each survey instrument calibration for two years. The record must include:

(1) A description of the calibration procedure; and

(2) The date of the calibration, a description of the source used and the certified exposure rates from the source, and the rates indicated by the instrument being calibrated, the correction factors deduced from the calibration data, and the signature of the individual who performed the calibration.

§ 35.53 Measurement of radiopharmaceutical dosages.

A licensee shall:

(a) Measure the activity of each radiopharmaceutical dosage that contains more than 10 microcuries of a photon-emitting radionuclide before medical use;

(b) Measure the activity of each radiopharmaceutical dosage with a desired activity of 10 microcuries or less of a photon-emitting radionuclide before medical use to verify that the dosage does not exceed 10 microcuries;

(c) Retain a record of the measurements required by this section for two years. To satisfy this requirement, the record must contain the:

(1) Generic name, trade name, or abbreviation of the radiopharmaceutical, its lot number, and expiration dates and the radionuclide;

(2) Patient's name, and identification number if one has been assigned;

(3) Prescribed dosage and activity of the dosage at the time of measurement, or a notation that the total activity is less than 10 microcuries;

(4) Date and time of the measurement; and

(5) Initials of the individual who made the record.

§ 35.57 Authorization for calibration and reference sources.

Any person authorized by § 35.11 of this Part for medical use of byproduct material may receive, possess, and use the following byproduct material for check, calibration, and reference use:

(a) Sealed sources manufactured and distributed by a person licensed pursuant to § 32.74 of this chapter or equivalent Agreement State regulations and that do not exceed 15 millicuries each;

(b) Any byproduct material listed in §§ 35.100 or 35.200 with a half-life not longer than 100 days in individual amounts not to exceed 15 millicuries;

(c) Any byproduct material listed in §§ 35.100 or 35.200 with a half-life longer than 100 days in individual amounts not to exceed 200 microcuries each; and

(d) Technetium-99m in individual amounts not to exceed 50 millicuries.

§ 35.59 Requirements for possession of sealed sources and brachytherapy sources.

(a) A licensee in possession of any sealed source or brachytherapy source shall follow the radiation safety and handling instructions supplied by the manufacturer, and shall maintain the instructions for the duration of source use in a legible form convenient to users.

(b) A licensee in possession of a sealed source shall:

(1) Test the source for leakage before its first use unless the licensee has a certificate from the supplier indicating that the source was tested within six months before transfer to the licensee; and

(2) Test the source for leakage at intervals not to exceed six months or at other intervals approved by the Commission or an Agreement State and described in the label or brochure that accompanies the source.

(c) To satisfy the leak test requirements of this section, the licensee must:

(1) Take a wipe sample from the sealed source or from the surfaces of the device in which the sealed source is mounted or stored on which radioactive contamination might be expected to accumulate or wash the source in a small volume of detergent solution and treat the entire volume as the sample;

(2) Take teletherapy and other device source test samples when the source is in the "off" position; and

(3) Measure the sample so that the leakage test can detect the presence of 0.005 microcuries of radioactive material on the sample.

(d) A licensee shall retain leakage test records for five years. The records must contain the model number, and serial number if assigned, of each source tested, the identity of each source radionuclide and its estimated activity, the measured activity of each test sample expressed in microcuries, a description of the method used to measure each test sample, the date of the test, and the signature of the Radiation Safety Officer.

(e) If the leakage test reveals the presence of 0.005 microcurie or more of removable contamination, the licensee shall:

(1) Immediately withdraw the sealed source from use and store it in accordance with the requirements in Parts 20 and 30 of this chapter; and

(2) File a report within five days of the leakage test with the appropriate NRC Office listed in § 30.6 of this chapter, with a copy to Director of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, describing the equipment involved, the test results, and the action taken.

(f) A licensee need not perform a leakage test on the following sources:

(1) Sources containing only byproduct material with a half-life of less than 30 days;

(2) Sources containing only byproduct material as a gas;

(3) Sources containing 100 microcuries or less of beta or gamma-emitting material or 10 microcuries or less of alpha-emitting material;

(4) Sources stored and not being used. The licensee shall, however, test each such source for leakage before any use or transfer unless it has been leakage-tested within six months before the date of use or transfer; and

(5) Seeds of iridium-192 encased in nylon ribbon.

(g) A licensee in possession of a sealed source or brachytherapy source shall conduct a quarterly physical inventory of all such sources in its possession. The licensee shall retain each inventory record for five years. The inventory records must contain the model number of each source, and serial number if one has been assigned, the identity of each source radionuclide and its nominal activity, the location of each source, and the signature of the Radiation Safety Officer.

(h) A licensee in possession of a sealed source or brachytherapy source shall measure the ambient dose rates quarterly in all areas where such sources are stored. This does not apply to teletherapy sources in teletherapy units or sealed sources in diagnostic devices.

(i) A licensee shall retain a record of each survey required in paragraph (h) of this section for two years. The record must include the date of the survey, a plan of each area that was surveyed, the measured dose rate at several points in each area expressed in millirem per hour, the survey instrument used, and the signature of the Radiation Safety Officer.

§ 35.60 Syringe shields and labels.

(a) A licensee shall keep syringes that contain byproduct material to be administered in a radiation shield.

(b) To identify its contents, a licensee shall conspicuously label each syringe, or syringe radiation shield that contains a syringe with a radiopharmaceutical. The label must show the radiopharmaceutical name or its abbreviation, the clinical procedure to be performed, or the patient's name.

(c) A licensee shall require each individual who prepares a radiopharmaceutical kit to use a syringe radiation shield when preparing the kit and shall require each individual to use a syringe radiation shield when administering a radiopharmaceutical by injection unless the use of the shield is contraindicated for that patient.

§ 35.61 Vial shields and labels.

(a) A licensee shall require each individual preparing or handling a vial that contains a radiopharmaceutical to keep the vial in a vial radiation shield.

(b) To identify its contents, a licensee shall conspicuously label each vial radiation shield that contains a vial of a radiopharmaceutical. The label must show the radiopharmaceutical name or its abbreviation.

§ 35.70 Surveys for contamination and ambient radiation exposure rate.

(a) A licensee shall survey with a radiation detection survey instrument at the end of each day of use all areas where radiopharmaceuticals are routinely prepared for use or administered.

(b) A licensee shall survey with a radiation detection survey instrument at least once each week all areas where radiopharmaceuticals or radiopharmaceutical waste is stored.

(c) A licensee shall conduct the surveys required by paragraphs (a) and (b) of this section so as to be able to detect dose rates as low as 0.1 millirem per hour.

(d) A licensee shall establish radiation dose rate trigger levels for the surveys required by paragraphs (a) and (b) of this section. A licensee shall require that the individual performing the survey immediately notify the Radiation Safety Officer if a dose rate exceeds a trigger level.

(e) A licensee shall survey for removable contamination once each week all areas where radiopharmaceuticals are routinely prepared for use, administered, or stored.

(f) A licensee shall conduct the surveys required by paragraph (e) of this section so as to be able to detect contamination on each wipe sample of 2000 disintegrations per minute.

(g) A licensee shall establish removable contamination trigger levels for the surveys required by paragraph (e) of this section. A licensee shall require that the individual performing the survey immediately notify the Radiation Safety Officer if contamination exceeds the trigger level.

(h) A licensee shall retain a record of each survey for two years. The record must include the date of the survey, a plan of each area surveyed, the trigger level established for each area, the

detected dose rate at several points in each area expressed in millirem per hour or the removable contamination in each area expressed in disintegrations per minute per 100 square centimeters, the instrument used to make the survey or analyze the samples, and the initials of the individual who performed the survey.

§ 35.75 Release of patients containing radiopharmaceuticals or permanent implants.

(a) A licensee may not authorize release from confinement for medical care any patient administered a radiopharmaceutical until either:

(1) The measured dose rate from the patient is less than 5 millirems per hour at a distance of one meter; or

(2) The activity in the patient is less than 30 millicuries.

(b) A licensee may not authorize release from confinement for medical care of any patient administered a permanent implant until the measured dose rate from the patient is less than 5 millirems per hour at a distance of one meter.

§ 35.80 Technical requirements that apply to the provision of mobile nuclear medicine service.

A licensee providing mobile nuclear medicine service shall:

(a) Transport to each address of use only syringes or vials containing prepared radiopharmaceuticals or radiopharmaceuticals that are intended for reconstitution of radiopharmaceutical kits;

(b) Bring into each address of use all byproduct material to be used and, before leaving, remove all unused byproduct material and all associated waste;

(c) Secure or keep under constant surveillance and immediate control all byproduct material when in transit or at an address of use;

(d) Check survey instruments and dose calibrators as described in §§ 35.50 and 35.51, and check all other transported equipment for proper function before medical use at each address of use;

(e) Carry a radiation detection survey meter in each vehicle that is being used to transport byproduct material, and, before leaving a client address of use, survey all radiopharmaceutical areas of use with a radiation detection survey meter to ensure that all radiopharmaceuticals and all associated waste have been removed;

(f) Retain a record of each survey required in paragraph (e) of this section for two years. The record must include the date of the survey, a plan of each area that was surveyed, the measured dose rate at several points in each area of use expressed in millirem per hour, the instrument used to make the survey, and the initials of the individual who performed the survey.

§ 35.90 Storage of volatiles and gases.

A licensee shall store volatile radiopharmaceuticals and radioactive gases in the shipper's radiation shield and container. A licensee shall store a multi-dose container in a fume hood after drawing the first dosage from it.

§ 35.92 Decay-in-storage.

(a) A licensee may hold byproduct material with a physical half-life of less than 65 days for decay-in-storage before disposal in ordinary trash and is exempt from the requirements of § 20.301 of this chapter if it:

(1) Holds byproduct material for decay a minimum of ten half-lives;

(2) Monitors byproduct material at the container surface before disposal as ordinary trash and determines that its radioactivity cannot be distinguished from the background radiation level with a radiation detection survey meter set on its most sensitive scale and with no interposed shielding;

(3) Removes or obliterates all radiation labels; and

(4) Separates and monitors each generator column individually with all radiation shielding removed to ensure that it has decayed to background radiation level before disposal.

(b) A licensee shall retain a record of each disposal permitted under paragraph (a) of this section for two years. The record must include the date of the disposal, the date on which the byproduct material was placed in storage, the radionuclides disposed, the survey instrument used, the background dose rate, the dose rate measured at the surface of each waste container, and the name of the individual who performed the disposal.

Subpart D—Uptake, Dilution, and Excretion

§ 35.100 Use of radiopharmaceuticals for uptake, dilution and excretion studies.

A licensee may use any byproduct material in a radiopharmaceutical and for a diagnostic use involving measurements of uptake, dilution, or excretion for which the Food and Drug Administration (FDA) has accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND) or approved a "New Drug Application" (NDA).

§ 35.120 Possession of survey instrument.

A licensee authorized to use byproduct material for uptake, dilution, and excretion studies shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range 0.1 millirem per hour to 100 millirem per hour.

Subpart E—Imaging and Localization

§ 35.200 Use of radiopharmaceuticals, generators, and reagent kits for imaging and localization studies.

(a) A licensee may use any byproduct material in a diagnostic radiopharmaceutical or any generator or reagent kit for preparation and diagnostic use of a radiopharmaceutical containing byproduct material for which the Food and Drug Administration has accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND) or approved a "New Drug Application" (NDA).

(b) A licensee shall elute generators and prepare reagent kits in accordance with the manufacturer's instructions.

§ 35.204 Permissible molybdenum-99 concentration.

(a) A licensee may not administer to humans a radiopharmaceutical containing more than 0.15 microcurie of molybdenum-99 per millicurie of technetium-99m.

(b) A licensee that uses molybdenum-99/technetium-99m generators for preparing a technetium-99m radiopharmaceutical shall measure the molybdenum-99 concentration in each eluate or extract.

(c) A licensee that must measure molybdenum concentration shall retain a record of each measurement for two years. The record must include, for each elution or extraction of technetium-99m, the measured activity of the technetium expressed in millicuries, the measured activity of the molybdenum expressed in microcuries, the ratio of the measures expressed as microcuries of molybdenum per millicurie of technetium, the time and date of the measurement, and the initials of the individual who made the measurement.

§ 35.205 Control of aerosols and gases.

(a) A licensee that administers radioactive aerosols or gases shall do so in a room with a system that will keep airborne concentrations within the limits prescribed by §§ 20.103 and 20.106 of this chapter. The system must either be directly vented to the atmosphere through an air exhaust or provide for collection and decay or disposal of the aerosol or gas in a shielded container.

(b) A licensee shall administer radioactive aerosols and gases in rooms that are at negative pressure compared to surrounding rooms.

(c) Before receiving, using, or storing a radioactive gas, the licensee shall calculate the amount of time needed after a spill to reduce the concentration in the room to the occupational limit listed in Appendix B to Part 20 of this chapter. The calculation must be based on the highest activity of gas handled in a single container, the air volume of the room, and the measured available air exhaust rate.

(d) A licensee shall make a record of the calculations required in paragraph (c) of this section that includes the assumptions, measurements, and calculations made and shall retain the record for the duration of use of the area. A licensee shall also post the calculated time and safety measures to be instituted in case of a spill at the area of use.

(e) A licensee shall check the operation of collection systems each month, and measure the ventilation rates available in areas of use each six months.

§ 35.220 Possession of survey instruments.

A licensee authorized to use byproduct material for imaging and localization studies shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range of 0.1 millirem per hour to 100 millirem per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range 1 millirem per hour to 1000 millirem per hour.

Subpart F—Radiopharmaceuticals for Therapy

§ 35.300 Use of radiopharmaceuticals for therapy.

A licensee may use any byproduct material in a radiopharmaceutical and for a therapeutic use for which the Food and Drug Administration has accepted a "Notice of Claimed Investigational Exemption for a New Drug" (IND), or approved a "New Drug Application" (NDA). The licensee shall comply with the package insert instructions regarding indications and method of administration.

§ 35.310 Safety instruction.

(a) A licensee shall provide radiation safety instruction for all personnel caring for the patient receiving radiopharmaceutical therapy and hospitalized for compliance with § 35.75 of this chapter. To satisfy this requirement, the instruction must describe the licensee's procedures for:

(1) Patient control;

(2) Visitor control;

(3) Contamination control;

(4) Waste control; and

(5) Notification of the Radiation Safety Officer in case of the patient's death or medical emergency.

(b) A licensee shall keep for two years a list of individuals receiving instruction required by paragraph (a) of this section, a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

§ 35.315 Safety precautions.

(a) For each patient receiving radiopharmaceutical therapy and hospitalized for compliance with § 35.75 of this chapter, a licensee shall:

(1) Provide a private room with a private sanitary facility;

(2) Post the patient's door with a "Radioactive Materials" sign and note on the door or in the patient's chart where and how long visitors may stay in the patient's room;

(3) Authorize visits by individuals under age 18 only on a patient-by-patient basis with the approval of the authorized user after consultation with the Radiation Safety Officer;

(4) Promptly after administration of the dosage, measure the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with the requirements of Part 20 of this chapter, and retain for two years a record of each survey that includes the time and date of the survey, a plan of the area or list of points surveyed, the measured dose rate at several points expressed in millirem per hour, the instrument used to make the survey, and the initials of the individual who made the survey.

(5) Either monitor material and items removed from the patient's room to determine that their radioactivity cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle them as radioactive waste.

(6) Provide the patient with radiation safety guidance that will help to keep radiation dose to household members and the public as low as reasonably achievable before authorizing release of the patient.

(7) Survey the patient's room and private sanitary facility for removable contamination with a radiation detection survey instrument before assigning another patient to the room. The room must not be reassigned until removable contamination is less than 200 disintegrations per minute per 100 square centimeters; and

(8) Measure the thyroid burden of each individual who helped prepare or administer a dosage of iodine-131 within three days after administering the dosage, and retain for the period required by § 20.401(c)(1) a record of each thyroid burden measurement, its date, the name of the individual whose thyroid burden was measured, and the initials of the individual who made the measurements.

(b) A licensee shall notify the Radiation Safety Officer immediately if the patient dies or has a medical emergency.

§ 35.320 Possession of survey instruments.

A licensee authorized to use byproduct material for radiopharmaceutical therapy shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range 0.1 millirem per hour to 100 millirem per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range 1 millirem per hour to 1000 millirem per hour.

Subpart G—Sources for Brachytherapy

§ 35.400 Use of sources for brachytherapy.

A licensee shall use the following sources in accordance with the manufacturer's radiation safety and handling instructions:

(a) Cesium-137 as a sealed source in needles and applicator cells for topical, interstitial, and intracavitary treatment of cancer;

(b) Cobalt-60 as a sealed source in needles and applicator cells for topical, interstitial, and intracavitary treatment of cancer;

(c) Gold-198 as a sealed source in seeds for interstitial treatment of cancer;

(d) Iridium-192 as seeds encased in nylon ribbon for interstitial treatment of cancer;

(e) Strontium-90 as a sealed source in an applicator for treatment of superficial eye conditions; and

(f) Iodine-125 as a sealed source in seeds for interstitial treatment of cancer.

§ 35.404 Release of patients treated with temporary implants.

(a) Immediately after removing the last temporary implant source from a patient, the licensee shall make a radiation survey of the patient with a radiation detection survey instrument to

confirm that all sources have been removed. The licensee may not release from confinement for medical care a patient treated by temporary implant until all sources have been removed.

(b) A licensee shall retain a record of patient surveys for two years. Each record must include the date of the survey, the name of the patient, the dose rate from the patient expressed as millirem per hour and measured at one meter from the patient, the survey instrument used, and the initials of the individual who made the survey.

§ 35.406 Brachytherapy sources inventory.

(a) Promptly after removing them from a patient, a licensee shall return brachytherapy sources to the storage area, and count the number returned to ensure that all sources taken from the storage area have been returned.

(b) A licensee shall make a record of brachytherapy source use which must include:

(1) The names of the individuals permitted to handle the sources,

(2) The number and activity of sources removed from storage, the patient's name and room number, the time and date they were removed from storage, the number and activity of the sources in storage after the removal, and the initials of the individual who removed the sources from storage;

(3) The number and activity of sources returned to storage, the patient's name and room number, the time and date they were returned to storage, the number and activity of sources in storage after the return, and the initials of the individual who returned the sources to storage.

(c) Immediately after implanting sources in a patient the licensee shall make a radiation survey of the patient and the area of use to confirm that no sources have been misplaced. The licensee shall make a record of each survey.

(d) A licensee shall retain the records required in paragraphs (b) and (c) of this section for two years.

§ 35.410 Safety instruction.

(a) The licensee shall provide radiation safety instruction to all personnel caring for the patient undergoing implant therapy. To satisfy this requirement, the instruction must describe:

(1) Size and appearance of the brachytherapy sources;

(2) Safe handling and shielding instructions in case of a dislodged source;

(3) Procedures for patient control;

(4) Procedures for visitor control; and

(5) Procedures for notification of the Radiation Safety Officer if the patient dies or has a medical emergency.

