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Briefings on How To Use the Federal Register—
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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register

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

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

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

WASHINGTON, DC

WHEN: September 29, at 9 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
RESERVATIONS: Janice Booker, 202-523-5239

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Presidential Documents

Title 3—

The President

Presidential Determination No. 87–19 of August 5, 1987

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended

Memorandum for the Secretary of State

I hereby determine, pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2601(c)(1)) ("the Act"), that it is important to the national interest that there shall be made available from the United States Emergency Refugee and Migration Assistance Fund up to $4.25 million for contributions to the United Nations Relief and Works Agency for Palestine Refugees in the Near East and the International Committee of the Red Cross (ICRC) to meet the unexpected urgent needs for assistance to Palestinian refugees and other civilians affected by the conflict in Lebanon. I further determine also pursuant to Section 2(c)(1) of the Act that it is important to the national interest that there shall be made available from the Emergency Refugee and Migration Assistance Fund up to $4.25 million for contributions to the United Nations High Commissioner for Refugees and to the ICRC to meet unexpected urgent needs of refugees and persons affected by strife in Africa.

The Secretary of State is requested to inform the appropriate committees of the Congress of this Determination and to arrange for the prompt publication of this Determination in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, August 5, 1987.

[FR Doc. 87–19516
Filed 8–21–87; 11:19 am]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 52, No. 163
Monday, August 24, 1987

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

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

United States Standards for Beans

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Confirmation of existing rules.

SUMMARY: According to the requirements for the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS or Service) has reviewed the U.S. Standards for Beans. Pursuant to this review, the Service has determined that no change will be made to the bean standards.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., USDA/FGIS/Resources Management Division/IRS, Room 1661–S, P.O. Box 96454, Washington, DC 20090–6454; telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: A Notice of Intent requesting public comment on the U.S. Standards for Beans was published in the **Federal Register** on December 8, 1986 (51 FR 44072). Views and comments were solicited to help in the evaluation of the current bean standards and in the development of any recommendations for change.

Within the 60-day comment period that ended on February 6, 1987, two written comments were received. One comment, submitted by a State Department of Agriculture, suggested that certain sections of the standards be clarified. For example, these suggestions included listing classes of beans in the order found in the grading charts, adding "detached hulls of beans" in the definition of splits, limiting the definition of "badly damaged beans" to apply only to classes of Pea beans, Large Lima beans, Small Lima beans and Miscellaneous Lima beans, and limiting the definition of "broken beans," "blistered beans" and "wrinkled beans" to apply only to the classes of lima beans. The Service has reviewed these suggestions and has determined that such changes to the standards are not necessary. Several of the concerns raised are addressed in the grade charts in the standards while others are addressed in the dry Bean Inspection Handbook. In addition, FGIS is not aware of any problems associated with applying the standards in the areas commented upon.

It was also suggested that the standards be changed by revising the definition of weevily beans to "beans that are infested with live weevils or other insects injurious to stored beans or that contain, in any combination, two or more of the following: weevil bored beans, visible window damaged beans, clean cut weevil bored beans, beans containing insect webbing or filth, or dead insects." The Service believes that this suggestion requires further study and analysis. Therefore, this suggested change to the standards will not be proposed at this time.

A State bean dealers association offered suggestions directed at updating the Dry Bean Inspection Handbook. The Service is reviewing the Handbook and based upon final evaluation of the concerns expressed by the Association, revisions to the Handbook will be made as deemed appropriate.

Accordingly, based on the information available, including the comments received from the industry, the Service has determined that the U.S. Standards for Beans which appear at 7 CFR 68.101–68.142 are meeting the needs of the industry and no changes are necessary at this time.

Dated: August 14, 1987.

W. Kirk Miller,

Administrator.

[FR Doc. 87–19256 Filed 8–21–87; 8:45 am]
BILLING CODE 3410–EN–M

Agricultural Marketing Service

7 CFR Part 1079

Milk in the Iowa Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action increases for the months of September, October and November 1987 the limits on the quantity of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the Iowa order. The suspension was requested by a cooperative association in order to maintain pool status for the milk of its member producers without incurring costs for hauling and handling milk that would otherwise be unnecessary.

EFFECTIVE DATE: August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued July 15, 1987; published July 20, 1987 (52 FR 27217).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accure from such pricing.

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

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Iowa marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on July 20, 1987 (52 FR 27217) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of September through November 1987 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1079.13 (d)(2) and (3) the words "50 percent in the months of September through November and ", and the words "in other months," as they appear in each paragraph.

Statement of Consideration

This action makes inoperative for September through November 1987 the seasonal reduction (from 70 percent to 50 percent) of the limit on the proportion of a handler's milk that may be moved directly from the farm to a nonpool manufacturing plant and still be pooled. Associated Milk Producers, Inc. (AMPI), an association of producers had requested the suspension. The cooperative asked that the diversion provisions be relaxed in order to avoid the costs associated with receiving and transferring milk merely to keep it pooled.

AMPI stated that the market's milk production in the first five months of 1987 was up one percent from a year earlier. At the same time, Class I use is essentially unchanged from a year earlier. AMPI expects that increased production relative to Class I demand will continue into the fall months because the whole-herd buyout program has been completed. Thus, the cooperative expects that it would have to move even more milk to nonpool manufacturing plants than it did last fall, when the Class I utilization percentage was about 30 percent for the months of September through November.

Market data indicate that producer receipts increased slightly more than 1.0 percent for the period of January through June 1987 when compared to the same period of 1986. However, for the last three months of this six-month period, producer receipts increased approximately 4.0 percent. Class I utilization as a percentage of producer receipts has been substantially below 30 percent for the last five months.

The 50-percent limit on diversions to nonpool plants is inadequate to permit efficient handling of milk that is not needed for fluid uses in cases where nonpool plants are the only outlet used for disposing of reserve milk. For example, a supply plant must ship at least 35 percent of its milk supply to other plants to qualify as a pool plant. However, with diversions limited to 50 percent, the other 15 percent must be received at the supply plant and then transferred to a nonpool plant. AMPI contends that the extra handling involved adversely affects milk quality (more pumping than if diverted), and is an uneconomic means of pooling its reserve milk supplies. Suspending the 50-percent diversion limit will alleviate these concerns and allow improved handling efficiencies.

Under the conditions cited by AMPI and an analysis of market data, a suspension of the 50-percent limitation in the diversion provisions is appropriate so that producer milk receipts not needed for fluid use may be moved directly from farms to manufacturing plants and still be priced under the order. A suspension of the 50-percent limitation will tend to improve efficiencies in disposing of AMPI's reserve milk supplies.

Pool plant handlers should be aware that suspension of the 50-percent limitation does not mean that the diversion limit is now 70 percent. The effective diversion limit is the reciprocal of the pool performance standards. A supply plant, for example, would still have to ship 35 percent of its receipts; thus, for such plant operators the effective diversion limit is 65 percent rather than 70 percent. Distributing plant operators would be able to divert up to 60 percent of their producer milk.

Interested parties were given an opportunity to submit written data, views, and arguments concerning the proposed suspension. No comments were received.

The suspension should not result in any change in the proportion of a supply plant's receipts that are shipped to fluid milk outlets. What the suspension will do is permit milk that otherwise would have to be received at the supply plant and then shipped to a manufacturing plant to be moved directly from the farm to the manufacturing plant and still be pooled. This should provide additional economies for AMPI by eliminating milk hauling and handling, which also adversely affects milk quality. Moreover, such benefits of this action will be available to other handlers who may have more reserve milk to dispose of this fall.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that uneconomic movements of milk would be made solely for the purpose of pooling the milk of producers who have regularly been associated with the Iowa market;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were filed in opposition to this action.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions in § 1079.13(d) (2) and (3) of the Iowa order are hereby suspended for September through November 1987.

PART 1079—MILK IN THE IOWA MARKETING AREA

1. The authority citation for 7 CFR Part 1079 continues to read as follows:

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

§ 1079.13 [Amended]

2. In § 1079.13(d) (2) and (3) the words "50 percent in the months of September through November and", and the words "in other months," as they appear in each paragraph are suspended during the months of September through November 1987.

Signed at Washington, DC, on: August 17, 1987.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 87–19254 Filed 8–21–87; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 97

[Docket No. 87–098]

Overtime Services Relating to Imports and Exports; Commuted Traveltime Allowances

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations in 9 CFR Part 97, which prescribe commuted traveltime allowances, by adding commuted

traveltime periods in Georgia. Commuted traveltime periods reflect the time spent in reporting to, and returning from, the place at which an employee of Veterinary Services performs Sunday, holiday, or unscheduled overtime duty. This action is necessary to inform the public where VS employees are available to perform Sunday, holiday, or unscheduled ovetime duty and to inform the public of the commuted traveltime periods for this travel.

EFFECTIVE DATE: August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Louise Rakestraw Lothery, Assistant Director, Resource Management Staff, VS, APHIS, USDA, Room 857, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8511.

SUPPLEMENTARY INFORMATION:

Background

We are amending the regulations in 9 CFR Part 97, entitled "Overtime Services Relating to Imports and Exports" (referred to below as the regulations), which set forth provisions for obtaining inspection, laboratory testing, certification, or quarantine services pertaining to the importation and exportation of animals, animal byproducts, or other commodities during Sundays, holidays, or other times outside the regular tour of duty of Veterinary Services (VS) employees who perform these services.

The regulations provide that, under certain circumstances, the charges for services of a VS employee shall include charge for a commuted traveltime period. Section 97.2 of the regulations contains administrative instructions prescribing commuted traveltime periods which reflect, as nearly as is practicable, the time required for a VS employee to travel to, and return from, the place where he or she performs the Sunday, holiday, or unscheduled overtime duty.

We are amending § 97.2 of the regulations by adding commuted traveltime periods in Georgia. (The amendments are set forth in the rule portion of this document.) This action is necessary to inform the public where VS employees are available to perform Sunday, holiday, or unscheduled overtime duty and to inform the public of the commuted traveltime periods for this travel.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

The number of animals, animal byproducts, or other commodities requiring inspection and other services of a VS employee on a Sunday, holiday, or unscheduled overtime basis at the affected locations represents an insignificant portion of the total number that requires these services at locations in the United States.

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

Effective Date

The commuted traveltime periods appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find for good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find for good cause that this rule be made effective less than 30 days after publication of this document in the **Federal Register.**

Excecutive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which require intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock, livestock products, Poultry and poultry products, Transportation.

Under the circumstances described above, 9 CFR Part 97 is amended as follows:

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

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

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 97.2 is amended by adding, in alphabetical order, the information as shown below:

§ 97.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan Area	
		Within	Outside
Add:			
* * * * *			
Georgia:			
Atlanta International Airport.	Ellijay		6

Done in Washington, DC, this 19th day of August, 1987.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–19353 Filed 8–21–87; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 368, 370, 371, and 386

[Docket No. 70633–7133]

Abolishment of Foreign Excess Property Disposal Programs

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations (15 CFR Parts 368–399) are amended to remove provisions regarding foreign excess property disposal programs. These programs were established pursuant to sec.

402(a)(1) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 512(a)(1)), which required that imports of foreign excess property be authorized by the Secretary of Commerce or Agriculture. This requirement is repealed by Pub. L. 99–627, a law that otherwise deals primarily with transportation audits. The requirement was imposed at a time when overseas surplus stocks constituted a credible threat to the domestic economy, and it is now obsolete. The repeal of the requirement and the removal of the implementing regulations will result in the elimination of unnecessary regulatory and paperwork burdens on businesses dealing in surplus merchandise. In addition, there will be reduced administrative costs for the Department of Commerce.

EFFECTIVE DATE: August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Joan Maguire, Regulations Branch, Export Administration, Department of Commerce, Washington, DC 20230 (Telephone: (202) 377–4479).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule reduces the regulatory burden on exporters because it eliminates Form ITA–302P, which was approved by the Office of Management and Budget under control number 0625–0026.

List of Subjects

15 CFR Part 368

Imports, Penalties, Reporting and recordkeeping requirements.

15 CFR Part 370

Administrative practice and procedure, Exports.

15 CFR Part 371 and 386

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 368, 370, 371, and 386 of the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. The authority citations for Parts 368 and 370 continue to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 et seq., as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. The authority citations for 15 CFR Parts 371 and 386 continue to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 et seq., as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 et seq.; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 (October 29, 1986); E.O. 12571, October 27, 1986 (51 FR 39505, October 29, 1986).

PARTS 368, 370, 371, AND 386—[AMENDED]

§§ 368.2, 370.6, 371.4 and 386.3 [Amended]

3. The paragraphs of sections listed below are removed and reserved.

Sections 368.2(a)(4), 370.6(d), 371.4(b)(2) and 386.3(1).

4. In § 371.17, paragraph (a)(2)(i) is revised to read as follows:

§ 371.17 General license GLR; return or replacement of certain commodities.

* * * * *

§§ 368.2, 370.6, 371.4 and 386.3 [Amended]

(a) * * *

(2) * * *

(i) Any commodity sent to the United States from Country Group T or V for servicing may be exported under this general license to the country from which it was sent, provided that the use of this general license is not precluded by the general prohibitions that apply to all general licenses as listed in § 371.2(c).

* * * * *

Dated: July 31, 1987.

Dan Hoydysh,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–19320 Filed 8–21–87; 8:45 am]

BILLING CODE 3510–DT–M

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15 CFR Parts 370 and 374

[Docket No. 70607–7107]

Status Information on Export Applications and Reexport Requests; Update and Clarification of Procedures

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations (15 CFR Parts 368–399) are amended to update and clarify procedures for requesting status information on pending export applications, amendments, and reexport requests. The mail-in request form is replaced by telephone request procedures, which provide immediate status information. Also, procedures involving the submission of reexport cases to COCOM and for inquiring about the status of such submissions are clarified to more appropriately reflect COCOM agreements.

EFFECTIVE DATE: August 24, 1987.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Regulations Branch, Export Administration, Department of Commerce, Washington, DC 20230 (Telephone: (202) 377–2440).

SUPPLEMENTARY INFORMATION:

Status Information Provided by Telephone

The Export Administration Regulations currently direct applicants for export licenses, reexport authorizations, and amendments to submit a mail-in form to the Office of Export Licensing (OEL) when inquiring

about the status of their applications. Since this procedure was first enacted, the processing times have been reduced to the extent that status information, mailed to the applicant, often is not current when received by the applicant. This procedure has been replace by procedures whereby immediate status is provided by telephone to the requester.

Export Administration has recently implemented the System for Tracking Export License Applications ("STELA"), which is an advanced computer generated voice unit that upon request via any standard touch-tone telephone provides up to the minute status on individual validated license applications, amendments, or reexport requests.

STELA is to be used for status information on an application or request of that type when the case number is known. Otherwise, applicants should contact OEL's Exporter Assistance Staff, which can provide immediate status on individual validated export licenses, reexport requests or amendments from computer processing output. Status information on special licenses is available from the Licensing Branch, Special Licensing Division, OEL, at (202) 377–3287. This rule revises the Export Administration Regulations by eliminating the mail-in request form and replacing it with the telephone request procedures.

Reexport Cases Submitted to COCOM

The Coordinating Committee (COCOM) is a multilateral export control organization whose members include Belgium, Canada, Denmark, France, the Federal Republic of Germany, Greece, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United States, and the United Kingdom. Under 15 CFR 374.3(e), certain commodities that are exported to COCOM countries may be permissively reexported to Country Groups Q, W, or Y, or the People's Republic of China, if the reexport has received unanimous approval from COCOM. This Rule amends those provisions of § 374.3 regarding COCOM participating country reexport submissions to more appropriately reflect COCOM agreements.

Regulations are clarified as to the availability of information about the status of COCOM submissions. This Rule makes it clear that only information on U.S. submissions will be made available. Information on the status of submissions made by other countries is not available from the U.S. Government. The regulations are also amended to remove a provision relating to direct submissions of data to the U.S. Government on other government COCOM submissions that involve reexports of U.S. items.

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The collections of information have been approved by the Office of Management and Budget under control numbers 0625–0001, 0625–0003, and 0625–0009. This rule also reduces the regulatory burden on exporters because it eliminates Form ITA–6019P, which was approved by the Office of Management and Budget under control number 0625–0050.

List of Subjects

15 CFR Part 370

Administrative practice and procedure, Exports.

15 CFR Part 374

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 370 and 374 of the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

PARTS 370 AND 374—[AMENDED]

1. The authority citations for Parts 370 and 374 continue to read as folows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq*., as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

2. In § 370.11, paragraph (a)(2) heading and (a)(2)(i) are revised and a sentence is added to the end of paragraph (c), reading as follows:

§ 370.11 Information to exporters.

(a) * * *

(2) *How to request status information.*

(i)(A) Applicants for individual validated export licenses, amendments, or reexport privileges who have received case numbers should contact the System for Tracking Export License Applications ("STELA") at (202) 377–2752 to request status information. STELA is an advanced computer generated voice unit that, upon request via any standard touch-tone telephone, provides up to the minute status on license applications, amendments, or reexport requests. STELA is in operation Monday through Friday from 7:15 a.m. to 11:15 p.m. and on Saturday from 8 a.m. to 4 p.m., Eastern time. After calling STELA on push button telephone keys, the caller will be prompted to enter a case number. The case number entered must use the number "1" to represent the letter "A", the number "2" to represent the letter "B", and the asterisk symbol "*" to represent the hyphen "-" that appears in a case number assigned to an amendment application. The "#" symbol must be used after each case number, and its use is equivalent to an enter command. For example, (*1*) case number A123456, which is assigned to a license application or reexport request, must be entered as "1123456#", and (*2*) case number B123456–1, which is assigned to the first amendment to a license application with assigned case number B123456, must be entered as "2123456*1#".

(B) Applicants for individual validated export licenses, amendments, or reexport privileges who do not have case numbers or who experience

difficulty in using STELA may call the Exporter Assistance Staff of the Office of Export Licensing for status information. Calls will be answered Monday through Thursday from 8:00 a.m. to 8:00 p.m. and on Friday from 8:00 a.m. to 5:00 p.m., Eastern time at (202) 377–2753. Status information on special licenses is not available from STELA, but can be obtained from the Licensing Branch, Special Licensing Division, Office of Export Licensing, at (202) 377–3287. Requests for status information may be made only by the applicant or applicant's agent. Callers will identify themselves with information contained on the applicant's file copy of the application.

* * * * *

(c) * * * A party to the transaction who wishes to know the status of cases submitted by the United States to COCOM may contact the Office of East-West Trade, Security Export Controls Division, Room 3817A, Department of State, 2201 C St., NW., Washington, DC 20520, telephone (202) 647–2885.

§ 374.3 [Amended]

2. Section 374.3 is amended by removing the last sentence in paragraph (e)(3) and by revising the reference to "a COCOM submission" contained in paragraph (e)(4) to read "cases submitted by the United States to COCOM".

Dated: July 31, 1987.

Dan Hoydysh,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–19319 Filed 8–21–87; 8:45 am]

BILLING CODE 3510-DT-M

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15 CFR Part 399

[Docket No. 70746–7146]

Hydraulic Fluids; Revision of ECCN 1702A

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which contains those items controlled for export by the Department of Commerce. This rule revises entry 1702A on the CCL covering certain types of hydraulic fluids. This revision is based on the review of the system of strategic export controls maintained by the United States and certain allied countries through the Coordinating Committee (COCOM).

EFFECTIVE DATE: This rule is effective August 24, 1987.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Regulations Branch, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377–2440. For Technical questions on hydraulic fluids, call Jeffrey Tripp, Capital Goods Technical Center, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377–1309.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection of information has been approved by the Office of Management and Budget under control number 0625–0001.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

PART 399—[AMENDED]

1. The authority citation for 15 CFR Part 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*, E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub L. 99–440 (October 2, 1986); E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1702A is amended by revising paragraphs (a) and (b) of the List of Hydraulic Fluids Controlled by ECCN 1702A, adding paragraphs (c) an (d), and adding two Technical Notes, as follows:

1702A Hydraulic fluids that contain as the principal ingredient(s) petroleum (mineral) oils, synthetic hydrocarbon oils, non-fluorinated silicones or fluorocarbons as described in this entry.

Controls for ECCN 1702A

* * * * *

List of Hydraulic Fluids Controlled by ECCN 1702A Hydraulic fluids that contain as the principal ingredient(s) petroleum (mineral) oils, synthetic hydrocarbon oils, non-fluorinated silicones or fluorocarbons that have all of the following characteristics:

(a) A flash point of greater than 477 K (204 °C, 400 °F);

(b) A pour point of 239 K [−34 °C, −30 °F) or lower;

(c) A viscosity index of 75 or greater; and

(d) Are thermally stable at 616 K (343 °C, 650 °F).

Technical Notes

1. For the purpose of this ECCN, "flash point" is determined using the "Cleveland open cup method" as shown in ASTM D–92 or national equivalents.

2. The following is the test procedure for determining thermal stability:

Twenty cc of the fluid under test shall be placed in a 46 cc type 317 stainless steel chamber containing one each of .5 inch (nominal) diameter balls of M–10 tool steel, 52100 steel and naval bronze (60 percent Cu, 39 percent Zn, 0.75 percent Sn). The chamber shall be purged with nitrogen, sealed at atmospheric pressure and the temperature raised to 644 plus 6 K (371± 6 °C, 700±10 °F) and maintained at this temperature for six hours.

The specimen will be considered thermally stable if at the completion of the above procedure all of the following conditions are met:

(1) The loss in weight of each ball is less than 0.1 mg/sq. cm. of ball surface (0.65 mg/sq. inch);

(2) The change in original viscosity as determined at 38°C is less than 25 % when measured in the centistokes system of units;

(3) The total acid or base number is less than .40.

Note: * * *

Dated: July 31, 1987.

Dan Hoydysh,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–19318 Filed 8–21–87; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Resource Limits for Conditional SSI Payments

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: Prior regulations for the Supplemental Security Income (SSI) program provided for conditional SSI payments to individuals who met all eligibility criteria except that they had nonliquid resources in excess of the statutory limits. The presumption which still applies under the new regulations is that, since these individuals have little or no income or liquid resources with which to meet basic needs for food, clothing, or shelter, they need SSI while they dispose of their excess nonliquid resource(s). The prior regulations provided special limits on the total and liquid resources an individual can own and receive conditional payments. The prior regulations also required that any conditional payments made be repaid from the proceeds of the sale of the excess resource(s).

These final regulations eliminate the special limit on total resources but retain the special limit on liquid resources. The regulations also retain the requirement that any conditional payments made be repaid from the proceeds of the sale of the excess resource(s). The regulations also provide that the original estimate of the property's market value remains operative for purposes of determining eligibility for SSI unless the individual submits evidence which establishes a lower value. There will no longer be a presumption that property which no one has offered to buy within the conditional payment disposition period has no market value at all.

EFFECTIVE DATE: These regulations are effective August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7463.

SUPPLEMENTARY INFORMATION:

We published a notice of proposed rulemaking (NPRM) on November 13, 1985 (50 FR 46778) and provided a 60-day comment period. The comments are discussed later in this preamble.

Section 1613(b) of the Social Security Act (the Act) grants the Secretary of Health and Human Services (the Secretary) the discretion to determine the period or periods of time within which, and the manner in which, various kinds of property must be disposed of in order not to be included in determining an individual's eligibility for SSI payments. The Secretary also prescribes the requirements for the payment of benefits conditioned upon the disposal of such property.

The prior regulations provided for conditional payments if total resources (liquid plus nonliquid) did not exceed $3,000 for an individual and $4,500 for a couple. Additionally, the liquid resources owned must not have exceeded one-fourth of the applicable dollar amount referenced in section 1611(b)(1) of the Act in the case of an individual, and the amount referenced in section 1611(b)(2) in the case of an individual and spouse, i.e., the annual Federal benefit rates. The current annual Federal benefit rates are $4,080 for an individual and $6,120 for a couple. Thus, the current limit on liquid resources for conditional payments is $1,020 for an individual and $1,530 for a couple.

Subsequent to the publication of the NPRM, we determined that there was a need to clarify 20 CFR 416.1240(a)(1) of this regulation with respect to these benefit amounts. 20 CFR 416.1240(a)(1) of the NPRM indicated that the applicable benefit rates were specified in section 1611 of the Act. However, section 1611 does not contain the current Federal SSI benefit rate but instead refers the reader to section 1617 of the Act. It is section 1617 which explains the calculation of the current benefit rate and states that these rates are published in the **Federal Register** pursuant to section 215(i)(2)(D) of the Act. The current benefit amounts reflecting the cost-of-living adjustments for both titles II and XVI are published in the **Federal Register** under the terms of section 215(i)(2)(D). In order to assist the public in locating the current dollar amount of the benefit, we have inserted a clause in 20 CFR 416.1240(a)(1) of this regulation which references sections 1617 and 215(i)(2)(D) of the Act and notes that the publication of the current benefit rates is in the **Federal Register**. Furthermore, field office personnel will know the current benefit rates and will inform claimants of these rates upon the filing of an application for conditional payments. Therefore, we believe that even though the applicable dollar amounts are not specified in section 1611 of the Act, this information is available to the claimants when they apply for conditional payments.

Conditional SSI payments are made to an individual, who is ineligible because he or she owns excess nonliquid resources, to meet his or her basic needs for food, clothing and shelter while disposing of the excess nonliquid resources (real property within 6 months and other property within 3 months). Since recipients of conditional payments do not meet all the SSI eligibility requirements (i.e., they have excess resources) during the conditional payment period, the payments made are overpayments. Therefore, recipients must agree to repay these payments from the proceeds of the disposition. Similarly, recipients are also liable for repayment if the resource is not sold and no new current market value which would permit eligibility for benefits has been established.

These regulations eliminate the limit on total resources but retain the limit on liquid resources. The effect will be to allow some additional individuals who have little or no income but who own nonliquid resources (e.g., an inherited house) that are difficulty to sell, to receive conditional payments while they dispose of the resource. The increase in

the number of individuals eligible for conditional payments as a result of this change will be small, since current income requirements and the current limit on liquid resources will remain. In addition, most of these conditional payments should subsequently be recouped from these individuals from the proceeds of their resource dispositions.

These regulations also eliminate an assumption, heretofore provided for in SSA's internal operating guidelines, that property has no value at all if its owner has been unable to sell it during the period allowed for disposition. This change conforms the operating guidelines for valuing property in conditional payment situations to the operating guidelines for valuing property in normal eligibility situations and makes them consistent with SSA policy on valuing resources as reflected in Social Security Ruling (SSR) 83–30a. SSR 83–30a holds that neither the Act nor the regulations provide for excluding property from consideration as a resource because its owner cannot sell it at a desired price. (Note that property is not a resource for SSI purposes if there is a legal bar to its sale. Legal bars may vary from country to country and, within the United States, from state to state, but, in general, are circumstances of law which preclude a sale.)

The effect of this change is as follows. When an individual requests conditional SSI payments while disposing of an excess resource, the individual signs an agreement to sell the excess resource and repay the conditional SSI payments with the proceeds. However, under prior conditional payment procedures, if an individual made a "bona fide effort to sell" the resource and was unable to sell it as its estimated value during the period provided for disposition, we treated the resource as if it had no value. Thus, the individual was not overpaid during the period he or she was attempting to dispose of the resource, and the individual was eligible for SSI payments. Although the "bona fide effort to sell" test was reevaluated at the time of redetermination, individuals could continue to receive SSI indefinitely.

Experience has demonstrated that often individuals cannot dispose of the excess resource(s) at the originally estimated value. It is possible, however, that the excess resource(s) can be disposed of for cash at a lesser amount but well in excess of the SSI resource limit ($1,800 for an individual, $2,700 for a couple effective January 1, 1987). Thus, the prior procedure allowed individuals to retain valuable property in excess of the resource limits and still receive SSI for extended periods. Under the new rules, when the time period for attempting to sell an excess resource expires (generally 6 months, or 9 months if good cause applies) and the resource has not been sold, the resource will be counted at market value. The market value originally estimated will be used unless the individual (at any time within the constraints of administrative finality) submits evidence (e.g., an estimate from a disinterested knowledgeable source) of a lesser current market value. If a lesser value is established, this could lead to a determination that the individual had no excess resources for the period and, thus, has not been overpaid. Individuals will be advised of this and of their right to submit additional evidence as to the value of the resource at the start and prior to the expiration of the conditional payment period. This procedure recognizes that adverse market conditions may drive down the value of the excess resource (in extreme situations possibly to zero), without presuming that property is valueless because it does not sell at a certain price within a certain period of time.

Comments Received Following Publication of the NPRM on Resource Limits for Conditional SSI Payments Published November 13, 1985 (50 FR 46778)

General

The subject NPRM generated comments from seven sources, primarily legal services organizations and several States. None of these sources opposes removing the limit on total resources for conditional payment eligibility (four make no mention of it). All oppose doing away with the presumption that property has no current market value (CMV) if its owner receives no offer to purchase it while trying to sell it as its estimated CMV. Several express concern about existing aspects of the conditional payment provision and/or about matters related to implementation of the regulations.

Many of the comments reflect what appears to be a misunderstanding of the nature and purpose of the conditional payment provision. Others reflect the belief that, in going away with the zero-CMV presumption, we will attach to property an arbitrary value that it does not have. We therefore wish to preface our specific responses to the comments with a general discussion of: (1) The relationship between SSI resources policy and conditional payments, and (2) the effect the regulations will have on determining the CMV of property which someone has tried unsuccessfully to sell at its estimated CMV.

SSI Resources Policy and Conditional Payments

Section 1611(a) of the Act establishes the SSI resources limit. The Act also specifies, at section 1613(a), those resources which are excluded from consideration in determining whether an individual's resources exceed the limit. The regulations, at 20 CFR 416.1201, include the definition of resources any nonliquid asset that an individual owns and has the "right, authority, or power" to liquidate. They require that nonexcluded resources be counted toward the SSI resources limit in the amount of their equity value; i.e., the amount they can reasonably be expected to sell for minus emcumbrances.

The statutory limits on resources (as well as on income) reflect congressional intent that the SSI program be means-tested, providing benefits only to those who have limited resources (and income) to meet their current basic needs. Implicit in those limits is the requirement that individuals whose resources exceed the resource limits must rely on the excess, rather than on SSI benefits, to provide for themselves.

Congress realized, however, that individuals may not be able to make immediate use of the excess when it consists of the value of nonliquid assets, which can take time to convert to cash. Section 1613(b) of the Act, therefore, directs the Secretary to set conditions, including time limits, under which individuals can receive refundable SSI payments while liquidating such excess assets. It stipulates, in addition, that the payments are conditioned upon actual liquidation of the assets.

An individual whose nonliquid resources make him or her ineligible for SSI, and who chooses to sell those resources in order to obtain needed cash, can receive conditional SSI payments if he or she agrees to sell the resources within a specified number of months and make appropriate repayment. The conditional payment provision does not purport to assure eventual eligibility for SSI. However, we fully recognize the importance, following an unsuccessful attempt to sell resources at their estimated CMV, of not finding ineligibility for SSI based on a value the resources do not have.

Effect of the Regulation on Determining CMV of Property Which Someone Has Tried Unsuccessfully to Sell at Its Estimated CMV

If the Act does not exclude a resource from consideration, its value must be counted toward the SSI resources limit. And, as Social Security Ruling (SSR) 83–30a points out, neither the Act nor the regulations authorize an exclusion of property from consideration as a resource because its owner cannot convert it to the amount of cash he or she desires for it. The CMV (i.e., any amount for which such property can reasonably be expected to sell on the open market) must be considered in determining whether the owner's resources exceed the SSI limit.

The Social Security Administration's (SSA's) internal operating guidelines, however, have permitted a presumption that property has no value if its owner, having tried for 6 months to sell it at its estimated CMV, received no offer to buy it. Since a lack of interest in property at its originally estimated CMV rarely means that it could not sell at any price, this presumption often results in SSI eligibility without regard to any lesser value the property may have.

The regulation does not do away with the principle that property has no value if it cannot be sold at any price; it only does away with the presumption that property has no value simply because it does not sell at a certain price within a certain time frame. It requires, instead, a case-by-case evaluation.

Evidence of the CMV of property usually consists of, but is not limited to, a tax assessment notice and/or estimates from knowledgeable sources. Such evidence is not infallible, but it provides the most generally acceptable and reliable CMV information available, short of an actual sale, and the individual has the right to rebut the estimated CMV with additional evidence either before or after trying to sell the property.