(b) A licensee shall retain for two years a record of individuals receiving instruction required by paragraph (a) of this section, a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

§ 35.415 Safety precautions.

(a) For each patient receiving implant therapy, a licensee shall:

(1) Not quarter the patient in the same room with a patient who is not receiving radiation therapy unless the licensee can demonstrate compliance with the requirements of § 20.105(b) of this chapter at a distance of one meter from the implant;

(2) Post the patient's door with a "Radioactive Materials" sign and note on the door or in the patient's chart where and how long visitors may stay in the patient's room;

(3) Authorize visits by individuals under age 18 only on a patient-by-patient basis with the approval of the authorized user after consultation with the Radiation Safety Officer; and

(4) Promptly after implanting the material, survey the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with the requirements of Part 20 of this chapter, and retain for two years a record of each survey that includes the time and date of the survey, a plan of the area or list of points surveyed, the measured dose rate at several points expressed in millirem per hour, the instrument used to make the survey, and the initials of the individual who made the survey.

(5) Provide the patient with radiation safety guidance that will help to keep radiation dose to household members and the public as low as reasonably achievable before releasing the patient if the patient was administered a permanent implant.

(b) A licensee shall notify the Radiation Safety Officer immediately if the patient dies or has a medical emergency.

§ 35.420 Possession of survey instrument.

A licensee authorized to use byproduct material for implant therapy shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range 0.1 millirem per hour to 100 millirem per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range 1 millirem per hour to 1000 millirem per hour.

Subpart H—Sealed Sources for Diagnosis

§ 35.500 Use of sealed sources for diagnosis.

A licensee shall use the following sealed sources in accordance with the manufacturer's radiation safety and handling instructions:

(a) Iodine-125, americium-241, or gadolinium-153 as a sealed source in a device for bone mineral analysis; and

(b) Iodine-125 as a sealed source in a portable imaging device.

§ 35.520 Availability of survey instrument.

A licensee authorized to use byproduct material as a sealed source for diagnostic purposes shall have available for use a portable radiation detection survey instrument capable of detecting dose rates over the range 0.1 millirem per hour to 100 millirem per hour or a portable radiation measurement survey instrument capable of measuring dose rates over the range 1 millirem per hour to 1000 millirem per hour. The instrument must have been calibrated in accordance with § 35.51 of this part.

Subpart I—Teletherapy

§ 35.600 Use of a sealed source in a teletherapy unit.

The regulations and provisions of this subpart govern the use of teletherapy units for medical use that contain a sealed source of cobalt-60 or cesium-137.

§ 35.605 Maintenance and repair restrictions.

Only a person specifically licensed by the Commission or an Agreement State to perform teletherapy unit maintenance and repair shall:

(a) Install, relocate, or remove a teletherapy sealed source or a teletherapy unit that contains a sealed source; or

(b) Maintain, adjust, or repair the source drawer, the shutter or other mechanism of a teletherapy unit that could expose the source, reduce the shielding around the source, or result in increased radiation levels.

§ 35.606 License amendments.

In addition to the changes specified in § 35.13 of this part, a licensee shall apply for and must receive a license amendment before:

(a) Making any change in the treatment room shielding;

(b) Making any change in the location of the teletherapy unit within the treatment room;

(c) Using the teletherapy unit in a manner that could result in increased radiation levels in areas outside the teletherapy treatment room;

(d) Relocating the teletherapy unit; or

(e) Allowing an individual not listed on the licensee's license to perform the duties of the teletherapy physicist.

§ 35.610 Safety instruction.

(a) A licensee shall post instructions at the teletherapy unit console. To satisfy this requirement, these instructions must inform the operator of:

(1) The procedure to be followed to ensure that only the patient is in the treatment room before turning the primary beam of radiation on to begin a treatment or after a door interlock interruption;

(2) The procedure to be followed if:

(i) The operator is unable to turn the primary beam of radiation off with controls outside the treatment room or any other abnormal operation occurs; and

(ii) The names and telephone numbers of the authorized users and Radiation Safety Officer to be immediately contacted if the teletherapy unit or console operates abnormally.

(b) A licensee shall provide instruction in the topics identified in paragraph (a) of this section to all individuals who operate a teletherapy unit.

(c) A licensee shall retain for two years a record of individuals receiving instruction required by paragraph (b) of this section, a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

§ 35.615 Safety precautions.

(a) A licensee shall control access to the teletherapy room by a door at each entrance.

(b) A licensee shall equip each entrance to the teletherapy room with an electrical interlock system that will:

(1) Prevent the operator from turning the primary beam of radiation on unless each treatment room entrance door is closed;

(2) Turn the primary beam of radiation off immediately when an entrance door is opened; and

(3) Prevent the primary beam of radiation from being turned on following an interlock interruption until all treatment room entrance doors are closed and the beam on-off control is reset at the console.

(c) A licensee shall equip each entrance to the teletherapy room with a beam condition indicator light.

(d) A licensee shall install in each teletherapy room a permanent radiation monitor capable of continuously monitoring beam status.

(1) A radiation monitor must provide visible notice of a teletherapy unit malfunction that results in an exposed or partially exposed source, and must be observable by an individual entering the teletherapy room.

(2) A radiation monitor must be equipped with a backup power supply separate from the power supply to the teletherapy unit. This backup power supply may be a battery system.

(3) A radiation monitor must be checked with a dedicated check source for proper operation each day before the teletherapy unit is used for treatment of patients.

(4) A licensee shall maintain a record of the check required by paragraph (d)(3) of this section for two years. The record must include the date of the check, notation that the monitor indicates when its detector is and is not exposed, and the initials of the individual who performed the check.

(5) If a radiation monitor is inoperable, the licensee shall require any individual entering the teletherapy room to use a survey instrument or audible alarm personal dosimeter to monitor for any malfunction of the source exposure mechanism that may result in an exposed or partially exposed source. The instrument or dosimeter must be checked with a dedicated check source for proper operation at the beginning of each day of use. The licensee shall keep a record as described in paragraph (d)(4) of this section.

(6) A licensee shall promptly repair or replace the radiation monitor if it is inoperable.

(e) A licensee shall construct or equip each teletherapy room to permit continuous observation of the patient from the teletherapy unit console during irradiation.

§ 35.620 Possession of survey instrument.

A licensee authorized to use byproduct material in a teletherapy unit shall have in its possession either a portable radiation detection survey instrument capable of detecting dose rate over the range 0.1 millirem per hour to 100 millirem per hour or a portable radiation measurement survey instrument capable of measuring dose rates over the range 1 millirem per hour to 1,000 millirem per hour.

§ 35.630 Dosimetry equipment.

(a) A licensee shall have a calibrated dosimetry system available for use. To satisfy this requirement, one of the following two conditions must be met.

(1) The system must have been calibrated by the National Bureau of Standards or by a calibration laboratory accredited by the American Association of Physicists in Medicine (AAPM). The calibration must have been performed within the previous two years and after any servicing that may have affected system calibration; or

(2) The system must have been calibrated within the previous four years; eighteen to thirty months after that calibration, the system must have been intercompared at an intercomparison meeting with another dosimetry system that was calibrated within the past twenty-four months by the National Bureau of Standards or by a calibration laboratory accredited by the AAPM. The intercomparison meeting must be sanctioned by a calibration laboratory or radiologic physics center accredited by the AAPM. The results of the intercomparison meeting must have indicated that the calibration factor of the licensee's system had not changed by more than 2 percent. The licensee may not use the intercomparison result to change the calibration factor. When intercomparing dosimetry systems to be used for calibrating cobalt-60 teletherapy units, the licensee shall use a teletherapy unit with a cobalt-60 source. When intercomparing dosimetry systems to be used for calibrating cesium-137 teletherapy units, the licensee shall use a teletherapy unit with a cesium-137 source.

(b) The licensee shall have available for use a dosimetry system for spot-check measurements. To satisfy this requirement, the system may be compared with a system that has been calibrated in accordance with paragraph (a) of this section. This comparison must have been performed within the previous year and after each servicing that may have affected system calibration. The spot-check system may be the same system used to meet the requirement in paragraph (a) of this section.

(c) The licensee shall retain a record of each calibration, intercomparison, and comparison for the duration of the license. For each calibration, intercomparison, or comparison, the record must include the date, the model numbers and serial numbers of the instruments that were calibrated, intercompared, or compared as required by paragraphs (a) and (b) of this section.

the correction factor that was determined from the calibration or comparison or the apparent correction factor that was determined from an intercomparison, the names of the individuals who performed the calibration, intercomparison, or comparison, and evidence that the intercomparison meeting was sanctioned by a calibration laboratory or radiologic physics center accredited by AAPM.

§ 35.632 Full calibration measurements.

(a) A licensee authorized to use a teletherapy unit for medical use shall perform full calibration measurements on each teletherapy unit:

(1) Before the first medical use of the unit; and

(2) Before medical use under the following conditions:

(i) Whenever spot-check measurements indicate that the output differs by more than 5 percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;

(ii) Following replacement of the source or following reinstallation of the teletherapy unit in a new location;

(iii) Following any repair of the teletherapy unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and

(3) At intervals not exceeding one year.

(b) To satisfy the requirement of paragraph (a) of this section, full calibration measurements must include determination of:

(1) The output within ±3 percent for the range of field sizes and for the distance or range of distances used for medical use;

(2) The coincidence of the radiation field and the field indicated by the light beam localizing device;

(3) The uniformity of the radiation field and its dependence on the orientation of the useful beam;

(4) Timer constancy and linearity over the range of use;

(5) On-off error; and

(6) The accuracy of all distance measuring and localization devices in medical use.

(c) A licensee shall use the dosimetry system described in § 35.630(a) to measure the output for one set of exposure conditions. The remaining radiation measurements required in paragraph (b)(1) of this section may be made using a dosimetry system that indicates relative dose rates.

(d) A licensee shall make full calibration measurements required by paragraph (a) of this section in accordance with either the procedures recommended by the Scientific Committee on Radiation Dosimetry of the American Association of Physicists in Medicine that are described in *Physics in Medicine and Biology* Vol. 16, No. 3, 1971, pp. 379–396, or by Task Group 21 of the Radiation Therapy Committee of the American Association of Physicists in Medicine that are described in *Medical Physics* Vol. 10, No. 6, 1983, pp. 741–771, and Vol. 11, No. 2, 1984, p. 213. (Both of these references have been approved for incorporation by reference by the Director of the Federal Register. Copies of the documents are available for inspection or may be obtained from the U.S. Nuclear Regulatory Commission, Public Document Room, 1717 H Street NW., Washington, DC 20555. Copies of the documents are also on file at the Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC 20408. A notice of any change in the material will be published in the **Federal Register.**)

(e) A licensee shall correct mathematically the outputs determined in paragraph (b)(1) of this section for physical decay for intervals not exceeding one month for cobalt-60 or six months for cesium-137.

(f) Full calibration measurements required by paragraph (a) of this section and physical decay corrections required by paragraph (e) of this section must be performed by the licensee's teletherapy physicist.

(g) A licensee shall retain a record of each calibration for the duration of use of the teletherapy unit source. The record must include the date of the calibration, the manufacturer's name, model number, and serial number for both the teletherapy unit and the source, the model numbers and serial numbers of the instruments used to calibrate the teletherapy unit, tables that describe the output of the unit over the range of field sizes and for the range of distances used in radiation therapy, a determination of the coincidence of the radiation field and the field indicated by the light beam localizing device, an assessment of timer linearity and constancy, the calculated on-off error, the estimated accuracy of each distance measuring or localization device, and the signature of the teletherapy physicist.

§ 35.634 Periodic spot-checks.

(a) A licensee authorized to use teletherapy units for medical use shall perform output spot-checks on each teletherapy unit once in each calendar month that include determination of:

(1) Timer constancy, and timer linearity over the range of use;

(2) On-off error;

(3) The coincidence of the radiation field and the field indicated by the light beam localizing device;

(4) The accuracy of all distance measuring and localization devices used for medical use;

(5) The output for one typical set of operating conditions measured with the dosimetry system described in § 35.630(b) of this part; and

(6) The difference between the measurement made in paragraph (b)(5) of this section and the anticipated output, expressed as a percentage of the anticipated output (i.e., the value obtained at last full calibration corrected mathematically for physical decay).

(b) A licensee shall perform measurements required by paragraph (a) of this section in accordance with procedures established by the teletherapy physicist. That individual need not actually perform the spotcheck measurements.

(c) A licensee shall have the teletherapy physicist review the results of each spot-check within 15 days. The teletherapy physicist shall promptly notify the licensee in writing of the results of each spot-check. The licensee shall keep a copy of each written notification for two years.

(d) A licensee authorized to use a teletherapy unit for medical use shall perform safety spot-checks of each teletherapy facility once in each calendar month that assure proper operation of:

(1) Electrical interlocks at each teletherapy room entrance;

(2) Electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation (restriction of source housing angulation or elevation, carriage or stand travel and operation of the beam on-off mechanism);

(3) Beam condition indicator lights on the teletherapy unit, on the control console, and in the facility;

(4) Viewing systems;

(5) Treatment room doors from inside and outside the treatment room; and

(6) Electrically assisted treatment room doors with the teletherapy unit electrical power turned off.

(e) A licensee shall arrange for prompt repair of any system identified in paragraph (d) of this section that is not operating properly, and shall not use the teletherapy unit following door interlock malfunction until the interlock system has been repaired.

(f) A licensee shall retain a record of each spot-check required by paragraphs (a) and (d) of this section for two years.

The record must include the date of the spot-check, the manufacturer's name, model number, and serial number for both the teletherapy unit and source, the manufacturer's name, model number and serial number of the instrument used to measure the output of the teletherapy unit, an assessment of timer linearity and constancy, the calculated on-off error, a determination of the coincidence of the radiation field and the field indicated by the light beam localizing device, the calculated on-off error, the determined accuracy of each distance measuring or localization device, the difference between the anticipated output and the measured output, notations indicating the operability of each entrance door electrical interlock, each electrical or mechanical stop, each beam condition indicator light, the viewing system and doors, and the signature of the individual who performed the periodic spot-check.

§ 35.636 Safety checks for teletherapy facilities.

(a) A licensee shall promptly check all systems listed in § 35.634(d) for proper function after each installation of a teletherapy source and after making any change for which an amendment is required by § 35.606 (a)–(d).

(b) If the results of the checks required in paragraph (a) of this section indicate the malfunction of any system specified in § 35.634(d), the licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(c) A licensee shall retain for two years a record of the facility checks following installation of a source. The record must include notations indicating the operability of each entrance door interlock, each electrical or mechanical stop, each beam condition indicator light, the viewing system, and doors, and the signature of the Radiation Safety Officer.

§ 35.641 Radiation surveys for teletherapy facilities.

(a) Before medical use, after each installation of a teletherapy source, and after making any change for which an amendment is required by § 35.606 (a)–(d), the licensee shall perform radiation surveys with a portable radiation measurement survey instrument calibrated in accordance with § 35.51 of this part to verify that:

(1) The maximum and average dose rates at one meter from the teletherapy source with the source in the off position and the collimators set for a normal treatment field do not exceed 10 millirem per hour and 2 millirem per hour, respectively; and

(2) With the teletherapy source in the on position with the largest clinically available treatment field and with a scattering phantom in the primary beam of radiation, that:

(i) Radiation dose quantities per unit time in restricted areas are not likely to cause personnel exposures in excess of the limits specified in § 20.101 of this chapter; and

(ii) Radiation dose quantities per unit time in unrestricted areas do not exceed the limits specified in § 20.105(b) of this chapter.

(b) If the results of the surveys required in paragraph (a) of this section indicate any radiation dose quantity per unit time in excess of the respective limit specified in that paragraph, the licensee shall lock the control in the off position and not use the unit:

(1) Except as may be necessary to repair, replace, or test the teletherapy unit shielding or the treatment room shielding; or

(2) Until the licensee has received a specific exemption pursuant to § 20.501 of this chapter.

(c) A licensee shall retain a record of the radiation measurements made following installation of a source for the duration of the license. The record must include the date of the measurements, the reason the survey is required, the manufacturer's name, model number and serial number of the teletherapy unit, the source, and the instrument used to measure radiation levels, each dose rate measured around the teletherapy source while in the off position and the average of all measurements, a plan of the areas surrounding the treatment room that were surveyed, the measured dose rate at several points in each area expressed in millirem per hour, the calculated maximum quantity of radiation over a period of one week for each restricted and unrestricted area, and the signature of the Radiation Safety Officer.

§ 35.643 Modification of teletherapy unit or room before beginning a treatment program.

(a) If the survey required by § 35.641 indicates that an individual in an unrestricted area may be exposed to levels of radiation greater than those permitted by § 20.105(b) of this chapter, before beginning the treatment program the licensee shall:

(1) Either equip the unit with stops or add additional radiation shielding to ensure compliance with § 20.105(b);

(2) Perform the survey required by § 35.641 again; and

(3) Include in the report required by § 35.645 the results of the initial survey, a description of the modification made to comply with paragraph (a)(1) of this section, and the results of the second survey.

(b) As an alternative to the requirements set out in paragraph (a) of this section, a licensee may request a license amendment under § 20.105(a) of this chapter that authorizes radiation levels in unrestricted areas greater than those permitted by § 20.105(b). A licensee may not begin the treatment program until the license amendment has been issued.

§ 35.645 Reports of teletherapy surveys, checks, tests, and measurements.

A licensee shall mail a copy of the records required in §§ 35.636, 35.641, 35.643, and the output from the teletherapy source expressed as roentgens or rads per hour at one meter from the source and determined during the full calibration required in § 35.632, to the appropriate Commission Regional Office listed in § 30.6 of this chapter within thirty days following completion of the action that initiated the record requirement.

§ 35.647 Five-year inspection.

(a) A licensee shall have each teletherapy unit fully inspected and serviced during teletherapy source replacement or at intervals not to exceed five years, whichever comes first, to assure proper functioning of the source exposure mechanism.

(b) This inspection and servicing may only be performed by persons specifically licensed to do so by the Commission or an Agreement State.

(c) A licensee shall keep a record of the inspection and servicing for the duration of the license. The record must contain the inspector's name, the inspector's license number, the date of inspection, the manufacturer's name and model number and serial number for both the teletherapy unit and source, a list of components inspected, a list of components serviced and the type of service, a list of components replaced, and the signature of the inspector.

Subpart J—Training and Experience Requirements

§ 35.900 Radiation Safety Officer.

Except as provided in § 35.901, the licensee shall require an individual fulfilling the responsibilities of the Radiation Safety Officer as provided in § 35.32 to be an individual who:

(a) Is certified by:

(1) American Board of Health Physics in Comprehensive Health Physics;

(2) American Board of Radiology;
(3) American Board of Nuclear Medicine;
(4) American Board of Science in Nuclear Medicine; or
(5) Board of Pharmaceutical Specialties in Nuclear Pharmacy; or
(b) Has had classroom and laboratory training and experience as follows:
(1) 200 hours of classroom and laboratory training that includes:
(i) Radiation physics and instrumentation;
(ii) Radiation protection;
(iii) Mathematics pertaining to the use and measurement of radioactivity;
(iv) Radiation biology; and
(v) Radiopharmaceutical chemistry; and
(2) One year of full time experience as a radiation safety technologist at a medical institution under the supervision of the individual identified as the Radiation Safety Officer on a Commission or Agreement State license that authorizes the medical use of byproduct material; or
(c) Be an authorized user identified on the licensee's license.

§ 35.901 Training for experienced Radiation Safety Officer.

An individual identified as a Radiation Safety Officer on a Commission or Agreement State license before October 1, 1986 need not comply with the training requirements of § 35.900.

§ 35.910 Training for uptake, dilution, and excretion studies.

Except as provided in §§ 35.970 and 35.971, the licensee shall require the authorized user of a radiopharmaceutical in § 35.100(a) to be a physician who:
(a) Is certified in:
(1) Nuclear medicine by the American Board of Nuclear Medicine;
(2) Diagnostic radiology by the American Board of Radiology; or
(3) Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or
(b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, and supervised clinical experience as follows:
(1) 40 hours of classroom and laboratory training that includes:
(i) Radiation physics and instrumentation;
(ii) Radiation protection;
(iii) Mathematics pertaining to the use and measurement of radioactivity;
(iv) Radiation biology; and
(v) Radiopharmaceutical chemistry; and
(2) 20 hours of supervised clinical experience under the supervision of an authorized user and that includes:
(i) Examining patients and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;
(ii) Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;
(iii) Administering dosages to patients and using syringe radiation shields;
(iv) Collaborating with the authorized user in the interpretation of radioisotope test results; and
(v) Patient followup; or
(c) Has successfully completed a six-month training program in nuclear medicine as part of a training program that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in paragraph (b) of this section.

§ 35.920 Training for imaging and localization studies.

Except as provided in § 35.970 or 35.971, the licensee shall require the authorized user of a radiopharmaceutical, generator, or reagent kit in § 35.200(a) to be a physician who:
(a) Is certified in:
(1) Nuclear medicine by the American Board of Nuclear Medicine;
(2) Diagnostic radiology by the American Board of Radiology; or
(3) Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or
(b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits, supervised work experience, and supervised clinical experience as follows:
(1) 200 hours of classroom and laboratory training that includes:
(i) Radiation physics and instrumentation;
(ii) Radiation protection;
(iii) Mathematics pertaining to the use and measurement of radioactivity;
(iv) Radiopharmaceutical chemistry; and
(v) Radiation biology; and
(2) 500 hours of supervised work experience under the supervision of an authorized user that includes:
(i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
(ii) Calibrating dose calibrators and diagnostic instruments and performing checks for proper operation of survey meters;
(iii) Calculating and safely preparing patient dosages;
(iv) Using administrative controls to prevent the misadministration of byproduct material;
(v) Using procedures to contain spilled byproduct material safely and using proper decontamination procedures; and
(vi) Eluting technetium-99m from generator systems, measuring and testing the eluate for molybdenum-99 and alumina contamination, and processing the eluate with reagent kits to prepare technetium-99m labeled radiopharmaceuticals; and
(3) 500 hours of supervised clinical experience under the supervision of an authorized user that includes:
(i) Examining patients and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;
(ii) Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;
(iii) Administering dosages to patients and using syringe radiation shields;
(iv) Collaborating with the authorized user in the interpretation of radioisotope test results; and
(v) Patient followup; or
(c) Has successfully completed a six-month training program in nuclear medicine that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in paragraph (b) of this section.

§ 35.930 Training for therapeutic use of radiopharmaceuticals.

Except as provided in § 35.970, the licensee shall require the authorized user of radiopharmaceuticals in § 35.300 to be a physician who:
(a) Is certified by:
(1) The American Board of Nuclear Medicine; or
(2) The American Board of Radiology in radiology or therapeutic radiology; or
(b) Has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of therapeutic radiopharmaceuticals, and supervised clinical experience as follows:
(1) 80 hours of classroom and laboratory training that includes:
(i) Radiation physics and instrumentation;
(ii) Radiation protection;
(iii) Mathematics pertaining to the use and measurement of radioactivity; and
(iv) Radiation biology; and

(2) Supervised clinical experience under the supervision of an authorized user at a medical institution that includes:

(i) Use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in 10 individuals; and

(ii) Use of iodine-131 for treatment of thyroid carcinoma in 3 individuals.

§ 35.932 Training for treatment of hyperthyroidism.

Except as provided in § 35.970, the licensee shall require the authorized user of only iodine-131 for the treatment of hyperthyroidism to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating hyperthyroidism, and supervised clinical experience as follows:

(a) 80 hours of classroom and laboratory training that includes:

(1) Radiation physics and instrumentation;

(2) Radiation protection,

(3) Mathematics pertaining to the use and measurement of radioactivity; and

(4) Radiation biology; and

(b) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for diagnosis of thyroid function, and the treatment of hyperthyroidism in 10 individuals.

§ 35.934 Training for treatment of thyroid carcinoma.

Except as provided in § 35.970, the licensee shall require the authorized user of only iodine-131 for the treatment of thyroid carcinoma to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating thyroid carcinoma, and supervised clinical experience as follows:

(a) 80 hours of classroom and laboratory training that includes:

(1) Radiation physics and instrumentation;

(2) Radiation protection;

(3) Mathematics pertaining to the use and measurement of radioactivity; and

(4) Radiation biology; and

(b) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for the treatment of thyroid carcinoma in 3 individuals.

§ 35.940 Training for use of brachytherapy sources.

Except as provided in § 35.970, the licensee shall require the authorized user of a brachytherapy source listed in § 35.400 for therapy to be a physician who:

(a) Is certified in:

(1) Radiology or therapeutic radiology by the American Board of Radiology;

(2) Radiation oncology by the American Osteopathic Board of Radiology;

(3) Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(4) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(b) Is in the active practice of therapeutic radiology, has had classroom and laboratory training in radioisotope handling techniques applicable to the therapeutic use of brachytherapy sources, supervised work experience, and supervised clinical experience as follows:

(1) 200 hours of classroom and laboratory training that includes:

(i) Radiation physics and instrumentation;

(ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurement of radioactivity; and

(iv) Radiation biology;

(2) 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:

(i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) Checking survey meters for proper operation;

(iii) Preparing, implanting, and removing sealed sources;

(iv) Maintaining running inventories of material on hand;

(v) Using administrative controls to prevent the misadministration of byproduct material; and

(vi) Using emergency procedures to control byproduct material; and

(3) Three years of supervised clinical experience that includes one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association, and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:

(i) Examining individuals and reviewing their case histories to determine their suitability for brachytherapy treatment, and any limitations or contraindications;

(ii) Selecting the proper brachytherapy sources and dose and method of administration;

(iii) Calculating the dose; and

(iv) Post-administration followup and review of case histories in collaboration with the authorized user.

§ 35.941 Training for ophthalmic use of strontium-90.

Except as provided in § 35.970, the licensee shall require the authorized user of only strontium-90 for ophthalmic radiotherapy to be a physician who is in the active practice of therapeutic radiology or ophthalmology, and has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of strontium-90 for ophthalmic radiotherapy, and a period of supervised clinical training in ophthalmic radiotherapy as follows:

(a) 24 hours of classroom and laboratory training that includes:

(1) Radiation physics and instrumentation;

(2) Radiation protection;

(3) Mathematics pertaining to the use and measurement of radioactivity; and

(4) Radiation biology;

(b) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution that includes the use of strontium-90 for the ophthalmic treatment of five individuals that includes:

(1) Examination of each individual to be treated;

(2) Calculation of the dose to be administered;

(3) Administration of the dose; and

(4) Followup and review of each individual's case history.

§ 35.950 Training for use of sealed sources for diagnosis.

Except as provided in § 35.970, the licensee shall require the authorized user of a sealed source in a device listed in § 35.500 to be a physician, dentist, or podiatrist who:

(a) Is certified in:

(1) Radiology, diagnostic radiology, or therapeutic radiology by the American Board of Radiology;

(2) Nuclear medicine by the American Board of Nuclear Medicine; or

(3) Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or

(b) Has had 8 hours of classroom and laboratory training in basic radioisotope handling techniques specifically applicable to the use of the device that includes:

(1) Radiation physics, mathematics pertaining to the use and measurement of radioactivity, and instrumentation;

(2) Radiation biology;

(3) Radiation protection; and

(4) Training in the use of the device for the uses requested.

§ 35.960 Training for teletherapy.

Except as provided in § 35.970, the licensee shall require the authorized user of a sealed source listed in § 35.600 in a teletherapy unit to be a physician who:

(a) Is certified in:

(1) Radiology or therapeutic radiology by the American Board of Radiology;

(2) Radiation oncology by the American Osteopathic Board of Radiology;

(3) Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(4) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(b) Is in the active practice of therapeutic radiology, and has had classroom and laboratory training in basic radioisotope techniques applicable to the use of a sealed source in a teletherapy unit, supervised work experience, and supervised clinical experience as follows:

(1) 200 hours of classroom and laboratory training that includes:

(i) Radiation physics and instrumentation;

(ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurement of radioactivity; and

(iv) Radiation biology;

(2) 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:

(i) Review of the full calibration measurements and periodic spot checks;

(ii) Preparing treatment plans and calculating treatment times;

(iii) Using administrative controls to prevent misadministrations;

(iv) Implementing emergency procedures to be followed in the event of the abnormal operation of a teletherapy unit or console; and

(v) Checking and using survey meters; and

(3) Three years of supervised clinical experience that includes one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:

(i) Examining individuals and reviewing their case histories to determine their suitability for teletherapy treatment, and any limitations or contraindications;

(ii) Selecting the proper dose and how it is to be administered;

(iii) Calculating the teletherapy doses and collaborating with the authorized user in the review of patients' progress and consideration of the need to modify originally prescribed doses as warranted by patients' reaction to radiation; and

(iv) Post-administration followup and review of case histories.

§ 35.961 Training for teletherapy physicist.

The licensee shall require the teletherapy physicist to be an individual who:

(a) Is certified by the American Board of Radiology in:

(1) Therapeutic radiological physics;

(2) Roentgen ray and gamma ray physics;

(3) X-ray and radium physics; or

(4) Radiological physics; or

(b) Holds a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and has completed one year of full time training in therapeutic radiological physics and an additional year of full time work experience under the supervision of a teletherapy physicist at a medical institution that includes the tasks listed in §§ 35.59, 35.632, 35.634, and 35.641 of this part.

§ 35.970 Training for experienced authorized users.

Physicians, dentists, or podiatrists identified as authorized users for the medical, dental, or podiatric use of byproduct material on a Commission or Agreement State license issued before April 1, 1987 who perform only those methods of use for which they were authorized on that date need not comply with the training requirements of Subpart J.

§ 35.971 Physician training in a three month program.

A physician who, before July 1, 1984, began a three month nuclear medicine training program approved by the Accreditation Council for Graduate Medical Education and has successfully completed the program need not comply with the requirements of §§ 35.910 or 35.920.

§ 35.972 Recentness of training.

The training and experience specified in this subpart must have been obtained within the five years preceding the date of application or the individual must have had related continuing education and experience since the required training and experience was completed.

Subpart K—Enforcement

§ 35.990 Violations.

(a) An injunction or other court order may be obtained to prohibit a violation of any provision of:

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) Any rule, regulation, or order issued under these Acts.

(b) A court order may be obtained for the payment of a civil penalty imposed for violation of:

(1) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 under section 234 of the Atomic Energy Act of 1954, as amended;

(2) Section 206 of the Energy Reorganization Act of 1974;

(3) Any rule, regulation, or order issued under these Acts;

(4) Any term, condition, or limitation of any license issued under these Acts; or

(5) Any requirement for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

(c) Any person who willfully violates any provision of the Atomic Energy Act of 1954, as amended, or any rule, regulation, or order issued under the Act may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both as provided by law. Regulations issued under the Act include regulations issued under sec. 161, and cited in the authority citation at the beginning of this part for the purposes of sec. 223.

§ 35.999 Resolution of conflicting requirements during transition period.

If the rules in this part conflict with the licensee's radiation safety program as identified in its license, and if that license was approved by the Commission before April 1, 1987 and has not been renewed since April 1, 1987, then the requirements in the license will apply. However, if that licensee exercises its privilege to make minor changes in its radiation safety procedures that are not potentially important to safety under § 35.31 of this chapter, the portion changed must comply with the requirements of this Part. At the time of license renewal and

thereafter, these admendments to this Part shall apply.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

2. The authority citation for Part 30 continues to read as follows:

Authority: Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

3. Section 30.4 is amended by revising paragraphs (h) and (l) to read as follows and by adding new paragraphs (y) and (z) as follows:

§ 30.4 Definitions.

* * * * *

(h) "Medical use" means the intentional internal or external administration of byproduct material, or the radiation therefrom, to human beings in the practice of medicine in accordance with a license issued by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

* * * * *

(l) "Physician" means a medical doctor or doctor of osteopathy licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to prescribe drugs in the practice of medicine;

* * * * *

(y) "Dentist" means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice dentistry.

(z) "Podiatrist" means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice podiatry.

4. Section 30.34 is amended by revising paragraph (g) to read as follows:

§ 30.34 Terms and conditions of licenses.

* * * * *

(g) A licensee may prepare technetium-99m radiopharmaceuticals only with technetium-99m that contains less than 0.15 microcuries of molybdenum-99 per millicurie of technetium-99m. The licensee shall perform tests and retain the records required by § 35.204.

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

5. The authority citation for Part 31 is revised to read as follows:

Authority: Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Section 31.6 is also issued under sec. 274, 73 Stat. 688 (42 U.S.C. 2021).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 31.5(c)(1)–(3) and (5)–(9), 31.8(c), 31.10(b), and 31.11(b), (c), and (d) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 31.5(c)(4), (5), and (8), and 31.11(b) and (e) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. The authority citations following §§ 31.2, 31.5, 31.6, 31.7, 31.8, 31.10 and 31.11 are removed.

7. Section 31.11 is amended by revising paragraph (b) to read as follows:

§ 31.11 General license for use of byproduct material for certain in vitro clinical or laboratory testing.

* * * * *

(b) A person shall not receive, acquire, possess, use, or transfer byproduct material under the general license established by paragraph (a) of this section unless that person:

(1) Has filed Form NRC–483, "Registration Certificate—In Vitro Testing with Byproduct Material Under General License," with the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and received from the Commission a validated copy of Form NRC–483 with a registration number assigned; or

(2) Has a license that authorizes the medical use of byproduct material that was issued under Part 35 of this chapter.

* * * * *

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIALS

8. The authority citation for Part 32 continues to read as follows:

Authority: Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 32.70 [Removed]

9. Section 32.70 is removed.

10. In § 32.72 the section heading, the introductory text of paragraph (a), and paragraph (a)(4)(i) are revised to read as follows:

§ 32.72 Manufacture and distribution of radiopharmaceuticals containing byproduct material for medical use under Part 35.

(a) An application for a specific license to manufacture and distribute radiopharmaceuticals containing byproduct material for use by persons authorized pursuant to Part 35 of this chapter will be approved if:

* * * * *

(4) * * *

(i) The label affixed to each package of the radiopharmaceutical contains information on the radionuclide, quantity, and date of assay, and the label, or the leaflet or brochure that accompanies each package, contains a statement that the U.S. Nuclear Regulatory Commission has approved distribution of the radiopharmaceutical to persons licensed to use byproduct material listed in §§ 35.100, 35.200, or 35.300, as appropriate, and to persons who hold an equivalent license issued by an Agreement State. However, labels worded in accordance with requirements that were in place on March 30, 1987 may be used until March 30, 1989.

* * * * *

11. In § 32.73 paragraph (a)(5)(ii) is revised to read as follows:

§ 32.73 Manufacture and distribution of generators or reagent kits for preparation of radiopharmaceuticals containing byproduct material.

(a) * * *

(5) * * *

(ii) A statement that this generator or reagent kit (as appropriate) is approved for distribution to persons licensed by the U.S. Nuclear Regulatory Commission to use byproduct material identified in § 35.200 or under an equivalent license of an Agreement State. However, labels worded in accordance with requirements that were in place on March 30, 1987 may be used until March 30, 1989.

* * * * *

12. In § 32.74 the introductory text of paragraph (a) and paragraph (a)(3) are revised to read as follows:

§ 32.74 Manufacture and distribution of sources or devices containing byproduct material for medical use.

(a) An application for a specific license to manufacture and distribute sources and devices containing byproduct material to persons licensed pursuant to Part 35 of this chapter for use as a calibration or reference source or for the uses listed in §§ 35.400 and 35.500 of this chapter will be approved if:

* * * * *

(3) The label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity and date of

assay, and a statement that the U.S. Nuclear Regulatory Commission has approved distribution of the (name of source or device) to persons licensed to use byproduct material identified in §§ 35.58, 35.400, or 35.500, as appropriate, and to persons who hold an equivalent license issued by an Agreement State. However, labels worded in accordance with requirements that were in place on March 30, 1987 may be used until March 30, 1989.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

13. The authority citation for Part 40 continues to read as follows:

Authority: Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

14. Section 40.4 is amended by revising paragraph (g) to read as follows:

§ 40.4 Definitions.

* * * * *

(g) "Physician" means a medical doctor or doctor of osteopathy licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to prescribe drugs in the practice of medicine;

* * * * *

Dated at Washington, DC, this 7th day of October 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86–23168 Filed 10–15–86; 8:45 am]

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federal register

Thursday
October 16, 1986

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 1, 6, 8, 13, 15, 31, 33, 36, 44, 52, and 53

Federal Acquisition Regulations; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 6, 8, 13, 15, 31, 33, 36, 44, 52, and 53

[Federal Acquisition Circular 84-23]

Federal Acquisition Regulation

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

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-23 amends the Federal Acquisition Regulation (FAR) with respect to the following: Changes to FAR 6.302-5(c)(2) to clarify procedures for certain noncompetitive purchases; Extension of Agency Policies and Procedures concerning Acquisition of Utility Services; OFPP Policy Letter 80-6 concerning appeal rights; Should-Cost Analysis to clarify its definition; Revision to FAR 33.210, Contracting Officer's Authority, to emphasize limitations in settlement of claims involving fraud; Definition of Architect-Engineer Services; Subcontracts—Clause Preface and Title (FAR 44.201, 52.244-1, and 52.222-28); and Editorial Corrections.

EFFECTIVE DATE: September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Public Comments

Public comments have not been solicited with respect to these revisions since such revisions either (a) do not alter the substantive meaning of any coverage in the FAR having a significant impact on contractors or offerors, or (b) do not have a significant effect beyond agency internal operating procedures.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because these final rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

C. Regulatory Flexibility Act

Analyses of these revisions indicate that they are not "significant revisions" as defined in FAR 1.501-1; i.e., they do not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 of Pub. L. 98-577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on these revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act (Pub. L. 96-354) does not apply.

List of Subjects in 48 CFR Parts 1, 6, 8, 13, 15, 31, 33, 36, 44, 52, and 53

Government procurement.

Dated: October 9, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

[Number 84-23]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-23 is effective September 30, 1986.