The responsibility for obtaining evidence of the CMV of property has always rested with the individual and must continue to do so. Thus, when an attempt to sell property at its originally estimated CMV fails, and the individual wishes to establish that the property has a lower CMV (or no CMV at all), it is up to the individual to obtain and submit evidence which supports that conclusion. If the individual does not submit such evidence, we will consider the original estimate of the property's CMV, based on the evidence originally submitted by the individual, to have been accurate.

If the individual does submit new evidence, we will consider such evidence in making a current estimate of the property's CMV. Operating guidelines will also provide for consideration of: (1) The fact that the individual tried unsuccessfully to sell the property at its originally estimated CMV, and (2) any other evidence available to SSA about the property or about market conditions where it is located.

We believe that this procedure will provide ample opportunity for individuals to establish that property they own, despite the original evidence and estimate of its CMV, either has no CMV or has one sufficiently low to permit SSI eligibility. We therefore do not believe that it will result in determinations of ineligibility where such determinations are not warranted.

At the same time, we believe that this procedure will permit determinations of ineligibility where they are warranted; i.e., where property, although it does not sell at its originally estimated CMV, still has a CMV sufficiently high to cause its owner's resources to exceed the SSI limit. The ability to make such determinations becomes critical to the integrity of the SSI program now that there will be no limit on the value of nonliquid resources an individual can own and qualify for conditional payments.

Comments and Responses

Comment: One commenter indicated that the NPRM "Summary" is misleading because it makes no mention of eliminating the zero-CMV presumption.

Response: We agree and have revised the "Summary" appropriately. The "Supplementary Information" section, which follows the "Summary," continues to discuss elimination of the zero-CMV presumption in detail.

Comment: One commenter stated that the regulations should specifically eliminate the risk of an individual being penalized under the transfer of assets provision when he or she sells a resource for less than its (estimated) CMV in order to sell it within the conditional payment time limit.

Response: The transfer of assets provision appears in section 1613(c) of the Act. The regulations, at 20 CFR 416.1246, make it clear that this provision applies only when an individual gives property away, or sells it for less than the CMV (i.e., as much as he or she could reasonably be expected to sell the property for at the time of the sale), in order to establish eligibility for SSI or Medicaid. We believe it is clear that the provision does not apply when an individual sells property for as much as he or she can within the time allowed under a conditional payment agreement which we will consider the CMV. Therefore, we have not revised the regulation.

Comment: One commenter pointed out that SSR 83–30a held that a deed of trust was a countable resource when its owner had rejected an offer to buy it for less than its face value, and that a discounted price often represents the fair market value (FMV) of such an asset. The commenter stated that the proposed regulations would go far beyond requiring an individual to sell a resource at FMV, and would require an individual to dispose of a resource even if there were no buyer. The commenter concluded that the proposed regulations should not be represented as an effort at compliance with SSR 83–30a.

Response: We believe the regulation does comply with SSR 83–30a since it is consistent with the notion that a discounted price often represents the FMV of a deed of trust, i.e., the most it can be expected to sell for. The regulations, at 20 CFR 416.1201, provide that property which an individual owns and could convert to cash is a resource in the amount of its CMV less encumbrances. If an individual can sell property, no matter at what price, such property has a CMV of more than zero. SSR 83–30a held that neither the Act nor the regulations provide for excluding property from consideration as a resource because the individual cannot sell it at a desired price. Thus, any amount for which property can reasonably be expected to sell must be considered in determining the CMV of an individual's resources.

Evidence may emerge, in the course of an attempt to sell property, which warrants a determination that the property has no CMV; i.e., that it cannot be expected to sell at any price. In and of itself, however, the fact that no one offers to buy property when an individual asks a certain price for it does not establish that the property has no CMV at all. The regulations do not require that an individual dispose of property which has no CMV. Rather the regulations require that a zero-CMV determination be based on evaluation of the circumstances in each case rather than on a presumption that the property has no CMV because no one offered to buy it within a limited period of time while the seller was asking a certain price for it.

Comment: Five commenters stated or implied that the zero-CMV presumption reflects market realities—that property, in fact, has no CMV if its owner receives no offer to buy it within the conditional payment period. One of the five stated

that the regulations presently do not, but should, permit SSA staff to assign a zero value to property which simply cannot be sold.

Two of the five indicated that elimination of the zero-CMV presumption would result in property being considered available as a resource when, in fact, it is not. One of these two stated that the proposed regulations are, therefore, contrary to existing law and regulations.

Response: Current regulations, at 20 CFR 416.1201, tie the value an asset has as a resource to the amount it can reasonably be expected to sell for on the open market. They, therefore, do recognize the possibility that a zero value could be established for property that cannot be sold at any price.

When someone tries to sell property at its estimated CMV, the fact that no one offers to buy it within the conditional payment period suggests that it has a lower CMV than estimated. In some instances, it may have no CMV at all. But a blanket presumption that such property has no CMV usually ignores, rather than reflects, market realities.

It is the zero-CMV presumption itself, to the extent that it disregards any lesser amount for which such property could reasonably be expected to sell, which is contrary to existing law and regulations. The regulations would not result in property being considered as a resource when, in fact, it is not; they would eliminate the presumption that property is not a resource when, in fact, it may be.

Comment: Five commenters stated either (1) that the present conditional payment time limits do not reflect the amount of time it takes to effect a sale of property, or (2) that the present limits, coupled with elimination of the zero-CMV presumption, would force people to sell their property at far below market value. Two of the five recommended a conditional payment agreement without time limits.

Response: We realize that property might sell for more, if left on the market longer. But the conditional payment provision is not designed to ensure that property can remain on the market for as long as it takes to reach its highest potential value. It is designed to provide, for a limited period of time, funds that individuals can use for their current basic needs while converting their own assets to cash.

Were there no SSI program, individuals who could provide for themselves only by selling their assets would have to do so, sometimes quickly, at whatever price the market would currently bear. The SSI program does not eliminate that need unless the Act excludes those assets from consideration or their value falls within certain limits. But neither does the SSI program in general, or the conditional payment provision in particular, create or contribute toward that need. The SSI resources exclusions provide substantial relief from it. Conditional payments provide funds that individuals otherwise might not have available to them while selling assets they would have to sell in any event.

Moreover, the conditional payment provision does not pressure individuals to sell their property in order to remain or become eligible for SSI. Individuals are advised that they are ineligible for SSI, due to the value of their resources, before they are presented with the conditional payment option. Those who opt to receive conditional payments do so with the understanding that such payments are limited and must be refunded whether the property is sold or not.

The pressure on individuals to sell certain property stems from their having to obtain cash to provide for their own needs. Conditional payments afford such individuals more time than they otherwise might have, within which to sell the property. But conditional payments are not intended to finance a deferral of the sale until such time as an individual can obtain a desired price for the property and/or establish eligibility for SSI. In the context of that view of the conditional payment provision, we believe that its present time limits suffice for their intended purpose.

Comment: One commenter stated that the proposed regulations are short-sighted; that many recipients would give up SSI before selling family property, thus losing health care coverage and risking eviction or foreclosure. The commenter stated that the resulting costs of increased medical care (due to a lack of preventive care, poor nutrition, and depression) would far exceed the costs of continued SSI.

Response: The SSI resources limits are set by statute. Individuals whose resources exceed the applicable limit cannot rely on the SSI program rather than their excess resources to provide for their needs. This, rather than the conditional payment regulations, is why such individuals may have to sell property they own. We know that individuals can become attached to property they have owned for some time, but we cannot selectively disregard the statutory resources limits on that basis. If an individual's resources exceed the applicable limit and he or she must sell certain property in order to obtain cash, conditional payments provide an interim source of cash, on a refundable basis and for a limited number of months, while he or she is selling the property.

Comment: One commenter, noting that an individual often could borrow money using the excess nonliquid resource as collateral, stated that the consequences of receiving conditional payments might be worse than receiving no benefit at all, particularly if the individual receives substantial Medicaid benefits based on receipt of the conditional SSI payments. The commenter expressed concern that we would make such individuals believe they were eligible for SSI by making conditional payments to them, then find them retroactively ineligible for both SSI and Medicaid, leaving them with a surprise debt that could not be repaid by any public program or from the eventual sale of the property.

Response: The receipt of conditional SSI payments does not lead to an overpayment of Medicaid benefits. Currently, 14 States do not extend Medicaid coverage to individuals based on their receipt of SSI payments. The question of Medicaid overpayments related to conditional SSI payments therefore does not pertain to individuals who live in these States. The remaining 36 States and the District of Columbia currently must, by law, provide Medicaid coverage to all individuals ". . . with respect to whom supplemental security income benefits *are being paid* under title XVI" (emphasis added). Eligibility for Medicaid in these States derives from the actual receipt of SSI payments and is unaffected by subsequent, retrospective determinations concerning eligibility for such payments. This includes conditional payments.

The receipt of conditional payments does not lead to a surprise overpayment of the conditional payments themselves. SSA staff inform individuals while discussing conditional payments that such payments must be refunded. The conditional payment agreement, which individuals sign and receive a copy of, also specifies that the conditional payments must be refunded.

Comment: One commenter stated that the regulations should specifically require detailed conditional payment notices, spelling out: the importance of complying with the rule; the right to seek amendment of the CMV and not be considered to have violated the transfer of assets provision; exclusions from the rule; all time frames; and whom to call with questions. The commenter states that follow-up notices should be sent at the end of 2 months and then monthly after that, emphasizing both the

importance of acting and what steps to take.

Response: Operating instructions already require that SSA staff provide a detailed oral explanation of the conditions for payment, and their implications, before an individual makes a decision to receive or not to receive conditional payments. The conditional payment agreement itself then stipulates, in writing: the agreement to sell specified property; the time limit for selling it; and the agreement to refund, whether the property is sold or not. It also tells the individuals whom to contact if problems arise. The individual receives a copy of this agreement.

The conditional payment agreement requires that individuals sell the specified resources at CMV within the specified time limit. Individuals who do this have sold their resources at FMV as defined in the regulations at 20 CFR 416.1246(b), and are protected against application of the transfer of assets provision. A notice to this effect seems unnecessary. However, revised operating instructions, to be released to SSA field offices upon issuance of these final regulations, will require that SSA staff alert individuals to the transfer of assets provision in conditional payment cases.

Operating instructions already require that SSA staff make personal contact with the individual every 60 days during a 6-month conditional payment period and every 30 days during a 3-month period. They must remind the individual of the applicable time limit and obtain a statement from the individual as to what steps he or she has taken or is taking to sell the property. We believe that these procedures ensure that individuals understand the agreement.

Comment: One commenter stated that installment payment agreements which are entered into in order to dispose of nonliquid assets under a conditional payment agreement should not be the basis later for a finding of ineligibility.

Response: An installment agreement, provided that its owner has the right, authority, or power to convert it to cash, constitutes a resource. Unless such an agreement were to fall under one of the existing resource exclusions, we would have to consider it, as well as any other countable resources, in determining eligibility.

Comment: One commenter stated that, where a person enters into an installment payment contract in order to sell property under a conditional payment agreement, and where the contract itself then causes the person's resources to exceed the SSI limit, the regulations should state that the person is entitled to a second period of conditional payments while attempting to sell the contract.

Response: Since the transaction satisfies the requirement of the original conditional payment agreement that the individual sell the property, the original agreement would have no bearing on whether the individual could include the installment payment contract in a second conditional payment agreement. However, the individual could not retain any of the proceeds of the original sale, including installment payments, until the refund requirement of the original agreement had been satisfied.

Ownership of the contract would not automatically entitle the individual to a second period of conditional payments. Rather, it would require that SSA make a new determination of eligibility for regular and/or conditional SSI payments, considering the contract and using those guidelines and criteria that apply to it. We will ensure that the operating instructions to be released upon issuance of these final regulations make this clear.

Comment: One commenter stated that the regulations should set forth and define "legal bars" to the sale of property.

Response: The term legal bar has been used in the preamble, but does not appear in the statute or in the regulations, so there is no need to define it in the regulations. We have, however, added clarifying language in the preamble.

Comment: One commenter stated that SSA should be required to state fully and in detail the basis of the figure used as market value.

Response: SSA staff do not make independent estimates of CMV; the figure they use, and which they enter on the face of the conditional payment agreement, comes from evidence provided by the individual. The individual, therefore, knows the figure used and the basis for it. Operating instructions do require that SSA staff prepare a written explanation of the estimate to be used if an individual originally submits conflicting evidence, or later submits additional evidence in rebuttal of the original evidence. An individual who disagrees with the resource determination can appeal it.

Comment: One commenter stated that, when an individual has a fractional ownership interest in property, the CMV estimate should reflect the fact that the fractional value of the whole is worth less than a fee simple interest in the same amount. For example, one-eighth of $12,000 is $1,500, but an individual is much more likely to get $1,500 for property he or she owns alone that is valued at $1,500 than for a one-eighth interest in property that is valued at $12,000.

Response: It is the individual's responsibility to obtain and submit evidence which establishes the value of property he or she owns. In general, SSA staff are not—and are not expected to become—expert in the area of valuing property. Nor is there a formula available which they can use to discount fractional ownership interest in property where such discounting would be appropriate. When an individual feels that a fractional ownership interest is worth less than the share it mathematically represents of the property's whole value, it is up to the individual to provide evidence to that effect. If satisfactory evidence is provided, the value will be discounted accordingly.

Comments: One commenter stated that the regulations should permit individuals to set aside $1,500 for burial expenses before using the proceeds of a sale of property to refund conditional payments.

Response: At the beginning of the period for which conditional payments are to be made, eligibility for them derives from an interim resources determination. The interim determination provisionally disregards the value of those nonliquid resources to be sold which, if counted, would cause total countable resources to exceed the SSI limit. At the time of a sale, the disregard becomes null and void, the value of the resources (in the form of the net proceeds of the sale) is added to other countable resources at the beginning of the period for which conditional payments were made, and the interim determination is revised retroactively. The amount by which the revised determination then shows total countable resources to have exceeded the SSI limit at the beginning of the period for which conditional payments were made determines the extent to which such payments are recoverable. An individual who wishes to receive conditional payments must, as a condition of receiving them, agree to refund them to that extent.

The burial fund exclusion can be applied to liquid resources and/or to the value of a nonliquid resource which an individual intends and designates for burial expenses. It can be applied for months preceding a formal designation, but not for months preceding the existence of the intent. SSA staff, in making the interim determination at the beginning of the period for which conditional payments are to be made, must explore the possibility of and, as appropriate, apply the burial fund and

other exclusions before finding that remaining countable resources would exceed the SSI limit. If, at that time, the individual indicates that he or she intends certain resources for burial expenses, the burial fund exclusion could be applied, subject to the provisions of 20 CFR 416.1231, in subsequently determining the amount by which total countable resources exceeded the SSI limit at the beginning of the conditional payment period. If such intent is found not to exist at the beginning of the conditional payment period, the burial fund exclusion could not affect the amount by which total countable resources exceeded the SSI limit at that time, and cannot otherwise be used, at the time of a sale, to circumvent the agreement to refund.

Comment: One commenter stated that elimination of the zero-CMV presumption should affect only new applicants for SSI.

Response: Elimination of the zero-CMV presumption must apply to all eligibility determinations, whether they pertain to new applicants for or current recipients of SSI. Current recipients cannot continue to receive SSI benefits indefinitely, without regard to the value of property they own. If, under the new rules, property previously presumed to have no CMV is found to have a value which causes an individual's resource to exceed the SSI limit, the individual will have the option of entering into a current conditional payment agreement, provided that he or she otherwise qualifies.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations will not result in any program or administrative cost, or otherwise meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no additional reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income program)

List of Subjects in 20 CFR Part 416

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

Dated: June 1, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: July 8, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

Subpart L of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart L of Part 416 is revised to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j and 1383; Sec. 211 of Pub. L. 93-66; 87 Stat. 154.

2. Section 416.1240 is revised to read as follows:

§ 416.1240 Disposition of resources.

(a) Where the resources of an individual (and spouse, if any) are determined to exceed the limitations prescribed in § 416.1205, such individual (and spouse, if any) shall not be eligible for payment except under the conditions provided in this section. Payment will be made to an individual (and spouse, if any) if:

(1) Total includable liquid resources (as defined in § 416.1201(b)) do not exceed one-fourth of the applicable dollar amount referenced in section 1611(b)(1) of the Act in the case of an individual and in section 1611(b)(2) in the case of an individual and spouse (as increased pursuant to section 1617 of the Act and published in the **Federal Register** pursuant to section 215(i)(2)(D)); and

(2) The individual agrees in writing to:

(i) Dispose, at current market value, of the nonliquid resources (as defined in § 416.1201(c)) in excess of the limitations prescribed in § 416.1205 within the time period specified in § 416.1242; and

(ii) Repay any overpayments (as defined in § 416.1244) with the proceeds of such disposition.

(b) Payment made for the period during which the resources are being disposed of will be conditioned upon the disposition of those resources as prescribed in paragraph (a)(2) of this section. Any payments so made are (at the time of disposition) considered overpayments to the extent they would not have been paid had the disposition occurred at the beginning of the period for which such payments were made.

(c) If an individual fails to dispose of the resources prescribed in paragraph (a)(2) of this section, regardless of the efforts he or she makes to dispose of them, the resources will be counted at their current market value and the individual will be ineligible due to excess resources. The original estimate of current market value will be used unless the individual submits evidence establishing a lower value (e.g., an estimate from a disinterested knowledgeable source.)

[FR Doc. 87-19253 Filed 8-21-87; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CG07-87-07]

Safety Zone; Tampa Bay, Hillsborough Bay and Approaches

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has established a rule to amend 33 CFR 165.703 by establishing a requirement for applicable vessels to provide certain information twenty-four hours prior to their arrival or departure. This twenty-four hour notification is essential to coordinate implementation of the required safety zone and provide adequate notification to all affected maritime interests. This notification requirement would have no major economic impact on affected parties as this requirement was previously mandated by Captain of the Port orders over the past five years and all applicable parties are currently voluntarily providing a twenty-four hour advance notification of arrival or departure.

EFFECTIVE DATE: September 23, 1987.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael E. Maes Telephone, (813) 228 2194.

SUPPLEMENTARY INFORMATION: On 7 May 1987, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (Vol. 52 No. 88 FR 17305). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this notice are Lieutenant Michael E. Maes, project officer, Marine Safety Office Tampa, Florida and LCDR F.T. Fuger, Jr. project attorney, Seventh Coast Guard District Legal Office.

Discussion of Comments

During the allotted comment period, no comments were received regarding the proposed amendment to the existing regulations. This reflects the current voluntary compliance with the provisions of the proposed amendment by affected maritime parties.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that full regulatory evaluation is unnecessary. During the past five years all anhydrous ammonia carriers have provided the twenty-four hour advance arrival notification either voluntarily or by direction of the Captain of the Port Orders. This amendment would simply make current voluntary standards mandatory.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Vessels, Waterways.

Final Regulations

In consideration of the foregoing, Part 165 of Title 33 Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191.49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.703(i) is added to read as follows:

§ 165.703 Tampa Bay, Florida Safety Zone.

* * * * *

(i) The owner, master, agent or person in charge of a vessel or barge, loaded with anhydrous ammonia shall report the following information to the Captain of the Port, Tampa at least twenty-four hours before entering Tampa Bay or its approaches or departing from Tampa Bay:

(1) Name and country of registry of the vessel or barge;

(2) The name of the port or place of departure;

(3) The name of the port or place of destination:

(4) The estimated time that the vessel is expected to begin its transit of Tampa Bay and the time it is expected to commence its transit of the safety zone.

(5) The cargo carried and amount.

Dated: July 23, 1987.

T.W. Boerger,

Captain, U.S. Coast Guard, Captain of the Port Tampa, FL.

[FR Doc. 87–19345 Filed 8–21–87; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Philadelphia, PA Regulation 87–01]

Safety Zone Regulations; Marcus Hook Range Ship Channel and Anchorages 6, 7, and 9, Delaware River

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Delaware River to include Marcus Hook Range ship channel, Anchorage 6 off Deepwater Point, Anchorage 7 off Marcus Hook, and Anchorage 9 near the entrance to Mantua Creek, Delaware River. The zone is needed to protect vessels from a potential safety hazard associated with dredging operations in the Marcus Hook Range ship channel and to minimize temporary port congestion.

The Marcus Hook Range ship channel in the vicinity of the dredging operation is closed to vessel traffic. Anchorage 7 off Marcus Hook is closed to anchoring so that vessel traffic may transit the anchorage in lieu of the Marcus Hook Range ship channel. Vessels over 700 feet in length are subject to anchorage restrictions in Anchorage 6 off Deepwater Point and Anchorage 9 near the entrance to Mantua Creek.

EFFECTIVE DATES: This regulation becomes effective on 14 August, 1987. It terminates on 1 October, 1987, or upon completion of dredging operations whichever first occurs, unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LTJG James Weakley at the Captain of the Port, Philadelphia, (215) 923–4320.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to respond to potential hazards to vessel traffic.

Drafting Information

The drafters of this regulation are LTJG James Weakley, project officer for the Captain of the Port, and LT. Wayne Patrick, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of the Regulation

The potential hazards requiring this regulation result from maintenance dredging of the Marcus Hook Range ship channel. The Marcus Hook Range ship channel must be closed and traffic diverted through Anchorage 7 off Marcus Hook to reduce the hazards associated with dredging in the ship channel. Anchorage restrictions in Anchorages 6 and 9 are being imposed to accommodate those vessels which may have been prevented from anchoring in Anchorage 7 off Marcus Hook.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 U.S.C. 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T05–76 is added to read as follows:

§ 165.T05–76 Safety Zone: Marcus Hook Range Ship Channel and Anchorage 6 off Deepwater Port, Anchorage 7 off Marcus Hook, and Anchorage 9 near the entrance to Mantua Creek Anchorage, Delaware River.

(a) *Location.* The following areas are a safety zone: The Marcus Hook Range ship channel in the vicinity of dredging operations, Anchorage 6 off Deepwater Point, Anchorage 7 off Marcus Hook, and Anchorage 9 off Mantua Creek, Delaware River.

(b) *Effective date.* This regulation becomes effective 14 August, 1987. It terminates on 1 October, 1987, or upon completion of dredging operations whichever first occurs, unless sooner terminated by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, the following restrictions are in effect:

(i) Entry into the Marcus Hook Range ship channel in the vicinity of dredging operations is prohibited. Vessels transiting the area shall make passage through Anchorage 7 off Marcus Hook.

(ii) Anchoring at Anchorage 7 off Marcus Hook is prohibited.

(iii) Vessels over 700 feet in length must obtain permission from the Captain of the Port to anchor in Anchorage 6 off Deepwater Point or Anchorage 9 near the entrance to Mantua Creek. Vessels granted permission are subject to the General Regulations (33 CFR 110.157(b)) and the following additional conditions:

(A) Vessels between 700 to 750 feet in length shall have one tug alongside while anchored in either Anchorage 6 or 9.

(B) Vessels greater than 750 feet in length shall have two tugs alongside while anchored in either Anchorage 6 or 9.

(C) Each tug alongside must have a minimum rating of 1000 shaft horsepower.

Dated: August 12, 1987.

C.A. Huber,

Commander, U.S. Coast Guard.

Alternate Captain of the Port, Philadelphia.

[FR Doc. 87-19344 Filed 8-21-87; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Springfield Armory National Historic Site, MA; Closure to Public

AGENCY: National Park Service, Interior.

ACTION: Interim Rule with Request for Comments.

SUMMARY: The National Park Service is closing the Springfield Armory Museum, the Historic Site's primary visitor attraction, to all public use from September 8, 1987 through April 3, 1989. This action is necessary because of serious health and safety hazards that will exist during the complete renovation of the interior of the Main Arsenal which houses the museum and research facilities. The closure will have minimal economic impact.

DATES: This rule will become effective on September 8, 1987 and will expire on April 4, 1989. Written comments regarding the closure will be accepted until September 23, 1987.

ADDRESSES: Comments should be addressed to: W. Douglas Lindsay, Jr., Superintendent, Springfield Armory National Historic Site, One Armory Square, Springfield, Massachusetts 01105.

FOR FURTHER INFORMATION CONTACT: W. Douglas Lindsay, Jr., or Larry Lowenthal; 413-734-6477; address above.

SUPPLEMENTARY INFORMATION:

Background

Springfield Armory National Historic Site consists of 55 acres near downtown Springfield, Massachusetts and commemorates the important role this armory played in the nation's military and industrial history. From its inception in 1777 through its deactivation in 1968, the armory was a center for small arms storage, research, development, and manufacture. Most experimental models produced at the armory, as well as thousands of pieces collected from around the world for research and development were retained as a museum and arms library. The national historic site was established by Congress in 1974 (Pub. L. 93-486).

In 1978 the National Park Service assumed administration of that portion of the site containing the Main Arsenal which houses the museum, and the Commanding Officer's House, which is used for park support functions. The remainder of the Site serves as the campus of Springfield Technical Community College and is administered by the Commonwealth of Massachusetts.

The Fiscal Year 1987 Appropriation to the National Park Service provides funds to redesign and renovate the public exhibit spaces and museum support facilities within the Main Arsenal. The work will extend to all three floors and the basement and will provide for a 50 seat theater, new exhibits, a combined information/sales facility, new restrooms, expanded office and research spaces and environmental controls for artifact and archival strorage areas. Minor rehabilitation of exterior components of the building will also occur.

The engineer/architects' estimate for completion time is 18 months. Serious health and safety hazards that will be present during the construction period preclude allowing exhibit spaces and exhibits to remain open to the visiting public. There is no alternative to closing the museum as there is no other suitable exhibit space available on site. The museum has averaged 15,000-20,000 visitors annually since 1978.

Drafting Information

The following persons participated in the writing of this regulation: Douglas Lindsay, Superintendent, Springfield Armory NHS; Larry Lowenthal, Park Historian, Springfield Armory NHS.

Public Participation

The policy of the National Park Service is to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this rulemaking to the address noted above.

Paperwork Reduction Act

This rule contains no information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291. The Department has also determined that this rulemaking will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This finding is based on the fact that the total economic effect of this rulemaking will impose no significant costs on any class or group of small entities.

The National Park Service has determined that this rulemaking will not have an effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental policy in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an

Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is amended to read as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); § 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. By adding a new § 7.23 to read as follows:

§ 7.23 Springfield Armory National Historic Site

Closure. The Springfield Armory Museum is closed to all public use and access from September 8, 1987 through April 3, 1989.

Dated: July 7, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–19239 Filed 8–21–87; 8:45 am]

BILLING CODE 4310–70–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6761]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

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

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

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

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

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

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

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of the future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

PART 64—[AMENDED]

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

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

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

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region III: Minimals Conversions				
Virginia:				
Amelia County, unincorporated areas	510314	Mar. 22, 1976, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Sept. 1, 1987.
Nottoway County, unincorporated areas	510307	May 7, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
West Virginia: Franklin, town of, Pendleton County	540154	July 2, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Region IV				
Alabama: Louisville, town of, Barbour County	010225	Nov. 25, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Georgia: Hart County, Unincorporated Area	130467	Sept. 26, 1978, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
North Carolina: Trenton, town of, Jones County	370141	May 27, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Tennessee: White Pine, city of, Jefferson County	470332	Jan. 13, 1978, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Mississippi:				
Montgomery County, unincorporated areas	280212	Apr. 11, 1974, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Perry County, unincorporated areas	280233	Apr. 11, 1974, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Scott County, unincorporated areas	280280	Apr. 23, 1979, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Stone County, unincorporated areas	280300	Apr. 23, 1980, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
North Carolina: Fairmont, town of, Robeson County	370205	May 6, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
South Carolina:				
Hartsville, city of, Darlington County	450062	June 20, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Kingstree, town of, Williamsburg County	450190	Dec. 20, 1974, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Oconee County, unincorporated areas	450157	May 16, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Tennessee: Rives, city, of Obion County	470235	Oct. 26, 1984, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Region V				
Illinois: Sublette, village of, Lee County	170421	Sept. 30, 1976, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Indiana: Ripley County, unincorporated areas	180221	Feb. 11, 1976, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Minnesota:				
Fisher, city of, Polk County	270366	Apr. 21, 1982, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Stevens County, unincorporated areas	270640	May 9, 1974, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Ohio:				
Corning, village of, Perry County	390440	July 18, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Fredericksburg, village of, Wayne County	390576	June 11, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Hanoverton, village of, Columbiana County	390082	Oct. 8, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Orrville, city of, Wayne County	390577	July 22, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Malta, village of, Morgan County	390421	Apr. 22, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Sunbury, village of, Delaware County	390152	June 18, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Warsaw, village of, Coshocton County	390733	Aug. 26, 1977, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Crescent City, city of, Iroquois County	170291	Dec. 26, 1974, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Steward, village of, Lee County	170420	Oct. 10, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Lakeview, village of, Logan County	390341	Feb. 10, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Shawnee, village of, Perry County	390710	Sept. 7, 1976, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 7, 1987	Do.
Van Wert County, unincorporated areas	390784	May 24, 1977, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Region VI				
Arkansas: Newark, city of, Independence County	050092	Aug. 8, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Louisiana: Roseland, town of, Tangipahoa Parish	220212	Mar. 23, 1977, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
New Mexico: Los Alamos County, unincorporated areas	350035	Nov. 25, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Oklahoma:				
Canadian County, unincorporated areas	400485	Feb. 11, 1985, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Chelsea, City of, Rogers County	400187	Mar. 18, 1986, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Jefferson, town of, Grant County	400065	Feb. 13, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Texas:				
Asherton, city of, Dimmit County	480790	Sept. 30, 1981, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Bartonville, town of, Denton County	481501	Oct. 1, 1985, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Boyd, city of, Wise County	480676	May 18, 1977, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Brownsboro, city of, Henderson County	480325	Jan. 15, 1982, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Crystal City, city of, Zavala County	480688	Nov. 29, 1974, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, Susp	Sept. 1, 1987	Do.
Giddings, city of, Lee County	480435	Oct. 8, 1982, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Lavaca County, unincorporated areas	481178	Oct. 8, 1981, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Premont, city of, Jim Wells County	480396	July 18, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
San Jacinto County, unincorporated areas County	480553	Mar. 23, 1982, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Terrell County, unincorporated areas	480619	July 22, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Yoakum, city of, Lavaca County	480434	Oct. 8, 1981, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Oklahoma: Wapanucka, town of, Johnson County	400337	June 7, 1979, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Region VII				
Iowa:				
Ainsworth, city of, Washington County	190525	July 23, 1984, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Calumet, city of, Washington County	190712	Sept. 23, 1984, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Lake Park, city of, Dickinson County	190367	Aug. 17, 1977, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
LeGrand, city of, Marshall County	190606	Dec. 5, 1977, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Lime Springs, town of, Howard County	190417	Jan. 24, 1977, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Lytton, city of, Calhoun and Sac Counties	190769	Oct. 6, 1976, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Nora Springs, city of, Floyd County	190384	Apr. 25, 1980, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Rockford, city of, Floyd County	190129	July 28, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Spirit Lake, city of, Dickinson County	190116	Sept. 4, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Titonka, city of, Kossuth County	190840	Apr. 30, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp	Sept. 1, 1987	Do.
Region V: Minimal Conversions				
Illinois:				
Deland, village of, Platt County	170547	Nov. 20, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp	Sept. 4, 1987	Sept. 4, 1987.
Towanda, village of, McLean County	170504	May 12, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp	Sept. 4, 1987	Do.
Indiana:				
Lewisville, town of, Henry County	180091	Oct. 26, 1976, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp	Sept. 4, 1987	Do.
Springport, town of, Henry County	180347	Feb. 23, 1976, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp	Sept. 4, 1987	Do.
Ohio County, unincorporated areas	180406	Jan. 20, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp	Sept. 4, 1987	Do.
Minnesota:				
Dumont, city of, Traverse County	270481	Sept. 3, 1974, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp	Sept. 4, 1987	Do.
Hinckley, city of, Pine County	270347	Sept. 20, 1974, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp	Sept. 4, 1987	Do.
Keewatin, city of, Itasca County	270205	Jan. 21 1977, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp	Sept. 4, 1987	Do.
Lester Prairie, city of, McLeod County	270265	May 8, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp	Sept. 4, 1987	Do.
White Bear Lake, city of, Ramsey County	270386	Apr. 28, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp	Sept. 4, 1987	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Ohio:				
Orangeville, village of, Trumbull County	390751	May 28, 1976, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Sherrodsville, village of, Carroll County	390054	Dec. 20, 1976, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Zoar, village of, Tuscarawas County	390752	Apr. 7, 1977, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Caldwell, village of, Noble County	390430	Aug. 1, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
East Palestine, city of, Columbiana County	390079	Aug. 1, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Galena, village of, Delaware County	390149	Jan. 23, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Ravenna, city of, Portage County	390458	Oct. 15, 1976, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Region VII				
Nebraska:				
Meadow Grove, village of, Madison County	310146	Oct. 3, 1974, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Tilden, city of, Antelope and Madison Counties	310401	Dec. 4, 1974, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Lindsay, village of, Platte County	310177	Dec. 15, 1976, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Region I: Regular Conversions				
Maine:				
Greenbush, town of, Penobscot County	230107	May 10, 1976, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Hampden, Town of, Penobscot County	230168	Nov. 24, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Region III				
Pennsylvania:				
Carroll, township of, Perry County	421949	Feb. 18, 1976, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
East Earl, township of, Lancaster County	421770	Oct. 18, 1974, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Glade, township of, Warren County	422122	Mar. 19, 1976, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Windham, township of, Wyoming County	422208	Dec. 30, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
West Virginia:				
Hamlin, town of, Lincoln County	540089	May 27, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
West Hamlin, town of, Lincoln County	540090	June 26, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Region IV				
Mississippi: Moss Point, city of, Jackson County	285258	Sept. 11, 1970, Emerg.; Sept. 18, 1970, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Region V				
Indiana:				
Bedford, city of, Lawrence County	180148	Apr. 17, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
New Castle, city of, Henry County	180092	Apr 14, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Region VI				
New Mexico: Zuni, pueblo of, McKinley County	350143	Dec. 21, 1978, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Region IX				
Arizona:				
Greenlee County, unincorporated areas	040110	Dec. 29, 1978, Emerg.; July 18, 1985, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Marana, town of, Pima County	040118	Apr. 17, 1980, Emerg.; Aug. 1, 1984, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
California:				
Antioch, city of, Contra Costa County	060026	May 1, 1975, Emerg.; Dec. 2, 1980, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Lassen County, unincorporated areas	060092	June 26, 1986, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Region X				
Oregon:				
Bend, city of, Deschutes County	410056	Mar. 12, 1975, Emerg.; Sept. 4, 1987, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.
Vale, city of, Malheur County	410153	Jan. 15, 1975, Emerg.; Aug. 26, 1977, Reg.; Sept. 4, 1987, Susp.	Sept. 4, 1987	Do.