Eleanor R. Spector,

Deputy Assistant Secretary of Defense for Procurement.

Terence C. Golden,

Administrator.

S.J. Evans,

Assistant Administrator for Procurement.

Federal Acquisition Circular (FAC) 84-23 amends the Federal Acquisition Regulation (FAR) as specified below.

Item I—Changes to FAR 6.302-5(c)(2)

FAR 6.302-5(c) is revised to clarify that written justifications and approvals described in FAR 6.303 and 6.304 are not required when a statute expressly requires that a procurement be made from a specified source.

Item II—Extension of Agency Policies and Procedures Concerning Acquisition of Utility Services

The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a revision of FAR Subpart 8.3, Acquisition of Utility Services. A proposed rule was published in the **Federal Register** on May 7, 1986 (51 FR 16988), with comments due July 7, 1986. The public comment period was extended on June 26, 1986 (51 FR 23248) to September 7, 1986, to ensure the adequacy of the time made available for public consideration of the proposed rule. Comments received to date raise a number of significant policy issues. Until these issues are resolved, a final rule will not be promulgated and FAR 8.300 is amended to extend the period in which agency policies and procedures predating the effective date of the FAR may continue to be used for the acquisition of utility services. If, after the policy issues are resolved, a revision to the FAR is necessary, a proposed rule again will be issued for full public comment.

Item III—OFPP Policy Letter 80-6

FAR 13.105 is revised to clarify that existing appeal rights of small business specialists and SBA representatives with respect to set-asides apply to small business-small purchase set-asides.

Item IV—Should-Cost Analysis

FAR 15.801 is revised to clarify the definition of cost analysis as it relates to should-cost analysis. FAR 15.810 is revised to (1) provide a definition of should-cost analysis, which distinguishes it from cost analysis; (2) clarify the objective of a should-cost analysis; (3) provide guidance in determining the scope and size of the should-cost analysis team; and (4) require the submission of a separate audit report, if a report is appropriate.

Item V—Revision to FAR 33.210, Contracting Officer's Authority

The current instructions in FAR 33.210 are revised to emphasize the limitations on the contracting officer's authority in the settlement of claims involving fraud.

Item VI—Definition of Architect-Engineer Services

The revision to FAR 36.102, Definitions, corresponding revisions to FAR 53.236-2 of the definition on Standard Form (SF) 254, Architect-Engineer and Related Services Questionnaire, and SF 255, Architect-Engineer and Related Services Questionnaire for Specific Projects, and FAR 36.601, Policy, implement the Office of Federal Procurement Policy Letter 83-3, June 8, 1983. The revisions add a definition and guidance regarding the acquisition of architect-engineer services.

Item VII—Subcontracts—Clause Preface and Title (FAR 44.201-1, 52.244-1, and 52.222-28)

In the April 1984 edition of the FAR the clause preface at 52.244-1 included an instruction to the contracting officer which authorized lowering the subcontract dollar threshold for contracting officer consent under certain circumstances. This authority was deleted when the preface was revised by FAC 84-7, thereby creating an

ambiguity as to whether lowering the threshold is still permissible. There has been no change in policy, and the present revision simply reinstates the instruction in the clause preface.

Item VIII—Editorial Corrections

FAR 15.805–5(h) and 52.233–1(c) are revised to make corrections to FAC 84–18 published in the **Federal Register** on July 29, 1986 (51 FR 27114). FAR 1.105 and 31.205–46(a)(2)(ii) are revised to make corrections to FAC 84–19 published in the **Federal Register** on July 31, 1986 (51 FR 27488).

Therefore, 48 CFR Parts 1, 6, 8, 13, 15, 31, 33, 36, 44, 52, and 53 are amended as set forth below.

1. The authority citation for 48 CFR Parts 1, 6, 8, 13, 15, 31, 33, 36, 44, 52, and 53 continues to read as follows:

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

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.105 is amended by adding, in numerical order, a FAR segment and a corresponding OMB Control Number to read as follows:

1.105 [Amended]

FAR segment	OMB control No.
* * * * *	
31.205–46(a)(3)	9000–0088
* * * * *	

PART 6—COMPETITION REQUIREMENTS

3. Section 6.302–5 is amended in paragraph (c)(2) by inserting a dash following the word "for" and removing the remainder of the sentence and by adding paragraphs (c)(2)(i) and (c)(2)(ii) to read as follows:

6.302–5 [Amended]

* * * * *

(c) * * *

(2) * * *

(i) Contracts awarded under (a)(2)(ii), (b)(2), or (b)(4) of this subsection; or

(ii) Contracts awarded under (a)(2)(i) of this subsection when the statute expressly requires that the procurement be made from a specified source. (Justification and approval requirements apply when the statute authorizes, but does not require, that the procurement be made from a specified source.)

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.300 [Amended]

4. Section 8.300 is amended by inserting in the second sentence a period following the word "used" and removing the remainder of the sentence and by removing in the third sentence the words ", or any policies or procedures to be used after September 30, 1986,".

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

5. Section 13.105 is amended by adding in paragraph (d)(2) a second sentence to read as follows:

13.105 Small business-small purchase set-asides.

* * * * *

(d) * * *

(2) * * * If the SBA procurement center representative disagrees with a contracting officer's decision not to proceed with a small business-small purchase set-aside, the SBA procurement center representative may appeal the decision in accordance with the procedures set forth in 19.505.

PART 15—CONTRACTING BY NEGOTIATION

6. Section 15.801 is amended by revising the definition of "Cost Analysis" to read as follows:

15.801 Definitions.

"Cost analysis" means the review and evaluation of the separate cost elements and proposed profit of (a) an offeror's or contractor's cost or pricing data and (b) the judgmental factors applied in projecting from the data to the estimated costs in order to form an opinion on the degree to which the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

* * * * *

15.805–5 [Amended]

7. Section 15.805–5 is amended in paragraph (h) by removing in the first sentence the words "the contracting officer believes" and by inserting in the second sentence a period following the word "necessary" and removing the remainder of the sentence.

8. Section 15.810 is amended by revising paragraphs (a) and (e), by redesignating the existing paragraph (c) as (f), and by adding a new paragraph (c) to read as follows:

15.810 Should-cost analysis.

(a) Should-cost analysis is a specialized form of cost analysis which is used to evaluate the cost of production programs by evaluating and challenging a contractor's management and operating systems or portions thereof. It does not assume the use of the contractor's existing workforce, methods, materials, facilities, or management and operating systems. It addresses significant cost drivers and may be tailored to a specific part of the contractor's operations, for example, indirect expense activities, factory layout, etc. This analysis is accomplished by an integrated team of Government contracting, contract administration, pricing, audit, and engineering representatives. The objective of should-cost analysis is to promote both short- and long-range improvements in the contractor's economy and efficiency by evaluating and challenging the contractor's existing workforce, methods, materials, facilities, or management and operating systems to identify uneconomical or inefficient practices. In addition, by providing rationale for any recommendations and quantifying their impact on cost, the Government will be better able to develop realistic price objectives for negotiation.

* * * * *

(c) The scope of a should-cost analysis can range from a large-scale review examining the contractor's entire operation (including plant-wide overhead and selected major subcontractors) to a small-scale review examining specific portions of a contractor's operation. When a should-cost analysis is conducted relative to a contractor proposal, a separate audit report on the proposal is required. In determining the team size for the review, the various factors outlined in this paragraph (c) should be considered.

* * * * *

(e) In acquisitions for which a should-cost analysis is conducted, a separate should-cost analysis team report, prepared in accordance with agency procedures, is required. Field pricing reports are required only to the extent that they contribute to the combined team position. The contracting officer shall consider the findings and recommendations contained in the should-cost analysis team report when negotiating the contract price. After completing the negotiation, the contracting officer shall provide the administrative contracting officer a report of any identified uneconomical or inefficient practices, together with a

report of correction or disposition agreements reached with the contractor. The contracting officer shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205-46 [Amended]

9. Section 31.205-46 is amended in paragraph (a)(2)(ii) by removing "Stock No. 906-010-00000-1" and inserting in its place "Stock No. 908-010-00000-1".

PART 33—PROTESTS, DISPUTES, AND APPEALS

10. Section 33.210 is amended by revising paragraph (b) to read as follows:

33.210 Contracting officer's authority.

* * * * *

(b) The settlement, compromise, payment or adjustment of any claim involving fraud.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

11. Section 36.102 is amended by adding in alphabetical order the definition "Architect-Engineer Services" to read as follows:

36.102 Definitions.

"Architect-Engineer Services" means—

(a) Professional services of an architectural or engineering nature associated with research, development, design, construction, alteration, or repair of real property that are required by virtue of law to be performed by a registered or licensed architect or engineer; or

(b) Such other professional services, as determined by the contracting officer, which uniquely or to a substantial or dominant extent logically require performance by a registered or licensed architect or engineer; and

(c) Incidental services that members of the architect or engineering professions or those in their employ may logically or justifiably perform in conjunction with professional architect-engineer services acquired by Pub. L. 92-582 procedures.

* * * * *

12. Section 36.601 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

36.601 [Amended]

(a) * * *

(b) Other than "incidental services" as specified in the definition of architect-engineer services in 36.102, services that do not require performance by a registered or licensed architect or engineer, notwithstanding the fact that architect-engineers also may perform those services, should be acquired pursuant to Parts 13, 14, and 15.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.201-1 [Amended]

13. Section 44.201-1 is amended by removing in paragraph (d) the words "Under Fixed Price Contracts" and inserting in their place the words "(Fixed-Price Contracts)".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.222-28 [Amended]

14. Section 52.222-28 is amended by inserting a colon in the introductory text following the word "clause" and removing the remainder of the sentence.

52.233-1 [Amended]

15. Section 52.233-1 is amended by removing in the first sentence of paragraph (c) of the clause the words "certain sum" and inserting in their place the words "sum certain".

16. Section 52.244-1 is amended by removing the colon in the introductory text following the word "clause" and inserting a period in its place and by adding a second sentence to read as follows:

52.244-1 Subcontracts (Fixed-Price Contracts).

* * * The threshold in subparagraphs (b)(2) and (b)(3) of the clause may be lowered when closer surveillance of subcontracting is necessary because of the nature of the industry involved, criticality of the work expected to be subcontracted, absence of competition in placing the prime contract, uncertainties as to the adequacy of the contractor's purchasing system, or novelty of the supplies or services being purchased.

* * * * *

PART 53—FORMS

17. Section 53.236-2 is amended by adding at the end of paragraph (b) a second sentence and the definition "Architect-engineer services"; and by adding at the end of paragraph (c) a second sentence and the definition "Architect-engineer services" to read as follows:

53.236-2 Architect-engineer services (SF's 252, 254, 255, 1421).

* * * * *

(b) * * * Pending issuance of a new edition of the form, the definition "Architect-engineer and related services" is replaced by the following:

"Architect-Engineer Services" means—

(1) Professional services of an architectural or engineering nature associated with research, development, design, construction, alteration, or repair of real property that are required by virtue of law to be performed by a registered or licensed architect or engineer; or

(2) Such other professional services, as determined by the contracting officer, which uniquely or to a substantial or dominant extent logically require performance by a registered or licensed architect or engineer; and

(3) Incidental services that members of the architect-engineer professions or those in their employ may logically or justifiably perform in conjunction with professional architect-engineer services acquired by Pub. L. 92-582 procedures.

(c) * * * Pending issuance of a new edition of the form, the definition "Architect-engineer and related services" is replaced by the following:

"Architect-Engineer Services" means—

(1) Professional services of an architectural or engineering nature associated with research, development, design, construction, alteration, or repair of real property that are required by virtue of law to be performed by a registered or licensed architect or engineer; or

(2) Such other professional services, as determined by the contracting officer, which uniquely or to a substantial or dominant extent logically require performance by a registered or licensed architect or engineer; and

(3) Incidental services that members of the architect-engineer professions or those in their employ may logically or justifiably perform in conjunction with professional architect-engineer services acquired by Pub. L. 92-582 procedures.

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Part V

Environmental Protection Agency

40 CFR Part 261

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusions

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3095-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude the solid wastes generated at three facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to exclude certain wastes generated at three particular facilities from listing as hazardous wastes under 40 CFR Part 261.

The Agency has previously evaluated all three of the petitions which are discussed in today's notice. Based on our review at that time, all three of these petitioners were granted temporary exclusions. Due to changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these petitions have been evaluated both for the factors for which the wastes were originally listed, as well as other factors which reasonably could cause the wastes to be hazardous.

DATES: EPA will accept public comments on the proposed exclusions and denials until October 31, 1986. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on these proposed decisions by filing a request with Bruce Weddle, whose address appears below, by October 27, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSP/OSW (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-86-TRPE-FFFFF".

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at U.S. Environmental Protection Agency, 401 M Street SW. (subbasement), Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 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 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3 (c) and (d)(2).) Again, the substantive standard for "delisting" is: (1) That the waste not meet any of the criteria for which it was listed originally; and (2) that the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous waste, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine on a periodic basis whether these residues exhibit any of the hazardous waste characteristics.

Approach Used to Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste (for which the petition was submitted) is

non-hazardous based on the criteria for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based on the original listing criteria), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volume of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. See 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985), and 50 FR 48943 (November 27, 1985). The overall approach, which includes a ground water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby hypothetical receptor wells—the "compliance point" (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.[1]

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous.[2] The Agency believes this to be a reasonable outcome since a larger quantity of the waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than the level of regulatory concern. The selected approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. The mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the compliance point equal to or less than the level of regulatory concern). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is using this approach as one factor in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment. The Agency has used this approach in evaluating each of the wastes discussed in today's publication. As a result of this evaluation, the Agency is proposing to delist the wastes from three petitioners.

It should be noted that EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate results. The Agency, however, has initiated a spot sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984 were enacted, the Agency granted temporary exclusions without first requesting public comment. The Amendments specifically require the Agency to provide notice and an opportunity for comment before granting a exclusion. All of the exclusions proposed today will not become effective unless and until made final. A notice of final exclusion will not be published until all public comments (including those that requested hearings, if any) are addressed.

Petitioners

The proposed exclusions published today involve the following petitioners:

Tricil Environmental Services, Inc., Hilliard, Ohio;

Tricil Environmental Services, Inc., Muskegon, Michigan;

Tricil Environmental Services, Inc., Nashville, Tennessee.

[1] The Agency proposed a similar approach, including a ground water transport model, as part of the proposed toxicity characteristic (see 51 FR 21648, June 13, 1986). The Agency has not completed its evaluation of the comments on this proposal, however. If a regulation is promulgated, using the ground water transport model, Agency will consider revising the delisting analysis.

[2] Other factors may result in the denial of a petition, such as actual ground water monitoring data or spot check verification data.

I. Tricil Environmental Services, Inc.—Hilliard, Ohio

A. Petition for Exclusion

Tricil Environmental Services, Inc., (Tricil), located in Hilliard, Ohio, operates a waste treatment facility for treatment of multiple metal-bearing waste streams for industrial clients. Tricil has petitioned the Agency to exclude the residue of specific segregated wastes produced by its treatment facility. This sludge is generated from the treatment of EPA Hazardous Wastes Nos. K062—Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332); and F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The listed constituents of concern for EPA Hazardous Waste No. K062 are hexavalent chromium and lead. The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Based upon the Agency's review of the petition, Tricil was granted a temporary exclusion on March 18, 1981 (see 46 FR 17197). The Agency's basis for granting the temporary exclusion (at that time) was the low concentration of cadmium, chromium, lead, nickel, and cyanide and the low migration potential of cadmium, chromium (hexavalent), lead, and nickel in the waste.

Since that time, the Hazardous and Solid Waste Amendments (HSWA) of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) As a result, the Agency has re-evaluated Tricil's petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which the waste was originally listed; and (2) determine whether the waste is nonhazardous with respect to factors and toxicants other than those for which the waste was originally listed. Today's notice is the result of the Agency's re-evaluation of Tricil's petition.

In support of their petition, Tricil has submitted a detailed description of its pre-screening process, bench-scale and proposed full-scale treatment process (which has since been installed), and contingency testing plan; total constituent analyses and EP toxicity test results of the treatment residue for cadmium, total chromium, lead, and nickel; and analytical results for total oil and grease, total cyanide, and total sulfide. Tricil also submitted total constituent analyses and EP toxicity test results for arsenic, barium, mercury, selenium, and silver; and results from total constituent analyses for selected Appendix VIII hazardous constituents. As noted above, the Agency requested this information to determine whether toxicants, other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.[3]

The Tricil process treats spent pickle liquor with electroplating wastes. The treatment process involves waste combination, neutralization with lime, metal precipitation, equalization, and final dewatering of the sludge by vacuum filtration. Monitored mixing of pickling and electroplating wastes at controlled ratios results in the reduction of hexavalent chromium by the ferrous ions present in the pickling wastes. Subsequent lime addition elevates the pH and converts lead, nickel, chromium, and cadmium to a hydroxide form. The sludge generated has a pH of 8.5–9.7.

Tricil claims that no cyanide-bearing wastes are accepted for treatment at the Hilliard facility. The Tricil pre-screening process includes analytical monitoring of incoming wastes for the presence of free cyanide. No wastes bearing free cyanides over 1 ppm are accepted for treatment. The absence of cyanide was confirmed through analyzing Tricil treatment residue. In addition, analytical monitoring of incoming wastes is used to pre-qualify wastes which, when treated, will generate a residue that meets the Agency's requirements. Tricil claims that its treated wastewater sludge is non-hazardous because the constituents of concern are present either in insignificant concentrations or, if present at significant levels, are essentially in immobile forms. Tricil also believes that the waste is not hazardous for any other reason.

Tricil initially presented analytical data on four samples collected from the vacuum filter. As a result of HSWA requirements, Tricil submitted additional organics sampling data. Nine composite samples of the sludge were collected from the sludge storage pile weekly over a 2-month period. Tricil claims that the treatment facility is operated in a consistent manner, and is monitored to verify compliance with pretreatment standards and delisting requirements. Tricil submitted additional EP toxicity analytical data for cadmium, chromium, nickel, and lead for 8 samples collected over a 2-month period to demonstrate the effectiveness of the bench-scale treatment process. Tricil further claims that all samples collected are representative of any variation of the listed and non-listed constituent concentrations in the waste. In addition to Tricil's sampling efforts, EPA conducted a spot check sampling visit to the facility in May 1983. A composite sample was taken from randomly selected areas of the treated sludge contained in four piles on the concrete storage pallet.

Tricil's total constituent and EP toxicity analyses of the filter press sludge for the listed constituents revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM CONCENTRATIONS

Listed constituents	Total constituent analyses (mg/kg)	EP leachate analyses [1] (mg/l)
Cadmium	11.4	0.049
Chromium (total) [2]	2,860.0	.203
Lead	1,880.0	.110
Nickel	684.0	1.198
Cyanide (total)	4.2	[3] .21

[1] EP leachate values were taken from Tricil's data submittal of May 16, 1986. This data is representative of segregated F006 and K062 wastes; earlier submittals were for unsegregated wastes which are not representative of the wastes that may be delisted under the contingency plan outlined later in this notice. Tricil claims that one data point for chromium (0.78 ppm) was an outlier. The Agency believes this claim and supports this conclusion using the Dixon Extreme Value Test.