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

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-19245 Filed 8-21-87; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORATION

Coast Guard

46 CFR Part 67

[CGD 87-041]

Documentation of Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice that International Tonnage Convention dimensions and tonnages may be endorsed on vessel certificates of documentation.

SUMMARY: The Coast Guard is publishing notice that the International Convention of Tonnage Measurement of Ships, 1969, may be used to determine a vessel's dimensions and tonnages for Certificate of Documentation endorsement purposes. In the past, the Coast Guard has consistently endorsed tonnages and dimensions based on the Standard System of Measurement. However, since 1983, when the United States ratified the International Convention on Tonnage Measurement of Ships, 1969, many vessel owners have been required to have their vessels additionally measured under this system.

DATE: August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Lieutenant Gregory L. Oxley, Vessel Documention Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security, and Environmental Protection, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-1492. Normal office hours are between 8:30 a.m. and 5:00 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The International Convention on Tonnage Measurement of Ships, 1969, (Tonnage Convention) became effective in the United States on February 10, 1983. Since then, many owners of U.S. vessels have begun having their vessels measured under this system in addition to measurement under the Standard System of Measurement. The result has been an increasing number of vessels which have a International Tonnage Certificate (1969) showing international tonnages and a Certificate of Documentation showing domestic tonnages.

On October 21, 1986, the President signed into law the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) which, among other things, directed the Secretary of the Department of Transportation to establish the 1969 Tonnage Convention system of measurement as the primary system for measuring U.S. vessels of 79 feet and

longer in length. In addition to being measured under the 1969 Tonnage Convention vessel owners will be allowed to have their vessels measured for a regulatory tonnage under the Standard System of Measurement. However, measurement regulations implementing this legislation are not yet in place.

The Coast Guard was recently asked by the owner of a number of vessles whether the tonnages and dimensions yielded by the 1969 Tonnage Convention could be endorsed on their vessels' Certificates of Documentation. The vessel owner pointed out that, on an international basis, applicability of many regulations and fees is based not on the tonnage and dimensions shown on a measurement certificate, but on the dimensions and tonnages shown on the vessel's documentation certificate. In accordance with this notice, the Coast Guard will recognize and allow use of either the 1969 Tonnage Convention or the Standard System of Measurement in determining a vessel's dimensions and tonnages for Certificate of Documentation endorsement purposes.

By allowing endorsement of a vessel's dimensions and tonnages under either system of measurement on the Certificate of Documentation, vessel owners will have greater flexibility and certainty in determining their vessel's expenses and operating requirements. This notice is being published so that as many vessel owners as possible may take advantage of this practice.

The current regulations (46 CFR Subpart 67.11) require that the tonnage and dimensions of a vessel be determined for initial documentation, whenever there is a change in the tonnage or dimensions of a documented vessel, or when the tonnage or dimensions of a vessel returning to documentation have changed since the vessel's last documentation. Upon the occurrence of one of these events (at the time of application for documentation) a vessel owner will be given an opportunity to elect which tonnage measurement system dimensions and tonnages shall be endorsed. Where a vessel is currently documented and the owner elects to have the 1969 Tonnage Convention values endorsed, the Certificate of Documentation should be surrendered at the vessel's home port with a request for issuance of a new Certificate of Documentation. In either case, the owner will need to submit the appropriate measurment certificate issued by the proper authority.

Date: August 19, 1987.

P.C. Lauridsen,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 87-19343 Filed 8-21-87; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. 1

[FCC 87-266]

Syracuse Peace Council v. Television Station WTVH, Syracuse, NY; Fairness Doctrine

AGENCY: Federal Communications Commission.

ACTION: Adjudication ruling.

SUMMARY: By this action, the Federal Communications Commission determined that the enforcement of the set of obligations known as the "fairness doctrine" violated the First Amendment rights of broadcasters and, therefore, was no longer in the public interest.

EFFECTIVE DATE: August 7, 1987.

ADDRESS: 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard J. Bozzelli, Special Assistant to the General Counsel, (202) 632-7020.

SUPPLEMENTARY INFORMATION:

The Federal Communications Commission ruled on August 4, 1987, that the set of obligations known as the "fairness doctrine" violated the First Amendment rights of broadcasters. It determined that enforcement of the doctrine "chilled" the speech of broadcasters and could no longer be considered "narrowly tailored to achieve a substantial government interest." It, therefore, vacated a 1984 Order in which it had determined that the Meredith Corporation, licensee of station WTVH(TV), Syracuse, NY, had violated the doctrine.

The Commission specifically noted that its ruling did not apply to "equal access" and "equal time" requirements imposed by the Communications Act. It also found that nothing in its decision will limit the ability to license stations and regulate them in the public interest.

The agency's action came in response to a January 1987 remand order of the U.S. Court of Appeals for the District of Columbia Circuit. *Meredith Corp.* v. *FCC*, 809 F.2d 863 (D.C. Cir. 1987). The court ruled that the Commission, in enforcing the doctrine against Meredith, had acted arbitrarily and capriciously in not responding to the licensee's arguments that the doctrine violated its First Amendment rights. The court instructed the Commission to resolve that issue.

In its action on August 4, 1987, the FCC determined that, although the doctrine was adopted to promote robust discussion of controversial issues, the enforcement of the doctrine has actually had the net effect of reducing, rather than enhancing, the discussion of controversial issues of public importance and, therefore, violated the constitutional principles announced by the Supreme Court in *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969). Consequently, while the doctrine was intended to enhance First Amendment principles, the FCC determined that, in fact, it had the exact opposite result.

It also concluded that the doctrine resulted in "excessive and unnecessary government intervention into the editorial processes of broadcast journalists," thereby violating the constitutional standard announced in a 1984 Supreme Court ruling in *FCC* v. *League of Women Voters of California*, 468 U.S. 364 (1984), that the regulation of broadcasters' speech be narrowly tailored to achieve a substantial government interest.

In reaching these determinations, the Commission relied on the record developed in this case from comments received after the Court of Appeals' remand and in its *1985 Fairness Report*, 102 FCC 2d 145 (1985), a comprehensive study of the administration and effects of the doctrine on broadcast journalists.

In the *1985 Fairness Report*, the FCC concluded that the doctrine no longer serves its intended purpose and, therefore, no longer furthers the public interest. It also found the constitutionality of the doctrine suspect. Because of intense congressional interest and some doubt as to whether the doctrine had been codified, however, the Commission did not act except to certify the record to Congress and terminate the proceeding.

The Syracuse Peace Council filed a complaint with the FCC alleging that Meredith had violated the doctrine in 1982 by broadcasting editorial advertisements over WTVH favoring the construction of a local nuclear power plant without presenting opposing points of view. The FCC found that Meredith had violated the doctrine. *Syracuse Peace Council* v. *Television Station WTVH, Syracuse, New York*, 99 FCC 2d 1389 (1984). Meredith argued that the doctrine violated its First Amendment right and, therefore, the FCC's enforcement of the doctrine was

unconstitutional. The Commission declined to consider Meredith's constitutional challenge, citing its decision in the *1985 Fairness Report* that this question was better dealt with by Congress and the courts. *Syracuse Peace Council* v. *Television Station WTVH, Syracuse, New York*, 59 RR 2d 179 (1985).

On review, the appellate court, while affirming the Commission's determination that the station had, in fact, violated the doctrine, ordered the agency to consider Meredith's constitutional arguments in its defense. The court ruled that the only way for the Commission to avoid that issue was if it determined that the doctrine was no longer in the public interest.

In its action on August 4, 1987, the Commission determined that it could not avoid the constitutional arguments raised by Meredith, because the constitutional and policy issues regarding the doctrine were "inextricably intertwined." It further ruled that there was nothing unique about its enforcement of the doctrine against WTVH that would justify a conclusion that the doctrine was unconstitutional only as applied in this case. Rather, the FCC stated that "the doctrine's infirmity of impermissibly chilling and reducing the discussion of controversial issues of public importance is not an infirmity resulting from the enforcement of the doctrine in this case or in particular markets, but is an infirmity that goes to the very heart of the enforcement of the fairness doctrine as a general matter."

The FCC found that in order to administer and enforce the doctrine, it is necessarily required to intervene in the editorial process and second-guess the judgment of broadcasters. Sanctions for noncompliance range from requiring the broadcaster to air contrasting viewpoints, to requiring the broadcaster to give free air time in certain circumstances, to revoking a license in the extreme case.

Citing the dramatic growth in the number and types of information outlets since the Supreme Court's 1969 *Red Lion* decision, the Commission also urged the Court to reconsider the First Amendment standards applicable to the broadcast media as announced in that case. The Court suggested in *League of Women Voters v. FCC* that it might revisit this standard if presented with an appropriate signal from Congress or the Commission.

The FCC argued that the scarcity rationale on which the *Red Lion* decision was based does not justify the current difference in First Amendment treatment between the print and broadcast media. Instead, the Commission urged the Court to apply a traditional First Amendment analysis to broadcasters.

Specifically, the Commission determined that there is no longer scarcity in the number of broadcast media outlets available to the public that could justify a difference in treatment between the printed and electronic press. In fact, the Commission noted that the number of broadcast outlets is far in excess of the number of daily newspapers.

It also determined that the notion of spectrum scarcity could not justify the difference in First Amendment treatment between the two media, because, as the Court of Appeals noted in *TRAC v. FCC*, all goods are scarce, and such a universal fact cannot be used to justify content regulation in one context and not another.

Furthermore, the FCC said that the fact that government allocates the spectrum through licensing does not justify its regulation of the content of broadcasters' speech. The Commission said that, because of the large number of broadcast licenses acquired through the purchase and transfer of stations on the open market, the relevant barrier to entry in both the broadcast and print markets is economic.

Arguing that a First Amendment analysis should not focus on the physical difference between the broadcast and print media, but on their functional similarities, the agency urged the Supreme Court to apply the same First Amendment principles now applicable to the printed press to the electronic press. It stated that the two media play a similar role in a free, democratic society and that the First Amendment "gives the people the right to receive ideas that are unfettered by government interference."

The FCC concluded: "This is the method set forth in our Constitution for maximizing the public interest; and furthering the public interest is likewise our mandate under the Communications Act."

Copies of the Commission's Memorandum Opinion and Order (FCC 87–266, released August 6, 1987) in this case may be obtained from International Transcription Service, (202) 857–3800. The Memorandum Opinion and Order will also be published in the Federal Communications Commission Record.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–19257 Filed 8–21–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 1

[CC Docket No. 86–212]

Attachment of Cable Television Hardware to Utility Poles

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: This action disposes of a Notice of Proposed Rulemaking which was issued to examine the issues raised in *Alabama Power* v. *FCC*, 773 F.2d 362 (1985) 51 FR 21774, June 16, 1986. The rulemaking examined the questions raised by the court since they affected the method traditionally used to determine the operating expenses and capital costs of poles in the Commission's maximum rate formula. This Report and Order modifies the method for calculating pole attachment rates and adopts amendments to the procedural rules for filing pole attachment complaints. This action is taken as a result of the examination of the issues addressed in the Notice of Proposed Rulemaking.

EFFECTIVE DATE: The effective date of this rule is contingent upon OMB approval of any new or modified information collection requirement. The effective date will be announced in the **Federal Register** at a later date.

FOR FURTHER INFORMATION CONTACT: Lenworth Smith or Margaret Wood, tele: 202–632–4887.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in CC Docket 86–212, Adopted June 10, 1987, and Released July 23, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. The Commission has modified the method for calculating pole attachment rates. In adopting a formula that results in a rate approaching the statutory maximum just and reasonable rate, the Commission adopted a different non-pole-related appurtenance ratio for electric companies and telephone companies, the ratio of total administrative and general expenses to

total plant investment to determine the administrative expenses component of the carrying charges, and the use of normalized taxes for the tax component of the carrying charges. The Commission also adopted amendments to the procedural rules for filing pole attachment complaints.

2. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the adopted policy and rule changes will not have a significant economic impact on a substantial number of small entities because they will continue to utilize a formula which relies on publicly available data and no additional recording or recordkeeping will be required by the items adopted in the Report and Order.

3. The decisions contained in the Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

4. Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), 201–205, 218, 220, 403, and 404 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 218, 220, 403 and 404, the policies and requirements set forth herein are adopted.

5. It is further ordered that, pursuant to the authority contained in sections 4(i) and 224 of the Communications Act, 47 U.S.C. 154(i), 224, Subpart J of Part 1 of the Commission's Rules and Regulations are amended, as set forth below.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Rule Changes

Subpart J of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. In § 1.1402, paragraphs (d) and (e) are revised to read as follows:

§ 1.1402. Definitions.

* * * * *

(d) The term "complaint" means a filing by a cable television system operator, a cable television system association, a utility, or an association of utilities alleging that a rate, term, or condition for a pole attachment is not just and reasonable.

(e) The term "complainant" means a cable television system operator, a cable television system association, a utility, or an association of utilities who files a complaint.

3. In § 1.1404, paragraphs (a), (d) (1) and (2), (g) (2), (4), (5), (9) and (10), (h) and (i) are revised to read as follows:

§ 1.1404 Complaint.

(a) The complaint shall contain the name and address of the complainant, name and address of the respondent, and shall contain a verification (in the form in § 1.721(b)), signed by the complainant or officer thereof if complainant is a corporation, showing complainant's direct interest in the matter complained of. Counsel for the complainant may sign the complaint. Complainants may join together to file a joint complaint. Complaints filed by associations shall specifically identify each utility or cable television company who is a party to the complaint and shall be accompanied by a document from each identified member certifying that the complaint is being filed on its behalf.

* * * * *

(d) * * *

(1) A statement that the utility uses or controls poles, ducts, or conduits used or designated, in whole or in part, for wire communication; and

(2) A statement that the cable television operator currently has attachments on the poles.

* * * * *

(g) * * *

(2) The investment in crossarms and other items which do not reflect the cost of owning and maintaining poles, if available;

* * * * *

(4) The depreciation reserve from the investment in crossarms and other items which do not reflect the cost of owning and maintaining poles, if available;

(5) The total number of poles: (i) Owned; and (ii) controlled or used by the utility.

If any of these poles are jointly owned, the complaint shall specify the number of such jointly owned poles and the percentage of each joint pole or the number of equivalent poles owned by the subject utility;

* * * * *

(9) The annual carrying charges attributable to the cost of owning a pole. These charges may be expressed as a percentage of the net pole investment. With its pleading, the utility shall file a copy of the latest decision of the state regulatory body or state court which determines the treatment of accumulated deferred taxes if it is at issue in the proceeding and shall note the section which specifically determines the treatment and amount of accumulated deferred taxes.

(10) The rate of return authorized for the utility for intrastate service. With its pleading, the utility shall file a copy of the latest decision of the state regulatory body or state court which establishes this authorized rate of return if the rate of return is at issue in the proceeding and shall note the section which specifically establishes this authorized rate and whether the decision is subject to further proceedings before the state regulatory body or a court;

* * * * *

(h) If any of the information required in (g) of this section is not provided to the cable television operator by the utility upon reasonable request, the cable television operator shall include a statement indicating the steps taken to obtain information from the utility, including the dates of all requests. No complaint filed by a cable television operator shall be dismissed where the utility has failed to provide the information in (g) of this section after such reasonable request. A utility should supply a cable television system operator the information required in paragraph (g) of this section, along with the supporting pages from its FERC Form 1, FCC Form M, or other report to a regulatory body, within 30 days of the request by the cable operator. (The cable operator, in turn, shall submit these pages with its complaint). If the utility did not supply these pages to the cable operator in response to the information request, it shall supply this information in its response to the complaint.

(i) The complaint shall include a brief summary of all steps taken to resolve the problem prior to filing. If no such steps were taken, the complaint shall state the reason(s) why it believed such steps were fruitless.

* * * * *

4. In § 1.1409, paragraph (b) is revised to read as follows:

§ 1.1409 Commission consideration of the complaint.

* * * * *

(b) The complainant shall have the burden of establishing a prima facie case that the rate, term, or condition is not just and reasonable. If, however, a utility argues that the proposed rate is lower than its incremental costs, the

utility has the burden of establishing that such rate is below the statutory minimum just and reasonable rate.

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-19277 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-138; RM-5204, RM-5379, and RM-5481]

Radio Broadcasting Services; Brooksville, Homosassa, and Ocala, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 225C2 for Channel 224A at Ocala, Florida, and modifies the Class A license for Station WMFQ(FM) to specify the Class C2 channel, in response to a counterproposal filed by the licensee, Greater Ocala Broadcasting Corp. A site restriction 5.8 miles southeast is imposed on Channel 225C2 at Ocala. The request of Radio Development Laboratories to allot Channel 225A to Brooksville, Florida, as proposed by the *Notice* is denied. Additionally, a counterproposal filed by Central Radio Communications, Inc. proposing to allot Channel 225A to Homosassa, Florida, is dismissed at the request of the petitioner. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 2, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-138, adopted July 24, 1987, and released August 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Florida, by removing Channel 224A and adding Channel 225C2 for Ocala.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-19275 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-309; RM-4959]

Radio Broadcasting Services; Manhattan and Ogden, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 284C2 to Manhattan, Kansas as that community's second FM channel at the request of William Gaines, et al. It denies the request of Manhattan Broadcasting Company to substitute Channel 284C2 for Channel 269A and to modify the license of Station KMKF, Manhattan, Kansas. It also reallocates Channel 280A from Manhattan, Kansas to Ogden, Kansas to reflect its actual usage in that community. With this action this proceeding is terminated.

EFFECTIVE DATE: October 2, 1987. The window period for filing applications will open on October 5, 1987, and close on November 4, 1987.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-309, adopted July 27, 1987, and released August 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding the entry of Channel 284C2 to Manhattan, Kansas; removing the entry of Channel 280A to Manhattan, Kansas; and adding the entry of Channel 280A to Ogden, Kansas.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-19274 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-357; RM-5418]

Radio Broadcasting Services; Ankeny, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 223C2 for Channel 292A at Ankeny, Iowa and modifies the license of Station KJJY(FM), Ankeny to specify the new channel at the request of Fuller-Jeffrey Broadcasting Corporation of Greater Des Moines. Channel 292A is retained at Ankeny, Iowa in response to an expression of interest filed by Harold A. Jahnke. With this action, this proceeding is terminated.

DATES: Modification effective October 2, 1987; The window period for filing applications for Channel 292A will open on October 5, 1987, and close on November 4, 1987.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-357, adopted July 27, 1987, and released August 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Channel 223C2 at the entry for Ankeny, Iowa.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-19276 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-59; RM-5082]

Radio Broadcasting Services; Lincoln, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 287A to Lincoln, Nebraska, as the community's sixth local FM service, at the request of Dan Norton. Channel 287A can be allocated to Lincoln in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

DATES: Effective date: September 28, 1987. The window period for filing applications will open on September 29, 1987, and close on October 29, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-59, adopted July 24, 1987, and released August 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Lincoln, Nebraska, is amended by adding Channels 287A and 297C1 and removing Channel 297.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-19265 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-514; RM-5571]

Radio Broadcasting Services; Jackson, NH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Michael J. Osborne, allocates Channel 258A to Jackson, NH, as the community's first local FM service. Channel 258A can be allocated to Jackson in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Canadian concurrence has been received since Jackson is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective Date: September 28, 1987. The window period for filing applications will open on September 29, 1987, and close on October 29, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-514, adopted July 24, 1987, and released August 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Jackson, New Hampshire, Channel 258A.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-19266 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-515; RM-5539]

Radio Broadcasting Services, Perry, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of The Andover Corporation, allocates Channel 286A to Perry, Oklahoma, as the community's first local FM service. Channel 286A can be allocated to Perry in compliance with the Commission's minimum distance separation requirements without a site restriction of 3.5 kilometers (2.2 miles) southwest to avoid a short-spacing to Station KXLK, Channel 287, Haysville, Kansas. With this action, this proceeding is terminated.

EFFECTIVE DATES: September 28, 1987; The window period for filing applications will open on September 29, 1987, and close on October 29, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-515, adopted July 24, 1987, and released August 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Perry, Oklahoma, Channel 286A.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-19267 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-433; RM-5477]

Radio Broadcasting Services; Hormigueros, PR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Occidental Broadcasting Corporation, allocates Channel 291A to Hormigueros, Puerto Rico, as the community's second local FM service. Channel 291A can be allocated to Hormigueros in compliance with the Commission's minimum distance separation requirements with a site restriction of 6 kilometers (3.7 miles) south to avoid a short-spacing to Station WRFE, Aguada, Puerto Rico. The request of Aurio Matos, licensee of Station WRFE, that the Commission allocate Channel 300A to Hormigueros, rather than 291A, is denied since it conflicts with the construction permit of Station WCMN(FM), Channel 297, Arecibo, Puerto Rico. With this action, this proceeding is terminated.

DATES: Effective Date: September 28, 1987; the window period for filing applications will open on September 29, 1987, and close on October 29, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-433, adopted July 24, 1987, and released August 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Hormigueros, Puerto Rico, is amended by adding Channel 291A.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-19268 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. MC-5 (Sub-No. 8)]

Property Broker Security for Protection of the Public; Decision

AGENCY: Interstate Commerce Commisison.

ACTION: Interim rule.

SUMMARY: At 52 FR 27351, July 21, 1987, the Commission issued interim rules for adopting procedures, for brokers to file other evidence of security as an alternative to filing a surety bond. Through this notice we are modifying the description of our Fee Item (78) to provide for a filing fee for such filings. We find that good cause under 5 U.S.C. 533(b) exists to waive notice and public comment and to have this modification effective upon publication of this notice because delay in implementing the fee change would be contrary to the public interest.

DATES: This interim rule is effective on August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, 202-275-7428.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission decision. To purchase a copy of the full decision write to T.S. InfoSystems, Room 2229, 12th & Constitution Avenue NW., Washington, DC 20423 or call (202) 289-4357, or TDD for hearing impaired (202) 275-1721.

This action will not significantly affect the quality of the human environment or the conservation of energy resources. The Commission certifies that the adoption of this interim rule will not have a significant impact on a substantial number of small entities because we are only applying the fee normally paid for surety bonds filings.

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure.

Decided: August 14, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

Appendix

Title 49 of the Code of Federal Regulations, Part 1002 is amended as follows:

PART 1002—FEES

1. The authority citation for Part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701, and 49 U.S.C. 10321.

2. Section 1002.2 is amended by revising paragraph (f)(78) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) * * *

(78) A service fee for insurer, surety or self-insurer accepted certificate of surety bond, or other instrument submitted in lieu of a broker surety bond. The fee is based on a formula of $10 per accepted certificate of insurance or surety bond or instrument in lieu of a broker surety bond as indication of ICC insurance activity. (There is a $50 annual minimum; but the minimum does not apply to an instrument submitted in lieu of a surety bond), $10 per accepted cetificate or other instrument in lieu of a broker surety bond.

* * * * *

[FR Doc. 87-19362 Filed 8-21-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Early Seasons, Bag Limits and Possession of Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico and the Virgin Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily

bag and possession limits of mourning doves, white-winged and white-tipped doves, band-tailed pigeons, rails, woodcock, common snipe, common moorhens and purple gallinules; teal in September, in the contiguous United States; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in Florida, Iowa, Kentucky and Tennessee; Canada geese in September in parts of Illinois, Michigan and Minnesota; sandhill cranes in the Central and Pacific Flyways; sandhill cranes and Canada geese in southwestern Wyoming; migratory game birds in Alaska, Puerto Rico and the Virgin Islands; and extended falconry seasons during 1987–88. The taking of these migratory birds is prohibited unless hunting seasons are specifically provided. The rules will permit the hunting of these species within specified periods of time beginning as early as September 1, as has been the case in past years.

DATE: Effective on August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 536, Matomic Building, 1717 H Street NW, Washington, DC, telephone 202–254–3207.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918, (40 Stat. 755, 16 U.S.C. 703 et seq.), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

On March 13, 1987, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the **Federal Register** (52 FR 7900) a proposal to amend 50 CFR Part 20, with comment periods ending June 18, July 14, and August 25, 1987, respectively, for the 1987–88 hunting season frameworks proposed for Alaska, Hawaii, Puerto Rico and the Virgin Islands; other early seasons; and late seasons. That document dealt with the establishment of hunting seasons, hours, areas and limits for migratory game birds under §§ 20.101 through 20.107 and 20.109 of Subpart K. On June 3, 1987, the service published in the **Federal Register** (52 FR 20757) a second document consisting of a supplemental proposed rulemaking dealing with both the early and late-season frameworks. On July 2, 1987, the Service published for public comment in the **Federal Register** (52 FR 25170) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. On August 3, 1987, the Service published in the **Federal Register** (52 FR 28717) a fourth document consisting of final frameworks for Alaska, Puerto Rico and the Virgin Islands. On August 6, 1986, the Service published a fifth document (52 FR 29187) consisting of a final rulemaking for the early-season frameworks for migratory game bird hunting regulations from which state wildlife conservation agency officials selected early-season hunting dates, hours, areas and limits for the 1987–88 season. On August 14, 1987, the Service published a sixth document in the **Federal Register** (52 FR 30395) consisting of a proposed rulemaking dealing specifically with frameworks for late-season migratory bird hunting regulations. The final rule described here is the seventh in a series of proposed, supplemental and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending Subpart K of 50 CFR Part 20 to set hunting seasons, hours, areas and limits for mourning doves, white-winged and white-tipped doves, bank-tailed pigeons, rails, woodcock, snipe, and common moorhens nd purple gallinules; September teal seasons; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in Florida, Iowa, Kentucky and Tennessee; Canada geese in September in parts of Illinois, Michigan and Minnesota; sandhill cranes in the Central and Pacific Flyways; sandhill cranes and Canada geese in southwestern Wyoming; migratory game birds in Alaska; Puerto Rico and the Virgin Islands; and extended falconry seasons.

Nontoxic Shot Regulations

In the July 21, 1987, **Federal Register** (52 FR 27352), the Service published a final rule describing zones in which use of lead shot would be prohibited for hunting waterfowl, coots and certain other species in the 1987–88 hunting season. Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 24241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of the environmental assessment are available from the Service at the address indicated under the caption ADDRESS. As noted in the March 13, 1987, **Federal Register** (52 FR 7905), the Service is preparing a Supplemental Environmental Impact Statement (SEIS) on the FES. The Service indicated a mid-July publication date for a draft SEIS to be followed by public meetings prior to preparation of the final SEIS was anticipated; however, it is now unlikely that the draft SEIS will be available before early September.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and shall] "insure that any action authorized, funded or carried out . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or modification of [critical] habitat . . ."

Subsequently, the Service initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 15, 1987, the Office of Endangered Species, gave a biological opinion that the proposed actions were not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under Section 7 is considered a public document and is available for inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

In the **Federal Register** dated March 13, 1987, (52 FR 7900), the Service

reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** dated August 3, 1987, (52 FR 28717).

Authorship

The primary author of this rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

Regulations Promulgation

After analysis of migratory game bird survey data obtained through investigations conducted by the Service, State conservation agencies, and other sources, and consideration of all comments received on the early proposals (52 FR 7900, March 13, 1987; 52 FR 20757, June 3, 1987; and 52 FR 25170, July 2, 1987), the Service published in the **Federal Register** on August 3, 1987, (52 FR 28717) final early-season frameworks for Alaska, Puerto Rico, and the Virgin Islands; and on August 6, 1987, (52 FR 29187) those for the contiguous United States and Hawaii. Copies of the final frameworks were sent to the officials of the State conservation agencies and to conservation agency officials in Puerto Rico and the Virgin Islands who were invited to submit recommendations for hunting seasons which complied with the season times and lengths, hours, areas and limits specified in the frameworks.

The taking of the designated species of migratory birds is prohibited unless open hunting seasons are specifically provided. The following amendments will permit taking of the designated species within specified time periods beginning as early as September 1, as has been the case in past years.

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when proposed rulemakings were published on March 13, June 3, and July 2, 1986, the Service established what it believed were the longest periods possible for public comment. In doing this the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select their season dates, shooting hours, hunting areas and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) (Administrative Procedure Act), and these regulations will, therefore, take effect immediately upon publication.

Accordingly, with each State conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State on those species of migratory birds for which open seasons are now to be prescribed, and consideration having been given to all other relevant matters presented, certain sections of Title 50, Chapter I, Subchapter B, Part 20, Subpart K, are amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting imports, Transportation, Wildlife.

PART 20—[AMENDED]

For these reasons set out in the preamble, Title 50, Chapter I, Subchapter B, Part 20, Subpart K, is amended as follows.

1. The authority citation for Part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712); Alaska Game Act of 1925, 43 Stat. 739, as amended, 54 Stat. 1103–04.

(**Note.**—The following annual hunting regulations provided for by §§ 20.101 through 20.106 and 20.109 of 50 CFR Part 20 will not appear in the Code of Federal Regulations because of their seasonal nature)

2. Section 20.101 is revised to read as follows:

§ 20.101 Seasons, limits and shooting hours for Puerto Rico and the Virgin Islands.

1. Subject to the applicable provisions of the preceding sections of this part, the open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits, and areas for hunting the species designated in this section are prescribed as follows:

(a) *Puerto Rico*

	Doves	*Pigeons*
Daily bag limit	10 singly or in the aggregate of all permitted species.	5
Possession limit	10 singly or in the aggregate of all permitted species.	5
Season dates	September 5 to November 2, 1987.	
Shooting hours	One-half hour before sunrise to sunset daily.	

Restrictions: Only the following species of doves and pigeons may be hunted during the open season: Zenaida dove (*Tortola cardosantera*); white-winged dove (*Tortola aliblanca o cubanita*); mourning dove (*Tortola rabilarga o rabiche*); and scaly-naped pigeon (*Paloma turca o torcaz*).

Closed Areas

No season is prescribed for doves and pigeons on Mona Island in order to give the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as *Paloma cabeciblanca*, a chance to recover.

No season is prescribed for doves and pigeons in the Municipality of Culebra and on Desecheo Island.

No season is prescribed in the El Verde Closure Area consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows. (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one (1) kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

No season is prescribed for doves and pigeons of any species in all of Cidra Municipality and in portions of Aguas Buenas, Caguas, Cayey, and Comerio

Municipalities as encompassed within the following boundary: Beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavata, west along the Rio Guavata to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning.

Check Commonwealth Regulations for Additional Restrictions

(b) *Puerto Rico*

	Ducks	Coots	Common Moorhens (Gallinules)	Common Snipe
Daily bag limits.	4	Closed	6	6
Possession limits.	8	Closed	12	12
Season dates.	November 7 to December 7, 1987 & February 6 to February 28, 1988.			
Shooting hours.	One-half hour before sunrise until sunset daily.			

Restrictions: No season is prescribed for waterfowl in the Municipality of Culebra and on Desecheo Island. The season is closed on the ruddy duck (*Oxyura jamaicensis*); Bahama pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*); masked duck (*Oxyura dominica*); purple gallinule (*Porphyrula martinica*); common coot (*Fulica americana*); and Caribbean coot (*Fulica carbaea*).

Check Commonwealth Regulations for Additional Restrictions

Note.—Local names for game birds: Ruddy duck (*Oxyura jamaicensis*)—Pato rojo (protected); purple gallinule (*Porphyrula martinica*)—Gallareta azul (protected); and Puerto Rican plain pigeon (*Columba inornata wetmorei*)—Paloma sabanera (protected).

(c) *Virgin Islands*

	Zenaida Dove	Scaly-naped Pigeon	Ducks
Daily bag limits	10	5	4
Possession limits	10	5	8
Season dates:			
Zenaida dove and scaly-naped pigeon.	September 1 through October 30, 1987.		
Ducks only	December 8, 1987, through January 31, 1988.		
Shooting hours	One half-hour before sunrise until sunset.		

Restrictions: Seasons are closed for ground or quail doves and pigeons (except scaly-naped pigeon) in the Virgin Islands. The season is closed on the ruddy duck (*Oxyura jamaicensis*); White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*); masked duck (*Oxyura dominica*), and purple gallinule (*Porphyrula martinica*).

Note.—Local names for game birds: Zenaida dove—mountain dove; Bridled quail dove—Barbary dove, partridge (protected); Ground dove—stone dove, tobacco dove, rola, tortolita (protected); Scaly-naped pigeon—red-necked pigeon, scaled pigeon.

Check Commonwealth Regulations for Additional Restrictions

3. Section 20.102 is revised to read as follows:

§ 20.102 Seasons, limits, and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Shooting and hawking hours: One-half hour before sunrise to sunset daily.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Open seasons	Ducks, geese, cranes, and snipe	Brant
Area:		
State Game Mgmt. Units: 11–13 and 17–26	Sept. 1–Dec. 16	Sept. 1–Oct. 20.
State Game Mgmt. Units: 5–7, 9, 14–16 & 10 (Unimak Island only)	Sept. 1–Dec. 16	Sept. 12–Oct. 31.
State Game Mgmt. Units: 1–4	Sept. 1–Dec. 16	Sept. 12–Oct. 31.
State Game Mgmt. Unit 10 (except Unimak Island)	Oct. 8–Jan. 22	Oct. 8–Nov. 26.
State Game Mgmt. Unit 8	Oct. 8–Jan. 22	Oct. 8–Nov. 26.

DAILY BAG AND POSSESSION LIMITS

Area	Ducks [1]	Geese [2]	Emperor geese	Brant	Common sandhill	
					Snipe	Cranes
Units 11–13 and 17–26	10–30	6–12	Closed	2–4	8–16	2–4 in Unit 17; 3–6 in Units 11–13 and 18–26
Units 5–7, 9, 14–16 and 10 (Unimak Island only)	8–24	6–12	Closed	2–4	8–16	2–4
Units 1–4	7–21	6–12	Closed	2–4	8–16	2–4
Unit 10 (except Unimak Island)	7–21	6–12	Closed	2–4	8–16	2–4
Unit 8	7–21	6–12	Closed	2–4	8–16	2–4

[1] In Units 1–26 (Statewide) the basic daily bag and possession limits may include not more than 3 and 9 pintails, respectively. In addition to the basic daily bag and possession limits, a daily bag limit of 15 and a possession limit of 30 is permitted singly or in the aggregate of the following species: scoter, eider, oldsquaw, harlequin, and American and red-breasted mergansers.

[2] No more than 4 daily, or 8 in possession may be any combination of Canada and/or white-fronted geese, provided that: in Units 1–9 and 14–18, no more than 2 daily, or 4 in possession, may be white-fronted geese. In Units 5 and 6, the taking of Canada geese is only permitted from September 21 through December 16. In Units 8, 9(E), 10 (except Unimak Island) and 18, the taking of Canada gesse is prohibited. In Unit 1(C), the taking of snow geese is prohibited. In Units 1–26 (Statewide) the taking of Aleutian and cackling Canada geese and emperor geese is prohibited.

4. Section 20.103 is revised to read as follows:

§ 20.103 Seasons, limits, and shooting hours for mourning and white-winged doves and wild pigeons.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) *Mourning Doves—Eastern Management Unit.*

In all States except Alabama, Illinois, Mississippi and Tennessee:	
Daily bag limit	12
Possession limit	24
In Illinois, Mississippi and Tennessee:	
Daily bag limit	15
Possession limit	30
In Alabama:	
North Zone:	
Daily bag limit	15
Possession limit	15
South Zone:	
Daily bag limit	12
Possession limit	12

Shooting and hawking hours: One-half hour before sunrise to sunset except as noted otherwise.

Check State regulations for additional restrictions, including area descriptions

Seasons in:	
Alabama:	
North Zone (1):	
12 noon to sunset	Sept. 5.
½ hour before sunrise to sunset.	Sept. 6–Sept. 14 and Sept. 19–Oct. 14 and Dec. 23–Jan. 15.
South Zone (1):	
½ hour before sunrise to sunset.	Sept. 26–Sept. 27 and Oct. 10–Nov.29
12 noon to sunset	Dec. 23–Jan. 8.
Connecticut	Closed.
Delaware (12 noon to sunset).	Sept. 5–Sept. 26 and Oct. 12–Oct. 24 and Dec. 7–Jan. 9.
Florida (2):	
12 noon to sunset	Oct. 3–Oct. 25.
½ hour before sunrise to sunset.	Nov. 14–Nov. 29 and Dec. 12–Jan. 10.
Georgia:	
North Zone (3):	
12 noon to sunset	Sept. 5.
½ hour before sunrise to sunset.	Sept. 6–Oct. 4 and Nov. 26–Nov. 29 and Dec. 11–Jan. 15.
South Zone (3):	
12 noon to sunset	Sept. 26.
½ hour before sunrise to sunset.	Sept. 27–Oct. 25 and Nov. 26–Nov. 29 and Dec. 11–Jan. 15.
Illinois (12 noon to sunset).	Sept. 1–Oct. 30.
Indiana:	
12 noon to sunset	Sept. 1–Oct. 15.
½ hour before sunrise to sunset.	Nov. 6–Nov. 30.
Kentucky:	
11 a.m. to sunset	Sept. 1–Oct. 31.
Sunrise to sunset	Nov. 28–Dec. 6.
Louisiana:	
12 noon to sunset	Sept. 5–Sept. 6 and Oct. 24–Oct. 25 and Dec. 12–Dec. 13.
½ hour before sunrise to sunset.	Sept. 7–Sept. 13 and Oct. 26–Nov. 29 and Dec. 14–Jan. 4
Maine	Closed.
Maryland:	
12 noon to sunset	Sept. 1–Oct. 24.
½ hour before sunrise to sunset.	Nov. 14–Nov. 21 and Dec. 19–Dec. 26.
Massachusetts	Closed.
Michigan	Closed.
Mississippi (½ hour before sunrise to sunset).	Dept. 5–Sept. 20 and Oct. 17–Nov. 14 and Dec. 19–Jan. 2.
New Hampshire	Closed.
New Jersey	Closed.
New York	Closed.
North Carolina:	
½ hour before sunrise to sunset.	Sept. 5–Oct. 15 and Nov. 23–Nov. 28 and Dec. 18–Jan. 9.
Ohio	Closed.
Pennsylvania:	
12 noon to sunset	Sept. 1–Oct. 17.
½ hour before sunrise to sunset.	Oct. 31–Nov. 21.
Rhode Island:	
12 noon to sunset	Sept. 14–Oct. 4.
sunrise to sunset	Oct. 17–Dec. 4.
South Carolina (½ hour before sunrise to sunset).	Sept. 5–Oct. 10 and Nov. 21–Nov. 28 and Dec. 19–Jan. 13.
Tennessee	
½ hour before sunrise to sunset.	Sept. 1–Sept. 29 and Oct. 10–Oct. 24 and Dec. 12–Dec. 27.
Vermont	Closed.
Virginia:	
12 noon to sunset	Sept. 5–Nov. 7.
½ hour before sunrise to sunset.	Dec. 24–Dec. 26 and Dec. 31–Jan. 2.
West Virginia:	
12 noon to sunset	Sept. 1–Oct. 31.
½ hour before sunrise to sunset.	Dec. 25–Jan. 2.
Wisconsin	Closed.

(1) In Alabama, the South Zone is defined as: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: remainder of the State.

(2) In Florida, the daily bag limit is 12 mourning and white-winged doves in the aggregate, of which not more than 4 may be white-winged doves. The possession limit is 24 mourning and white-winged doves in the aggregate, of which not more than 8 may be white-winged doves.

(3) In Georgia, the North Zone is defined as that area lying north of a division line as follows: U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County, south along the western border of Jeff Davis County, east along the southern border of Jeff Davis and Appling Counties, north along the eastern border of Appling County to the Altamaha River, east to the eastern border of Tattnall County; north along the eastern boundary of Tattnall County, north along the western border of Evans County to Candler County, east along the northern border of Evans County to Bulloch County, north along the western border of Bulloch County to Highway 301, then northeast along Highway 301 to the South Carolina line.

(b) *Mourning Doves—Central Management Unit.*

In Missouri:	
Daily bag limit	10
Possession limit	20
In Texas:	
Daily bag limit	12(3)
Possession limit	24(3)
In Arkansas, Colorado, Kansas, Nebraska, North Dakota, New Mexico, Oklahoma, South Dakota, Wyoming and Montana:	
Daily bag limit	15(1)
Possession limit	30(1)

Shooting and hawking hours: One-half hour before sunrise until sunset except as noted otherwise.

Check State Regulations For Additional Restrictions, Including Area Descriptions

Seasons in:	
Arkansas	Sept. 5–Sept. 27 & Oct. 10–Oct. 25 & Dec. 19–Jan. 8.
Colorado	Sept. 1–Oct. 30.
Iowa	Closed.
Kansas	Sept. 1–Oct. 30.
Minnesota	Closed.
Missouri	Sept. 1–Nov. 9.

Montana	Sept. 5–Oct. 12.
Nebraska	Sept. 1–Oct. 30.
New Mexico (1).	Sept. 1–Sept. 30 & Dec. 1–Dec. 30.
North Dakota.	Sept. 1–Oct. 30.
Oklahoma	Sept. 1–Oct. 30.
South Dakota.	Sept. 1–Oct. 16.
Texas: (2)(3)	
North Zone.	Sept. 1–Nov. 9.
Central Zone.	Sept. 1–Oct. 30 & Jan. 2–Jan. 11.
South Zone (4).	Sept. 20–Nov. 18 & Jan. 2–Jan. 11.
Wyoming	Sept. 1–Oct. 15.

(1) In New Mexico, the daily bag limit is 15 and the possession limit is 30 whitewinged and mourning doves, singly or in the aggregate of these species.

(2) In Texas, the three zones are North, South and Central as follows:

NORTH ZONE—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

SOUTH ZONE—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then east on Interstate 10 to Orange, Texas.

CENTRAL ZONE—That portion of the State lying between the North and South Zones.

(3) In Texas, the daily bag limit is 12 mourning, white-winged and white-tipped doves in the aggregate, of which no more than 2 can be white-winged doves and two can be white-tipped doves; and the possession limit is 24, of which no more than 4 may be whitewings, and 4 may be whitetips.

(4) In Texas, the mourning dove season in the Special White-winged Dove Area of the South Zone is Sept. 20–Nov. 14 and Jan. 2–Jan. 11.

(c) *Mourning Doves—Western Management Unit.*

In Arizona, California, Idaho, Nevada, Oregon, Washington and Utah:

Daily bag limit.....10 (1)(2)
Possession limit.....20 (1)(2)

Shooting and hawking hours: One-half hour before sunrise until sunset.

Check State Regulations For Additional Restrictions, Including Area Descriptions

Seasons in:	
Arizona (1)	Sept. 1–Sept. 13 & Nov. 27–Dec. 28.
California (2).	Sept. 1–Sept. 30.
Idaho	Sept. 1–Sept. 30.
Nevada (2)	Sept. 1–Sept. 30.
Oregon	Sept. 1–Sept. 30.
Utah	Sept. 1–Sept. 30.
Washington	Sept. 1–Sept. 15.

(1) In Arizona, during September 1 through 13 the daily bag limit is 10 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit after opening day is 20 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves. During November 27 through December 28, the bag and possession limits are 10 and 20 mourning doves, respectively.

(2) In those counties of California (Imperial, Riverside, and San Bernardino) and Nevada (Clark and Nye) having a season on white-winged doves, the daily bag limit is 10 and the possession limit is 20 mourning and white-winged doves, singly or in the aggregate of these species.

Notice:—Hawaii—Subject to the applicable provisions of the preceding selections of this part, mourning doves may be taken in accordance with the State regulations.

(d) *White-winged Doves.*

Shooting and hawking hours: One-half hour before sunrise until sunset except as noted otherwise.

Check State Regulations For Additional Restrictions, Including Area Descriptions

	Season dates	Limits	
		Bag	Poss.
Seasons in:			
Arizona (Statewide).	Sept. 1–Sept. 13	6(1)	12(1)
California:			
Counties of Imperial, Riverside, and San Bernardino.	Sept. 1–Sept 30	10(2)	20(2)
Remainder of State.	Closed		
Florida	See Mourning dove regulations.		
Nevada:			
Counties of Clark and Nye.	Sept. 1–Sept. 30	10(2)	20(2)
Remainder of State.	Closed		
New Mexico	Sept. 1–Sept. 30 & Dec. 1–Dec. 30.	15(3)	30(3)
Texas: (4) (5)			
Area in South Zone.	Sept. 5, 6, 12 and 13.	10(5)	20(5)
Remainder of State.	See Mourning Dove regulations.		

(1) In Arizona during September 1 through 13 the daily bag limit is 10 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit after opening day is 20 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves.

(2) In designated counties of California and Nevada, the daily bag limit is 10 and the possession limit is 20 white-winged and mourning doves, singly or in the aggregate of both species.

(3) In New Mexico the daily bag limit is 15 and the possession limit is 30 white-winged and mourning doves, singly or in the aggregate of both species.

(4) SPECIAL WHITE-WINGED DOVE AREA IN THE SOUTH ZONE—That portion of State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

(5) In Texas, the daily bag limit in the Special White-winged Dove Area is 10 white-winged, mourning and white-tipped doves in the aggregate of which no more than 2 may be mourning doves and 2 may be white-tipped doves. Possession limit is twice the daily bag limit.

(e) *Band-tailed Pigeons.*

Shooting and hawking hours: one-half hour before sunrise until senset.

Check State Regulations For Additional Restrictions, Including Area Descriptions

	Season dates	Limits	
		Bag	Poss.
Seasons in:			
Seasons in:			
Arizona (1)	Oct. 9–Nov. 7	5	10
California:			
Counties of Alpine, Butte, Del Norte, Glen, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta Sierra, Siskiyou, Tehama, and Trinity.	Sept. 26–Oct 11	4	4
Remainder of State.	Dec. 12–Dec. 27	4	4
Colorado: In all lands west of U.S. Interstate 25 and Small Game Management Units 128, 129, 133–136 and 140–142.	Sept. 1–Sept. 30	5	10

	Season dates	Limits	
		Bag	Poss.
Nevada: Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral, and Storey Counties only.	Sept. 7–Sept. 22	4	4
New Mexico:			
North Zone (2)	Sept. 1–Sept. 20	5	10
South Zone (2)	Oct. 1–Oct. 20	5	10
Oregon	Sept. 7–Sept. 22	4	4
Utah	Sept. 1–Sept. 30	5	10
Washington	Sept. 7–Sept. 22	4	4

(1) Each hunter must have for Arizona a special bird permit stamp issued by the State.

(2) In New Mexico, the *North Zone* is defined as that area lying north and east of a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and then south along Interstate Highway 25 to the Texas State line. The *South Zone* is that area lying south and west of the North Zone.

5. Section 20.104 is revised to read as follows:

§ 20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are as follows:

	Rails (Sora & Virginia)	Rails (Clapper & King)	Woodcock	Common Snipe
Daily bag limit	25 (1)	See footnote (2).	5 (3)	8
Possession limit	25 (1)	See footnote (2).	10 (3)	16
Shooting Hours: One-half hour before sunrise until sunset daily on all species, except as noted otherwise.				
CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS				
Seasons in the Atlantic flyway:				
Connecticut	Sept. 1–Nov. 7	Sept. 1–Nov. 7.	Oct. 17–Nov. 30.	Oct. 17–Dec.5.
Delaware	Sept. 1–Nov. 9.	Sept. 1–Nov. 9.	Nov. 16–Dec. 30.	Nov. 16–Jan. 31.
Florida	Sept. 1–Nov. 9.	Sept. 1–Nov. 9	Dec. 12–Jan. 25.	Nov. 1–Feb. 15.
Georgia	Sept. 5–Nov. 13.	Sept. 5–Nov. 13.	Nov. 28–Jan. 11.	Nov. 20–Feb. 28.
Maine	Sept. 1–Nov. 9.	Closed	Oct. 1–Nov. 14.	Sept. 1–Dec. 16.
Maryland	Sept. 1–Nov. 9.	Sept. 1–Nov. 9	Oct. 14–Nov. 27.	Oct. 1–Jan. 15.
Massachusetts	Sept. 1–Nov. 8.	Closed.	Deferred.	Sept. 1–Dec. 13.
New Hampshire	Closed.	Closed.	Oct. 1–Nov. 14	Oct. 1–Nov. 30.
New Jersey (4):				
North Zone	Sept. 1–Nov. 9.	Sept. 1–Nov. 9.	Oct. 10–Nov. 13.	Oct. 2–Jan. 16.
South Zone	Sept. 1–Nov. 9.	Sept. 1–Nov. 9.	Nov. 7–Dec. 5 & Dec. 19–Dec. 24.	Oct. 2–Jan. 16.
New York:				
Long Island	Closed.	Closed.	Oct. 1–Nov. 14.	Closed.
Remainder of State	Sept. 1–Nov. 9.	Closed.	Oct. 1–Nov. 14.	Sept. 1–Dec. 16.
North Carolina	Sept. 7–Nov. 14.	Sept. 7–Nov. 14.	Nov. 21–Jan. 4.	Nov. 13–Feb. 27.
Pennsylvania	Sept. 1–Nov. 7.	Closed.	Oct. 17–Nov. 7.	Oct. 17–Dec. 12.
Rhode Island	Sept. 14–Nov. 22.	Sept. 14–Nov. 22.	Oct. 17–Nov. 30.	Sept. 14–Dec. 4 & Dec. 14–Jan. 7.
South Carolina	Sept. 4–Oct. 10 & Oct. 23–Nov. 24.	Sept. 4–Oct. 10 & Oct. 23–Nov. 24.	Nov. 26–Jan. 9.	Nov. 14–Feb. 28.
Vermont	Sept. 26–Dec. 4.	Closed.	Oct. 1–Nov. 14.	Sept. 26–Dec. 4.
Virginia	Sept. 1–Nov. 9.	Sept. 1–Nov. 9.	Nov. 2–Nov. 26 & Dec. 21–Jan. 9.	Oct. 16–Jan. 30.
West Virginia	Sept. 1–Nov. 7.	Closed	Oct. 17–Nov. 30.	Sept. 1–Dec. 16.
Seasons in the Mississippi Flyway:				
Alabama (10)	Nov. 12–Jan. 20.	Nov. 12–Jan. 20	Nov. 28–Jan. 31.	Nov. 14–Feb. 28.
Arkansas	Sept. 1–Nov. 9.	Closed.	Nov. 7–Dec. 13 & Jan. 9–Feb. 5.	Sept. 12–Sept. 20 & Nov. 21–Feb. 26.
Illinois	Sept. 1–Nov. 9.	Closed.	Oct. 1–Dec. 4.	Sept. 12–Dec. 29.
Indiana	Sept. 1–Nov. 9.	Closed.	Sept. 19–Sept. 25 & Oct. 3–Nov. 29.	Sept. 1–Dec. 16.
Iowa (5)	Sept. 5–Nov. 13.	Closed.	Sept. 19–Nov. 22.	Sept. 5–Dec. 20.
Kentucky	Deferred.	Closed.	Oct. 1.Dec. 4.	Oct. 1–Dec. 4.
Louisiana	Sept. 19–Sept. 27 & Nov. 7–Jan. 6.	Sept. 19–Sept. 27 & Nov. 7–Jan. 6.	Dec. 5–Feb. 7.	Nov. 7–Feb. 21.
Michigan (6)	Sept. 15–Nov. 14.	Closed.	Sept. 15–Nov. 14.	Sept. 15–Nov. 14.
Minnesota	Sept. 1–Nov. 4.	Closed.	Sept. 1–Nov. 4.	Sept. 1–Nov. 4.
Mississippi	Oct. 17–Dec. 25.	Oct. 17–Dec. 25	Dec. 26–Feb. 28.	Nov. 14–Feb. 28.
Missouri	Sept. 1–Nov. 9.	Closed.	October 15–Dec. 18.	Sept. 1–Dec. 16.
Ohio	Sept. 1–Nov. 9.	Closed.	Sept. 25–Nov. 28.	Sept. 1–Nov. 28 & Dec. 7–Dec. 24.
Tennessee	Deferred.	Closed.	Oct. 24–Nov. 29 & Feb. 1–Feb. 28.	Nov. 14–Feb. 28.
Wisconsin	Deferred.	Closed.	Sept. 12–Nov. 15.	Deferred.
Seasons in the Central Flyway:				
Colorado (7)	Sept. 1–Nov. 9.	Closed.	Closed.	Sept. 1–Dec. 2.
Kansas	Sept. 12–Nov. 20.	Closed.	Oct. 3–Dec. 6.	Sept. 12–Dec. 27.
Montana (7)	Closed.	Closed.	Closed.	Oct. 3–Dec. 1.
Nebraska (8)	Sept. 1–Nov. 9.	Closed.	Sept. 15–Nov. 18.	Sept. 1–Dec. 15.
New Mexico (7)(11)	Sept. 1–Oct. 31.	Closed.	Closed.	Sept. 1–Nov. 30.
North Dakota	Closed.	Closed.	Closed.	Oct. 3–Nov. 22.
Oklahoma	Sept. 1–Nov. 9.	Closed.	Oct. 24–Dec. 27.	Oct. 1–Jan. 15.
South Dakota (9)	Closed.	Closed.	Closed.	Sept. 1–Oct. 31.
Texas	Sept.–Nov. 9.	Sept. 1–Nov. 9.	Deferred.	Deferred.
Wyoming (7)	Sept. 19.–Nov. 27.	Closed.	Closed.	Sept. 19–Jan. 3.
Seasons in the Pacific Flyway:				
Colorado (7)	Sept. 1–Nov. 9.	Closed.	Closed.	Sept. 1–Dec. 2.
Montana (7)	Closed.	Closed.	Closed.	Oct. 3–Dec. 20.
New Mexico (7)(11)	Sept. 1–Oct. 31.	Closed.	Closed.	Sept. 1–Nov. 30.
Wyoming (7)	Sept. 19–Nov. 27.	Closed.	Closed.	Sept. 19–Dec. 20.

NOTE: No seasons are prescribed for woodcock. Snipe seasons have been deferred by all other States in the Pacific Flyway.

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these two species.

(2) In addition to the limits on sora and Virginia rails, in Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, there is a daily bag limit of 10 and possession limit of 20 clapper and king rails, singly or in the aggregate of these two species, except that the season is closed on king rails in New Jersey by State regulation. In Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia, there is a daily bag limit of 15 and possession limit of 30 clapper and king rails, singly or in the aggregate of these two species.

(3) In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 6 in possession.

(4) For description of zones or management units within a State, see State regulations.

(5) In Iowa, rail limits are 15 daily and 25 in possession.

(6) See State regulations for listing of certain Great Lakes waters where the season is to open concurrently with the duck season.

(7) The Central Flyway portion consists of: *Colorado* and *Wyoming*—the area lying east of the Continental Divide; *Montana*—the area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties; *New Mexico*—the area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation. The remaining portions of these States are in the Pacific flyway.

(8) In Nebraska, the rail limits are 10 daily and 20 in possession.

(9) In South Dakota, the snipe limits are 5 daily and 15 in possession.

(10) In Alabama, the rail limits are 15 daily and 15 in possession.

(11) In New Mexico, the rail limits are 10 daily and 10 in possession.

Note: Some States may select rail, woodcock, and snipe seasons at the time they select their duck seasons in August. Consult waterfowl regulations to be published later for information concerning these seasons.

6. Section 20.105 is amended by revising paragraphs (a) through (c) and by amending paragraph (d) to read as follows:

§ 20.105 Seasons, limits, and shooting hours for waterfowl, coots, and common moorhens and purple gallinules.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) *Sea Ducks.*

(1) An open season for taking scoter, eider and oldsquaw ducks is prescribed according to the following table during the period between September 15, 1987, and January 20, 1988, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York; in any waters of the Atlantic Ocean and, in addition, in any tidal waters of any bay which are separated by at least one mile of open water from any shore, island and emergent vegetation in New Jersey, South Carolina and Georgia; and in any waters of the Atlantic Ocean and/or in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated as special duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season conventional or point-system daily bag and possession limits.

(2) The daily bag limit is 7 and the possession limit is 14, singly or in the aggregate of these species. Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may set, in addition to the regular season limits, a daily bag limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

(3) Shooting hours are one-half hour before sunrise until sunset daily.

Check State Regulations for Additional Restrictions

Seasons in:	
Connecticut	Deferred.
Delaware	Sept. 26–Jan. 9.
Georgia	Deferred.
Maine	Deferred.
Maryland	Oct. 6–Jan. 20.
Massachusetts	Deferred.
New Hampshire	Sept. 15–Dec. 30.
New Jersey	Oct. 2–Jan. 16.
New York (Long Island only).	Sept. 26–Jan. 11.
North Carolina	Deferred.
Rhode Island	Deferred.
South Carolina	Deferred.
Virginia	Deferred.

(4) Notwithstanding the provisions of this Part 20, the shooting of *crippled* waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated and designated in their respective hunting regulations as being open to sea duck hunting.

Note.—States with deferred seasons may select sea duck seasons at the time they select their waterfowl seasons in August. Consult waterfowl regulations to be published later for information concerning these later seasons.

(b) *Teal.* September season: An open season for teal ducks (blue-winged, green-winged, and cinnamon) is prescribed according to the following table in those areas which are described, delineated, and designated in the hunting regulations of the following States:

Daily bag limit.....4
Possession limit.....8
Shooting and hawking hours: Sunrise until sunset daily.

Check State Regulations for Additional Restrictions

Seasons in the Mississippi Flyway:	
Alabama (1)	Sept. 12–Sept. 20.
Arkansas	Sept. 12–Sept. 20.
Illinois (2)	Sept. 5–Sept. 13.
Indiana (3)	Sept. 5–Sept. 13.
Louisiana	Sept. 19–Sept. 27.
Mississippi	Sept. 12–Sept. 20.
Missouri	Sept. 12–Sept. 20.
Ohio	Sept. 11–Sept. 19.
Seasons in the Central Flyway:	
Colorado (4)	Sept. 5–Sept. 13.
Kansas	Sept. 12–Sept. 20.
New Mexico (5)	Sept. 5–Sept. 13.
Oklahoma	Sept. 5–Sept. 13.
Texas	Sept. 19–Sept. 27.

(1) In Alabama, hunting hours in the Mobile Delta north of the causeway and south of the L&N Railroad are sunrise to 12 noon.

(2) In Illinois, shooting hours are from 7 a.m. to 4 p.m. local time by State Regulation.

(3) In Indiana, the Kankakee fish and wildlife area, and portions of Atterbury, Hovey Lake, Jasper-Pulaski, and Pigeon River

fish and wildlife areas are closed to teal hunting by State regulations.

(4) Only in Lake and Chaffee Counties, and that portion of Colorado east of U.S. Highway-Colorado State Highway 85 from the Wyoming State line to its intersection with U.S. Interstate Highway 25 to the New Mexico State line.

(5) Central Flyway portion only.

(c) *Common Moorhens and Purple Gallinules.*

Daily bag limit	15 singly or in the aggregate of the two species.
Possession limit	30 singly or in the aggregate of the two species.

Shooting hours: One-half hour before sunrise to sunset.

Check State Regulations for Additional Restrictions

Seasons in the Atlantic Flyway:	
Connecticut	Sept. 1–Nov. 7.
Delaware	Sept. 1–Nov. 9.
Florida (1)	Sept. 1–Nov. 9.
Georgia	Deferred
Maine	Sept. 1–Nov. 9.
Maryland	Closed.
Massachusetts	Closed.
New Hampshire	Closed.
New Jersey (2)	Sept. 1–Nov. 9.
New York:	
Long Island	Closed.
Remainder of State.	Sept. 1–Nov. 9.
North Carolina	Sept. 7–Nov. 14.
Pennsylvania	Sept. 1–Nov. 7.
Rhode Island	Sept. 14–Nov. 22.
South Carolina	Sept. 4–Oct. 10 & Oct. 23–Nov. 24.
Vermont	Sept. 26–Dec. 4.
Virginia	Deferred.
West Virginia	Deferred.
Seasons in the Mississippi Flyway:	
Alabama (3)	Nov. 12–Jan. 20.
Arkansas	Sept. 1–Nov. 9.
Illinois	Closed.
Indiana	Sept. 1–Nov. 9.
Iowa	Closed.
Kentucky	Deferred.
Louisiana	Sept. 19–Sept. 27 & Nov. 7–Jan. 6.
Michigan	Deferred.
Minnesota	Deferred.
Mississippi	Oct. 17–Dec. 25.
Missouri	Closed.
Ohio	Sept. 1–Nov. 9.
Tennessee	Deferred.
Wisconsin	Deferred.
Seasons in the Central Flyway:	
Colorado (4)	Closed.
Kansas	Closed.
Montana (4)	Closed.
Nebraska	Closed.
New Mexico (4)(5)	Oct. 10–Dec. 19.
North Dakota	Closed.
Oklahoma	Sept. 1–Nov. 9.
South Dakota	Closed.
Texas	Sept. 1–Nov. 9.
Wyoming (4)	Closed.
Seasons in the Pacific Flyway:	
All States and portions thereof.	Deferred.

(1) The season in Florida applies to the common moorhen only. There is no open season on the purple gallinule in Florida.

(2) In New Jersey, the bag limit is 10 daily and 20 in possession.

(3) In Alabama, the bag limit is 15 daily and 15 in possession.

(4) Seasons apply to Central Flyway portion of State only.

(5) In New Mexico, the bag limit is 5 common moorhens daily and 10 in possession; there is no open season on the purple gallinule in New Mexico.

Note.—States with deferred seasons may select gallinule seasons at the time they select their waterfowl seasons in August. Consult waterfowl regulations to be published later for information concerning these later seasons.

(d) *Waterfowl and coots in Atlantic, Mississippi, Central and Pacific Flyways.*

Atlantic Flyway

Flywaywide Restrictions. Shooting (including hawking) hours: One half hour before sunrise to sunset daily except as otherwise restricted.

* * * * *

	Season dates	Limits: Bag	Limits: Possession
* *	*	*	*
Florida:			
Ducks, no more than 1 of which may be a species other than teal or wood duck, and the possession limit will be double the daily bag limit.	Sept. 26–Sept. 30.	4	8
* *	*	*	*

Mississippi Flyway

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily except as otherwise restricted.