[2] Hexavalent chromium is listed as the constituent of concern for this waste; however, the concentration of total chromium is low enough to make a determination of hexavalent chromium unnecessary.

[3] Leachable cyanide was not measured by Tricil. The Agency estimated the maximum leachable cyanide by assuming a theoretical leaching of 100 percent and twenty-fold dilution (100 grams of solids diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.

Tricil's total constituent and EP toxicity analyses of the filter press sludge for the non-listed EP toxic metals

[3] The Agency generally requests that raw materials lists be submitted from single waste stream petitioners to determine whether additional Appendix VIII hazardous constituents may be present in the waste at levels of regulatory concern. For Multiple Waste Treatment Facilities (MWTFs), however, the Agency realizes that hundreds of clients may be involved, therefore making it impossible for raw materials lists to be presented. The Agency has decided to request testing of a minimum of eight samples of waste for all Appendix VIII hazardous constituents reasonably expected to be present in the waste. (At a minimum, testing should be conducted for the priority pollutants.) The MWTF petitioner may choose to limit the number of Appendix VIII hazardous constituents tested by submitting suitable explanations of why specific toxicants are not present in the waste at levels of regulatory concern.

revealed the maximum concentrations reported in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS

Non-listed constituents	Total constituent analyses (mg/kg)	EP leachate analyses (mg/l)
Arsenic	52.0	<0.005
Barium	695.0	<.025
Mercury	2.5	.0013
Selenium	3.0	<.005
Silver	2.0	<.002

Note.—< Denotes concentrations below the detection limit.

Tricil also submitted total constituent analyses for Appendix VIII hazardous constituents potentially present in the waste. Tricil analyzed the samples for all Appendix VIII hazardous constituents except those that are reactive or hydrolyze in water and those that require special analytical methods. A more detailed explanation and list of these compounds is available in the public docket. Maximum concentrations for these constituents in the sludge are reported in Table 3. (The maximum concentrations for organics detected are reported in Table 3.)

TABLE 3.—MAXIMUM CONCENTRATIONS OF ORGANICS IDENTIFIED BY TRICIL'S ANALYSES OF THE FILTER PRESS SLUDGE (ppm)

Constituents	Total constituent analyses
Acrolein	27.3
Anthracene	1.18
Benzene	.054
Bis(2-ethylhexyl)phthalate	14.2
Butyl benzyl phthalate	303.0
p-Chloro-m-cresol	3.34
m- and p-Cresols	6.888
1,1-Dichloroethane	2.73
Di-n-octyl phthalate	6.09
Fluorene	1.19
Methylene chloride	1.30
Methyl ethyl ketone	1.48
Naphthalene	8.26
Phenanthrene	4.39
Phenol	20.7
2,4,5-TP (Silvex)	.69
Tetrachloroethylene	1.83
Toluene	2.67
1,1,1-Trichloroethane	2.31
Trichloroethylene	.069

The sludge sample collected by EPA from the sludge storage piles was analyzed for total and leachable concentrations of the EP metals, nickel, and cyanide. These concentrations are reported in Table 4.

TABLE 4.—MAXIMUM SLUDGE CONCENTRATIONS

Constituents	Total constituent anlyses (mg/kg)	EP leachate analyses (mg/l)
Arsenic	57.0	<0.02
Barium	540.0	.102
Cadmium	9.0	<.025
Chromium	990.0	<.20
Lead	2,900.0	.35
Mercury	2.8	<.001
Nickel	1,110.0	11.0
Selenium	<50.0	<.05
Silver	<4.0	<.02
Cyanide (total)	5.5	<.010
Cyanide (amenable)	5.5	(1)

[1] Not applicable.
Note.—< Denotes concentrations below the detection limit.

The sludge sample also was analyzed by EPA for the 126 priority pollutants and volatile organics. (See 47 FR 52309, November 19, 1982—Appendix A.) Table 5 summarizes concentrations of Appendix VIII hazardous constituents detected in EPA's samples.

TABLE 5.—MAXIMUM CONCENTRATIONS OF ORGANICS IDENTIFIED BY EPA'S ANALYSES OF THE FILTER PRESS SLUDGE (ppm)

Constituents	Total constituent analyses
Bis(2-ethylhexyl)phthalate	11.0
p-Chloro-m-cresol	14.0
1,1-Dichloroethane	2.0
Ethyl benzene	18.0
Fluorene	4.3
Methylene chloride	450
Naphthalene	3.4
N-Nitrosodiphenylamine	3.1
Pentachlorophenol	.63
Phenanthrene	9.4
Pyrene	1.4
Tetrachloroethylene	25
Toluene	160
Trichloroethylene	11

The maximum total oil and grease value reported by Tricil was 0.12 percent. Tricil also provided test data indicating that the sludge is not ignitable, corrosive, or reactive. Tricil, in addition, analyzed the filter press sludge for total sulfides; the maximum reported concentration in the sludge was 27 ppm. Tricil claims to generate a maximum of 9,000 tons of filter press sludge per year.

B. Agency Analysis and Action

Tricil has demonstrated that its waste treatment system, under specified controlled conditions, produces a non-hazardous sludge. The Agency believes that the eight samples collected by Tricil from the sludge storage pile over 2 months and the additional sample collected in EPA's spot check sampling visit were non-biased and adequately represent any variations that may occur in the filter press sludge. The key factors that could vary toxicant concentrations in the residue at MWTFs are the addition of new clients, the variation of client processes occurring from time to time, and variations in raw materials used at generator facilities on the original client list of a MWTF. This variation in raw materials can be expected when the clients of the MWTF perform as job shops or when the product line changes on a seasonal basis. The Agency does not believe it is possible to represent this variation without sampling that would be considered excessive for a delisting petition demonstration. The Agency, therefore, has requested all MWTF petitioners to submit analytical data collected during a 2-month period on a minimum of eight composite samples.[4] The Agency believes that the sampling period used by Tricil was long enough to cover any variations in the treatment process.

The Agency has evaluated the mobility of the listed constituents from Tricil's waste using the vertical and horizontal spread (VHS) model.[5] The VHS model generated compliance point values using the 9,000 ton per year maximum waste generation rate and the maximum reported extract levels reported by Tricil or EPA as input parameters. These predicted compliance point concentrations are reported in Table 6. (When leachate concentrations were below the detection limits, the value of the detection limit was used.) The conditions specified below will require batch testing for oil and grease contents. If content exceeds 1 percent the OWEP would be required. The EP is used here since the oil and grease content did not exceed 1 percent. (See 49 FR 42591, October 23, 1984.) (The sludge sample collected by EPA was not analyzed for total oil and grease content.)

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (ppm)

Listed constituents	Compliance point concentrations	Regulatory standards
Cadmium	0.008	0.01
Chromium (total)	.032	.05
Lead	[1].055	.05
Nickel	[1] 1.74	.35
Cyanide	.03	.2

[1] Maximum concentrations obtained from EPA's sampling results.

The sludge exhibited cadmium and chromium levels (at the compliance point) below their respective National Interim Primary Drinking Water Standards, and cyanide levels below the

[4] The Agency's intention is to grant conditional exclusions requiring continuous batch testing where the initial demonstration is successful.

[5] See 50 FR 7882, Appendix I, February 26, 1985, for a detailed explanation of the development of the VHS model for use in the delisting program. See also the final version of the VHS model, 50 FR 48896, Appendix, November 27, 1985.

U.S. Public Health Service's suggested drinking water standard.[6] Using the maximum reported lead and nickel concentrations (from the EPA sampling results), the VHS model generated compliance point concentrations that exceeded the National Interim Primary Drinking Water Standard for lead and the Agency's interim health-based standard for nickel.[7] The Agency notes, however, that these extract levels did not exceed the limits set in Tricil's temporary exclusion. In addition, all other reported lead and nickel concentrations (*i.e.*, nine other segregated waste samples) did not fail the VHS model evaluation. Under the pre-screening controls, the Agency believes that, for the majority of the time, this facility can generate a non-hazardous treatment residue with respect to mobile lead and nickel. Furthermore, under the continuous testing provisions of a conditional exclusion, Tricil will be required to retreat or dispose as hazardous any batch exhibiting lead or nickel extract levels above 0.31 and 2.2 ppm, respectively. (The Agency specifically requests comments on this interpretation.) The waste's maximum sulfide and cyanide contents (27 and 5.5 ppm, respectively) also are low enough not to be of regulatory concern from an air contamination route. That is, the Agency believes these levels to be sufficiently low so as to preclude the generation of hazardous levels of toxic gases.[8] (The capability of a sulfide- or cyanide-bearing waste to generate hazardous levels of toxic gases, vapors, or fumes is a property of the reactivity characteristic.) These constituents, therefore, are not of regulatory concern.

The Agency also concluded, through using the VHS model, that no other EP toxic metals are present in the sludge at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point in the VHS model). The compliance point values generated from these extract levels are displayed in Table 7.

TABLE 7.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (ppm)

Non-listed constituents	Compliance point concentrations	Regulatory standards
Arsenic	[1] <0.003	0.05
Barium	[1] .02	1.0
Mercury	.0002	.002
Selenium	[1] <.008	.01
Silver	[1] <.003	.05

[1] Maximum concentrations from EPA's sampling results.

The Agency also has evaluated the mobility of organic constituents detected in the sludge by first estimating their leachate concentrations with the Agency's Organic Leachate Model (OLM), and then predicting their compliance point concentrations with the VHS model.[9] Predicted leachate concentrations, compliance point levels, and regulatory standards are presented in Table 8.

TABLE 8.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS [1] [2] (ppm)

Constituents	Predicted leachate concentrations		Compliance point concentrations		Regulatory standards
	(Base)	(95%)	(Base)	(95%)	
Acrolein	1.91	2.76	0.303	0.437	0.5
Anthracene	.0008	.0011	.0001	.0002	.002
Benzene	.0047	.0066	.0007	.0010	.0012
Bis(2-ethylhexyl)phthalate	.009	.012	.0014	.0019	.70
Butyl benzyl phthalate	.15	.186	.024	.029	8.75
p-Chloro-m-cresol [3]	.274	.349	.043	.055	.2
m- and p-Cresols	.369	.503	.059	.080	1.8
1,1-Dichloroethane	.103	.136	[4].016	[4].022	.00038
Di-n-octyl phthalate	.0044	.006	.0007	.0009	.6
Ethyl benzene [3]	.108	.117	.017	.018	3.5
Fluorene [3]	.007	.009	.001	.0014	.002
Methylene chloride [3]	5.3	7.4	[4].84	[4] 1.17	.056
Methyl ethyl ketone	.286	.426	.045	.067	1.8
Naphthalene	.032	.039	.005	.0062	9.0
N-Nitrosodiphenylamine [3]	.018	.022	.0029	.0035	.0071
Pentachlorophenol [3]	.005	.0055	.0008	.0009	1.1
Phenanthrene [3]	.010	.012	.0015	.002	.002
Phenol	1.18	1.65	.187	.262	3.5
Pyrene [3]	.001	.002	.0002	.0003	4.0
2,4,5-TP (Silvex)	.103	.0135	.0016	.0021	.01
Tetrachloroethylene [3]	.121	.145	[4].019	[4].02	.0007
Toluene [3]	.682	.835	.108	.132	10.5
1,1,1-Trichloroethane	.057	.0729	.009	.012	1.2
Trichloroethylene [3]	.145	.18	[4].023	[4].03	.0032

[1] Combines detectable EPA and Tricil data (i.e., uses the maximum concentrations found either by EPA or Tricil) from Tables 3 and 5.
[2] Since the OLM has not been finalized, both the baseline equation and the 95 percent confidence interval (applied to the baseline) are calculated here. Once it has been finalized only one of these two versions will apply.
[3] Maximum concentration obtained from EPA's sampling results.
[4] Concentration exceeds standard.

Methylene chloride and trichloroethylene levels for one of eight samples generated compliance point concentrations that exceeded the Agency's regulatory standards. 1,1-Dichloroethane levels for all eight samples generated compliance point concentrations that exceeded the Agency's regulatory standards. Tetrachloroethylene levels for six of nine samples also generated compliance point concentrations that exceeded the Agency's regulatory standard. The Agency believes that since trichloroethylene and methylene chloride were not present at levels of concern for the majority of the samples analyzed, and since Tricil performs stringent pre-screening, the sources of these organic constituents can be traced and eliminated. The Agency has previously granted Tricil a conditional exclusion which required batch testing. Through this batch testing condition of their exclusion, Tricil has periodically identified "problem" batches. Treatment failures under the temporary exclusion were identified only in terms of cyanide or heavy metals. If process adjustments did not successfully treat the waste, Tricil has successfully eliminated acceptance of "problem" wastes through their pre-screening program. The Agency did not previously specify limitations on trace organics in the temporary exclusion nor did the Agency specify acceptable concentrations of trace organics. Tricil has not had, therefore, the opportunity to adjust its treatment system or eliminate clients to address tetrachloroethylene and 1,1-dichloroethane. Under these circumstances the Agency feels it inappropriate to penalize Tricil's petition effort due to the unacceptable levels of tetrachloroethylene and 1,1-

[6] Drinking Water Standards, U.S. Public Health Service, Publication 956, 1962 (0.2 ppm).

[7] See 50 FR 20247 (May 15, 1985) for a complete description of the development of the Agency's interim standard for nickel.

[8] See Internal Agency Memorandum entitled "Interim Thresholds for Toxic Gas Generation Reactivity" in the RCRA public docket (July 12, 1985).

[9] For a discussion of the Agency's proposed OLM, see 50 FR 48944, Appendix, November 27, 1985. See 51 FR 27061, Notice of Data Availability and Request for Comment, July 29, 1986, for a discussion of the revised OLM.

dichloroethane found to be present. Instead the Agency is proposing to add these constituents (as well as other potential organic constituents) to Tricil's conditional batch testing program. The Agency believes if Tricil cannot successfully treat the present level of organic contaminants, that they can eliminate the wastes containing these constituents through their pre-screening operations. The Agency believes it necessary, therefore, to incorporate organics batch testing into the contingency testing program to ensure that organic constituents are not present in the treatment residue at levels of regulatory concern.

The Agency believes that a conditional exclusion can be granted to the Tricil Hilliard facility. The conditions of the exclusion would necessitate testing each batch of treated waste for the EP toxic metals, nickel, cyanide, and a group of organics. The Agency believes this testing requirement is necessary due to the inherent variability encountered by a changing client base, the process variation associated with each of the clients serviced, the high concentrations of toxic constituents in the incoming wastes and in the treatment residue, and the high volumes of treatment residue generated annually by Tricil.

This testing requirement is self-implemented, that is, the results of testing each batch need not be reviewed by state or Federal EPA representatives prior to disposal. The test data must be recorded and kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a semi-annual basis.

The Agency, therefore, proposes to grant an exclusion to the Tricil Hilliard facility providing that the following contingency testing program is followed:

(1) Each batch [10] of treatment residue must be representatively sampled and tested using the total oil and grease test and the EP toxicity test (or the Oily Waste EP test if the oil and grease content of the waste exceeds one percent) for the EP toxic metals (As, Ba, Cd, Cr, Pb, Se, Ag, and Hg) and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.315 ppm; barium levels exceed 6.3 ppm; cadmium and selenium levels exceed 0.063 ppm; mercury levels exceed 0.013 ppm; or nickel levels exceed 2.2 ppm, the waste will be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

(2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm [11] or leachable cyanide levels (using the EP toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

(3) Each batch of waste must be tested for the total content of the organic toxicants listed below. If the total content of any of these constituents exceeds the maximum levels listed below, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. This list of organic constituents is a compilation of organics detected at each of Tricil's three facilities.[12]

Compound	Maximum acceptable level [1] [2] [3] (ppm)	
	(Base)	(95%)
Acrolein	39.9	22.3
Anthracene	72	45
Benzene	.106	.060
p-Chloro-m-cresol	132.4	92.1
m- and p-Cresols	1,030	619
1,1-Dichloroethane	.01	.005
Fluorene	10.4	7.23
Methylene chloride	8.18	5.27
Methyl ethyl ketone	313	175
N-Nitrosodiphenylamine	11.9	9.1
Phenanthrene	13.95	9.57
Phenol	1,560	882
Tetrachloroethylene	.188	.113
Trichloroethylene	.59	.38
Chloroform	.012	.0061
1,2-Dichloroethane	.0082	.0038
2,4-Dimethylphenol	126	87
Vinyl chloride	.18	.105
1,2-Diphenylhydrazine	1.95	.917

[1] Since the OLM has not been finalized, both versions of the model (*i.e.*, the baseline equation and the 95 percent confidence interval applied to the baseline) are calculated here. Once it has been finalized, only one of these two versions will apply.

[2] Includes constituents identified at all of Tricil's petitioning facilities.

[3] Although the original list of constituents was the same for all of Tricil's petitioning facilities (*i.e.*, constituents detected at each facility are to be tested for at all of the facilities), the actual tabulation in each proposed exclusion may vary due to the facility's specific generation rate and our subsequent 1,000 ppm VHS model limitation.

(4) A grab sample must be collected from each batch to form one monthly composite sample, which must be tested using GC/MS analysis for the compounds listed above, as well as for the remaining organics on the priority pollutant list. (See 47 FR 52309, November 19, 1982, Appendix A—126 Priority Pollutants) These data must be kept on file at the facility and submitted to the Administrator by certified mail semi-annually. The Agency has required that these additional scans be run on monthly composites to determine whether additional organic constituents should be added to the group of parameters tested on a batch basis due to variation of existing client wastes or variation of the client base. The Agency will review this information and, if needed, will propose to modify or withdraw the exclusion.

The Agency notes that the limits specified above are based on the VHS model and a treatment residue generation rate of greater than 8000 tons per year. Based on total constituent analyses, the pre-screening process, the VHS analyses, and the contingency plan, the Agency believes that the treatment residue generated at Tricil Environmental Services' MWTF located in Hilliard, Ohio, from their wastewater treatment processes, under the conditions specified above, is non-hazardous (for all reasons). The Agency, therefore, proposes to exclude conditionally Tricil's treatment residue from hazardous waste control for the EPA Hazardous Waste Nos. F006 and K062, as described in their petition. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*e.g.*, the waste is altered as a result of changes in the treatment process.) [13] In addition, Tricil is still obligated to determine whether their treatment residue exhibits any of the characteristics of a hazardous waste.

II. Tricil Environmental Services, Inc.—Nashville, Tennessee

A. Petition for Exclusion

Tricil Environmental Services, Inc., (Tricil), located in Nashville, Tennessee, is involved in the pretreatment of industrial wastes, including a chrome electroplating waste. Tricil has

[10] The Agency is defining "batch" as the volume of waste generated for periodic disposal. That is, if a dumpster of filter cake is generated every 2 days, but is accumulated for a week before disposal, representative samples would be collected from each dumpster of waste and composited for analysis prior to disposal.