* * * * *

	Season Dates	Limits: Bag	Limits: Possession
* *	*	*	*
Illinois: [1]			
Geese			
Canada	Sept. 1–Sept. 10.	5	10
* *	*	*	*
Iowa:			
Ducks			
North Zone [2]	Sept. 19–Sept. 23..	(3)	(3)
South Zone [2] (2).	Sept. 19–Sept. 21..	.....	

	Season Dates	Limits	
		Bag	Possession
* *	*	*	*
Kentucky:			
Ducks, no more than 2 of which may be wood ducks, and no more than 1 of which may be a species other than teal or wood duck, and the possession limit will be double the daily bag limit.	Sept. 9–Sept. 13..	4	8
* *	*	*	*
Michigan:[1]			
Geese			
Canada	Sept. 1–Sept. 10.	3	6
* *	*	*	*
Minnesota:[1]			
Geese			
Canada	Sept. 1–Sept. 10.	4	8
* *	*	*	*
Tennessee:			
Ducks, no more than 2 of which may be wood ducks, and no more than 1 of which may be a species other than teal or wood duck, and the possession limit will be double the daily bag limit.	Sept. 12-Sept. 16..	4	8
* * * * *			

[1] Check State regulations for areas open to the hunting of Canada geese.

[2] North Zone—that portion of Iowa north of a line running west from the Illinois border along I–80 to U.S. 59, north along U.S. 59 to State Highway 37, northwest along State Highway 37 to State Highway 175, then west along State Highway 175 to the Nebraska border. South Zone—the remainder of the State.

[3] [Limits to conform to those set for the regular season.]

* * * * *

7. Section 20.106 is revised to read as follows:

§ 20.106 Season, limits, and shooting hours for sandhill cranes.

Central Flyway: Subject to the applicable provisions of the preceding sections of this part, open seasons are prescribed for taking sandhill cranes with a daily bag limit of 3 and a possession limit of 6 cranes (unless otherwise noted), and with shooting hours from one-half hour before sunrise until sunset (unless otherwise noted) in the following areas for the dates indicated:

(a) In Colorado (the Central Flyway portion except the San Luis Valley and North Park) the inclusive dates are October 3 through November 29, 1987.

(b) In New Mexico (a) in the counties of Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt, the inclusive dates for the regular season are October 24, 1987, through January 24, 1988; (b) in the Middle Rio Grande Valley Hunt Area (described in State regulations) the inclusive dates for the two experimental seasons are October 17 through October 24, 1987, and October 25 through October 31, 1987. Hunting in the experimental seasons is by State permit only, the daily bag limit is 3 sandhill cranes and the seasonal bag limit is 9, and shooting hours are sunrise to sunset.

(c) In Oklahoma (that portion west of I–35) the inclusive dates are October 10 through November 20, 1987, and November 28, 1987 through January 17, 1988.

(d) In Texas that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S. 283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary the season has been deferred.

(e) In North Dakota, in Zone 1 (the area east of a line starting on the east shore of Lake Oahe at the South Dakota border, then north on this shore to Bismarck, then north on U.S. Highway 83 to the north shore of Lake Sakakawea, then west along the north shore of Lake Sakakawea to ND No. 23, then east on ND No. 23 to ND No. 8, then north on ND No. 8 to the Canadian line; and west of a line starting where ND No. 14 enters Canada, then south on ND No. 14 to U.S. Highway 83, then south on U.S. Highway 83 to South Dakota) the inclusive dates are September 5 through November 1, 1987, in Zone 2 (that area east of Zone 1 and west of U.S. Highway 281) the inclusive dates are September 5 through October 2, 1987.

(f) In South Dakota, the inclusive season dates are September 26 through November 1, 1987.

(g) In Montana (the Central Flyway portion except that area south of I–90 and west of the Bighorn River), the inclusive dates are October 3 through November 29, 1987.

(h) In Wyoming, in Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties, the inclusive dates are September 19 through November 15, 1987.

Each hunter participating in the regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

Pacific Flyway

(a) In Arizona (within Game Management Units 30A, 30B, 31, and 32), the season selection has been deferred.

(b) In Wyoming's sandhill crane—Canada goose hunt areas: Hunting is by State permit only.

Bear River area in Lincoln County—the season dates are September 5 through September 7, 1987. Season limits are 2 sandhill cranes per hunter.

Riverton Boysen Unit in Fremont County—the season dates are September 12 through September 13, 1987, and September 19 through September 20, 1987. Season limits are 2 sandhill cranes per hunter.

Salt River (Star Valley) area in Lincoln County—the season dates are September 1 through September 7, 1987. Season limits are 2 sandhill cranes and 2 Canada geese per hunter.

Eden-Farson Agricultural Project in Sweetwater and Sublette Counties—the season dates are September 5 through September 7, 1987. Season limits are 3 sandhill cranes and 1 Canada goose per hunter.

8. Section 20.109 is revised to read as follows:

§ 20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of this part, the areas open to hunting, the respective open seasons (dates inclusive), the hawking hours, and the daily bag and possession limits on the

species designated in this section are prescribed as follows:

Daily bag limit	3 singly or in the aggregate.
Possession limit	6 singly or in the aggregate.

These limits apply during both regular hunting seasons and extended falconry seasons.

Hawking hours: One-half hour before sunrise until sunset daily.

Check State Regulations for Additional Restrictions

Atlantic Flyway	
Florida:	
Mourning doves and white-winged doves.	Sept. 26–Dec. 4.
Woodcock	Oct. 24–Dec. 6.
Snipe	Nov. 1–Feb. 15.
Ducks and coots	Oct. 4–Nov. 21.
Common moorhens and rails.	Sept. 26–Dec. 4.
Maryland:	
Mourning doves	Sept. 1–Oct. 24 & Nov. 4–Dec. 26.
Rails	Sept. 1–Dec. 16.
Woodcock	Oct. 5–Jan. 19.
Snipe	Oct. 1–Jan. 15.
Pennsylvania:	
Mourning doves	Sept. 1–Dec. 12.
Ducks and geese	Oct. 7–Jan. 16.
Virginia:	
Woodcock and snipe.	Oct. 16–Jan. 30.
Mourning doves and rails.	Sept. 1–Nov. 30 & Dec. 19–Jan. 3.
Mississippi Flyway	
Illinois:	
Mourning doves, woodcock and rails.	Sept. 1–Dec. 16.
Snipe	Sept. 12–Dec. 29.
Teal	Sept. 5–Sept. 13.
Ducks, mergansers and coots.	Oct. 3–Jan. 6.
Indiana:	
Mourning doves	Oct. 16–Nov. 5.
Woodcock	Sept. 1–Sept. 18.
Iowa:	
Rails and snipe	Sept. 5–Dec. 5.
Woodcock	Sept. 19–Jan. 3.
Geese	Oct. 3–Jan. 17.
Ducks and coots	Sept. 19–Sept. 30 & Oct. 3–Jan. 5.
Michigan:	
Snipe, rails and moorhens.	Sept. 1–Dec. 16.
Ducks, mergansers, coots and geese.	Oct. 4–Jan. 17.
Minnesota:	
Woodcock, snipe, and rails.	Sept. 1–Dec. 16.
Ducks, mergansers, coots and geese.	Oct. 3–Jan. 17.
Mississippi:	
Ducks, mergansers and coots.	Oct. 31–Dec. 12.
Mourning doves	Sept. 28–Oct. 1 & Nov. 20–Dec. 13.
Missouri:	
Mourning doves	Sept. 1–Dec. 16.
Wisconsin:	
Rails, woodcocks, snipe, and gallinules.	Sept. 1–Dec. 16.
Ducks, mergansers, and coots.	Oct. 1–Jan. 15.
Central Flyway	
Colorado:	
Ducks, mergansers, coots and geese.	Oct. 18–Oct. 30.
Montana:	
Mourning doves	Sept. 1–Oct. 12.
Snipe	Oct. 3–Jan. 10.
Ducks and geese	Oct. 3–Jan. 10.
Nebraska:	
Ducks, mergansers, coots and geese.	Oct. 3–Jan. 17.
New Mexico: (1)	
Mourning doves	Sept. 1–Nov. 6 & Nov. 22–Dec. 30.
Band-tailed pigeons	Sept. 1–Nov. 30.
Sandhill cranes only in Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.	Oct. 10–Jan. 24.
Ducks, coots and common moorhens.	Oct. 10–Jan. 15.
Canada and white-fronted geese.	Oct. 10–Jan. 17.
Snow, blue, and Ross' geese.	Nov. 14–Feb. 28.
Oklahoma:	
Duck, coots and mergansers.	Oct. 10–Nov. 29 & Dec. 2–Jan. 17.
Texas:	
Mourning doves (statewide).	Sept. 1–Nov. 30 & Jan. 2–Jan. 17.
Rails and gallinules	Sept. 1–Dec. 16.
White-winged doves.	Sept. 1–Nov. 30 & Jan. 2–Jan. 17.
Wyoming:	
Mourning doves	Sept 1–Oct. 15.
Snipe and rails	Sept. 19–Nov. 27.
Pacific Flyway	
Colorado:	
Ducks, mergansers, coots and geese.	Oct. 17–Nov. 6.
Idaho:	
Mourning doves	Sept. 1–Dec. 16.
Montana:	See Central Flyway
New Mexico: (1)	
Mourning doves	Sept. 1–Nov. 6 & Nov. 22–Dec. 30.
Band-tailed pigeons	Sept. 1–Nov. 30.
Ducks, coots and common moorhens.	Oct. 10–Jan. 10.
Canada and white-fronted geese.	Oct. 10–Jan. 17.
Snow, blue and Ross' geese.	Oct. 7–Jan. 11.
Oregon:	
Mourning doves	Sept. 1–Dec. 16.
Band-tailed pigeons	Sept. 7–Dec. 16.
Wyoming:	
Mourning doves	Sept. 1–Oct. 15.
Snipe and rails	Sept. 19–Nov. 27.

Note. See waterfowl season footnotes for descriptions of zones. For some States, the extended falconry season dates also include general season dates.

Date: August 19, 1987.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–19329 Filed 8–21–87; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 52, No. 163
Monday, August 24, 1987

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children; Funding Formula

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule: Notice of extension of public comment period.

SUMMARY: A proposed rule that would amend 7 CFR Part 246, by prescribing a revised funding formula for the Special Supplemental Food Program for Women, Infants and Children (WIC), was published in the **Federal Register** on July 17, 1987 (52 FR 27005). A 45-day comment period, ending August 31, 1987, was announced. This notice extends that public comment period to September 30, 1987. The Department anticipates that the quality of the comments received will be enhanced if commentors are provided an additional 30 days in which to respond. The comments will thus be of greater value to the Department in developing the final rule.

DATE: Comments on the proposed rule must be received on or before September 30, 1987 to be assured of consideration in the final rulemaking.

ADDRESS: Comments may be mailed to Patrick J. Clerkin, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. All written submissions will be available for public inspection at the same address during regular business hours (8:30 am to 5:00 pm) Monday through Friday

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, (703) 756–3746 at the address above.

SUPPLEMENTARY INFORMATION: A number of considerations have led the Department to conlude that an extension of the 45-day comment period is appropriate. A number of commentors, including the National Association of WIC Director (NAWD), have indicated that the complexity of the proposal requires additional time to complete their analysis and provide substantive written comments. Although consultations with the NAWD preceded the publication of the proposed rule, the Department recognizes the merit of the requests for an extended comment period. The WIC Program would best be served by obtaining carefully formulated comments. Such comments will be very valuable to the Department in developing the final rule.

In addition, while State-level WIC managers significantly influenced the substance of the proposed formula, a larger universe of local-level managers has not had the same opportunity for input. Since the proposed rule would affect their functions as well as those conducted at the State level, providing them more time to formulate their comments is appropriate.

Accordingly, the Department will accept comments postmarked on or before September 30, 1987. Commentors who have already submitted comments are welcome to submit additional recommendations if they wish to address new subjects or revise previous remarks. Otherwise, the comments previously submitted will be considered in the comment analysis.

Since the extended comment period ends September 30, 1987 it is intended that the final rule implementing the formula will specify that the new formula will be in effect beginning in the second quarter of Fiscal Year 1988.

Dated: August 19, 1987.

Anna Kondratas,

Administrator.

[FR Doc. 87–19377 Filed 8–20–87; 9:28 am]

BILLING CODE 3410–30–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245a

[INS Number: 1038–87]

Temporary Disqualification of Certain Newly Legalized Aliens From Receiving Benefits From Federal Programs of Financial Assistance

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements section 245A(h) of the Immigration and Nationality Act ("Act"), as amended by section 201 of the Immigration Reform and Control Act of 1986, Pub. L. 99–603 ("IRCA"). Section 245A(h) of the Act provides that, with certain exceptions, aliens granted lawful temporary resident status pursuant to section 245A(a) are not eligible for a period of five years after such grant to receive benefits from programs of financial assistance furnished under Federal law on the basis of financial need. The Attorney General is required by section 245A(h)(1)(A)(i) of the Act to identify such programs after consultation with other appropriate heads of the various departments and agencies of government. This proposed rule implements such provision.

DATE: Comment must be received no later than September 23, 1987.

ADDRESS: Send written comments in triplicate, to Immigration and Naturalization Service Policy, Directives and Instructions, Room 2011, 425 I Street NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Paul W. Virtue, Associate General Counsel, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, (202) 633–2656.

SUPPLEMENTARY INFORMATION: Section 245A(a) of the Immigration and Nationality Act, as amended, Pub. L. 99–603 ("Act") provides for the legalization of status of certain individuals who have been residing illegally in the United States since before January 1, 1982. Section 245A(h) of the Act provides that,

with certain exceptions, aliens legalized under section 245A will be ineligible for five years for "any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government (but in any event including the program of aid to families with dependent children under part A of Title IV of the Social Security Act)." Section 245A(h)(2) of the Act provides that such temporary ineligibility does not apply (A) to a Cuban or Haitian entrant (as defined in paragraph (1) or (2)(A) of section 510(e) of Pub. L. 96–422, as in effect on April 1, 1983), or (B) in the case of assistance (other than aid to families with dependent children) which is furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act, 49 Stat. 620). The five-year period of ineligibility begins on the date an alien is granted lawful temporary resident status under section 245A(a) of the Act.

Section 245A(h) of the Act also provides that, subject to the same exceptions, aliens legalized under section 245A of the Act will be temporarily ineligible for medical assistance under a State plan approved under Title XIX of the Social Security Act, 49 Stat. 620 (Medicaid) (except certain emergency services and services to pregnant women or aliens who are under 18 years of age), and for benefits financed by the Food Stamp Act of 1977, as amended, Pub. L. 95–400 (which includes, but is not limited to, Section 19 therein, the Puerto Rico Block Grant).

It is also noted that a different provision, section 210(f) of the Act, provides that, with certain exceptions, aliens granted lawful temporary resident status under section 210 of the Act (Lawful Residence for Certain Special Agricultural Workers) are temporarily ineligible for aid under a State plan approved under part A of Title IV of the Social Security Act, 49 Stat. 620 (aid to families with dependent children), or for Medicaid. It is further noted that section 210A(d)(6) of the Act provides in effect that an alien granted lawful temporary resident status under section 210A of the Act (Determinations of Agricultural Labor Shortages and Admission of Additional Special Agricultural Workers) shall be subject to the same ineligibility rules as aliens legalized under section 245A of the Act except that the provision in section 245A(h) relating to assistance under the Food Stamp Act of 1977, Pub. L. 95–400, shall not apply, and assistance furnished under the Legal Services Corporation Act, Pub. L. 88–452, or Title V of the Housing Act of 1949, 63 Stat. 413, shall not be construed to be financial assistance for which such aliens are temporarily ineligible.

No such temporary ineligibility is in effect for aliens granted the status of an alien lawfully admitted for permanent residence pursuant to section 249 of the Act (Record of Admission for Permanent Residence in the Case of Certain Aliens Who Entered the United States Prior to July 1, 1924 or January 1, 1972).

The Department of Justice, after consulting with representatives of various appropriate departments and agencies of the Federal Government, has developed a list of programs of financial assistance furnished under Federal law on the basis of financial need for which newly legalized aliens are ineligible for a period of five years. The criteria used to identify such programs are as follows:

1. Federal financial assistance is furnished for the benefit of individuals in financial need.

(A) Financial assistance in the form of grants, wages, loans, loan guarantees, or otherwise, is furnished by the Federal Government directly, or indirectly through a State or local government or a private entity, to eligible individuals or to private suppliers of goods or services to such individuals, or is furnished to a State or local government that provides to such individuals goods or services of a kind that is offered by private suppliers.

(B) Benefits under the program are targeted to individuals in financial need. Either (i) in order to be eligible individuals must establish that their income or wealth is below some maximum level, or, with respect to certain loan or loan guarantee programs, that they are unable to obtain financing from alternative sources, or at prevailing interest rates, or at rates that would permit the achievement of program goals, or (ii) distribution of assistance is directed, geographically or otherwise, in a way that is intended to primarily benefit persons in financial need, as evidenced by references to such intent in the authorizing legislation.

2. The financial assistance is not furnished under a Federal disaster relief program.

3. Eligibility does not require United States citizenship.

4. Assistance under the program is not expressly precluded from being construed as financial assistance by section 245A(h)(4) of the Act. This paragraph provides that assistance furnished under the following assistance:

(A) The National School Lunch Act, 60 Stat. 230.

(B) The Child Nutrition Act of 1966, Pub. L. 89–642.

(C) The Vocational Education Act of 1963, Pub. L. 88–210.

(D) Chapter 1 of the Education Consolidation and Improvement Act of 1981, Pub. L. 97–35.

(E) The Headstart-Follow Through Act, Pub. L. 88–452.

(F) The Job Training Partnership Act, Pub. L. 97–300.

(G) Title IV of the Higher Education Act of 1965, Pub. L. 89–329.

(H) The Public Health Service Act, 37 Stat. 309.

(I) Titles V, XVI, and XX, and parts B, D, and E of Title IV, of the Social Security Act, 49 Stat. 620 (and Titles I, X, XIV, and XVI of such Act as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972).

Some of the programs that are listed in § 245a.4(c) of the proposed rule provide for Federal financial assistance to intermediate State or local government agencies or private entities. In several programs of this kind, the intermediate government agency or private entity uses the funds for many different programs of its own. Only some of these private or State or local government programs provide benefits for which aliens legalized under section 245A or 210A of the Act are, with certain exceptions, temporarily ineligible, specifically those programs having both of the following characteristics: (A) The distribution of financial assistance directly or indirectly to eligible individuals or to private suppliers of goods or services to such individuals, or the distribution to such individuals of goods or services of a kind that is offered by private supliers, and (B) targeting to individuals in financial need.

In addition State and local governments may, at their discretion, provide that aliens legalized under section 245A or 210A of the Act are ineligible for certain other programs. Section 245(h)(1)(B) of the Act states that a State or political subdivision therein may, to the extent consistent with sections 245A(h)(1)(A), (2), and (3) of the Act, provide that such legalized aliens are ineligible for a period of five years, for the programs of financial assistance or for cetain medical assistance which are furnished under the law of that State or political subdivision therein.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities.

This is not a "major rule" within the meaning of section 1(b) of Executive Order 12291.

List of Subjects in 8 CFR Part 245a

Aliens, Temporary resident status and permanent resident status.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended as follows:

PART 245a—[AMENDED]

1. The authority for Part 245a continues to read as follows:

Authority: Pub. L. 99–603, 100 Stat 3359; 8 U.S.C. 1101 note.

2. Part 245a is amended by adding the following section:

§ 245a.4 Temporary disqualification of certain newly legalized aliens from receiving benefits from Federal programs of financial assistance.

(a) Except as provided in § 245a.4(b), any alien who has obtained the status of an alien lawfully admitted for temporary residence pursuant to section 245A of the Act (Adjustment of Status of Certain Entrants Before January 1, 1982, to that of Person Admitted for Lawful Residence) or 210A of the Act (Determinations of Agricultural Labor Shortages and Admission of Additional Special Agricultural Workers) is ineligible, for a period of five years from the date such status was obtained, for benefits financed directly or indirectly, in whole or in part, through the programs identified in § 245a.4(c) of this chapter.

(b)(1) § 245a.4(a) shall not apply to a Cuban or Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Pub. L. 96–422, as in effect on April 1, 1983), or in the case of assistance (other than aid to families with dependent children) which is furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).

(2) With respect to any alien who has obtained the status of an alien lawfully admitted for temporary residence pursuant to section 210A of the Act only, assistance furnished under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) or Title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.) shall not be construed to be financial assistance referrred to in § 245a.4(a).

(3) Section 245a.4 shall not apply to benefits financed through the programs identified in § 245a.4(c), which are marked with an asterisk(*), except to the extent that such benefits:

(i) Consist of, or are the result of, financial assistance in the form of grants, wages, loans, loan guarantees, or otherwise, which is furnished by the Federal Government directly, or indirectly through a State or local government or a private entity, to eligible individuals or to private suppliers of goods or services to such individuals, or is furnished to a State or local government that provides to such individuals goods or services of a kind that is offered by private suppliers, and

(ii) Are targeted to individuals in financial need, in the sense that either (A) in order to be eligible individuals must establish that their income or wealth is below some maximum level, or, with respect to certain loan or loan guarantee programs, that they are unable to obtain financing from alternative sources, or at prevailing interest rates, or at rates that would permit the achievement of program goals, or (B) distribution of assistance is directed, geographically or otherwise, in a way that is intended to primarily benefit persons in financial need, as evidenced by references to such intent in the authorizing legislation.

(c) The programs of Federal financial assistance referred to in § 245a.4(a) are those identified in the list set forth below. The General Services Administration (GSA) Program Numbers set forth in the right column of the program list refer to the program identification numbers used in the Catalog of Federal Domestic Assistance, published by the United States General Services Administration, as updated through December, 1986.

	GSA program Nos.
Department of Agriculture:	
Farm labor housing loans and grants (labor housing)	10.405
Farm operating loans	10.406
Farm ownership loans	10.407
Very low and low income housing loans (Section 502, Rural Housing Loans)	10.410
Rural rental housing loans	10.415
Very low-income housing repair loans and grants (Section 504, Rural Housing Loans and Grants)	10.417
Rural rental assistance payments (rental assistance)	10.427
Rural housing preservation grants	10.433
Department of Health and Human Services:	
Assistance payments—maintenance assistance (maintenance assistance; State aid; Aid to Families with Dependent Children)	13.780
Low-income home energy assitance	13.789
*Community services block grant	13.792
*Community services block grant—discretionary awards	13.793
Department of Housing and Urban Development	
Interest reduction payments—rental and cooperative housing for lower income families (236)	14.103
Mortgage insurance—housing in older, declining areas (223(e))	14.123
Mortgage insurance—special credit risks (237)	14.140
Rent supplements—rental housing for lower income families (rent supplement program)	14.149
Lower income housing assistance program (Section 8—Housing Assistance Payments Program for Very Low Income Families-Existing Housing/Moderate Rehabilitation)	14.156
Operating assistance for troubled multifamily housing projects (troubled projects (flexible subsidy) program)	14.164
Housing development grants (lower income units only)	14.174
Housing voucher program	14.177
*Community development block grants/entitlement grants	14.218
*Community development block grants/small cities program (small cities)	14.219
Section 312 rehabilitation loans (312)	14.220
Urban development action grants	14.221
*Community development block grants/State's program	14.228
Rental housing rehabilitation (rental rehabilitation)	14.230
Public and Indian housing	14.850
Low income housing—homeownership opportunities for low income families (Turnkey III)	14.851
Section 8—New construction/substantial rehabilitation	
Section 221(d)(3) mortgage insurance for multifamily rental housing for low and moderate income families (below market interest rate)	
Section 235—Interest supplement on home mortgages	
Department of Labor:	
Senior Community Service Employment Program (SCSEP)	17.235
Office of Personnel Management:	
Federal Employment for Disadvantaged Youth—Part-Time (Stay-in-School program)	27.003
Federal Employment for Disadvantaged Youth—Summer (Summer Aids)	27.004
Small Business Administration:	
Loans for small businesses (business loans 7(a)(11))	59.003
Small business loans (regular business loans—7(a) loans)	59.01
Department of Energy:	
Weatherization Assistance for low-income persons	81.042
Minority honors vocational training (minority honors program)	81.084
Department of Education:	
Patricia Roberts Harris fellowships (graduate and professional study; graduate and professional study opportunity fellowships; public service education fellowships)	84.094
Legal training for the disadvantaged (The American Bar Association Fund for Public Education)	84.136
Allen J. Ellender fellowship program (Ellender fellowship)	84.148
National Graduate Fellowship Program/Jacob Javits fellows	84.173
Legal Services Corporation:	
Payments to Legal Services Corporation	

Dated: August 4, 1987.

Mark W. Everson,

Deputy Commissioner, Immigration and Naturalization Service.

[FR Doc. 87–19342 Filed 8–21–87; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Ch. I

46 CFR Ch. I and III

[CGD 87–031]

Paperwork Reduction Act of 1980

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Paperwork Reduction Act of 1980 requires federal agencies to seek ways to reduce the burden placed on various individuals or entities for the providing of information to one or more federal agencies. The Coast Guard is currently soliciting comments from vessel owners and operators in the marine industry concerning requirements placed by the Coast Guard and the Federal Regulations regarding the providing of information, maintenance and posting of documents, etc, which they feel are unduly burdensome or duplicative of information requirements placed by other agencies.

DATE: Comments must be received on or before November 23, 1987.

ADDRESSES: Comments should be submitted to the Commandant (G–CMC/21) [CGD 87–031], U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593–0001. Comments will be made available for examination or copying between the hours of 8:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays, at the Marine Safety Council (G–CMC/21), Room 2110, Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC, Phone (202) 267–1477. Comments may also be delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR William J. Morani Jr., the Office of Marine Safety, Security and Environmental Protection, Standards Development Branch (G–MVI–2), telephone (202) 267–1055 from 7:00 a.m. until 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (found in Title 44 U.S.C. Chapter 35) implemented by the Office of Management and Budget in Title 5 of the Code of Federal Regulations, Part 1320 was enacted by the Federal government for the purposes, among other things, of (1) minimizing the Federal paperwork burden for individuals, small businesses, State and local governments, and other persons; (2) minimizing the cost to the Federal government of collecting, maintaining, using, and disseminating information; (3) maximizing the usefulness of information collected by the Federal government; and (4) coordinating, integrating, and, to the extent possible, making uniform federal information policies and practices.

The term collection of information is generally defined as the obtaining or soliciting of information by an agency from ten or more persons by means of identical questions, whether such collection of information is mandatory, voluntary, or required to obtain a governmental benefit. The obtaining or soliciting of information includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information. It includes the use of written report forms, application forms, schedules, questionnaires, reporting or recordkeeping requirements, or similar methods. Similar methods may include contracts, agreements, policy statements, plans, rules, regulations, planning requirements, circulars, directives, instructions, bulletins, requests for proposal or other procurement requirements, labeling requirements, and standard questionnaires used to monitor compliance with agency requirements.

Information means any statement of fact or opinion, including numerical data, whether oral or maintained on paper, magnetic tapes, or other media.

Burden means the total time, effort, or financial resources required to respond to a collection of information: Including that to read or hear instructions; to develop, modify, construct, or assemble any materials or equipment; to conduct tests, inspections, polls, observations, or the like necessary to obtain the information; to organize information into the requested format; and to review, disclose, or report the information.

The Act places control of the implementation of the paperwork reduction program under the Office of Management and Budget (OMB) and requires OMB to develop and implement Federal information policies, principles, standards, and guidelines, and to review and approve information collection requests. Under 5 CFR Part 1320, before a collection of information is approved the agency must show that it has taken every reasonable step to ensure that: (1) The collection of information is the least burdensome necessary to comply with legal requirements and achieve program objectives; (2) the collection of information is not duplicative of information otherwise accessible to the agency; and (3) the collection of information has practical utility.

The Coast Guard imposes certain requirements on vessel owners and operators in the marine industry regarding the maintenance, collection, and providing of information and the maintenance, posting, and availability of certain certificates and other documents. These requirements are principally set out in various subchapters of Titles 33 and 46, CFR. These requirements include, but are not limited to, vessel plan review and approval, recordkeeping for hazardous materials, certain certificates of inspection, and other requirements of the marine inspection program. The Coast Guard is reviewing the information collection requirements that have been placed on vessel owners and operators in the marine industry to identify those areas in which the burden may be reduced, without compromise to the missions of the Coast Guard, and to comply with both the letter and spirit of the Paperwork Reduction Act, as well as to reduce the information collection budget of the Coast Guard.

The Coast Guard is particularly soliciting comments regarding any posting requirements which may be modified or eliminated. A list of specific posting requirements is included in this notice.

Drafting Information

The principal persons involved in the drafting of this notice are LCDR William J. Morani Jr., Project Manager, and LT John Astley, Project Counsel, Office of Chief Counsel.

Discussion

In accordance with this effort, the Coast Guard is inviting members of the marine industry and other interested persons to comment on the information requirements imposed upon them by the Coast Guard. Persons commenting should indicate which requirements they consider most burdensome, which requirements they feel should be eliminated (and why), and which could be altered to minimize the "burden" (and how). Comments are further solicited regarding any information collection requirements that are duplicative of requirements imposed by other agencies. Additionally, the marine industry is invited to suggest alternative methods of communicating information to the Marine Inspection Program.

Information Desired

The following questions were developed by the Coast Guard to obtain information and views that it believes will be helpful in reducing the paperwork burden on the marine industry. While general comments are of value, comments specifically addressed to particular requirements will be of greatest help in the Coast Guard's efforts to reduce the information collection burden and may establish the priority of regulatory action.

1. What are the number of burden hours (i.e. the number of man-hours you are required to expend) placed on your operation to maintain records and provide information pursuant to the requirements of the Coast Guard?

2. What forms are you required to complete because of these requirements?

3. What impact does the collection and recording of any required information, the completion of forms, or the providing of information have on your overall costs?

4. Are there any forms or information collection requirements that you feel are unnecessary and could be deleted, and/or in which the information contained could be found elsewhere in the Federal government? Which requirements and why?

5. Are there any forms or documents required by the Coast Guard that are not accepted by foreign countries in satisfaction of their similar requirements? Are there any foreign documents which U.S. flag vessels must maintain that contain information that duplicates information required to be maintained separately by the Coast Guard?

6. Below is a listing of required "postings" with their applicable regulatory citations. This list includes certificates, licenses, permits, plans, operating instructions, warnings, and crew employment lists. Some deal with emergency response, operating instructions, and warnings which should continue to be posted. However, the posting of certificates, licenses, and crew employment lists may not be necessary.

(a) Could any of the forms listed below simply be maintained by the master and be available for inspection and still accomplish the purpose of the document? Which ones and why?

(b) Are there any forms not listed below which are required to be posted? What are they and could they also simply be maintained by the master and be available for inspection and still accomplish the purpose of the document?