[11] See footnote 8.

[12] The Agency's VHS model was used to calculate the maximum extract levels of the EP toxic metals, nickel, and cyanide corresponding to Tricil's reported maximum annual waste volume. Similarly, the Agency's OLM and VHS models were used to calculate the maximum acceptable levels for organic constituents. These maximum levels are the highest concentrations that can be present in the leachate (for metals and cyanide) and in the waste (for organics) and still pass the VHS model evaluation. When the OLM and VHS model resulted in a compliance point concentration greater than 1,000 ppm, the organic constituent was not included in this testing requirement because the pre-screening procedures are not expected to allow acceptance of wastes that will result in concentrations at this level.

[13] The current exclusion applies only to the processes covered by the original demonstration. A facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however, until a new exclusion is granted.

petitioned the Agency to exclude its wastewater treatment residue presently listed as EPA Hazardous Waste No. F019—Wastewater treatment sludges from the chemical conversion coating of aluminum. The listed constituents of concern for this waste are hexavalent chromium and cyanide (complexed).

Based upon the Agency's review of the petition, Tricil was granted a temporary exclusion on March 18, 1981 (see 46 FR 17197). The Agency's basis for granting the temporary exclusion (at that time) was the low concentration of cyanide and the low migration potential of chromium in the waste. Since that time, the Hazardous and Solid Waste Amendments (HSWA) of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) As a result, the Agency has re-evaluated Tricil's petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which the waste was originally listed; and (2) determine whether the waste is non-hazardous with respect to factors and toxicants other than those for which the waste was originally listed. Today's notice is the result of the Agency's re-evaluation of Tricil's petition.

In support of their petition, Tricil has submitted a detailed description of its waste screening process and sludge treatment system; total constituent analyses and EP toxicity test results of the residue for total chromium; and analytical results for total cyanide and total sulfide. Tricil also submitted total constituent analyses and EP toxicity test results for arsenic, barium, cadmium, lead, mercury, nickel, selenium, and silver; results of total oil and grease analyses on representative waste samples; and total constituent analyses for Appendix VIII hazardous constituents. As noted above, the Agency requested this information to determine whether toxicants, other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.[14]

Tricil's treatment process uses waste combination, neutralization, metal precipitation, settling and final dewatering of the sludge by vacuum filtration. Tricil claims that no cyanide-bearing wastes are accepted for treatment at the Nashville facility. The Tricil pre-screening process includes analytical monitoring of incoming wastes for the presence of free cyanide. No wastes bearing free cyanides over 1 ppm are accepted for treatment. The absence of cyanide was confirmed through analyzing Tricil treatment residue. In addition, analytical monitoring of incoming wastes is used to pre-qualify wastes which, when treated, will generate a residue that meets the Agency's requirements.

Tricil claims that its treated wastewater residue is nonhazardous because the constituents of concern are present either in insignificant concentrations or, if present at significant levels, are essentially in immobile forms. Tricil also believes that the waste is not hazardous for any other reason.

Tricil presented analytical data on seven composite samples collected from the filter drum. Each weekly composite sample was composed of 60 grab samples collected from the filter drum. The grab samples were collected at random times over a 1-week period. As a result of HSWA requirements, Tricil submitted additional organics sampling data. Eight composite samples of the residue were collected from the filter drum at random times over a 2-month period. Tricil claims that the treatment facility is operated in a consistent manner, and is monitored to verify compliance with pretreatment standards and delisting requirements. In addition, Tricil claims that the sampling period was long enough to cover any scheduled changes in the wastes received and, therefore, all samples collected are representative of any variation of the listed and non-listed constituent concentrations in the waste. In addition to Tricil's sampling efforts, EPA conducted a spot check sampling visit to the facility in June 29, 1984. A total of six samples were taken of the sludge; two from the filter press and four from the storage dumpsters.

Tricil's total constituent and EP toxicity analyses of the residue for the listed constituents revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM CONCENTRATIONS

Listed constituents	Total constituent analyses (mg/kg)	EP leachate analyses (mg/l)
Chromium (total) [1]	8880.0	0.75
Cyanide	1.40	* .07

[1] Seven EP toxicity values for total chromium were reported in the March 26, 1986 Tricil data. Tricil claims that three values (14.4, 10.6, and 3.29 ppm) reflect influent wastes which will be diverted from the F019 waste treatment residue proposed for delisting.

[2] Leachable cyanide was not measured by Tricil. The Agency estimated the maximum leachable cyanide by assuming a theoretical leaching of 100 percent and a twenty-fold dilution (100 grams of solids diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.

Tricil's total constituent and EP toxicity analyses of the residue for the non-listed EP toxic metals revealed the maximum concentrations reported in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS (ppm)

Non-listed constituents	Total constituent analyses	EP leachate analyses
Arsenic	4.0	0.2
Barium	82.4	.31
Cadmium	21.0	.11
Lead	480.0	.37
Mercury		[1].0095
Nickel	258.0	4.2
Selenium	7.0	.30
Silver	<1.0	.007

[1] Six EP toxicity values for mercury were reported in the March 26, 1986 Tricil data. Tricil claims that one value (*i.e.*, 0.2 ppm) is an outlier. The Agency also believes that this value does not reflect the typical mobility of mercury. The Agency's conclusion is supported by the Dixon Extreme Value Test. The Agency, therefore, considers that a maximum mercury level of 0.0095 ppm (the second-highest value) to more accurately reflects mercury mobility from the waste.

Tricil also submitted total constituent analyses for Appendix VIII hazardous constituents potentially present in the waste. Tricil analyzed the samples for all Appendix VIII hazardous constituents except those that are reactive or hydrolize in water and those that require special analytical methods. A more detailed explanation and list of these compounds is available in the public docket.

Maximum concentrations for these constituents in the residue are reported in Table 3. (The maximum concentrations for organics that were detected are reported in Table 3.)

TABLE 3.—Maximum Concentrations of Organics Identified by Tricil's Analyses of the Filter Press Sludge (ppm)

Constituents	Total constituent analyses
Anthracene	8.61
Bis(2-ethyl hexyl)phthalate	13
Butyl benzyl phthalate	393
Chlorobenzene	.104
p-Chloro-m-cresol	4.73
m- and p-Cresols	2.630
Di-n-butyl phthalate	6.96
1,1-Dichloroethane	2.59
1,2-Dichloroethane	0.152
1,2-trans-Dichloroethylene	2.43
2,4-Dimethylphenol	26.1
Dimethyl phthalate	28.614
Methylene chloride	2.18
Methyl ethyl ketone	2.18
Naphthalene	21.7
N-Nitrosodimethylamine	.363
Phenanthrene	105
Phenol	232
2,4,5-TP (Silvex)	1.3
Tetrachloroethylene	1.99
Toluene	2.53
1,1,1-Trichloroethane	.030
Trichloroethylene	6.12
Vinyl chloride	.223

[14] See footnote 3.

The sludge samples collected by EPA from the filter press and dumpster were analyzed for total and leachable concentrations of the EP metals, nickel, and cyanide. These concentrations are reported in Table 4.

TABLE 4.—MAXIMUM SLUDGE CONCENTRATIONS (ppm)

Constituents	Total constituent analyses	EP leachate analyses
Arsenic	11	<0.02
Barium	130	<.5
Cadmium	30	.221
Chromium	16,200	<.20
Lead	1,300	.147
Mercury	.33	<.001
Nickel	680	1.5
Selenium	9.9	<.02
Silver	1.2	<.02
Cyanide (total)	5.2	[1].26
Cyanide (amenable)	5.2	([2])

[1] Leachable cyanide was not measured by EPA. The Agency estimated the maximum leachable cyanide by assuming a theoretical leaching of 100 percent and a twenty-fold dilution (100 grams of solids diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.
[2] Not applicable.
Note.—< Denotes concentrations below the detection limit.

The sludge samples also were analyzed by EPA for the 126 priority pollutants and volatile organics. (See 47 FR 52309, November 19, 1982—Appendix A.) Table 5 summarizes concentrations of Appendix VIII hazardous constituents detected in EPA's samples.

TABLE 5.—MAXIMUM CONCENTRATIONS OF ORGANICS IDENTIFIED BY EPA'S ANALYSES OF THE FILTER PRESS SLUDGE (ppm)

Constituents	Total constituent analyses
Anthracene	3.6
Bis(2-ethyl hexyl)phthalate	46.0
p-Chloro-m-cresol	4.3
Di-n-octyl-phthalate	9.3
Ethyl benzene	4.5
Fluorene	3.2
Phenanthrene	5.5
Phenol	17.0
Tetrachloroethylene	27.0
Toluene	15.0
Trichloroethylene	2.1

The maximum total oil and grease value reported by Tricil was 0.4 percent. EPA detected total oil and grease levels for the sample of 8.32 percent. Tricil also provided test data indicating that the residue is not ignitable, corrosive, or reactive. In addition, Tricil analyzed the residue for total sulfides; the maximum concentration reported was 17 ppm. Tricil claims to generate a maximum of 700 tons of residue per year from F019 segregated waste.

B. Agency Analysis and Action

Tricil has demonstrated that its waste treatment system produces a non-hazardous sludge. The Agency believes that the eight samples collected by Tricil from the filter drum over a 2-month period were non-biased and adequately represent any variations that may occur in the residue.[15] The key factors that could vary toxicant concentrations in the residue at MWTFs is the addition of new clients, the variation of client processes occurring from time to time, and variations in raw materials used at generator facilities on the original client list of a MWTF. Variations in raw materials can be expected when the clients of the MWTF perform as job shops or when the product line changes on a seasonal basis. The Agency does not believe it is possible to represent this variation without sampling that would be considered excessive for a delisting petition demonstration. The Agency, therefore, has requested all MWTF petitioners to submit analytical data collected during a 2-month period on a minimum of eight composite samples.[16] The Agency believes that the sampling period used by Tricil was long enough to cover any variations in the treatment process.

The Agency has evaluated the mobility of the listed constituents from Tricil's waste using the vertical and horizontal spread (VHS) model.[17] The VHS model generated compliance point values using the 700 tons per year maximum waste generation rate and the maximum extract levels reported by Tricil or EPA as input parameters. These predicted compliance point concentrations are reported in Table 6. (When leachate concentrations were below the detection limits, the value of the detection limit was used.) The Agency notes that since the samples tested by Tricil did not exhibit oil and grease levels above one percent, the EP data is acceptable. EPA's sample, however, exceeded one percent oil and grease content. (See 49 FR 42591, October 23, 1984.) The Agency believes that this variability will require verification in the conditional batch testing program described below.

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (ppm)

Listed constituents	Compliance point concentrations	Regulatory standards
Chromium (total)	0.034	0.05
Cyanide	[1].012	.2

[1] Maximum concentration obtained from EPA's sampling results.

[15] The authoritative grab samples collected by EPA confirm that the samples collected by Tricil are representative.

[16] The Agency's intention is to grant conditional exclusions requiring continuous batch testing where the initial demonstration is successful.

[17] See footnote 5.

The residue exhibited chromium levels (at the compliance point) below the National Interim Primary Drinking Water Standard; and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.[18] The waste's maximum sulfide and cyanide contents (17 and 5.2 ppm, respectively) also are low enough not to be of regulatory concern from an air contamination route. That is, the Agency believes these levels to be sufficiently low so as to preclude the generation of hazardous levels of toxic gases.[19] (The capability of a sulfide- or cyanide-bearing waste to generate hazardous levels of toxic gases, vapors, or fumes is a property of the reactive characteristic.) These constituents are, therefore, not of regulatory concern.

The Agency also concluded, through using the VHS model, that no other EP toxic metals, except selenium, are present in the residue at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point in the VHS model). The compliance point values generated from these extract levels are displayed in Table 7.

TABLE 7.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (ppm)

Nonlisted constituents	Compliance point concentrations	Regulatory standards
Arsenic	0.009	0.05
Barium	[1] <.023	1.0
Cadmium	[1].0099	.01
Lead	.017	.05
Mercury	.0004	.002
Nickel	.19	.35
Selenium	[2].013	.01
Silver	[1].0009	.05

[1] Maximum concentrations obtained from EPA's sampling results.
[2] Exceeds regulatory standard.

Using the maximum reported selenium concentration, the VHS model generated a compliance point concentration that exceeded the National Interim Primary Drinking Water Standard for selenium. (The Agency notes that only the maximum selenium value reported failed the VHS model evaluation. Extract values reported for 13 other samples generated compliance point concentrations well below the drinking water standard.) Under the pre-screening controls, the Agency believes that, for the majority of the time, this facility can generate a non-hazardous treatment residue with respect to mobile selenium. Furthermore, under the continuous testing provisions of a conditional exclusion, Tricil will be

[18] See footnote 6.

[19] See footnote 8.

required to retreat or dispose as hazardous any batch exhibiting selenium levels above 0.22 ppm. Selenium values, therefore, are also not of regulatory concern. (The Agency specifically requests comments on this interpretation.)

The Agency also has evaluated the mobility of organic constituents detected in the sludge by first estimating their leachate concentrations with the Agency's organic leachate model (OLM), and then predicting their compliance point concentrations using the VHS model.[20] Predicted leachate concentrations, compliance point levels, and regulatory standards are presented in Table 8.

TABLE 8.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS [1] [2] (ppm)

Constituents	Predicted leachate concentrations		Compliance point concentrations		Regulatory standards
	(Base)	(95%)	(Base)	(95%)	
Anthracene	0.003	0.004	0.0001	0.0002	0.0002
Bis(2-ethyl hexyl) phthalate [1]	.02	.026	.0009	.0012	.70
Butyl benzyl phthalate	1.12	1.40	.051	.063	8.75
Chlorobenzene	.004	.006	.0002	.0003	1.1
p-Chloro-m-cresol	.13	.169	.0059	.0076	.2
m- and p-Cresols	.19	.26	.0086	.012	1.8
Di-n-butyl phthalate	.020	.025	.0009	.0011	3.5
1,1-Dichloroethane	.10	.13	.0045	.0059	.00038
1,2-Dichloroethane	.017	.024	[4].0008	[4].0011	.0004
1,2-trans-Dichloro-ethylene	.10	.13	.0045	.006	.35
2,4-Dimethyl phenol	.21	.25	.0095	.011	.02
Dimethyl phthalate	.46	.59	.021	.027	350
Di-n-octyl phthalate [3]	.0059	.0079	.0003	.0004	.6
Ethyl benzene [3]	.018	.047	.0008	.0021	3.5
Fluorene [3]	.006	.007	.0003	.0003	.002
Methylene chloride	.14	.19	.006	.0086	.056
Methyl ethyl ketone	.378	.556	.017	.025	1.8
Naphthalene	.061	.074	.003	.003	9.0
N-Nitrosodimethylamine	.0042	.0056	.00019	.0003	.0071
Phenanthrene	.049	.062	[4].0022	[4].0028	.002
Phenol	6.02	8.65	.27	.39	3.5
2,4,5-TP (Silvex)	.016	.02	.0007	.0009	.01
Tetrachloroethylene [3]	.127	.15	[4].006	[4].0068	.0007
Toluene [3]	.14	.17	.006	.0077	10.5
1,1,1-Trichloroethane	.003	.0043	.0001	.0002	1.2
Trichloroethylene	.098	.12	[4].004	[4].0054	.0032
Vinyl chloride	.069	.075	[4].003	[4].0034	.002

[1] Since the OLM has not been finalized, both versions of the model, baseline equation and 95 percent confidence interval (applied to the baseline) are calculated here. Once the OLM has been finalized only one of these two versions will apply.
[2] Combines detectable EPA and Tricil data (i.e., uses maximum concentrations found either by EPA or Tricil, from Tables 3 and 5).
[3] Maximum concentration obtained from EPA's sampling results.
[4] Value exceeds regulatory standard.

The 1,2-dichloroethane level for 1 of 15 samples generated a compliance point concentration that exceeded the Agency's regulatory standard. Tetrachloroethylene levels for 8 of 16 samples generated compliance point concentrations that exceeded the Agency's regulatory standard. Phenanthrene levels for 1 of 14 samples generated compliance point concentrations that exceeded the Agency's regulatory standard. Trichloroethylene levels for 1 of 16 samples also generated compliance point concentrations that exceeded the Agency's regulatory standard. The maximum vinyl chloride value also generated a compliance point concentration that exceeded the Agency's regulatory standard.

The Agency believes that since 1,2-dichloroethane, trichloroethylene, and vinyl chloride were not present at levels of concern for the majority of the samples analyzed, and since Tricil performs stringent pre-screening, the sources of 1,2-dichloroethane, trichloroethylene, and vinyl chloride can be traced and eliminated. The Agency has previously granted Tricil a conditional temporary exclusion which required batch testing. Through this batch testing condition of their exclusion Tricil has periodically identified "problem" batches. Treatment failures under the temporary exclusion were identified only in terms of cyanide or heavy metals. If process adjustments did not successfully treat the waste, Tricil has successfully eliminated acceptance of "problem" wastes through their pre-screening program. The Agency did not previously specify any limitations on trace organics in the temporary exclusion nor did the Agency specify acceptable concentrations of trace organics. Tricil has not had the opportunity, therefore, to adjust its treatment system or eliminate clients to address tetrachloroethylene. Under these circumstances the Agency feels it inappropriate to penalize Tricil's petition effort due to the unacceptable levels of tetrachloroethylene found to be present. Instead the Agency is proposing to add this constituent (as well as other potential organic constituents) to Tricil's conditional batch testing program. The Agency believes that if Tricil cannot successfully treat the present level of organic contaminants, that they can eliminate the wastes containing these constituents through their pre-screening operations. The Agency, therefore, believes it is necessary to incorporate organics batch testing into the contingency testing program to ensure that organic constituents are not present in the treatment residue at levels of regulatory concern.

The Agency believes that a conditional exclusion can be granted to the Tricil Nashville facility. The conditions of the exclusion would necessitate testing each batch of treated waste for the EP toxic metals, nickel, and a group of organics. The Agency believes this testing requirement is necessary due to the inherent variability encountered by a changing client base, the process variation associated with each of the clients serviced, and the high concentrations of toxic constituents in the incoming wastes and in the treatment residue.

This testing requirement is self-implemented. That is, the results of testing each batch need not be reviewed by state or Federal EPA representatives prior to disposal. The test data must be recorded and kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a semi-annual basis.

The Agency, therefore, proposes to grant an exclusion to the Tricil Nashville facility, providing that the following contingency testing program is followed:

(1) Each batch[21] of treatment residue must be representatively sampled and tested using the total oil and grease test and the EP toxicity test (or the Oily Waste EP test if the oil and grease content of the waste exceeds one percent) for the EP toxic metals (As, Ba, Cd, Cr, Pb, Se, Ag, and Hg) and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 1.1 ppm; barium levels exceed 22.2 ppm; cadmium and selenium levels exceed 0.22 ppm; mercury levels exceed 0.044 ppm; or nickel levels exceed 7.8 ppm, the waste will be retreated or managed and

[20] See footnote 9.

[21] The Agency is defining "batch" as the volume of waste generated for periodic disposal. That is, if a dumpster of filter cake is generated every 2 days, but is accumulated for a week before disposal, representative samples would be collected from each dumpster and composited for analysis prior to disposal.

disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

(2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm [22] or leachable cyanide levels (using the EP toxicity test without acetic acid adjustment) exceed 4.4 ppm, the waste must be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

(3) Each batch of waste must be tested for the total content of the organic toxicants listed below. If the total content of any of these constituents exceeds the maximum levels listed below, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. This list of organic constituents is a compilation of organics detected at each of Tricil's three facilities.[23]

Compound	Maximum acceptable level [1 2 3] (ppm)	
	(Base)	(95%)
Acrolein	254	145
Anthracene	465	287
Benzene	.67	.43
p-Chloro-m-cresol	847	560
1,1-Dichloroethane	.067	.036
Fluorene	66.6	48.24
Methylene chloride	52.2	34.1
n-Nitrosodiphenylamine	76.1	59.6
Phenanthrene	89.4	63.4
Tetrachloroethylene	1.2	.81
Trichloroethylene	3.78	2.63
Chloroform	.081	.044
1,2-Dichloroethane	.082	.044
1,2-trans-Dichloroethylene	1,474	934
2,4-Dimethylphenol	79.7	60
Vinyl chloride	1.15	.75
1,2-Diphenyl hydrazine	12.51	6.24

[1] Since the OLM has not been finalized, both versions of the model, (*i.e.*, the baseline equation and the 95 percent confidence interval applied to the baseline) are calculated here. Once finalized, only one of these two versions apply.

[2] Includes constituents identified at all of Tricil's petitioning facilities.

[3] Although the original list of constituents was the same for all of Tricil's petitioning facilities (*i.e.*, constituents detected at each facility are to be tested for at all of the facilities) the actual tabulation in each proposed exclusion may vary due to the facility's specific generation rate and our subsequent 1000 ppm VHS limitation.

(4) A grab sample must be collected from each batch to form one monthly composite sample, which must be tested using GC/MS analysis for the compounds listed above, as well as for the remaining organics on the priority pollutant list. (See 47 FR 52309, November 19, 1982, Appendix A—126 Priority Pollutants.) These data must be kept on file at the facility, and submitted to the Administrator by certified mail semi-annually. The Agency has required that these additional scans be run on monthly composite samples to determine if additional organic constituents should be added to the group of parameters tested on a batch basis due to variation of existing client wastes or variation of the client base. The Agency will review this information and, if needed, will propose to modify or withdraw the exclusion.

(5) The Agency notes that the limits specified above are based on the VHS model and a maximum treatment residue generation rate of 700 tons per year. These limits and the exclusion do not apply to generation rates exceeding 700 tons per year. If Tricil anticipates increasing this generation rate, a new petition would need to be filed. Based on the VHS analyses, total constituent analyses, the pre-screening process, and the contingency plan, the Agency believes that the treatment residue generated at Tricil Environmental Services' MWTF located in Nashville, Tennessee, from their wastewater treatment processes, under the conditions specified above, is non-hazardous (for all reasons). The Agency, therefore, proposes to exclude conditionally Tricil's treatment residue from hazardous waste control for the EPA Hazardous Waste No. F019, as described in their petition. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*e.g.*, the waste is altered as a result of changes in the treatment process).[24] In addition, Tricil is still obligated to determine whether their treatment residue exhibits any of the characteristics of a hazardous waste.)

III. Tricil Environmental Services, Inc.—Muskegon, Michigan

A. Petition for Exclusion

Tricil Environmental Services, Inc. (Tricil), located in Muskegon, Michigan, operates a waste treatment facility for treatment of multiple metal-bearing waste streams for industrial clients. Tricil has petitioned the Agency to exclude the residue produced by its treatment facility. This sludge is generated from the treatment of EPA Hazardous Wastes Nos. K062—Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332); and F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The listed constituents of concern for EPA Hazardous Waste No. K062 are chromium and lead. The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, chromium, nickel, and cyanide (complexed).

Based upon the Agency's review of the petition, Tricil was granted a temporary exclusion on March 18, 1981 (see 46 FR 17197). The Agency's basis for granting the temporary exclusion (at that time) was the low concentration of cadmium, chromium, lead, nickel, and cyanide and the low migration potential of cadmium, chromium (hexavalent), lead, and nickel in the waste. Since that time, the Hazardous and Solid Waste Amendments (HSWA) of 1984 were enacted. In part, the Amendments require the Agency to consider factors (including additional toxicants) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) As a result, the Agency has re-evaluated Tricil's petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which the waste was originally listed; and (2) determine whether the waste is non-hazardous with respect to factors and toxicants other than those for which the waste was originally listed. Today's notice is the result of the Agency's re-evaluation of Tricil's petition.

In support of their petition, Tricil has submitted a detailed description of its pre-screening process, treatment process, and contingency testing plan; total constituent analyses and EP toxicity test results of the treatment residue for cadmium, total chromium, lead, and nickel; and analytical results for total cyanide and total sulfide. Tricil also submitted total constituent analyses and EP toxicity test results for arsenic, barium, mercury, selenium, and silver; results of total oil and grease analyses on representative waste samples; and results of total constituent analyses for Appendix VIII hazardous constituents. As noted above, the Agency requested this information to determine whether toxicants, other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.[25]

[22] See footnote 8.

[23] See footnote 12.

[24] See footnote 13.

[25] See footnote 3.

The Tricil process treats spent pickle liquor with electroplating wastes, waste acids, and oils. The treatment process involves waste combination, neutralization, and metal precipitation; a 5-day settling/equalization period; and final dewatering of the sludge by vacuum filtration. Monitored mixing of pickling and electroplating wastes at controlled ratios results in the reduction of hexavalent chromium by the iron present in the pickling wastes. Waste combination also neutralizes acidic wastes and subsequent lime addition elevates the pH and converts lead, nickel, chromium, and cadmium to a hydroxide form. The sludge generated has a pH of 8.5–9.7, thus confirming the acid neutralization.

Tricil claims that no cyanide-bearing wastes are accepted for treatment at the Muskegon facility. The Tricil pre-screening process includes analytical monitoring of incoming wastes for the presence of free cyanide. No wastes bearing free cyanides over 1 ppm are accepted for treatment. In addition, analytical monitoring of incoming wastes is used to pre-qualify wastes which, when treated, will generate a residue that meets the Agency's requirements. Tricil claims that its treated wastewater sludge is non-hazardous because the constituents of concern are present either in insignificant concentrations or, if present at significant levels, are essentially in immobile forms. Tricil also believes that the waste is not hazardous for any other reason.

Tricil initially presented analytical data on one composite sample collected from the vacuum filter. The composite sample was composed of five grab samples collected from the vacuum filter; the grab samples were collected at random times over 5 days of operation. As a result of HSWA requirements, Tricil submitted additional organics sampling data. Nine composite samples of the sludge were collected from the sludge storage pile weekly over a 2-month period. Tricil claims that the treatment facility is operated in a consistent manner, and is monitored to verify compliance with pretreatment standards and delisting requirements. Tricil further claims that all samples collected are representative of any variation of the listed and non-listed constituent concentrations in the waste. In addition to Tricil's sampling efforts, EPA conducted a spot check sampling visit to the facility in April 1984. Three composite samples were taken of the sludge contained in the filter press storage shed, and two composite samples were taken of the sludge in a filtered sludge pile.

Tricil's total constituent and EP toxicity analyses of the filter press sludge for the listed constituents revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM CONCENTRATIONS

Listed constituents	Total constituent analyses (mg/kg)	EP leachate analyses (mg/l)
Cadmium	1.4	0.047
Chromium (total) [1]	21,500	.29
Lead	15,300	.6
Nickel	9,340	5.5
Cyanide (total)	19	[2].95

[1] Hexavalent chromium is listed as the constituent of concern for this waste; however, the concentration of total chromium is low enough to make a determination of hexavalent chromium unnecessary.
[2] Leachable cyanide was not measured by Tricil. The Agency estimated the maximum leachable cyanide by assuming a theoretical leaching of 100 percent and a twenty-fold dilution (100 grams of solids diluted with 2.0 liters of water) of the maximum total constituent concentration of cyanide.

Tricil's total constituent and EP toxicity analyses of the filter press sludge for the non-listed EP toxic metals revealed the maximum concentrations reported in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS

Nonlisted constituents	Total constituent analyses (mg/kg)	EP leachate analyses (mg/l)
Arsenic	<5.0	0.06
Barium	1,240.0	.65
Mercury	0.4	.003
Selenium	4.0	.005
Silver	22.0	.032

Tricil also submitted total constituent analyses for Appendix VIII hazardous constituents potentially present in the waste. Tricil analyzed the samples for all Appendix VIII hazardous constituents except those that are reactive or hydrolyze in water and those that require special analytical methods. A more detailed explanation and list of these compounds is available in the public docket. Maximum concentrations for those organics that were detected are reported in Table 3.

TABLE 3.—MAXIMUM CONCENTRATIONS OF ORGANICS IDENTIFIED BY TRICIL'S ANALYSES OF THE FILTER PRESS SLUDGE (ppm)

Constituents	Total constituent analyses
Anthracene	0.263
Benzyl chloride	35.4
Bis(2-ethylhexyl)phthalate	46.5
Butyl benzyl phthalate	10.1
Carbon disulfide	.094
p-Chloro-m-cresol	1.08
m- and p-Cresols	.715
o-Cresol	.43
2,4-D	1.0
1,1-Dichloroethane	.567
1,2-trans-Dichloroethylene	.025

TABLE 3.—MAXIMUM CONCENTRATIONS OF ORGANICS IDENTIFIED BY TRICIL'S ANALYSES OF THE FILTER PRESS SLUDGE (ppm)—Continued

Constituents	Total constituent analyses
2,4-Dimethyl phenol	1.17
Fluorene	1.017
Methylene chloride	1.38
Methyl ethyl ketone	2.24
Naphthalene	5.0
Pentachlorophenol	1.77
Phenanthrene	5.28
Phenol	14.0
2,4,5-TP (Silvex)	2.0
Tetrachloroethylene	.243
Toluene	6.57
1,2,4-Trichlorobenzene	.545
1,1,1-Trichloroethane	.474
Trichloroethylene	.844

The sludge samples collected by EPA were analyzed for total and leachable concentrations of the EP metals, nickel, and cyanide. These concentrations are reported in Table 4.

TABLE 4.—MAXIMUM SLUDGE CONCENTRATION

Constituents	Total constituent analyses (mg/kg)	EP leachate analyses (mg/l)
Arsenic	22	<0.02
Barium	14	<.5
Cadmium	13	.052
Chromium	12,000	[1].31
Lead	640	.12
Mercury	0.13	<.001
Nickel	2,300	.34
Selenium	<7	<.02
Silver	<1.5	.064
Cyanide (total)	90	([2])

< Denotes concentrations below the detection limit.
[1] This value represents the second highest reported concentration. The Agency has concluded, using the Dixon Extreme Value Test, that the maximum reported concentration is an outlier. The Agency notes that even the maximum chromium value of 1.0 did not exceed the limits of the temporary exclusion.
[2] Not tested.

The sludge samples also were analyzed by EPA for the 126 priority pollutants and volatile organics. (See 47 FR 52309, November 19, 1982—Appendix A.) Table 5 summarizes concentrations of Appendix VIII hazardous constituents detected in EPA's samples.

TABLE 5.—MAXIMUM CONCENTRATIONS OF ORGANICS DETECTED IN EPA'S ANALYSES OF THE FILTER PRESS SLUDGE (ppm)

Constituents	Total constituent analyses
Bis(2-ethylhexyl)phthalate	1.90
Di-n-butyl phthalate	1.5
Di-n-octyl phthalate	1.2
1,2-Diphenyl hydrazine	1.3
Ethyl benzene	5.9
Fluorene	.205
Naphthalene	1.2
N-Nitrosodiphenylamine	.88
Phenanthrene	2.5
Phenol	2.040
Tetrachloroethylene	39.0
Toluene	4.5
Trichloroethylene	.65

The maximum total oil and grease value reported by Tricil was 1.7 percent. EPA detected a maximum total oil and grease level equal to 6 percent. Tricil also provided test data indicating that the sludge is not ignitable, corrosive, or reactive. Tricil, in addition, analyzed the filter press sludge for total sulfides; the maximum reported concentration in the sludge was 26 ppm. Tricil claims to generate 12,000 tons of filter press sludge per year.

B. Agency Analysis and Action

Tricil has demonstrated that its waste treatment system, under specified controlled conditions, produces a non-hazardous sludge. The Agency believes that the nine samples collected by Tricil from the sludge storage pile over 8 weeks and the additional samples collected in EPA's spot check sampling visit were non-biased and adequately represent any variations that may occur in the filter press sludge. The key factors that could vary toxicant concentrations in the residue at MWTFs are the addition of new clients, the variation of client processes occurring from time to time, and variations in raw materials used at generator facilities on the original client list of a MWTF. Variations in raw materials can be expected when the clients of the MWTF perform as job shops or when their products line change on a seasonal basis. The Agency does not believe it is possible to represent this variation without sampling that would be considered excessive for a delisting petition demonstration. The Agency, therefore, has requested all MWTF petitioners to submit analytical data collected during a 2-month period on a minimum of eight composite samples.[26] The Agency believes that the sampling period used by Tricil was long enough to cover any variations in the treatment process.

The Agency has evaluated the mobility of the listed constituents from Tricil's waste using the vertical and horizontal spread (VHS) model.[27] The VHS model generated compliance point values using the 12,000 ton per year maximum waste generation rate and the maximum reported extract levels reported by Tricil or EPA as input parameters. These predicted compliance point concentrations are reported in Table 6. (When leachate concentrations were below the detection limits, the value of the detection limit was used.) The Agency has used the EP data in its VHS model analyses, however, since the oil and grease content of Tricil's waste exceed one percent, the oily waste EP (OWEP) should have been run. (See 49 FR 42591, October 23, 1984.) Tricil did not furnish OWEP data since the conditions of their temporary exclusion only require that the EP test be run. The Agency has, as noted below, conditioned Tricil's exclusion to require each batch of waste to be tested for oil and grease content. If the oil and grease content exceeds one percent the OWEP must be run instead of the EP to determine if the residue meets the conditions of the exclusion.

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (ppm)

Listed constituents	Compliance point concentrations	Regulatory standards
Cadmium	[1] 0.0082	0.01
Chromium (total)	[1].049	.05
Lead	[2].095	.05
Nickel	[2].87	.35
Cyanide	.15	.2

[1] Maximum concentration obtained from EPA's sampling results.
[2] Value exceeds regulatory standard. (The extract level generating this compliance point concentration, however, is well below the maximum acceptable limit in Tricil's temporary exclusion.)

The sludge exhibited cadmium and chromium levels (at the compliance point) below the National Interim Primary Drinking Water Standards, and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.[28] The maximum reported concentration for lead (*i.e.*, one of fifteen samples) generated a compliance point concentration that exceeded the National Interim Primary Drinking Water Standard for lead. Nickel levels for two of fourteen samples generated compliance point concentrations that exceeded the Agency's interim health-based standard for nickel.[29] Under the pre-screening controls, the Agency believes that, for the majority of the time, this facility can generate a non-hazardous treatment residue with respect to mobile lead and nickel. Furthermore, under the continuous testing provisions of a conditional exclusion, Tricil will be required to retreat or dispose as hazardous any batch exhibiting lead or nickel extract levels above 0.31 and 2.2 ppm, respectively.[30] (The Agency specifically requests comments on this interpretation.)

The waste's maximum sulfide and cyanide contents (26 and 90 ppm, respectively) also are low enough not to be of regulatory concern from an air contamination route. That is, the Agency believes these levels to be sufficiently low so as to preclude the generation of hazardous levels of toxic gases.[31] (The capability of a sulfide-or cyanide-bearing waste to generate hazardous levels of toxic gases, vapors, or fumes is a property of the reactivity characteristic.) These constituents, therefore, are not of regulatory concern.

The Agency also concluded, through using the VHS model, that no other EP toxic metals are present in the sludge at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point in the VHS model). The compliance point values generated from these extract levels are displayed in Table 7.

TABLE 7.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (ppm)

Nonlisted constituents	Compliance point concentrations	Regulatory standards
Arsenic	0.0095	0.05
Barium	.1	1.0
Mercury	.0005	.002
Selenium	[1] <.003	.01
Silver	[1].03	.05

[1] Maximum concentrations obtained from EPA's sampling results.

The Agency also has evaluated the mobility of organic constituents detected in the sludge by first estimating their leachate concentrations with the Agency's organic leachate model (OLM), and then predicting their compliance point concentrations with the VHS model.[32] Predicted leachate concentrations, compliance point levels, and regulatory standards are presented in Table 8.

[26] The Agency's intention is to grant conditional exclusions requiring continuous batch testing where the initial demonstration is successful.
[27] See footnote 5.
[28] See footnote 6.
[29] See footnote 7.
[30] It should be noted that these extract levels were below the maximum acceptable limits set in Tricil's temporary exclusion.
[31] See footnote 8.
[32] See footnote 9.

TABLE 8.—VHS MODEL: CALCULATED COMPLIANCE POINT [1] [2] CONCENTRATIONS (ppm)

Constituents	Predicted leachate concentrations		Compliance point concentrations		Regulatory standards
	(Base)	(95%)	(Base)	(95%)	
Anthracene	0.0003	0.0004	0.00005	0.00006	0.002
Benzyl chloride	.50	.61	.079	.097	.2
Bis(2-ethylhexyl)phthalate	.020	.026	.0032	.0041	.7
Butyl benzyl phthalate	.035	.043	.0055	.0068	8.75
Carbon disulfide	.0083	.012	.0013	.0019	3.5
p-Chloro-m-cresol	.048	.064	.0076	.010	.2
Cresols	.108	.152	.017	.024	1.8
2,4-D	.027	.035	.004	.006	.4
Di-n-butyl phthalate [3]	.0071	.0092	.0011	.0014	3.5
1,1-Dichloroethane	.042	.058	[4].0067	[4].0092	.00038
1,2-trans-Dichloroethylene	.0042	.0065	.0007	.001	.35
2,4-Dimethyl phenol	.059	.079	.009	.012	.02
Di-n-octyl phthalate [3]	.095	.115	.015	.018	.6
1,2-Diphenyl hydrazine [3]	.041	.053	[4].0065	[4].0084	.00004
Ethyl benzene [3]	.046	.056	.007	.009	3.5
Fluorene	.0026	.0035	.0004	.0006	.002
Methylene chloride	.105	.143	.017	.023	.056
Methyl ethyl ketone	.384	.567	.061	.090	1.8
Naphthalene	.023	.028	.0036	.0044	9.0
N-Nitrosodiphenylamine [3]	.007	.0099	.0012	.0016	.0071
Pentachlorophenol	.0082	.010	.0013	.0016	1.1
Phenanthrene	.0065	.0085	.001	.0013	.002
Phenol	.902	1.27	.143	.201	3.5
2,4,5-TP (Silvex)	.0210	.026	.003	.004	.01
Tetrachloroethylene [3]	.16	.185	[4].026	[4].029	.0007
Toluene	.079	.097	.012	.015	10.5
1,2,4-Trichlorobenzene	.0050	.0066	.0008	.0011	.7
1,1,1-Trichloroethane	.029	.040	.0046	.0064	1.2
Trichloroethylene	.026	.034	[4].0041	[4].0054	.0032

[1] Since the OLM has not been finalized, both versions of the model baseline equation and 95 percent confidence interval (applied to the baseline) are calculated here. Once finalized, only one of these two versions will apply.
[2] Combines detectable EPA and Tricil data (i.e., uses the maximum concentrations found either by EPA or Tricil, from Tables 3 and 5).
[3] Maximum concentration obtained from EPA's sampling results.
[4] Exceeds regulatory standard.