Document name	CFR Cite
Atomic Attack Instructions for Merchant Vessles, Merchant Vessels in port (CG-3256)	33 CFR 122.10
CO_2 Operating Instructions	46 CFR 34.15-10(h)
	76.15-10(h)
	95.15-10(h)
	181.20-15(d)
	193.15-10(h)
Cargo Hold Lighting Circuits—Re-Energizing Warning Notice	46 CFR 78.70-5(a)
	97.55-5(a)
Certificates of Inspection	46 CFR 31.05-5
	71.01-5
	91.01-5(a)
	167.60-10
	176.01-40(a)
	189.01-5(a)
Certification Expiration Sticker	46 CFR 176.10-45(a)
Deck Foam System Operating Instructions	46 CFR 34.20-10(c)
"Discharge of Oil Prohibited" Placard	33 CFR 155.450
Display of Plans	46 CFR 35.10-3(a)
	78.45-1(a)
	97.36-1(a)
	196.36-1(a)
Electric Fire Detecting System Operating Instructions	46 CFR 76.27-15(f)
Emergency Check-off List	46 CFR 185.25-1(a)
Exhibition of Licenses	46 CFR 78.65-1(a)
	97.53-1(a)
	196.53-1(a)
Fire Detection System Operating Instructions	46 CFR 108.405(c)(i)
Fixed Fire Extinguishing System Operating Instructions	46 CFR 108.631(b)
Fixed Foam Extinguishing System Operating Instructions	46 CFR 34.17-10(c)
	76.17-10(c)
	95.17-10(c)
Liferaft Launching & Inflating Instructions	46 CFR 78.49-1(a)
	97.39-1(a)
	167.65-55(a)
	185.25-7(a)
	196.39-1(a)
Lifesaving Signals and Breeches Buoy Instructions (CG-811)	46 CFR 35.12-5
	78.53-5
	97.43-5
	108.659
	167.65-50(a)
	196.43-5
Manual Alarm System	46 CFR 76.35-15(e)
Maneuvering Information	33 CFR 164.35(g)
	46 CFR 35.20-40(a)
	78.21-1(a)
	97.19-1(a)
	109.564(a)
	196.19-1(a)
Marine Sanitation Device Placard	33 CFR 159.59
Muster Lists	46 CFR 35.10-1(a)
	78.13-1(a)
	97.13-5(a)
	167.65-1(a)
	196.13-5(a)
Permit to Engagte in Excursions	46 CFR 71.10-15(a)
Permit to Proceed	46 CFR 31.10-35(d)
	71.05-15(a)
	91.05-15(a)
	176.01-27(d)
	189.05-15(a)
Pneumatic Fire Detecting System Operating Instructions	46 CFR 76.30-15(f)
Shipping Articles	46 CFR 14.05-2(a)
SOLAS Certificates	46 CFR 31.40-35(a)
	71.75-15(a)
	91.60-35(a)
	176.35-25(a)
	189.60-35(a)
Smoke Detecting System Operating Instructions	46 CFR 76.33-20(g)
Stability Letter	46 CFR 35.08-20(g)
	78.12-1
	97.11-1
	185.12-1(a)
	196.12-1
Stateroom Notices	46 CFR 78.47-47(a)
Station Bills, Drills, and Reports of Master (CG-809)	46 CFR 35.10-1(a)
	78.17-50(e)
	97.15-35(d)
Station Bills	46 CFR 167.65-1(a)
Steering Gear Change Instructions	46 CFR 35.40-30
	78.47-55(a)
	97.37-33(a)
	108.641
	167.55-5(h)
	196.37-33(a)
Temporary Certificates of Inspection	46 CFR 71.01-15(a)
	91.01-15(a)
	189.01-15(a)

7. Are there any required documents which could be issued with a longer period of validity, and still accomplish the purpose of the document? Which documents?

8. Are the benefits of holding U.S. documents in foreign ports [i.e. SOLAS Certificates, International Oil Pollution Prevention Certificates, etc.) outweighed by the burdens of compiling information and maintaining these documents? Why or why not?

The Coast Guard will carefully evaluate all comments received and, where appropriate, will initiate regulatory changes to reduce the information collection burden.

P.C. Lauridsen,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

August 18, 1987.

[FR Doc. 87-19346 Filed 8-21-87; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Upper Delaware Scenic and Recreational River, Pennsylvania and New York; Fishing Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This rulemaking pertains to a proposed special regulation concerning fishing within Upper Delaware Scenic and Recreational River, Pennsylvania and New York. The proposed special regulation would allow fishing methods which are authorized under applicable State law. National Park Service General Regulations, effective April 1984, prohibit fishing in fresh water in any manner other than by hook and line, with the rod or line being closely attended. That regulation is in conflict with Pennsylvania and New York fishing regulations, which have been in effect since before Upper Delaware Scenic and Recreational River was authorized in 1978. This proposed rule would serve to resolve that conflict.

DATE: Written comments will be accepted through September 23, 1987.

ADDRESS: Comments should be addressed to: Superintendent, Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12764 0159.

FOR FURTHER INFORMATION CONTACT: Glenn H. Voss, Chief Ranger, Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12764 0159, Telephone: 717/729–7134.

SUPPLEMENTARY INFORMATION:

Background

National Park Service General Regulations (36 CFR 2.3(d)(1)), which became effective on April 30, 1984, prohibit "Fishing in fresh water in any manner other than by hook and line, with the rod or line being closely attended." This regulation is in conflict with PA and NY fishing regulations which have been in effect since Upper Delaware Scenic and Recreational River was authorized in 1978 and for many years prior to its authorization. Examples of conflicts include:

1. PA permits the use of spears or gigs to take carp, gar, suckers and eels. NY regulations allow for the use of spears and long bows for the taking of bowfin, eels, carp, suckers, catfish, gar, turbot, redhorse, sheepshead, herring, and bullheads.

2. Both States permit the use of seines for getting bait, digging of lampreys, and a maximum of (5) tip-ups or five (5) give devices (tip-ups, rods, handlines) for ice fishing.

Congress's stated intent in the enabling legislation for Upper Delaware Scenic and Recreational River was for the National Park Service to manage recreational fishing in a manner consistent with state fishing laws, to the extent compatible with proper management of park resources. The National Park Service has determined that allowing recreational fishing at Upper Delaware Scenic and Recreational River in accordance with methods permitted by the States of Pennsylvania and New York would be advantageous both to visitor use, as well as to the management of the park resources. The species of fish to be taken under Example 1 above consist of exotics as well as native species that cannot be taken effectively by traditional rod and reel methods. The use of seines for bait collection, digging of lamprey eels, and the use of tip-ups for ice fishing, as in Example 2 above, are all traditional uses by the Delaware River anglers. In addition, the regulations of both the NY Department of Environmental Conservation, and the PA Fish Commission allow these methods of capture. Many years of using these traditional fishing methods have not been detrimental to the area, and the National Park Service anticipates no detrimental effects from continuing these methods. If these methods should cause harm to the fishery or other resources in the future, they can be prohibited by designating areas closed to certain fishing methods.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed regulation to the address noted at the beginning of this rulemaking.

Drafting Information

The principal author of this rulemaking is Glenn H. Voss, Chief Park Ranger, Upper Delaware Scenic and Recreational River.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of E.O. 12291, and certifies that this document will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) These determinations are based on the fact that this rule will contribute in some part to the local tourism of communities in the vicinity of the park by assuring the continued availability of the range of recreational activities that have been available to park users in the past. An Environmental Assessment has been prepared with a finding of No Significant Impact for this rulemaking. These documents are available for review at the address noted at the beginning of this rulemaking.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements. In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citiation continues to read as follows:

Authority: 16 U.S.C.1, 3, 9a, 462(k). § 7.96 also issued under DC Code 8–137 (1981) and DC Code 40–721 (1981).

2. By adding a new § 7.24, to read as follows:

§ 7.24 Upper Delaware Scenic and Recreational River.

Fishing. Fishing in any manner authorized under applicable State law is allowed.

Dated: July 29, 1987.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–19372 Filed 8–21–87; 8:45 am]

BILLING CODE 4310–70–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[A–4–FRL–3251–6; FL–022]

Approval and Promulgation of Implementation Plans Florida; Approval of Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing to approve revisions to the Florida State Implementation Plan (SIP) which were submitted by the Florida Department of Environmental Regulation (FDER) on November 4, 1986. This submittal amends the open burning rules contained in the Florida Administrative Code (FAC), Chapter 17–5 (Open Burning and Frost Protection Fires). These revisions include:

renumbering all of Chapter 17–5 to conform to the rulemaking requirements of Chapter IS–1; the addition of several new definitions and minor revisions to others; a ruling that the Florida Division of Forestry (FDOF) or any authorized fire control agency may extinguish or cause to be extinguished any unauthorized fire, and that the responsible party shall bear the costs for extinguishment; a ruling that the generator of land clearing debris may transport this debris offsite to property owned or leased by the generator for burning in an air curtain incinerator (other provisions apply); a ruling that prohibits open burning in particular and ozone nonattainment areas when the ambient air concentration of these pollutants may approach or exceed the ambient air standard, and prohibits open burning during an air stagnation advisory, an air pollution episode, or unfavorable weather condition as determined by the FDOF; updating portions of the land clearing provisions; a ruling that open burning of yard trash generated by a hurricane, tornado, fire or other disaster using an air curtain incinerator is allowed when open burning is determined by the Department to be the only feasible method of disposal; and additional open burning requirements. These regulation changes are minor in nature and serve merely to update the Florida regulations.

DATE: To be considered, comments must be received on or before September 23, 1987.

ADDRESS: Written comments should be addressed to Stuart Perry of EPA Region IV (address below). Copies of the material submitted by Florida may be examined during normal business hours at the following locations.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT: Stuart Perry of the EPA Region IV Air Programs Branch at the address given above, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On November 4, 1986, the FDER submitted to EPA for approval revisions to the Florida SIP, and EPA is today proposing to approve them. This submittal contained certification that the revisions were preceded by adequate notice and public hearing.

Background

In 1981, the FDER delegated the authority and responsibility to enforce all of the rules in FAC Chapter 17–5 (except those related to frost protection, commercial, industrial, and municipal open burning) to the FDOF through an interagency agreement. The FDER also retained the authority to enforce Chapter 17–5 in six urban counties (Broward, Dade, Duval, Hillsborough, Sarasota, and Pinellas).

The FDOF has exercised primary regulatory control over all open burning for the purposes of land clearing as well as other allowed open burning the State. Since the signing of the agreement, the FDOF has experienced certain difficulties with the enforcement and interpretation of the rules. As a result, the FDOF asked FDER to amend the rules in Chapter 17–5 to address the problems they encountered. A discussion of these revisions now follows:

• Each section in Chapter 17–5 (Open Burning and Frost Protection Fires) of the Florida Administrative Code (FAC) has been renumbered to conform to the requirements of FAC Chapter 1S–1. The rules now are numbered according to the following table:

Chapter 17–5

Before (rule)	After (rule)
17–5.01	17–5.010
17–5.02	17–5.020
17–5.03	17–5.030
17–5.04	17–5.040
17–5.05	17–5.050
17–5.06	17–5.060
17–5.07	17–5.070
17–5.08	17–5.080
17–5.09	17–5.090
17–5.10	17–5.100

• Rule 17–5.020 (Definitions) was amended by adding the following definitions: Air Pollution Episode, Department Air Stagnation Advisory, Extinguished, Land Clearing Debris, National Weather Service Air Stagnation Advisory, Non-rural Land Clearing, Air Curtain Incinerator, and Residential Land Clearing. With the addition of the new definitions, the rule's definitions were again put in alphabetical order and subsequently renumbered.

The definition of "garbage" was amended to include any waste that is attendant with or results from packaging of food materials. The definition of "open burning" was amended and is now defined as follows: the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the outdoor atmosphere without passing through a stack or chimney.

• Rule 17–5.030 (Prohibitions) was amended to recognize that the FDOF or any authorized fire control agency has the authority to extinguish or cause to be extinguished any unauthorized fire. In addition, the person responsible for the unauthorized open burning will be responsible for any applicable costs involved in extinguishing the fire. Further amendments to this section allow the generator of land clearing debris to transport the debris offsite to property owned or leased by the generator for burning in an air curtain incinerator owned and operated by the generator. The provisions require a setback distance of 300 feet from occupied buildings for air curtain incinerators with refractory lined walls and forced underdraft air. A setback distance of 1000 feet is required for all other air curtain incinerators. Open burning within 1000 feet of any Department of Transportation approved active runway is prohibited, and the FDOF or any other authorized fire control agency can extinguish or cause to be extinguished any fire that reduces visibility at an airport.

Further amendments to this section prohibit open burning in particulate and ozone nonattainment areas when the ambient air concentrations of total suspended particulate or ozone approach or exceed the state primary or secondary ambient air standards for these pollutants (the state ambient air quality standards are listed in FAC Rule 17–2.300.), prohibit open burning during a national weather service or department air stagnation advisory, or during an air pollution episode, or if weather conditions are determined by the FDOF to be unfavorable for safe burning. Open burning which reduces visibility on public roadways to less than 1000 feet is also prohibited.

• Rule 17–5.040 (Limitations) was amended by transferring the provisions of this rule to Rule 17–5.030 (Prohibitions). This rule is now reserved.

• Rule 17–5.070 (Land Clearing) was amended to increase the setback requirements for non-rural land clearing open burning. The setback requirement for residential land clearing operations has been increased from 200 feet to 300 feet from any occupied building. Setback requirements are being established for the open burning of wooden material or vegetation generated by a land clearing operation (other than residential land clearing) or by the demolition of a structure and are as follows:

The open burning shall be conducted 300 feet or more away from any occupied building when an air curtain incinerator is used for the open burning.

and 1000 feet or more from any occupied building when an air curtain incinerator is not used. A setback distance of 100 feet from any public highway or road is required for all types of open burning, and a new provision is added that requires that the prevailing winds be such that they direct the smoke away from the public highway or road. The open burning provisions previously provided that fires will be ignited after 9:00 a.m. and extinguished one hour before sunset. Provisions have been added which require the open burning to be attended at all times, and to be authorized by the FDOF or appropriate fire control authority. In addition, provisions have been added which restrict the pile size, moisture content, and composition of the material to be burned, and require the removal of excessive smoke producing or potentially toxic materials prior to the authorized open burning for the demolition of a structure.

The amendments exempt portable air curtain incinerators from FDER's permitting requirements if the air curtain incinerator does not operate on any one site for more than six months of the year, and prior authorization to use a portable air curtain incinerator is obtained from the FDOF and local fire authority where necessary. In addition, provisions have been added which restrict the air curtain incinerator's pit width, length, side wall construction, and the loading of and types of materials to be burned. The provisions prohibit excessive visible emissions except for up to 30 minutes during startups, shutdowns and temporary malfunctions (terms defined in Chapter 17-2 FAC).

The amendments require air curtain incinerators that are intended to be operated as stationary units or that operate at FDER permitted landfill sites to obtain a FDER permit. The amendments further allow the FDER to suspend or defer open burning if it creates a nuisance or if weather or atmospheric conditions create a real or potential fire, safety, or air pollution problem. FDER may also grant exceptions to the setback requirements if any affected resident within the setback area waives his objections in writing.

A special provision has been added which applies to refractory lined air curtain incinerators with forced underdraft air which states that these incinerators are allowed to commence burning at sunrise and charge until sunset provided they comply with a setback distance of 1000 feet from offsite occupied buildings, do not create a nuisance, and public access is restricted.

- Rule 17-5.080 (Industrial, Commercial, Municipal, and Research Open Burning) was amended to allow open burning of yard trash generated by a hurricane, tornado, fire or other disaster using an air curtain incinerator, when the open burning is determined by the FDER to be the only feasible method of disposal.
- Rule 17-5.090 (Open Burning Allowed) was amended to provide for open burning of yard trash and household paper products (generated on occupied residential premises of not more than two family units) in ozone attainment areas (subject to adherence to specific conditions specified in the rule) without FDER authorization, and to provide for open burning of yard trash and household paper products (as above) in ozone nonattainment and maintenance areas (with prior authorization from FDER or the authorized local fire control agency) only if a municipal, county or commercial solid waste collection service is not available on a periodic basis of at least once a week.

Further amendments to rule 17-5.090 provide additional ozone attainment area open burning limitations (specific conditions must be met in order to be able to open burn) which include a requirement that open burning be conducted at least 300 feet (previously 200 feet) from any occupied building other than one owned or leased by the individual doing the burning and 50 feet from any residence on the property where the open burning is being conducted. Also provisions have been added which require the open burning to be attended, adequate fire control equipment to be available, the material (yard trash, etc.) to be favorable for good combustion, and the open burning to be enclosed in a noncombustible container or ground excavation covered by a metal mesh or grill and setback at least 25 feet from any woodlands, forest or brush. Also, open burning in ozone nonattainment areas must meet the same requirements as those specified for burning in ozone attainment areas. The amendments further allow bonfires, and open burning for the sole purpose of fire suppression training (limited to non-hazardous liquid fires such as gasoline and jet fuel, and structural fires.)

Prior to these amendments, the rule provided for open burning of yard trash and household paper products only in areas where a collection service was not available on a periodic basis of at least once a week, and no distinction was made between nonattainment and attainment areas for ozone or for any other pollutants. It would appear that this action could impact the attainment status in the counties where open burning is allowed.

The State contends that the open burning amendments to Rule 17-5.090 Section (1) which allow open burning of yard trash in ozone attainment areas will not impact the attainment status in the Florida TSP and ozone attainment areas since additional open burning requirements are being established with these amendments (See TSD for additional discussion). EPA agrees with this interpretation.

Further details pertaining to these regulation changes are contained in the Technical Support Document, which is available for public inspection at EPA's Regional Office in Atlanta, Georgia.

Proposed Action

EPA proposes to approve the above regulation changes which were submitted to EPA on November 4, 1986.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Particulate matter.

Authority. 42 U.S.C. 7401-7642.

Date: June 8,1987.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 87-19315 Filed 8-21-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-4-FRL-3251-5; KY-046]

Approval and Promulgation of Implementation Plans, Kentucky; Opacity Variance for Boiler Units 1 and 2 at TVA's Paradise Steam Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to approve an opacity variance for Units 1 and 2 at Tennessee Valley Authority's (TVA's) Paradise Steam Plant, submitted by the Kentucky Natural Resources and Environmental Protection Cabinet (NREPC) on August 6, 1986. The

proposed opacity limitations for Units 1 and 2 are 61 percent and 50 percent, respectively. This opacity variance is being proposed for approval because testing procedures agreed to by EPA and the Commonwealth of Kentucky have confirmed that both units can demonstrate compliance with the 0.11 pounds per million BTU (lbs/mmBTU) particulate emission limitation when the current 20 percent opacity standard (Regulation 401 KAR 61.015, Section 4(2)) is exceeded. The authority for this opacity variance is provided in Regulation 401 KAR 50:055, Section 2(6).

DATES: Comments must be received on or before September 23, 1987.

ADDRESSES: Comments may be mailed to Pamela E. Adams, U.S. Environmental Protection Agency Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Kentucky Natural Resources and Environmental Protection Cabinet, Department of Environmental Protection, 18 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: Ms. Pamela E. Adams, U.S. Environmental Protection Agency, Region IV, Air Programs Branch at the above listed address or at (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On August 6, 1986, Kentucky submitted to EPA a request for an opacity variance for Units 1 and 2 at TVA's Paradise Steam Plant in Muhlenberg County, Kentucky. The Kentucky Division for Air Quality is processing this request as a State Implementation Plan (SIP) revision so that it will be federally enforceable, and EPA will not enforce the limitations contained in Regulation 401 KAR 61:015. Opportunity for public participation and input relevant to this request was provided through a public hearing conducted on May 13, 1985, at the Capital Plaza Tower in Frankfort, Kentucky. Kentucky is requesting this opacity variance in accordance with the provisions of Regulation 401 KAR 50:055, Section 2(6).

TVA's Paradise Steam Plant is capable of complying with the 0.11 lbs/mmBTU particulate emission limitation but incapable of complying with the 20 percent opacity limitation of Regulation 401 KAR 61:015, Section 4(2), using EPA's Method 9 when boiler Units 1 and 2 are operated at normal full load with all associated emission control equipment optimized. The TVA attributes the high opacity readings from Units 1 and 2 to NO_2 formation associated with the boiler units rather than to particulate emissions.

Paradise Units 1 and 2 are identical crushed coal, cyclone-fired boilers. Due to the higher temperatures in the cyclones, these boilers produce twice as much NO_x as conventional pulverized coal-fired boilers. Approximately 95 percent of this NO_x is in the NO form, and 5 percent is in the NO_2 form. The conversion of NO to NO_2 increases with decreasing temperature and increasing O_2 concentration (at constant NO concentrations). Units 1 and 2 are each equipped with an electrostatic precipitator and a wet limestone scrubber for emission control. The temperature of the flue gas leaving the scrubbers is reduced by approximately 125 degrees. In addition, more O_2 is available within the scrubber units due to leakage and the addition of oxidizing air. These factors would be expected to result in more rapid conversion of NO to NO_2. Since NO_2 is a visible, brownish colored gas, TVA attributes high opacity readings from Units 1 and 2 to this NO_2. In support of this claim, TVA explains that Paradise Unit 3, which operates without a scrubber, does not produce high opacity emissions as do Units 1 and 2. Kentucky's Regulation 401 KAR 50:055, Section 2(6), requires that a facility requesting an opacity variance demonstrate ". . . that the affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard." In order to meet the requirements of 401 KAR 50:055, Section 2(6), and establish the basis for an alternate opacity standard for Units 1 and 2, testing procedures were conducted that were established in a "Compliance Test Protocol" mutually agreed upon by EPA and the Commonwealth of Kentucky.

On October 30 and 31, 1984, particulate stack tests were conducted on Unit 1 at the Paradise Steam Plant. Similar tests were conducted on Unit 2 at the plant on November 7, and 9, 1984. The units were operated at normal full load with all associated emission control equipment optimized in accordance with the Compliance Test Protocol. This manner of operation was designed to minimize the opacity of emissions. Test procedures used for these tests were those described in Method 17 in the *Code of Federal Regulations*, Title 40, Part 60, Appendix A, revised July 1, 1978. These procedures determined the particulate emissions, visual opacity, and in-stack monitor opacity of boiler Units 1 and 2. Testing was performed by the Test and Performance Section of TVA. The tests were observed by representatives of the Kentucky Division of Air Pollution Control (KDAPC). Representatives of the Environmental Protection Agency observed the Unit 1 test.

During each test run, a time- and area-integrated flue gas sample was taken for oxygen content analysis. The first sample was analyzed with a chemical Orsat analyzer and with a Teledyne brand electronic oxygen analyzer to verify the accuracy of the electronic analyzer. The electronic analyzer was then used for subsequent analyses. This verification procedure was employed each test day. During testing, all flue gas samples were extracted from the flue gas flow at the stack test planes. The diameter of each 600-foot stack at the test plane is 30.4 feet. The stack breeching, which is 250-feet or 8.2 diameters away, is the nearest downstream disturbance to each test plane. The top of each stack is the nearest upstream disturbance and is 298 feet or 9.8 diameters from the respective test planes. In accordance with Section 4.1.2 of Method 17, these location parameters require gas to be sampled from 12 points positioned according to EPA Method 1.

In order to ensure the accuracy of the visual opacity data obtained during the testing procedures, the unit not being tested was removed from service to eliminate the possibility of interference from the adjacent unit's plume. Furthermore, no tests were performed unless an acceptable background conducive to accurate visual opacity data was available. The visual opacity data was taken by the Kentucky Division of Air Pollution Control.

The testing procedures were performed acceptably by TVA personnel, and the isokinetics for all 6 runs were within the acceptable range of 0.90 to 1.10. Furthermore, the test report submitted was complete and acceptable. The results of the stack tests reveal that the actual particulate emission rate for both units was 0.04 lbs/mmBTU during testing. Identical mass particulate emissions from independent but identical units operated identically (optimized for maximum particulate emission control) show that the particulate emissions from Paradise Units 1 and 2 cannot be reduced below the measured 0.04 lb/mmBTU. These particulate emissions comply with the 0.11 lb/mmBTU standard. The Unit 1 average visual opacity reading value was 55 percent. The maximum reading

observed during the stack test was 61 percent. The in-stack monitor values corresponding to the times of the visual readings averaged 35 percent. The Unit 2 average visual opacity reading set value was 40 percent. The maximum opacity reading observed during the stack tests was 50 percent. The in-stack monitor values corresponding to the times of the visual set readings averaged 38 percent. For all test runs, the opacities (visual and monitor) exceeded the current 20-percent standard as the units operated under normal full load with all emission control equipment optimized.

The proposed opacity limitations for Units 1 and 2 of TVA's Paradise Steam Plant are 61 percent and 50 percent, respectively. These proposed opacity limitations were the highest recorded for each unit during emission testing procedures mutually agreed to by Kentucky and EPA. While EPA is proposing approval of these revised opacity limitations, EPA is uncomfortable with opacity variances since many factors can contribute to the cause of high opacities in each situation (e.g., NO_x, SO_3, H_2SO_4, particulate, other sulfates). EPA is currently undertaking a study of high opacity situations and may recommend solutions other than opacity variances in the future.

Proposed Action: EPA is today proposing to approve an opacity variance for TVA's Paradise Steam Plant boiler Units 1 and 2. This variance will allow 61 percent opacity according to EPA Method 9 for Unit 1 and 50 percent opacity for Unit 2. These proposed opacity limitations were the highest recorded for each unit during emission testing procedures conducted with units operating under normal full load with all emission control equipment optimized.

Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter.

Authority: 42 U.S.C. 7401–7642.

Dated: June 26, 1987.

Lee A. DeHihns III,

Acting Regional Administrator.

[FR Doc. 87–19316 Filed 8–26–87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[Common Carrier Docket No. 87–215]

Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed Rule; Extension of Comment/Reply Comment Period.

SUMMARY: This Order extends the time for filing comments and reply comments in this proceeding concerning enhanced service providers. This extension of time is taken in response to two motions for extension of time.

DATES: Comments in this proceeding are now due on or before September 24, 1987, and reply comments are due on or before October 26, 1987.

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

FOR FURTHER INFORMATION CONTACT: Ruth Milkman, tele: (202) 632–4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Bureau's *Order* in Common Carrier Docket No. 87–215, DA 87–1070, Adopted August 4, 1987, and Released August 5, 1987. The Notice of Proposed Rulemaking was published in the **Federal Register** on July 29, 1987, 52 FR 28317.

The full text of this Bureau Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order

1. This order extends the time for filing comments and reply comments in response to the Commission's Notice of Proposed Rulemaking in Common Carrier Docket No. 87–215. Thirty seven companies and trade associations filed a motion requesting that the Commission extend the time for filing comments to September 24, 1987 and the time for filing reply comments to October 26, 1987. The Public Interest Computer Association (PICA) requested that the Commission extend the time for filing reply comments to September 28, 1987.

2. The parties contend that the length of the pleading cycle established for the Notice of Proposed Rulemaking is insufficient to allow commenters to gather the detailed information requested by the Commission.

3. We believe that the public interest would be served by the development of as complete a record as possible in this proceeding. Therefore we extend the time for filing comments and the time for filing reply comments as requested by the 37 companies and associations. We accordingly dismiss PICA's motion as moot.

Federal Communications Commission.

Gerald P. Vaughan,

Deputy Chief, Common Carrier Bureau.

[FR Doc. 87–19269 Filed 8–21–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87–292, RM–5771]

Radio Broadcasting Services; Buffalo, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Communications Systems III, licensee of Station KLGT(FM), Channel 224A, Buffalo, Wyoming, proposing the substitution of Class C Channel 225 for 224A at Buffalo and modification of its license to specify the higher class frequency, as that community's first wide coverage area station.

DATES: Comments must be filed on or before October 5, 1987, and reply comments on or before October 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Rober J. Metzler, Esquire, Farrand, Cooper, Metzler & Bruiniers, P.O. Box 7329, San Francisco, CA 94120 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–292, adopted July 24, 1987, and released August 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete test of this decision may also be purchased from the Commission's copy contractors, International

Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–19264 Filed 8–21–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–293, RM–5786]

Radio Broadcasting Services; Canaan, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Timothy D. Martz proposing the allotment of Channel 231A to Canaan, Vermont, as that community's first FM service. Concurrence by the Canadian government must be obtained.

DATES: Comments must be filed on or before October 5, 1987, and reply comments on or before October 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James R. Bayes, Esquire, Jerry V. Haines, Esquire, Wiley, Rein & Fielding, 1776 K Street, NW., Washington, DC 20006 (Counsels for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–293, adopted July 24, 1987, and released August 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–19263 Filed 8–21–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–297, RM–5868]

Radio Broadcasting Services; Franklin, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Northwestern Pennsylvania Broadcasting Co., Inc. seeking the substitution of Channel 257B1 for Channel 257A at Franklin, PA, and the modification of its license for Station WVEN(FM) to specify operation on the higher powered channel. Channel 257B1 can be allocated in compliance with the Commission's minimum distance separation requirements, to all domestic allotments, and used at petitioner's preferred site 7.5 kilometers (4.7 miles) west. The allotment would be short-spaced by 14.8 kilometers to Station CJBC–4 at London, Ontario. However, the Commission has determined that any interference would fall entirely over Lake Erie. Thus, we shall request Canadian concurrence as a "specially negotiated short-spaced allotment." Canadian concurrence is required since Franklin is located within 320 kilometers of the U.S.-Canadian border. In accordance with § 1.420(g) of the Commission's rules, we shall not accept the filing of competing interests in use of this channel at Franklin nor require petitioner to demonstrate the availability of an additional channel for use by other interested parties.

DATES: Comments must be filed on or before October 5, 1987, and reply comments on or before October 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dennis F. Begley, Esq., Reddy, Begley & Martin, 2033 M Street NW., Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.———, adopted July 23, 1987, and released August 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washigton, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such at this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–19273 Filed 8–21–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-309, RM-5807]

Radio Broadcasting Services; Montrose and Scranton, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: At the request of Christian Discerner, Inc., this document requests comments on its petition to reallocate UHF TV Channel 64 from Scranton, PA. to Montrose, PA as the community's first local television service. A construction permit (BPCT-830310KG), issued to Scranton Family Television, Ltd. to operate on Channel 64 at Scranton, was cancelled by letter of February 17, 1987. Channel 64 can be allocated to Montrose in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.8 kilometers (2.3 miles) southeast to avoid a short-spacing to unused and unapplied for Channel *65 at Ithaca, New York. Canadian concurrence in the allocation is required since Montrose and Scranton are located within 400 kilometers (250 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before October 9, 1987, and reply comments on or before October 26, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James L. Oyster, Esq., 8315 Robin Road, Annandale, Virginia 22003-1101 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-309, adopted July 21, 1987, and released August 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission considered or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-19272 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-310, RM-5851]

Radio Broadcasting Services; Chippewa Falls, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Bushland Radio Specialties, licensee of Station WCFW(FM), Channel 288A, Chippewa Falls, Wisconsin, proposing the substitution of Channel 291C2 at Chippewa Falls and modification of its license to specify the higher class frequency, as that community's first wide coverage area station.

DATES: Comments must be filed on or before October 9, 1987, and reply comments on or before October 26, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Irving Gastfreund, Esquire, Barry J. Fleishman, Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey, 1120 Connecticut Avenue NW., Washington, DC 20036 (Counsels for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary for the Commission's Notice of Proposed Rule Making, MM Docket No. 87-310, adopted July 27, 1987, and released August 18, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-19271 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket 87-267; FCC 87-245]

Review of Technical Assignment Criteria for the AM Broadcast Service

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission initiated an inquiry to provide a comprehensive review of the technical principles pertaining to AM broadcast assignment criteria and related issues. The Commission's goal in taking this action is to identify any needed changes to its technical rules that would permit AM stations to improve their service to the public. The Commission noted that significant growth of the AM and FM radio services has occurred and that many changes in the listening habits of the public have taken place since these technical rules were first adopted. The rules being reviewed are those that prescribe the degree interference protection provided to AM stations during daytime and nighttime hours; that establish the areas of AM service entitled to protection from interference; and that establish the standards and procedures used in applying the technical assignment principles.

DATES: Comments must be filed on or before December 17, 1987 and reply comments on or before February 17, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Wilson A. La Follette, Policy and Rules Division, Mass Media Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Inquiry* MM Docket 87-267, adopted July 16, 1987, and released August 17, 1987.

The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order and Notice of Inquiry

1. The Commission has initiated this *Notice of Inquiry* (Inquiry) for the purpose of providing a comprehensive review of the technical principles pertaining to AM broadcast assignment criteria and related issues. The goal of the FCC in taking this action is to identify any needed changes to its technical rules which would permit AM stations to improve their service to the public and enhance their ability to compete in the market place.

2. This *Inquiry* is an outgrowth of the Mass Media Bureau's *Report on the status of the AM Broadcast Rules*, RM-5532, (Report) released April 3, 1986. The *Report* addressed a large number of technical, legal, and policy issues, and sought to identify opportunities to modify existing rules in order to allow AM broadcasters to meet the competitive challenges facing them and thereby to enhance their service to the public. It is the intent of the Commission to initiate subsequent rule making actions where the record developed supports such action.

3. The AM broadcast service is the oldest broadcasting service, but it still remains today one of the most technically complex to administer. The technical AM broadcast assignment principles currently set out in the FCC rules evolved over many decades during which AM broadcasting was undergoing considerable growth. Section 307(b) of the Communications Act of 1934 has provided a foundation for development of these principles, by requiring that there be a fair, efficient and equitable distribution of radio services to the States and communities. To accomplish this, the 107 AM channels were subdivided into three classes of channels, clear channels, regional channels, and local channels. Four basic classes of stations evolved: Class I and Class II on clear channels, Class III on regional channels, and Class IV on local channels. Assignment principles and technical criteria were developed to regulate the manner in which assignments are made to ensure appropriate levels of protection from interference for each class of station.

4. The AM broadcasting service has significantly matured since those earlier years of rapid growth and there are approximately 4,900 AM stations currently authorized. Opportunities for new stations are not limited, except in the more remote areas of the United States. Morover, there are not approximately 5,200 FM stations authorized in the United States which have significantly added to the availability and choices of aural broadcast service available to the public. Television has also become an important source of information and entertainment, particularly during evening hours. These developments have dramatically altered the listening habits of the public over the past two decades, generally resulting in significant changes in the market place in which AM stations operate. The burden and responsibility to provide a national aural broadcast service once placed solely upon the AM service is now shared with the FM radio service.

5. In view of these significant changes that have occurred, the Commission concluded that it is not appropriate to reassess the policies and technical criteria related to AM station assignments and interference protection that have been applied through the years. The technical assignment rules that are reviewed in the *Inquiry* are those that (1) prescribe the degree of interference protection provided to AM stations during daytime and nighttime hours; that (2) establish the areas of service AM stations are entitled to under their particular circumstances; and that (3) establish the standards and procedures used in applying the technical assignment principles.

6. The AM technical assignment principles are interrelated to a large extent, and there are many permutations in the technical changes that are possible. This makes it necessary to assess these interrelationships and the overall effect upon AM service resulting from any single technical change or combination of changes that may be under consideration. For this reason, the various issues have been grouped together in an omnibus Notice of Inquiry.

Comments

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before December 17, 1987, and reply comments on or before February 17, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Ex Parte Language

8. *Nonrestricted rule making:* This is a nonrestricted notice and comment rule making proceeding. *See* 1.1231, of the Commission's Rules, 47 CFR 1.231, for rules governing permissable *ex parte* contracts.

Ordering Clauses

9. Accordingly, the Commission adopts this *Notice of Inquiry* pursuant to the authority contained in sections 4(i), 303(r) and 403 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-19262 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 87-213]

Trunking in the Private Land Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry; extension of time.

SUMMARY: The FCC released a Notice of Inquiry concerning trunking in the private land mobile services which was summarized in the **Federal Register** on July 6, 1987 (52 FR 25265). The Land Mobile Radio Section of the Electronic Industries Association's Information and Telecommunications Technologies Group (EIA) requested an extension of time until October 21, 1987. By this Order, the Commission is extending the comment and reply dates.

DATES: Comments are now due on or before October 21, 1987. Reply comments are due on or before November 20, 1987.

FOR FURTHER INFORMATION CONTACT: Herb Zeiler, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443.

In the matter of Trunking in the Private Land Mobile Radio Services for more effective and efficient use of the spectrum; Docket 87–213.

Order Extending Time for Filing Comments

Adopted: August 10, 1987.
Released: August 11, 1987.

By the Acting Chief, Private Radio Bureau:

1. On June 10, 1987, the Commission adopted a *Notice of Inquiry* (NOI) in the above captioned matter, 2 FCC Red 3820 (1987). Comments on the NOI are due by August 21, 1987 and reply comments are due on or before September 21, 1987.

2. The Land Mobile Radio Section of the Electronic Industries Association's Information and Telecommunications Technologies Group (EIA) requested an extension of time until October 21, 1987, within which to file comments in this proceeding. It also requested that the date for filing reply comments be extended to November 20, 1987.

3. In support of its request EIA states that the proceeding raises a number of complex issues. It contends that categorizing and organizing all of the relevant issues in a form that is suitable for the necessary analysis will take considerable time. Further, EIA argues that the matters contained in the NOI will require the development of major policy positions that must be ratified by senior officials. It states that the appropriate forum for such decisions will be at its fall conference October 5–8, 1987.

4. It appears that good cause has been shown and that the public interest would be served by granting the additional period in order to afford the petitioner and other interested parties a full opportunity for the preparation and presentation of their views in this proceeding.

5. Accordingly, it is ordered, pursuant to the authority set forth in Section 0.331 of the Commission's Rules and Regulations, that interested parties have until October 21, 1987 to file comments and until November 20, 1987 to file reply comments in this proceeding.

Federal Communications Commission.

Richard J. Shiben,

Acting Chief, Private Radio Bureau.

[FR Doc. 87–19270 Filed 8–21–87; 8:45 am]
BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 52, No. 163
Monday, August 24, 1987

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.

AVIATION SAFETY COMMISSION

Meeting

ACTION: Notice of meeting.

TIME AND DATES: 10 a.m. to 1 p.m., August 28, 1987.

PLACE: Room SD–538, Dirksen Senate Office Building, Washington, DC 20510–6075.

STATUS: Meeting is completely open to the public as required under section 10(a)(2) of the Federal Advisory Committee Act of 1972.

MATTERS TO BE CONSIDERED: Selected witnesses are invited to provide statements to the Aviation Safety Commission.

FOR FURTHER INFORMATION CONTACT: Richard K. Pemberton, Administrative Officer, Aviation Safety Commission, Premier Building, Room 1008, 1725 I Street NW., Washington, DC 20006, (202) 634–4677 or (202) 634–4860.

John M. Albertine,

Chairman.

[FR Doc. 87–19418 Filed 8–21–87; 8:45 am]

BILLING CODE 6820–AG–M

CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

Meeting

AGENCY: Christopher Columbus Quincentenary Jubilee Commission.

ACTION: Notice of meeting.

SUMMARY: This notice announces a forthcoming meeting of the Christopher Columbus Quincentenary Jubilee Commission, a presidential commission established in 1984 (Pub. L. 98–375). The meeting will be held in Washington, DC and will be chaired by the Commission's Chairman, John N. Goudie.

DATES: Thursday, September 10, 1987 at 10:30 a.m., 2:00 p.m. and 3:45 p.m. (Closed). Friday, September 11, 1987 at 8:30 a.m. and 2:30 p.m. (Open).

ADDRESSES: On September 10, from 10:30 a.m. to 12:00 p.m., in the Research Services Conference Room and Special Collections Conference Room, 116 Jefferson Building, The Library of Congress; from 2:00 p.m. to 3:30 p.m., in the Research Services Conference Room, 116 Jefferson Building, The Library of Congress; and from 3:45 p.m. to 5:30 p.m., in the Whittal Pavillion, the Library of Congress. On September 11, from 8:30 a.m. to 12:30 p.m., in the Farragut/Lafeyette Room at The Grand Hyatt, 1000 H Street NW.; and from 2:30 p.m. to 5:30 p.m. in the Loy Henderson Room at the Department of State, 2201 C Street NW.

FOR FURTHER INFORMATION CONTACT: Dr. John Alexander Williams, (202) 632–1992.

SUPPLEMENTARY INFORMATION: On September 10, the meetings will be executive sessions and closed to the public. On September 11, the meetings will be open to the public. The agenda for the Commission meeting is as follows:

Executive Sessions

Evaluations of proposed projects, examination of Commission budgets, appropriations and personnel structure, status of negotiations on potential projects.

Open Sessions

Progress reports on commemorative plans and programs, announcement of project recognition decisions, discussion of international projects.

Dr. John Alexander Williams,

Director.

[FR Doc. 87–19323 Filed 8–21–87; 8:45 am]

BILLING CODE 6820–RB–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–507–701]

Initiation of Countervailing Duty Investigation; Certain Circular Welded Carbon Steel Pipes and Tubes From Iran

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in propoer form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Iran of certain circular welded carbon steel pipes and tubes (hereinafter referred to as "standard pipe"), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the U.S. countervailing duty law. If our investigation proceeds normally, we will make our preliminary determination on or before October 22, 1987.

EFFECTIVE DATE: August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Mary Martin or Jessica Wasserman, Office of Investigation, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–2830 or 377–1442.

SUPPLEMENTARY INFORMATION:

The Petition

On July 29, 1987, we received a petition filed in proper form by the Subcommittee on Standard Pipe of the Committee on Pipe and Tube Imports and by each of the individual manufacturers of standard pipe that are members of this subcommittee, on behalf of the U.S. industry producing standard pipe. In compliance with the filing requirements of 19 CFR 355.26, the petition alleges that manufacturers, producers, or exporters in Iran of standard pipe receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Iran is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, sections 303 (a)(1) and (b) of the Act apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on standard pipe and have found that it meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Iran of standard pipe, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants. If our investigation proceeds normally, we will make our preliminary determination on or before October 22, 1987.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("*TSUSA*") item numbers and the appropriate HS item numbers with our product description on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System Schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs Offices have reference copies and petitioners may contact the Import Specialist at the local Customs office to consult the schedule.

The products covered by this investigation are certain circular welded carbon steel pipes and tubes, 0.375 inch or more, but not over 16 inches, in outside diameter as currently classifiable in the *Tariff Schedules of the United States Annotated* (*TSUSA*) under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A–120, A–53, and A–135. These products are currently classifiable under HS item numbers 7306.30.1000, 7306.30.5025, 7306.30.5030, 7306.30.5040, 7306.30.5045, 7306.30.5050, 7306.30.5060, 7306.30.5065, 7306.30.5070, and 7306.30.5075.

Allegations of Bounties or Grants

The petition alleges that manufacturers, producers, or exporters in Iran of standard pipe receive benefits under one program which constitutes a bounty or grant. We are initiating an investigation on the following program:

- Foreign Exchange Benefit for Exporters (Wariznameh) Program.

This notice is published pursuant to section 702(c)(2) of the Act.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

August 18, 1987.

[FR Doc. 87–19341 Filed 8–21–87; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit; Dr. Kenneth S. Norris et al., (P20H)

On April 15, 1987, notice was published in the **Federal Register** (52 FR 12228) that an application has been filed by Dr. Kenneth S. Norris, Dr. Randall S. Wells, Mr. Jan S. Ostman, and Dr. William T. Doyle to incidentally harass spinner dolphins (*Stenella longirostris*) and to take dead dolphins found floating or beached for examination, measurement and specimen materials.

Notice is hereby given that on August 17, 1987, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: August 17, 1987.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87–19284 Filed 8–21–87; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of the Import Limits for Certain Wool Textile Products Produced or Manufactured in the Polish People's Republic

August 19, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 25, 1987. For further information contact Chris Lozano, Assistant International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the 1987 import restraint limits for wool textile products in Categories 410 and 433, produced or manufactured in Poland.

Background

A CITA directive dated December 24, 1986 (52 FR 854) established import limits for cotton, wool and man-made fiber textile products, including Categories 410 and 433, produced or manufactured in Poland and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 5 and 31, 1984 between the Governments of the United States and the Polish People's Republic provides, among other things, for designated percentage increases in certain categories. At the request of the Government of the Polish People's Republic, increases for swing and

carryover are being applied to the restraint limits previously established for wool textile products in Categories 410 and 433, produced or manufactured in Poland and exported during the agreement year which began on January 1, 1987 and extends through December 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 19, 1987

Committee For The Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 24, 1986 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports of cotton, wool and man-made fiber textile products, produced or manufactured in the Polish People's Republic and exported during the period which began on January 1, 1987 and extends through December 31, 1987.

Effective on August 25, 1987, the directive of December 24, 1986 is hereby amended to include adjusted restraint limits for the following categories, in accordance with the bilateral agreement of December 5 and 31, 1984:[1]

Category	Adjusted 12-mo. restraint limit [1]
410	2,825,766 sq. yds
433	8,810 doz

[1] The restraint limits have not been adjusted to reflect any imports exported after December 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-19321 Filed 8-21-87; 8:45 am]

BILLING CODE 3510-DR-M

Continuation of an Import Restraint Limit and Cancellation of Staged Entry for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

August 19, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 25, 1987. For further information contact Diana Solkoff, International Trade Specialist (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to renew the import restraint limit for man-made fiber textile products in Category 642, produced or manufactured in the People's Republic of China and exported during the period which began on July 24, 1987 and extends through July 23, 1988. Staged entry for goods in Category 642 exported in excess of the previous restraint limit is being cancelled.

Background

On July 23, 1986 a notice was published in the **Federal Register** (51 FR 26459) which announced the establishment of import restraint limits for certain man-made fiber textile products, including Category 642, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on July 24, 1986 and extended through July 23, 1987.

A further notice was published on July 22, 1987 (52 FR 27573) which announced the establishment of staged entry for certain man-made fiber textile products, including Category 642, produced or manufactured in the People's Republic of China and exported in excess of the restraint limit established in the directive of July 18, 1986 (51 FR 26459).

To avoid continued risk of market disruption, the Committee for the Implementation of Textile Agreements, in accordance with section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973 and extended by protocols on December 14, 1977, December 22, 1981 and July 31, 1986; and the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, has decided to renew the restraint limit for the twelve-month period which began on July 24, 1987 and extends through July 23, 1988.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 20768) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits

[1] The terms of the bilateral agreement provide, in part, that: (1) within the aggregate and applicable group limits of the agreement, specific limits may be exceeded by designated percentages; (2) the aggregate and group limits may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

affected by adoption of the HCC will be published in the **Federal Register.**

Ronald L. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 19, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, I request that, effective on August 25, 1987, you cancel the staged entry periods established in the directive of July 20, 1987 for man-made fiber textile products in Category 642, produced or manufactured in the People's Republic of China and exported in excess of the import restraint limit established for the twelve-month period which began on July 24, 1986 and extended through July 23, 1987.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 25, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 642, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on July 24, 1987 and extends through July 23, 1988, in excess of 148,595 dozen.[1]

Goods shipped in excess of the previous twelve-month period established in the directive of July 18, 1986, which began on July 24, 1986 and extended through July 23, 1987 shall be subject to the level set forth in this letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The limit has not been adjusted to account for any imports exported after July 23, 1987.

Sincerely,
Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-19373 Filed 8-21-87; 8:45 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 AM to 5:00 PM on 18-19 September 1987. The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202. The purpose of the meeting is to review the Department of Defense's computer adaptive testing efforts, and equating plans for the Armed Services Vocational Aptitude Battery Forms 15, 16 and 17. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. A. R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 2B271, the Pentagon, Washington, DC 20301-4000, telephone (202) 697-9271, no later than 1 September 1987.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 17, 1987.

[FR Doc. 87-19282 Filed 8-21-87; 8:45 am]
BILLING CODE 3810-01-M

Department of the Army

Military Traffic Management Command, Military Personal Property Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Symposium. This meeting will be held on 17 September 1987 at the Clarion Hotel, Crystal City, Arlington, Virginia, and will convene at 0830 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of the symposium is to provide and open discussion and free exchange of ideas with the public on procedural changes to Personal Property Traffic Management Regulation (DOD 4500.34R), and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, *Attn:* MT-PPM, at telephone number 756-1600, between 0800-1530 hours. Topics to be discussed should be received on or before 28 August 1987.

Date: August 10, 1987.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 87-19227 Filed 8-21-87; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

Intent To Repay to the Indiana State Board of Vocational and Technical Education Funds Recovered as a Result of a Final Audit Audit Determination

AGENCY: Department of Education.

ACTION: Intent to Award Grantback Funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), as amended, (20 U.S.C. 1234e), the Secretary of Education (Secretary) intends to repay to the Indiana State Board of Vocational and Technical Education (State Board) under a grantback arrangement an amount equal to 67 percent of funds recovered by the Department of Education as a result of a final audit determination. This notice describes the State Board's plans for the use of funds which the Secretary intends to repay and the terms and conditions under which the Secretary intends to make these funds available and invites comments on the proposed grantback.

DATE: All written comments should be received on or before September 23, 1987.

ADDRESS: All written comments should be submitted to Dr. Thomas L. Johns, Acting Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education, (Room 620, Reporters Building), 400 Maryland Avenue, SW., Washington, DC 20202-5609.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas L. Johns, (202) 732-2237.

SUPPLEMENTARY INFORMATION:

A. Background

In August, 1985, the Department of Education recovered $46,479 from the

State Board in satisfaction of an audit, covering the period from July 1, 1976 to June 30, 1979. The auditors examined the accounting procedures, procurement practices, and system of internal controls of the State Board in expending funds under the Vocational Education Act of 1963 (VEA), as amended, 20 U.S.C. 2301 *et seq.* (1976).

The auditors issued, among other findings, the following monetary findings under which funds were recovered:

(1) The subcontractor (the Indiana Department of Public Instruction) improperly charged the vocational education program for services rendered to other programs because it did not have an indirect cost allocation plan or procedure for distributing joint costs;

(2) Three local educational agencies were improperly reimbursed with Federal funds for which there were not supporting documents such as payroll records, invoices, travel vouchers, or work papers at the local level; and

(3) One local educational agency failed to maintain daily time records to support the payment of wages for its work-study program.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the State agency affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this so-called "grantback" arrangement if the Secretary determines that—

(1) The practices and procedures of the State Board that resulted in the audit determination have been corrected, and that the State Board, in all other respects, is in compliance with the requirements of the applicable program;

(2) The State Board has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) The use of the funds to be awarded under the grantback arrangement in accordance with the State Board's plan would serve to achieve the purposes of the program under which funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Agreement

Pursuant to section 456(a)(2) of GEPA, the State Board has applied for a grantback of $31,018 and has submitted a plan to use the proposed grantback funds consistently with section 111 of the Carl D. Perkins Vocational Education Act (Perkins Act), 20 U.S.C. 2301 *et seq.* (1984). The audit findings against the State Board resulted from improper expenditures of VEA funds. However, since the Perkins Act has superseded the VEA, the State Board's proposal reflects the requirements of the Perkins Act.

The State Board proposes to use grantback funds to hire two people on a part-time basis (total of 1948 hours) to analyze four recently completed studies of vocational education in Indiana, undertake any addtional research needed, and create and implement a new management information system using the information learned form these sources. The State Board's plan is available on request from the Department of Education contact person listed above.

D. The Secretary's Determination

The Secretary has carefully reviewed the request for repayment of funds, the plan, and other information submitted by the State Board. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent to Enter into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least thirty days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with the requirement of section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Indiana State Board of Vocational and Technical Education under a grantback arrangement. The grantback award would in the amount of $31,018, which is 75 percent of the $41,357 recovered by the Department as a result of the first finding described above, or 67 percent—less than the maximum 75 percent authorized by the statute—of the total $46,479 recovered.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Will Be Made

The State Board agrees to comply with the following terms and conditions under which payments under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements; and

(b) The plan that was submitted in conjunction with the grantback request dated April 17, 1986, as amended on October 10, 1986, and any other amendments to that plan that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be expended not later than September 30, 1988, in accordance with section 456(c) of GEPA and the State Board's plan.

(3) The State Board must, not later than December 30, 1988, submit a report to the Secretary which—

(a) Indicates how the funds awarded under the grantback have been used;

(b) Shows that the funds awarded under the grantback have been liquidated; and

(c) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(Catalog of Federal Domestic Assistance Number 84.048, Basic State Grants for Vocational Education)

Dated: August 18, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-19287 Filed 8-21-87; 8:45 am]

BILLING CODE 4000-01-M

Intent to Repay to the West Virginia Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Intent to Award Grantback Funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), the Secretary of Education (Secretary) intends to repay to the West Virginia Department of Education (State Department) an amount equal to 64 percent of the funds recovered by the Department of Education as a result of a

final audit determination. This notice describes the State Department's plans for the use of repaid funds and the terms and conditions under which the Secretary intends to make these funds available, and invites comments on the proposed grantback.

DATE: All written comments should be received on or before September 23, 1987.

ADDRESS: All written comments should be submitted to Dr. Thomas L. Johns, Acting Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education, (Room 620, Reporters Building), 400 Maryland Avenue, SW., Washington, DC 20202-5609.

FOR FURTHER INFORMATION CONTACT: Mrs. Sharon A. Jones, (292) 732-2470.

SUPPLEMENTARY INFORMATION:

A. Background

In November 1984 and June 1986, the Department of Education recovered $103,134 from the State Department in satisfaction of an audit, covering the period from July 1, 1977 to June 30, 1982. The auditors found that the State Department failed to maintain appropriate time distribution records to support employees' salaries paid from funds awarded under the Vocational Education Act of 1963 (VEA), as amended, 20 U.S.C. 2301 *et seq.* (1976). Additionally, the auditors found (1) an inadequate accounting for the proper application of VEA funds and (2) a failure of a local agency to maintain fiscal effort.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a), provides that whenever the Secretary has recovered funds allowing a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the State agency affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this so-called "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the State Department that resulted in the audit determination have been corrected, and that the State Department is, in all other respects, in compliance with the requirements of the applicable program;

(2) State Department has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of the funds to be awarded under the grantback arrangement in accordance with the State Department's plan would serve to achieve the purposes of the program under which funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Agreement

Pursuant to section 456(a)(2) of GEPA, the State Department has applied for a grantback of $65,629 and has submitted a plan to use the grantback funds consistent with section 251 of the Carl D. Perkins Vocational Education Act (Perkins Act), 20 U.S.C. 2301 *et seq.* (1984). The audit findings against the State Department resulted from improper expenditures of VEA funds. However, since the Perkins Act has superseded the VEA, the State Department's proposal reflects the requirements of the Perkins Act, which—like the VEA—provides for grants to States for vocational education.

The State Department proposes to use the grantback funds to equip and operate a video production laboratory for training education and industry personnel. The laboratory activities would include curriculum development, production of videotaped instructional modules, and training in videotape production processes. The State Department's plan is available on request from the U.S. Department of Education contact person listed above.

D. The Secretary's Determination

The Secretary has carefully reviewed the plan and other information submitted by the State Department. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent to Enter into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least thirty days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the West Virginia Department of Education under a grantback arrangement. The grantback award would be in the amount of $65,629, which is 64 percent—less than the maximum of 75 percent authorized by the statute—of the funds recovered by the Department as a result of the audit.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Will Be Made

The State Department agrees to comply with the following terms and conditions under which payments under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements, and

(b) The plan that was submitted in conjunction with the request dated July 10, 1986, as amended as September 26, 1986, and any other amendments to that plan that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be expended not later than September 30, 1989, in accordance with section 456(c) of GEPA and the State Department's plan.

(3) The State Department must, not later than December 30, 1989, submit a report to the Secretary which—

(a) Indicates how the funds awarded under the grantback have been used;

(b) Shows that the funds awarded under the grantback have been liquidated; and

(c) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(Catalog of Federal Domestic Assistance Number 84.048, Basic State Grants for Vocational Education)

Dated: August 19, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-19288 Filed 8-21-87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.133E]

Invitation to Apply for New Awards Under the National Institute on Disability and Rehabilitation Research (NIDRR) Program of Rehabilitation, Engineering Centers

Purpose: Provides funding through grants or cooperative agreements to public or private agencies or organizations, including institutions of higher education, Indian tribes or tribal organizations, to conduct programs that meet the specifications in the proposed priorities published in this issue of the **Federal Register.**

Deadline for Transmittal of Applications: October 30, 1987.

Applications available: August 24, 1987.

Available funds: $7,000,000.

Estimated range of awards: $400,000–700,000.

Estimated average award: $575,000.

Project period: Up to 60 months.

Applicable regulations: (a) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78, (b) NIDRR regulations at 34 CFR Parts 350 and 353, and (c) the final funding priorities for this program when they become effective. Applicants should assume there will be no changes to the priorities as proposed. If there are significant changes in the final priorities, applicants will be given an opportunity to amend or resubmit their applications.

For applications information contact: Joseph Traub, National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Building, Room 3070, Washington, DC, 20202. Telephone: (202) 732–1189, or (202) 732–1198 for TDD service.

Program authority: 29 U.S.C. 762(b)(2).

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 87–19292 Filed 8–21–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[PRDA No. DE–PR07–87ID12708]

Research and Development Announcement for Development of Enhanced Heat Transfer; Idaho Operations Office

August 11, 1987.

AGENCY: Department of Energy.

ACTION: Program Research and Development Announcement (PRDA) for Development of Enhanced Heat Transfer.

SUMMARY: The U.S. Department of Energy (DOE), Idaho Operations Office, is seeking proposals for development of enhanced heat transfer techniqus in heat exchangers for application in energy-intensive industrial processes. The enhancement techniques should be able to increase overall heat transfer rate leading to greater heat exchanger effectiveness, and, when applied, should reduce industrial energy consumption. The scope of this work encompasses research and development of unique, innovative and economical heat transfer techniques applied to industrial heat exchangers. Proposals must address the development of an advanced technique from the previously esatablished point of basic identification and theoretical understanding to the point where interested companies would be willing to complete the development of the techniuqe and commercialize the end product. Results of the proposed investigations should verify the industrial applicability and cost effectiveness of the proposed concept. All the adverse effects of the enhancement technique, such as increased pressure drop and cost, should be addressed. Proposals must document collaboration with an industrial partner who has an interest in manufacturing and/or commercializing the concept. The proposed enhancement technique may be applicable to situation involving single or multi-phase fluids, phase change, convection and/or radiation heat transfer.—It is anticipated that two or three awards will be initiated from a total available DOE funding of $200,000. However, DOE reserves the right to make no award, a single award, or multiple awards as determined to be in the best interest of the Government. Subject to the availability of funds, it is anticipated that a total of approximately $300,000 of additional funds will be provided in fiscal year 1988 for completion of this work. Duration of this effort is expected to be approximately two years. — DEAR 917.73 will govern if a procurement contract is entered into and the DOE Financial Assistance Rules (10 CFR 600) will goven if a financial assistance instrument is utilized. However, DOE reserves the right to make any or all awards and contracts subject to the Federal Acquisition Regulations (48 CFR, Chapter 1) and the DOE Acquisition Regulations (48 CFR, Chapter 9). Educational institutions, nonprofit organizations, individuals, or other private organizations are invited to respond to this announcement. Proposals from Federal agencies and/or laboratories owned, operated, or under the cognizance of the Federal Government will not be considered for selection and should not respond.

Dates: This PRDA is expected to be available to interested parties by early September 1987 and proposals will be due approximately 45 days thereafter.

Contacts: Potential proposers desiring to receive a copy of the PRDA should povide a written request to the following address: U.S. Department of Energy, Idaho Operations Office, ATTN: T. Wade Hillebrant, Contracts Management Division, 785 DOE Place, Idaho Falls, ID 83402.

H. Brent Clark,

Director,

Contracts Management Division.

[FR Doc. 87–19332 Filed 8–21–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 87–27–NG]

Order Granting Blanket Authorization To Import Natural Gas From Canada; American Natural Gas Corp.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting American Natural Gas Corporation (American Natural) blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 87–27–NG authorizes American Natural to import up to 146 Bcf over a two-year period for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 14, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–19333 Filed 8–21–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87-39-NG]

Application to Extend Authorization to Import Natural Gas from Canada; Natural Gas Clearinghouse Inc.

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application to extend blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on July 17, 1987, of an application filed by Natural Gas Clearinghouse Inc. (NGC) to extend for two years its existing two-year blanket authorization to import up to 730 Bcf of Canadian natural gas granted by the ERA in DOE/ERA and Order No. 86 (Order No. 86) issued July 5, 1985 (1 ERA Para. 70,602). NGC, formerly The U.S. Natural Gas Clearinghouse, Ltd., is a nationwide marketer of imported and domestic natural gas. The authorization will expire on October 31, 1987. NGC requests approval to continue importing gas for short-term or spot market sales for an additional two years to October 31, 1989. NGC proposes to import a daily maximum quantity of 1 Bcf, for a total of 730 Bcf of gas during the two-year extended term.

The gas to be imported would be purchased from a variety of Canadian suppliers and resold at competitive prices to U.S. pipelines, electric utilities, distribution companies, industrial end-users, and others on NGC's own behalf or as agent for others. All sales would be fully interruptible. Moreover, NGC contemplates that many of the arrangements would not require the purchase of a minimum quantity of gas. The price for the gas would be a negotiated contract price varying from sale to sale based on competition in the market. The specific location where the gas would enter the U.S. would also vary for different transactions with delivery points to be established during sales contract negotiations. The proposed imports would be accomplished using existing pipeline capacity and no new construction would be involved.

NGC proposes to continue to file reports with the ERA within 30 days after the end of each calendar quarter giving the details of the individual transactions. NGC's prior quarterly reports filed with the ERA indicate that approximately 7.4 Bcf of natural gas was imported under Order No. 86 through June 30, 1987.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than September 23, 1987.

FOR FURTHER INFORMATION:

P.J. Fleming, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4819

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves NGC's application to extend its blanket import authority, the ERA may, as it did in Order No. 86, approve only a total volume over the authorized term rather than a daily or annual limit, in order to provide the applicant with maximum flexibility of operation.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., September 23, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of NGC's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 17, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–19331 Filed 8–21–87; 8:45 am]

BILLING CODE 6450–01

[ERA Docket No. 87-32-NG]

Applications To Import Natural Gas From Canada; Pacific Interstate Transmission Co.

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application for authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on June 26, 1987, of an application filed by Pacific Interstate Transmission Company (PIT), an interstate pipeline, for authority to import from Canada total daily quantities of up to 640,000 Mcf of natural gas for a period of two years, beginning on the date when initial deliveries commence. PIT requests that approval be granted on a self-implementing basis, characterized by PIT as a blanket import authorization. The gas would be purchased from its current suppliers, Pan-Alberta Gas Ltd. (Pan-Alberta) and Westcoast Transmission Company Limited (Westcoast), on a best-efforts, interruptible basis and resold to PIT's distributor affiliate and only customer, Southern California Gas Company (SoCal), for consumption within California. PIT furnished copies of signed letters of intent with Pan-Alberta and Westcoast to enter into contracts for the purchase of up to 640,000 Mcf per day and 440,000 Mcf per day, of natural gas, respectively, as a potential supply for its proposed import arrangement. PIT will receive the gas at points on the international boundary near Kingsgate and Huntingdon, British Columbia. Transportation and delivery of the gas to SoCal is expected to be performed for PIT by Pacific Gas Transmission Company, Northwest Pipeline Corporation, and El Paso Natural Gas Company using their existing pipeline facilities. No new construction would be involved.

The application proposes an interruptible supply arrangement, involving no take-or-pay requirements. The purchase price SoCal will pay PIT will be determined in response to market forces and will reflect the price of competing natural gas supplies available to SoCal. The price paid to the Canadian suppliers by PIT will be a "net-back" price determined by SoCal's price, less PIT's tariff charges which include domestic transportation and fuel costs and a fee of 1 cent per Mcf to cover administrative and general expenses. This net-back price would be adjusted each month to reflect any difference in the competitive prices of natural gas in southern California.

Under the proposed service agreement between PIT and SoCal, sales would be arranged on a monthly basis. PIT would notify SoCal of the price of the Canadian gas available for sale and SoCal, in turn, would nominate the volumes of gas it desires to purchase, up to a daily maximum of 640,000 Mcf. There will be no minimum bill to recover fixed or commodity costs. The service agreement also provides that at SoCal's request, PIT will purchase and sell competitively priced domestic gas.

PIT proposes to submit quarterly reports to the ERA showing the volumes imported, points of entry, transporters, and purchase and sales prices.

PIT has filed an application with the Federal Energy Regulatory Commission for certificate authority to sell this imported gas or gas purchased from domestic suppliers to SoCal under a new rate schedule (CP87-411-000)

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on September 23, 1987.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4819

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., (202) 586-6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m., e.d.t., September 23, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the

official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of PIT's application is available for inspection and copying in the Natural Gas Docket Room, GA–076, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 18, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–19330 Filed 8–21–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER87–332–000 et al.]

Electric Rate and Corporate Regulation Filings; Florida Power & Light Co. et al.

August 14, 1987.

Take notice that the following filings have been made with the commission:

1. Florida Power & Light Company

[Docket No. ER87–332–000]

Take notice that on August 11, 1987, Florida Power & Light Company (FPL) tendered pursuant to the Commission's order dated June 19, 1987 a compliance filing. FPL states that it is filing to adjust the rates applicable to service provided under the Agreement to reflect the 34% federal marginal income tax rate.