1,2-Diphenyl hydrazine was detected in one sample; the waste concentration generated a compliance point concentration that exceeded the Agency's regulatory standard. Tetrachloroethylene levels for ten of fourteen samples also generated compliance point concentrations that exceeded the regulatory standard. Three of fourteen (four for the 95% version of the OLM model) samples failed the VHS model evaluation for trichloroethylene levels. All nine samples failed the VHS model evaluation for 1,1-dichloroethane levels. The Agency believes that since 1,2-diphenyl hydrazine and trichloroethylene were not present at levels of concern for the majority of the samples analyzed, and since Tricil performs stringent pre-screening, the sources of these organic constituents can be traced and eliminated.

The Agency has previously granted Tricil a conditional exclusion which required batch testing. Through this batch testing condition of their exclusion Tricil has periodically identified "problem" batches. Treatment failures under the temporary exclusion were identified only in terms of cyanide or heavy metals. If process adjustments did not successfully treat the waste, Tricil has successfully eliminated acceptance of "problem" wastes through their prescreening program. The Agency did not previously specify any limitations on trace organics in the temporary exclusion nor did the Agency specify acceptable concentrations of trace organics. Tricil has not, therefore, had the opportunity to adjust its treatment system or eliminate clients to address 1,1-dichloroethane and tetracholoroethylene. Under these circumstances the Agency feels it inappropriate to penalize Tricil's petition effort due to the unacceptable levels of 1,1-dichloroethane and tetrachloroethylene found to be present. Instead the Agency is proposing to add these constituents (as well as other potential organic constituents) to Tricil's conditional batch testing program. The Agency believes that if Tricil cannot successfully treat the present level of organic contaminants, that they can eliminate the wastes containing these constituents through their prescreening operations. The Agency, therefore, believes it is necessary to incorporate organics batch testing into the contingency testing program to ensure that stray organic constituents are not present in the treatment residue at levels of regulatory concern.

The Agency believes that a conditional exclusion can be granted to the Tricil Muskegon facility. The conditions of the exclusion would necessitate testing each batch of treated waste for the EP toxic metals, nickel, cyanide, and a group of organics. The Agency believes this testing requirement is necessary due to the inherent variability encountered by a changing client base, the process variation associated with each of the clients serviced, the high concentrations of toxic constituents in the incoming wastes and in the treatment residue, and the high volumes of treatment residue generated annually by Tricil.

This testing requirement is self-implemented. That is, the results of testing each batch need not be reviewed by state or Federal EPA representatives prior to disposal. The test data must be recorded and kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a semi-annual basis.

The Agency, therefore, proposes to grant an exclusion to the Tricil Muskegon facility providing that the following contingency testing program is followed:

(1) Each batch [33] of treatment residue must be representatively sampled and tested using the total oil and grease test and the EP toxicity test (or the Oily Waste EP test if total oil and grease levels are greater than one percent) for the EP toxic metals (As, Ba, Cd, Cr, Pb, Se, Ag and Hg) and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.315 ppm; barium levels exceed 6.3 ppm; cadmium and selenium levels exceed 0.063 ppm; mercury levels exceed 0.013 ppm; nickel levels exceed 2.2 ppm, the waste will be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

(2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm [34] or leachable cyanide levels (using the EP toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

(3) Each batch of waste must be tested for the total content of the organic toxicants listed below. If the total content of any of these constituents exceeds the maximum levels listed below, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. This list of organic constituents is a compilation of

[33] The Agency is defining "batch" as the volume of waste generated for periodic disposal. That is, if a dumpster of filter cake is generated every 2 days, but is accumulated for a week before disposal, representative samples would be collected prior to disposal from each dumpster of waste and composited for analysis.

[34] See footnote 8.

organics detected at each of Tricil's three facilities.[35]

Compound	Maximum acceptable level [1 2 3] (ppm)	
	Baseline	95 percent
Acrolein	39.9	22.3
Anthracene	72	45
Benzene	0.106	0.060
p-Chloro-m-cresol	132.4	92.1
m- and p-Cresols	1,030	619
1,1-Dichloroethane	.01	.005
Fluorene	10.4	7.23
Methylene chloride	8.18	5.27
Methyl ethyl ketone	313	175
N-Nitrosodiphenylamine	11.9	9.1
Phenanthrene	13.95	9.57
Phenol	1,560	882
Tetrachloroethylene	.188	.113
Trichloroethylene	.59	.38
Chloroform	.012	.0061
1,2-Dichloroethane	.0082	.0038
2,4-Dimethylphenol	126	87
Vinyl chloride	.18	.105
1,2-Diphenyl hydrazine	1.95	.917

[1] Since the OLM has not been finalized, both versions of the model (*i.e.*, the baseline equation and the 95 percent confidence interval applied to the baseline) are calculated here. Once finalized, only one of these two versions will apply.

[2] Includes constituents identified at all of Tricil's petitioning facilities.

[3] Although the original list of constituents was the same for all of Tricil's petitioning facilities (*i.e.*, constituents detected at each facility are to be tested for at all of the facilities), the actual tabulation in each proposed exclusion may vary due to the facility's specific generation rate and our subsequent 1000 ppm VHS limitation.

(4) A grab sample must be collected from each batch to form one monthly composite sample, which must be tested using GC/MS analysis for the compounds listed above, as well as for the remaining organics on the priority pollutant list. (See 47 FR 52309, November 19, 1982, Appendix A—126 Priority Pollutants.) These data must be kept on file at the facility and submitted to the Administrator by certified mail semi-annually. The Agency has required that these additional scans be run on monthly composites to determine whether additional organic constituents should be added to the group of parameters tested on a batch basis due to variation of existing client wastes or variation of the client base. The Agency will review this information and, if needed, will propose to modify or withdraw the exclusion.

The Agency notes that the limits specified above are based on the VHS model and a treatment residue generation rate of greater than 8000 tons per year. Based on the VHS analyses, total constituent analyses, the pre-screening process, and the contingency plan, the Agency believes that the treatment residue generated at Tricil Environmental Services' MWTF located in Muskegon, Michigan, from their wastewater treatment processes, under the conditions specified above, is non-hazardous (for all reasons). The Agency, therefore, proposes to exclude conditionally Tricil's treatment residue from hazardous waste control for the EPA Hazardous Waste Nos. F006 and K062, as described in their petition. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*e.g.*, the waste is altered as a result of changes in the treatment process).[36] In addition, Tricil is still obligated to determine whether their treatment residue exhibits any of the characteristics of a hazardous waste.)

[35] See footnote 8.

[36] See footnote 13.

IV. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case for the three proposed exclusions since this rule reduces, rather than increases, the existing requirements for generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on these petitioners by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that the exclusions, if promulgated, should be effective immediately.

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The granting of the three exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's lists of hazardous wastes, thereby enabling these facilities to treat their wastes as non-hazardous.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have no effect of increasing overall waste disposal costs. For the three facilities that may be excluded, this amendment will reduce the overall costs of EPA's hazardous waste regulations. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial numbers of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

(Sec. 3001 RCRA, 42 U.S.C. 6921)

Dated: October 8, 1986.

Jeffrey D. Denit,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 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, and 6922].

2. In Appendix IX, add to tables 1 and 2 the following wastestreams in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Tricil Environmental Services, Inc	Hilliard, OH	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after [insert date of final rule's publication]. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned wastes. This testing program must meet the following conditions for the exclusion to be valid: (1) Each batch of treatment residue must be representatively sampled and tested using the total oil and grease test and the EP toxicity test (or the Oily Waste EP test, if the oil and grease content of the waste exceeds one percent) for arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 6.3 ppm; cadmium and selenium levels exceed 0.063 ppm; mercury levels exceed 0.013 ppm; or nickel levels exceed 2.2 ppm, the waste will be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270; (2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm or leachable cyanide levels (using the EP toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270; (3) Each batch of the waste must be tested for the total content of the following organic toxicants. If the total content of any of the constituents exceeds the maximum levels shown, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. Maximum Acceptable Levels (ppm) Acrolein, 39.9 Anthracene, 72 Benzene, 0.106 p-Chloro-m-cresol, 132.4 m- and p-Cresols, 1,030 1,1-Dichloroethane, 0.01 Fluorene, 10.4 Methylene chloride, 8.18 Methyl ethyl ketone, 313 N-Nitrosodiphenylamine, 11.9 Phenanthrene, 13.95 Phenol, 1,560 Tetrachloroethylene, 0.186 Trichloroethylene, 0.59 Chloroform, 0.012 1,2-Dichloroethane, 0.0082 2,4-Dimethylphenol, 126 Vinyl chloride, 0.18 1,2-Diphenyl hydrazine, 1.95 (4) A grab sample must be collected from each batch to form one monthly composite sample, which must be tested using GC/MS analysis for the organic compounds shown above as well as the remaining organics on the priority pollutant list (see 47 FR 52309, November 19, 1982, Appendix A—126 Priority Pollutants); (5) The test data from conditions 1–4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a semi-annual basis. The Agency will review this information and if needed, will propose to modify or withdraw the exclusion.
Tricil Environmental Services, Inc	Nashville, TN	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F019) generated the chemical conversion coating of aluminum after [insert date of final rule's publication]. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned wastes. This testing program must meet the following conditions for the exclusion to be valid: (1) Each batch of treatment residue must be representatively sampled and tested using the total oil and grease test and the EP toxicity test (or the Oily Waste EP test if the oil and grease content of the waste exceeds one percent) for arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.31 ppm; barium levels exceed 6.3 ppm; cadmium and selenium levels exceed 0.063 ppm; mercury levels exceed 0.013 ppm; or nickel levels exceed 2.2 ppm, the waste will be retreated or managed and disposed as a hazardous waste; under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270; (2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm or leachable cyanide levels (using the EP toxicity test without acetic acid adjustment) exceed 4.4 ppm, the waste must be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270; (3) Each batch of waste must be tested for the total content of the following organic toxicants. If the content of any of these constituents exceeds the maximum levels shown, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. Maximum Acceptable Levels (ppm) Acrolein, 254 Anthracene, 465 Benzene, 0.67 p-Chloro-m-cresol, 847 1,1-Dichloroethane, 0.067 Fluorene, 66.6 Methylene chloride, 52.2 N-Nitrosodiphenylamine, 76.1 Phenanthrene, 89.4 Tetrachloroethylene, 1.2 Trichloroethylene, 3.78 Chloroform, 0.081 1,2-Dichloroethane, 0.082 1,2-trans-Dichloroethylene, 1,474 2,4-Dimethylphenol, 79.7 Vinyl chloride, 1.15 1,2-Diphenyl hydrazine, 12.51

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(4) a grab sample must be collected from each batch to form a monthly composite sample, which must be tested using GC/MS analysis for the organic compounds shown above, as well as for the remaining organics on the priority pollutant list (see 47 FR 52309, November 19, 1982—Appendix A—126 Priority Pollutants); (5) The test data from conditions 1-4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a semi-annual basis. The Agency will review this information and if needed, will propose to modify or withdraw the exclusion; (6) This exclusion applies to a maximum treatment residue generation rate of 700 tons per year.
Tricil Environmental Services, Inc	Muskegon, MI	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after [insert date of final rule's publication]. To ensure that hazardous constituents are not present at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned waste. This testing program must meet the following conditions for the exclusion to be valid: (1) Each batch of treatment residue must be representatively sampled and tested using the total oil and grease test and the EP toxicity test (or the Oily Waste EP if the oil and grease content of the waste exceeds one percent) for arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 1.1 ppm; barium levels exceed 2.2 ppm; cadmium and selenium levels exceed 0.22 ppm; mercury levels exceed .044 pm; or nickel levels exceed 7.8 ppm, the waste will be retreated or managed and disposed as a hazardous waste under Parts 262 to 265 and the permitting standards of 40 CFR Part 270; (2) Batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm or leachable cyanide levels (using the EP toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be retreated or managed and disposed a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270; (3) Each batch of waste must be tested for the total content of the following organic toxicants. If the total content of any of these constituents exceeds the maximum levels shown, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. Maximum Acceptable Levels (ppm) Acrolein, 39.9 Anthracene, 72 Benzene, 0.106 p-Chloro-m-cresol, 132.4 m- and p-Cresols, 1,030 1,1-Dichloroethane, 0.01 Fluorene, 10.4 Methylene chloride, 8.18 Methyl ethyl ketone, 313 N-Nitrosodiphenylamine, 11.9 Phenanthrene, 13.95 Phenol, 1,560 Tetrachloroethylene, 0.188 Trichloroethylene, 0.59 Chloroform, 0.012 1,2-Dichloroethane, 0.0082 2,4-Dimethylphenol, 126 Vinyl chloride, 0.18 1,2-Diphenyl hydrazine, 1.95 (4) One grab sample must be collected from each batch to form one monthly composite sample, which must be tested using the GC/MS analysis for the organic compounds shown above, as well as for the remaining organics on the priority pollutant list (see 47 FR 52309, November 19, 1982—Appendix A—126 Priority Pollutants); (5) The test data from conditions 1–4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a semi-annual basis. The Agency will review this information and if needed, will propose to modify or withdraw the exclusion.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
Tricil Environmental	Hilliard, OH	Spent pickle liquor (EPA Hazardous No. K062) generated by steel finishing operations of facilities within the iron and steel industry (SIC codes 331 and 332) after [insert date of final rule's publication]. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned wastes. This testing program must meet the following conditions for the exclusion to be valid: (1) Each batch of treatment residue must be representatively sampled and tested using the total oil and grease test and the EP toxicity test.(or the Oily Waste EP test, if the oil and grease content of the waste exceeds one percent) for arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 6.3 ppm; cadmium and selenium levels exceed 0.063 ppm; mercury levels exceed 0.013 ppm; or nickel levels exceed 2.2 ppm, the waste will be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270; (2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm or leachable cyanide levels (using the EP toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be retreated or managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270; (3) Each batch of the waste must be tested for the total content of the following organic toxicants. If the total content of any of the constituents exceeds the maximum levels shown, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270.

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		Maximum acceptable levels (ppm) Acrolein, 39.9 Anthracene, 72 Benzene, 0.106 p-Chloro-m-cresol, 132.4 m- and p-Cresols, 1,030 1,1-Dichloroethane, 0.01 Fluorene, 10.4 Methylene chloride, 8.18 Methyl ethyl ketone, 313 N-Nitrosodiphenylamine, 11.9 Phenanthrene, 13.95 Phenol, 1,560 Tetrachloroethylene, 0.188 Trichloroethylene, 0.59 Chloroform, 0.012 1,2-Dichloroethane, 0.0082 2,4-Dimethylphenol, 126 Vinyl chloride, 0.18 1,2-Diphenyl hydrazine, 1.95 (4) A grab sample must be collected from each batch to form one monthly composite sample, which must be tested using GC/MS analysis for the organic compounds shown above, as well as the remaining organics on the priority pollutant list (see 47 FR 52309, November 19, 1982, Appendix A—126 Priority Pollutants); (5) The test data from conditions 1–4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a semiannual basis. The Agency will review this information and if needed, will propose to modify or withdraw the exclusion.
Tricil Environmental Services, Inc	Muskegon, MI	Spent pickle liquor (EPA Hazardous Waste No. K062) generated by steel finishing operations of facilities within the iron and steel industry (SIC codes 331 and 332), after [insert date of final rule's publication]. To ensure that hazardous constituents are not present at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned waste. This testing program must meet the following conditions for the exclusion to be valid: (1) Each batch of treatment residue must be representatively sampled and tested using the total oil and grease test and the EP toxicity test (or the Oily Waste EP if the oil and grease content of the waste exceeds one percent) for arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 1.1 ppm; barium levels exceed 2.2 ppm; cadmium and selenium levels exceed 0.22 ppm; mercury levels exceed 0.044 pm; or nickel levels exceed 7.8 ppm, the waste will be retreated or managed and disposed as a hazardous waste under Parts 262 to 265 and the permitting standards of 40 CFR Part 270; (2) Batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm or leachable cyanide levels (using the EP toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be retreated or managed and disposed a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270; (3) Each batch of waste must be tested for the total content of the following organic toxicants. If the total content of any of these constituents exceeds the maximum levels shown, the waste must be managed and disposed as a hazardous waste under 40 CFR Parts 262 to 265 and the permitting standards of 40 CFR Part 270. Maximum acceptable levels (ppm) Acrolein, 39.9 Anthracene, 72 Benzene, 0.106 p-Chloro-m-cresol, 132.4 m- and p-Cresols, 1,030 1,1-Dichloroethane, 0.01 Fluorene, 10.4 Methylene chloride, 8.18 Methyl ethyl ketone, 313 N-Nitrosodiphenylamine, 11.9 Phenanthrene, 13.95 Phenol, 1,560 Tetrachloroethylene, 0.188 Trichloroethylene, 0.59 Chloroform, 0.012 1,2-Dichloroethane, 0.0082 2,4-Dimethylphenol, 126 Vinyl chloride, 0.18 1,2-Diphenyl hydrazine, 1.95 (4) One grab sample must be collected from each batch to form one monthly composite sample, which must be tested using the GC/MS analysis for the organic compounds shown above, as well as for the remaining organics on the priority pollutant list (see 47 FR 52309, November 19, 1982—Appendix A—126 Priority Pollutants); (5) The test data from conditions 1–4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a semi-annual basis. The Agency will review this information and if needed, will propose to modify or withdraw the exclusion.

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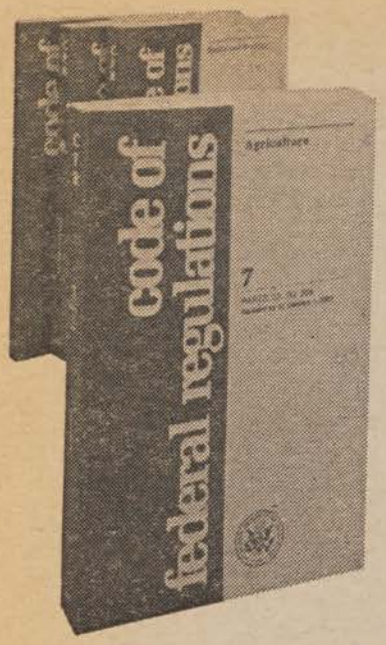

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