The resulting transmission service rates are:

Schedule TA—Emergency Transmission Service: $2.52 per MWh of Scheduled Delivery

Schedule TB—Short Term Firm Transmission Service: $60.50 per MW–day of Scheduled Delivery

Schedule TC—Economy Energy Transmission Service: $2.52 per MWh of Scheduled Delivery

Schedule TD—Firm Transmission Service: $22,081.05 per MW of Contracted Demand per year ($1,840.09 per MW of Contracted Demand per month for periods of less than entire years)

Schedule TF—Assured Capacity and Energy Transmission Service: $2.52 per MWh of Scheduled Delivery

Schedule TX—Extended Economy Energy Transmission Service: $2.52 per MWh of Scheduled Delivery

FPL requests that waiver of Section 35.3 of the Commission Regulations be granted and that the proposed Amendment No. 1 be made effective July 1, 1987.

A copy of this filing has been served upon all affected parties.

Comment date: August 31, 1987, in accordance with Standard Paragraph E at the end of this document.

2. Mississippi Power Company

[Docket No. ER87–573–000]

Take notice that on August 10, 1987, Mississippi Power Company (Mississippi) tendered for filing revised sheets of Mississippi Power Company FERC Electric Tariff Original Volume No. 1:

(1) Fourteenth Revised Sheet No. 3, superseding Thirteenth Revised Sheet No. 3

(2) Fifteenth Revised Sheet No. 4, superseding Fourteenth revised Sheet No. 4

(3) First Revised Sheet No. 4.01 superseding Original Sheet No. 4.01

all relating to wholesale Electric Service to Cooperative Electric Power Association, and designated "Rate Schedule MRA–16C"

(4) Fourteenth Revised Sheet No. 3, Supplement No. 1 superseding Thirteenth Revised Sheet No. 3

(5) Fifteenth Revised Sheet No. 4, Supplement No. 1 superseding Original Sheet No. 4.01

(6) First Revised Sheet No. 4.01, Supplement No. 1 superseding Original Sheet No. 4.01

all relating to Wholesale Electric Service to City of Collins, and designated "Rate Schedule MRA–16C".

Mississippi states that the revisions relate solely to the Fuel Cost Adjustment Clause applicable to wholesale of electric energy to the three Electric Power Associations which are wholesale customers of Mississippi and to the City of Collins, which is a wholesale municipal customer of Mississippi.

Mississippi also states that the purpose of this filing is to provide a method by which the benefits of lower total fuel costs (including the costs of the buy-outs) and tax benefits can be immediately passed on to wholesale customers through the Fuel Cost Adjustment Clause.

Comment date: August 27, 1987, 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, 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. 87–19325 Filed 8–21–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA87–14–20–000]

Proposed Changes in FERC Gas Tariff; Algonquin Gas Transmission Co.

August 19, 1987.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on August 14, 1987, submitted for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, six (6) copies of the following tariff sheets;

Twentieth Revised Sheet No. 203
Alternate Twentieth Revised Sheet No. 203

Algonquin states such tariff sheets are being filed pursuant to the provisions of its Rate Schedule F–2 for the purpose of revising Algonquin's rates to reflect the effect of Consolidated Gas Transmission Corporation's ("Consolidated") PGA filing dated July 31, 1987 in Docket No. TA87–3–22–000.

Algonquin requests that the Commission accept that tariff sheet which synchronizes its rates with the underlying approved rates of Consolidated and to grant any waiver of the Regulations as may be necessary by the Commission to permit such accepted tariff sheet to become effective September 1, 1987.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 26, 1987. 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. 87-19324 Filed 8-21-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket NO. RP87-84-000]

Tariff Filing; El Paso Natural Gas Co.

August 19, 1987.

Take notice that on August 7, 1987, El Paso Natural Gas Company (El Paso) filed, pursuant to section 4 of the Natural Gas Act and Part 154 of the Regulations issued thereunder by the Federal Energy Regulatory Commission (Commission), Original Sheet Nos. 100-C and 100-D, First Revised Sheet No. 300 and Original Sheet Nos. 366 through 399 to First Revised Volume No. 1 of its FERC Gas Tariff.

El Paso states that the tendered tariff sheets, when accepted by the Commission and permitted to become effective, will establish procedures for (i) determining the costs related to gas prepayment liabilities incurred by El Paso on and after January 1, 1988 in maintaining gas supply to serve the firm sales entitlements of its customers, and (ii) reimbursement of an allocated portion of such costs by Southern California Gas Company, Pacific Gas and Electric Company, Gas Company of New Mexico, Southern Union Gas Company and Southwest Gas Corporation to El Paso through a Gas Inventory Charge to be applied to the quantity by which the customer's actual purchases (including transported released gas for which El Paso receives take-or-pay relief) is less than that customer's specified Annual Exemption Quantity. El Paso states that it has offered to enter into negotiations with the affected customers to establish Annual Exemption Quantities based on firm sales entitlements and load factors reflective of the customers' appraisal of the quantities of natural gas they will look at El Paso to supply and maintain in the future.

El Paso is proposing to implement the Gas Inventory Charge commencing January 1, 1988. However, since certain steps necessary to the determination of each customer's allocable portion of such costs must occur prior to the date on which the Gas Inventory Charge is implemented, El Paso requests that the tendered tariff sheets be accepted by the Commission and permitted to become effective thirty (30) days after the date of filing.

El Paso is proposing that the Gas Inventory Charge rate be equal to the weighted average cost of prepayment multiplied by a time value factor equal to the present value of the estimated Commission-prescribed interest rate to be in effect during a five-year prepayment recovery period, such charge to be implemented on a prospective basis for prepayment liabilities incurred on and after January 1, 1988. El Paso states that, depending upon the future purchasing decisions of its customers, some of the prepayments incurred by El Paso on and after January 1, 1988 may later be found to be non-recoupable. El Paso therefore requests that the Commission set for hearing the issue of including in the Gas Inventory Charge calculation prepayments incurred on and after January 1, 1988 which are later found to be non-recoupable (as set forth on the *pro forma* tariff sheet included in the filing) for prospective application following issuance of a final order approving such inclusion.

El Paso states that copies of the filing have been served upon all of its interstate pipeline system customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the regulations. All such motions or protests should be filed on or before August 26, 1987. 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. 87-19326 Filed 8-21-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders; Period of June 29 Through August 7, 1987

During the period of June 29 through August 7, 1987, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: August 14, 1987.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Deaton Oil Company, Murfreesboro, AR, KEE-0142, Reporting Req'mts

Deaton Oil Company filed an Application for Exception from the requirement to file Form EIA-821, entitled "Annual Fuel Oil and Kerosene Sales Report." On August 4, 1987, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

Site Oil Company, St. Louis, MO, KEE-0145, Reporting Req'mts

Site Oil Company filed an Application for Exception from the requirement to file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." On August 8, 1987, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

[FR Doc. 87-19334 Filed 8-21-87; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 87-316, File Nos. BPH-850711MY et al.]

Applications for Consolidated Hearing; Cynthia Escajeda Cart et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Cynthia Escajeda Cart, Reno, NV.	BPH-850711MY	87-316
B. Reno 93-FM Broadcasters, a California limited partnership Reno, NV.	BPH-850711OE	
C. Dennis L. Martin, Reno, NV.	BPH-850712ON	
D. Washoe Wireless Associates, Reno, NV.	BPH-850712OO	
E. Reno Radio, Ltd., Reno, NV.	BPH-850712OP	
F. Reno FM Services Partners Limited, Reno, NV.	BPH-850712OQ	
G. David L. Metts and Debbie Raborn d/b/a/ High Sierra Communications Co., Reno, NV.	BPH-850712OV	
H. Condor & Associates, Inc., Reno, NV.	BPH-850712OZ	
I. L C Broadcasting, Inc., Reno, NV.	BPH-850712PA	
J. Susan Lundborg, Reno, NV	BPH-850712TU	
K. Tropic-Air, Ltd., Reno, NV	BPH-850712TV	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Misrepresentation, H
2. Comparative, A-K
3. Ultimate, A-K

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87-19278 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 87-330; File Nos. BPCT-861261IQ and BPCT-870112KE]

Applications for Consolidated Hearing; Melvin Jones and G & D Communications, Inc.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, City, and State	File No.	MM Docket No.
A. Melvin Jones, Enid, OK	BPCT-861216IQ	87-330
B. G&D Communications, Inc., Enid, OK.	BPCT-870112KE	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading Applicant(s)

Misrepresentation, A
Air Hazard, A, B
Comparative, A, B
Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Stephen F. Sewell,

Assistant Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 87-19279 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 87-317; File Nos. BPH-860505MI et al.]

Applications for Consolidated Hearing; Massanutten Broadcasting Co., Inc. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Massanutten Broadcasting Company, Inc., Broadway, VA.	BPH-860505MI	87-317
B. Gloria A. Benns, Broadway, VA.	BPH-860507MB	
C. Nanette Markunas, Broadway, VA.	BPH-860507MC	
D. Massanutten Radio Limited Partnership, Broadway, VA.	BPH-860507ME	

2. Pursuant to 47 U.S.C. 309(e), the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of theses issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19,347 (May 29, 1986). The letter shown before each applicant's name, above, is useds below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicants

1. Comparative, A, B, C, D
2. Ultimate, A, B, C, D

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87-19280 Filed 8-21-87; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 87-315; File Nos. BPH-860707NP and BPH-860707OG]

Applications for Consolidated Hearing; William M. Morris and Caballero Spanish Media, Inc.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. William M. Morris, McFarland, Ca.	BPH-860707NP	87-315
B. Caballero Spanish Media, Inc., McFarland, Ca.	BPH-860707OG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have

been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Comparative, A, B
2. Ultimate, A, B

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–19281 Filed 8–21–87; 8:45 am]

BILLING CODE 6712-01-M

Travel Reimbursement Program Report

AGENCY: Federal Communications Commission.

ACTION: Publishing of Report on Travel Reimbursement Program.

SUMMARY: In Pub. L. 97–259 the Congress authorized the Federal Communications Commission to accept reimbursement from non-government organizations for travel of employees of the Commission. The Federal Communications Commission must keep records of reimbursable travel by event and prepare a report of all reimbursements allowed. Copies of each report will be provided to the Senate Committee on Appropriations, House Committee on Appropriations, Senate Committee on Commerce, Science and Transportation, and the House Committee on Energy and Commerce. In addition, the Federal Communications Commission must publish each report in the **Federal Register.**

DATE: This report is for the period April 1, 1987 through June 30, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Myers, Office of the Managing Director, (202) 632–6900.

SUPPLEMENTARY INFORMATION: The report for the period April 1, 1987 through June 30, 1987 is as follows:

Federal Communications Commission, Travel Reimbursement Program, April 1, 1987—June 30, 1987, Summary Report

Total number of sponsored events	31
Total number of sponsoring organizations	24
Total number of commissioners/employees attending	52

Total number of reimbursement expected:	
Transportation	$12,068.11
Subsistence	10,386.90
Other expenses	1,553.31
Total	$24,008.32

Federal Communications Commission, Travel Reimbursement Program, Individual Event Report

Sponsoring Organization: American Bar Association of Science & Technology, 7500 North Lake Shore Drive, Chicago, Illinois 60611.

Date of the Event: May 15–17, 1987.

Description of the Event: To participate in meeting on International Telecommunications facilities in Easton, Maryland.

Commissioners Attending: N/A.

Other Employee(s) Attending: William Kirsch, Attorney-Advisor—Common Carrier Bureau.

Amount of reimbursement:	
Transportation	$32.39
Subsistence	128.00
Other expenses	20.00
Total	180.39

Federal Communications Commission, Travel Reimbursement Program, Individual Event Report

Sponsoring Organization: Ameritech, 1050 Connecticut Avenue, N.W., Washington, D.C. 20036.

Date of the Event: May 5, 1987.

Description of the Event: To participate in Ameritech's 1987 Spring President's Conference in Scottsdale, Arizona.

Commissioners Attending: N/A.

Other Employee(s) Attending: James Schlichting, Attorney—Advisor Office of Commissioner.

Amount of reimbursement:	
Transportation	$360.00
Subsistence	75.00
Other expenses	20.00
Total	455.00

Sponsoring Organization: Bell Atlantic, 1133 20th Street, N.W., Suite 810, Washington, D.C. 20036.

Date of the Event: March 30, 1987.

Description of the Event: To participate in the Bell Atlantic Companies Regional External Affairs Conference held in Baltimore, Md.

Commissioners Attending: N/A.

Other Employee(s) Attending: John Cimko, Chief, Tariff Division-Common Carrier Bureau.

Amount of reimbursement:	
Transportation	$20.50
Subsistence	
Other expenses	
Total	20.50

Sponsoring Organization: Bell Atlantic, 1133 20th Street, N.W., Suite 810, Washington, D.C. 20036.

Date of the Event: April 21, 1987.

Description of the Event: To attend Separations Settlements and Access Charge Seminar in Baltimore, Md.

Commissioners Attending: N/A.

Other Employee(s) Attending: Cynthia Work, Supervisory Attorney-Advisor-Common Carrier Bureau.

Amount of reimbursement:	
Transportation	$74.00
Subsistence	
Other expenses	$25.00
Total	99.00

Sponsoring Organization: Bell Communications Research, 2101 L Street, N.W., Washington, D.C. 20037.

Date of the Event: April 29—May 1, 1987.

Description of the Event: To participate in the 1987 National Forecasting Conference in New Orleans, Louisiana.

Commissioners Attending: N/A.

Other Employee(s) Attending: Alexander Belinfante, Industry Economist-Common Carrier Bureau.

Amount of reimbursement:	
Transportation	$318.00
Subsistence	170.00
Other expenses	185.00
Total	673.00

Sponsoring Organization: Bell Communications Research, 2101 L Street, N.W., Washington, D.C. 20037.

Date of the Event: May 6, 1987.

Description of the Event: To participate in the Eastern Communications Forum in Stamford, Connecticut.

Commissioners Attending: N/A.

Other Employee(s) Attending: Thomas C. Spavins, Deputy Chief-Office of Plans & Policy.

Amount of reimbursement:	
Transportation	$158.00
Subsistence	126.00

Other expenses	
Total	284.00

Sponsoring Organization: Bell Communication Research, 290 W Mt. Pleasant Avenue, Livingston, NJ. 07039.
Date of the Event: May 13 & 14, 1987.
Description of the Event: To participate in the Bellcore Executive Briefing Session on Third-Party Marketing in Dallas, Texas.
Commissioners Attending: N/A.
Other Employee(s) Attending: Thomas Sugrue, Chief, Policy & Program Plan—Common Carrier Bureau.

Amount of reimbursement:

Transportation	$270.00
Subsistence	107.00
Other expenses	30.00
Total	407.00

Sponsoring Organization: Bell Communications Research, 2101 L Street, NW., Washington, DC 20037.
Date of the Event: June 9, 1987.
Description of the Event: To participate in the National Security Emergency Preparedness Committee meeting in Chicago, Illinois.
Commissioners Attending: N/A.
Other Employee(s) Attending: Edward J. Minkel, Managing Director—Office of Managing Director.

Amount of reimbursement:

Transportation	$391.00
Subsistence	429.00
Other expenses	10.00
Total	830.00

Sponsoring Organization: Bell South Corporation, Suite 900—1133 21st Street, NW., Washington, DC. 20036.
Date of the Event: May 27, 1987.
Description of the Event: To discuss recent separations changes and future plans for separations changes with carriers in Atlanta, Georgia.
Commissioners Attending: N/A.
Other Employee(s) Attending: Michael E. Wilson, Supervisory Auditor—Common Carrier Bureau.

Amount of reimbursement:

Transportation	$200.00
Subsistence	12.50
Other expenses	42.80
Total	255.30

Sponsoring Organization: Centel, O'Hare Plaza, 5725 N. East River Road, Chicago, Illinois 60631.
Date of the Event: May 7, 1987.
Description of the Event: To participate in a training session on filing tariffs pursuant to Part 61 of the Commission's rules in Chicago, Illinois.
Commissioners Attending: N/A.
Other Employee(s) Attending: James W. Lichford, Public Utilities Specialist—Common Carrier Bureau.

Amount of reimbursement:

Transportation	$311.00
Subsistence	203.64
Other expenses	13.80
Total	528.44

Sponsoring Organization: Harvard University Graduate School of Business Administration, Soldiers Field, Boston, Massachusetts 02163.
Date of the Event: May 28–29, 1987.
Description of the Event: To participate in Colloquium on Future Competition in Telecommunications in Boston, Massachusetts.
Commissioners Attending: N/A.
Other Employee(s) Attending: Thomas C. Spavins, Deputy Chief—Office of Plans and Policy.

Amount of reimbursement:

Transportation	$119.00
Subsistence	324.00
Other expenses	0
Total	443.00

Sponsoring Organization: Kentucky Broadcasters Association, Post Office Box 680, Lebanon, KY 40033.
Date of the Event: May 15, 1987.
Description of the Event: To address the annual convention of the Kentucky Broadcasters Association in Louisville, Kentucky.
Commissioners Attending: Commissioner Patricia Diaz Dennis.
Other Employee(s) Attending: N/A.

Amount of reimbursement:

Transportation	$202.00
Subsistence	16.50
Other expenses	28.20
Total	246.70

Sponsoring Organization: Law Offices Keller and Heckman, 1150 17th Street NW., Suite 1000, Washington, D.C. 20036.
Date of the Event: June 16–18, 1987.
Description of the Event: Attend and participate at the Utilities Telecommunications Counsel (UTC) Annual Meeting in Portland, Oregon.
Commissioners Attending: N/A.
Other Employee(s) Attending: Michael T.N. Fitch, Chief—Private Radio Bureau.

Amount of reimbursement:

Transportation	$478.00
Subsistence	300.00
Other expenses	25.00
Total	803.00

Sponsoring Organization: Md./DC/Del. Broadcasters' Association, Incorporate, Robert B. Cochrane Executive Director, Route 1—Box 559, St. Michaels, Maryland 21663.
Date of the Event: June 18–20, 1987.
Description of the Event: To participate in the Md/DC/Del. Broadcasters' meeting in Ocean City, Maryland.
Commissioners Attending: N/A.
Other Employee(s) Attending: James C. McKinney, Chief—Mass Media Bureau, Charles W. Kelley, Chief—Enforcement Division—Mass Media Bureau.

Amount of reimbursement:

Transportation	$139.40
Subsistence	297.00
Other expenses	40.00
Total	476.40

Sponsoring Organization: Mississippi Broadcaster Association, Post Office Box 4561, Jackson, Mississippi 39216.
Date of the Event: June 13, 1987.
Description of the Event: To participate in the Mississippi Broadcasters Association Annual Convention in Biloxi, Mississippi.
Commissioners Attending: N/A.
Other Employee(s) Attending: Larry P. Eads, Chief, Audio Services Division—Mass Media Bureau.

Amount of reimbursement:

Transportation	$372.00
Subsistence	128.00
Other expenses	25.00
Total	525.00

Sponsoring Organization: National Cable Television Association, 1724 Massachusetts Avenue, N.W., Washington, D.C. 20036.
Date of the Event: May 17–20, 1987.
Description of the Event: To participate in the National Cable TV Association Convention and Exposition in Las Vegas, Nevada.
Commissioners Attending: Commissioner Dennis R. Patrick.
Other Employee(s) Attending:
James C. McKinney, Chief-Mass Media Bureau
Diane S. Killory, General Counsel
Sydney P. Bradfield, Supervisory Electronics Engineer-Mass Media Bureau
Bradley P. Holmes, Supervisory Attorney-Advisor-Mass Media Bureau
Roy J. Stewart, Chief Video Services-Mass Media Bureau
Stephen R. Ross, Supervisory General Attorney-Mass Media Bureau
Gregory Vogt, Supervisory General Attorney-Common Carrier Bureau
Brian F. Fontes, Special Assistant-Office of the Commissioner

Amount of reimbursement

Transportation	$3,336.00
Subsistence	3,000.66
Other expenses	263.65
Total	6,600.31

Sponsoring Organization: National Translator Association, Fernand Bibeau, 4

Broadcast Plaza, S.W., Albuquerque, New Mexico 87104.
Date of the Event: April 30, May 2, 1987.
Description of the Event: To participate in the TV & FM Translator Annual Technical Seminar in Albuquerque, New Mexico.
Commissioners Attending: N/A.
Other Employee(s) Attending: Keith Larson, Supervisory Electronics Engineer-Mass Media Bureau.

Amount of reimbursement:	
Transportation	$332.00
Subsistence	336.00
Other expenses	
Total	668.00

Sponsoring Organization: Nebraska Telephone Association, 645 South 14th Street, Suite 300, Lincoln, Nebraska 68508.
Date of the Event: May 19, 1987.
Description of the Event: Speak at annual meeting of the Nebraska Telephone Association in Lincoln, Nebraska.
Commissioners Attending: N/A.
Other Employee(s) Attending: Stephen L. Goodman, Supervisory Attorney—Common Carrier Bureau.

Amount of reimbursement:	
Transportation	$604.00
Subsistence	64.00
Other expenses	10.00
Total	678.00

Sponsoring Organization: North American Philips Corporation, 100 East 42nd Street, New York, New York 10017.
Date of the Event: April 23–24, 1987.
Description of the Event: To attend demonstrations at North American Philips Corporation laboratories in Briarcliff Manor, N.Y.
Commissioners Attending: N/A.
Other Employee(s) Attending: Bruce A. Franca, Supervisory Electronics Engineer—Office of Engineering & Technology.
James C. McKinney, Chief—Mass Media Bureau.
Victor Tawil, Electronics Engineer—Office of Engineering and Technology.
William Hassinger, Electronics Engineer—Office of Engineering and Technology.

Amount of reimbursement:	
Transportation	$592.00
Subsistence	66.00
Other expenses	80.00
Total	738.00

Sponsoring Organization: Northern Telecom Incorporate, Post Office Box 13010, Research Triangle Park, North Carolina 27709.
Date of the Event: April 5–8, 1987.
Description of the Event: To speak at Northern Telecom symposium held in Sarasota, Florida.
Commissioners Attending: N/A.
Other Employee(s) Attending: Karl W. Brimmer, Chief, Management Planning & Program Evaluation Staff—Office of Managing Director.

Amount of reimbursement:	
Transportation	$319.00
Subsistence	206.00
Other expenses	40.00
Total	565.00

Sponsoring Organization: Phoenix Telocator Network of America, 2000 M Street, N.W., Washington, D.C. 20036.
Date of the Event: April 29–May 1, 1987.
Description of the Event: To participate in Telocator Network of America 1987 Semi-Annual meeting held in Phoenix, Arizona.
Commissioners Attending: N/A.
Other Employee(s) Attending: Richard J. Shiben, Chief—Land Mobile & Microwave Division; Kevin J. Kelley, Supervisor Attorney Advisor—Common Carrier Bureau.

Amount of reimbursement:	
Transportation	$498.00
Subsistence	450.00
Other expenses	110.00
Total	1,058.00

Sponsoring Organization: Pierson, Ball and Dowd, 1200 18th Street, N.W., Washington, D.C. 20036.
Date of the Event: April 28, 1987.
Description of the Event: To participate in a conference held in Scottsdale, Arizona.
Commissioners Attending: N/A.
Other Employee(s) Attending: Gerald Vaughan, Deputy Bureau Chief Common Carrier—Bureau.

Amount of reimbursement:	
Transportation	$310.00
Subsistence	325.00
Other expenses	25.10
Total	660.10

Sponsoring Organization: Southeastern Association of Regulatory Utility Commissioners, Post Office Box 991, Montgomery, Alabama 36102.
Date of the Event: June 1, 1987.
Description of the Event: To participate in the 1987 SEARUC Conference in Birmingham, AL.
Commissioners Attending: N/A.
Other Employee(s) Attending: Cynthia Work, Supervisory Attorney-Advisor—Common Carrier Bureau.

Amount of reimbursement:	
Transportation	$243.00
Subsistence	75.00
Other expenses	30.00
Total	348.00

Sponsoring Organization: Tharring, Smith & Hargrove, Post Office Box 1151, Raleigh, North Carolina 27602.
Date of the Event: May 5–6, 1987.
Description of the Event: To participate in North Carolina Association of Broadcaster's EEO Seminar held in Raleigh, North Carolina.
Commissioners Attending: N/A.
Other Employee(s) Attending: Larry D. Eads, Chief, Audio Services—Mass Media Bureau; James Shook, Supervisory Attorney-Advisor—Mass Media Bureau.

Amount of reimbursement:	
Transportation	$346.00
Subsistence	316.00
Other expenses	22.00
Total	684.00

Sponsoring Organization: The Illinois Telephone Association, 300 East Monroe Street, Springfield, Illinois 62705.
Date of the Event: June 7–9, 1987.
Description of the Event: To participate in the annual meeting of the Illinois Telephone Association in Chicago, Illinois.
Commissioners Attending: N/A.
Other Employee(s) Attending: Barbara J. Lynch, Attorney-Advisor (PU)—Common Carrier Bureau.

Amount of reimbursement:	
Transportation	$355.00
Subsistence	105.00
Other expenses	20.00
Total	480.00

Sponsoring Organization: United States Telephone Association, 900 19th Street, N.W., Suite 800, Washington, DC 20006–2102.
Date of the Event: April 14–16, 1987.
Description of the Event: To participate and speak at a Western Telecommunications Showcase Seminar.
Commissioners Attending: N/A.
Other Employee(s) Attending: Colleen Boothby, Attorney-Advisor—Common Carrier Bureau.

Amount of reimbursement:	
Transportation	$289.50
Subsistence	306.00
Other expenses	60.00
Total	655.50

Sponsoring Organization: United States Telephone Association, 900 19th Street, N.W., Suite 800, Washington, DC 20006–2102.
Date of the Event: June 9–10, 1987.
Description of the Event: To participate in depreciation rate conference with General Telephone Company in Raleigh, North Carolina.
Commissioners Attending: N/A.
Other Employee(s) Attending: Richard G. Kirkman, Supervisory Electronics Engineer—Common Carrier Bureau.

Amount of reimbursement:	
Transportation	$162.00
Subsistence	237.00
Other expenses	100.00

Total	499.00

Sponsoring Organization: United States Telephone Association, 900 19th Street, N.W., Suite 800, Washington, DC 20006–2102.
Date of the Event: June 22–23, 1987.
Description of the Event: To participate in depreciation rate conference with General Telephone Company and the Ohio Public Utilities Commission in Indianapolis, Indiana.
Commissioners Attending: N/A.
Other Employee(s) Attending: Richard G. Kirkman, Supervisory Electronics Engineer—Common Carrier Bureau.

Amount of reimbursement:

Transportation	$234.52
Subsistence	75.00
Other expenses	30.00
Total	339.52

Sponsoring Organization: United States Telephone Association, 900 19th Street, N.W., Suite 800, Washington, D.C. 20006–2102.
Date of the Event: July 8–9, 1987.
Description of the Event: To participate in depreciation rate conferences with Pacific NW Bell in Seattle, Washington.
Commissioners Attending: N/A.
Other Employee(s) Attending: Richard G. Kirkman, Supervisory Electronics Engineer—Common Carrier Bureau.

Amount of reimbursement:

Transportation	$604.00
Subsistence	973.50
Other expenses	150.00
Total	1,727.50

Sponsoring Organization: Virginia Association of Broadcasters (VAB), 620 Stagecoach Road, Charlottesville, Virginia 22901.
Date of the Event: June 26, 1987.
Description of the Event: To attend VAB Convention in Virginia Beach, Virginia.
Commissioners Attending: N/A.
Other Employee(s) Attending: Glenn A. Wolfe, Equal Opportunity Officer—Mass Media Bureau.

Amount of reimbursement:

Transportation	$40.00
Subsistence	320.00
Other expenses	10.00
Total	370.00

Sponsoring Organization: Wiley, Rein & Fielding, 1776 K Street, N.W., Washington, D.C. 20006.
Date of the Event: April 24–26, 1987.
Description of the Event: FCC Bar Association Annual Seminar held in Wintergreen, VA.
Commissioners Attending: Commissioner James H. Quello.
Other Employee(s) Attending: Lauren J. Belvin, Senior Advisor to Commissioner Dawson; Stuart Z. Chiron, Attorney-Advisor—Office of the Commissioner; Diane S. Killory, General Counsel; Peter Pitsch, Chief—Office of Plans and Policy; Jerald N. Fritz, Chief of Staff—Office of the Chairman; Sharon B. Kelley, Attorney-Advisor—Office of General Counsel; David L. Donovan, Attorney—Advisor-Office of Commissioner Quello.

Amount of reimbursement:

Transportation	$357.80
Subsistence	1,215.10
Other expenses	137.76
Total	1,710.66

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–19259 Filed 8–21–87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0176
Title: Statewide Radiological Instrument inventory

Abstract: Maintenance of a statewide civil defense radiological instrument inventory is required to assist Federal and State Government to maintain the existing FEMA radiological instrument inventory of 4.3 million instruments, granted and dispersed to Federal, State, and local users. The inventory is maintained and calibrated by FEMA supported State Radiological Instrument Maintenance and Calibration (RIM&C) facilities.

Type of Respondents: State or local governments
Number of Respondents: 50
Burden Hours: 100
Frequency of Recording or Reporting: Annually

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 87–19244 Filed 8–21–87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Company Engaged in Permissible Nonbanking Activities; The Chase Manhattan Corp.

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under setion 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the officers of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 9, 1987.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation,* New York, New York; to acquire through

its wholly-owned subsidiary, Chase Home Mortgage Corporation, selected assets and liabilities of Lyons Mortgage Corp, Rolling Meadows, Illinois, and thereby engage in the servicing of loans and the origination of residential mortgages pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 18, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–19235 Filed 8–21–87; 8:45 am]

BILLING CODE 6210-01-M

Acquisitions of Companies Engaged in Permissible Nonbanking Activities; Fleet Financial Group, Inc.; et al.; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 87–17929) published at page 29436 of the issue for Friday, August 7, 1987.

Under the Federal Reserve Bank of Boston, the entry for Fleet Financial Group, Inc. is revised to read as follows:

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

3. *Fleet Financial Group, Inc.,* Providence, Rhode Island; to acquire Norstar Investment Advisory Services, Inc.; Rochester, New York; and thereby engage in portfolio management and investment advice and consumer financial counseling pursuant to § 225.25(b)(4) and (b)(20) of the Board's Regulation Y.

8. *Fleet Financial Group, Inc.,* Providence, Rhode Island; to acquire Adams, McEntee & Company, Inc., New York, New York; and thereby engage in the sale and underwriting of state and municipal securities and brokerage of certain mutual fund shares pursuant to § 225.25(b)(16) and (b)(15) of the Board's Regulation Y.

9. *Fleet Financial Group, Inc.,* Providence, Rhode Island; to acquire Altman, Brown & Everett Inc., Albany, New York; and thereby engage in actuarial and employee benefits consulting services pursuant to Board Orders dated June 19, 1985 and August 19, 1986.

Comments on this application must be received by August 31, 1987.

Board of Governors of the Federal Reserve System, August 18, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–19233 Filed 8–21–87; 8:45 am]

BILLING CODE 6210-01-M

Application To Engage de novo in Permissible Nonbanking Activities; FNB Rochester Corp.

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any question 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 application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 9, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *FNB Rochester Corp.,* Rochester, New York; to engage *de novo* through its subsidiary, First National Mortgage Inc., Rochester, New York, in making, procuring or acquiring loans and other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 18, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–19236 Filed 8–21–87; 8:45 am]

BILLING CODE 6210-01-M

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Horizon Bancorp et al.

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 September 14, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Horizon Bancorp,* Morristown, New Jersey; to acquire 100 percent of the voting shares of Princeton Bank of Pennsylvania, Philadelphia, Pennsylvania, a *de novo* bank.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Security Banco, Inc.,* Adams, North Dakota; to become a bank holding company be acquiring 100 percent of the voting shares of Security State Bank, Adams, North Dakota.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City Missouri 64198:

1. *United Community Corporation,* Oklahoma City, Oklahoma; to merge

with Arbuckle Bancorp, Inc., Sulphur, Oklahoma, and thereby indirectly acquire First Oklahoma Bank and Trust Company, Sulphur, Oklahoma; First Madill Bancorporation, Inc., Madill, Oklahoma, and thereby indirectly acquire First National Bank of Marshall County, Madill, Oklahoma; First Prague Bancorporation, Inc., Prague, Oklahoma, and thereby indirectly acquire First National Bank, Prague, Oklahoma; and Kiamichi Bancshares, Inc., Hugo, Oklahoma, and thereby indirectly acquire The Citizens State Bank, Hugo, Oklahoma. Comments on this application must be received by September 4, 1987.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Western Community Bancorp,* Corona, California; to become a bank holding company by acquiring 100 percent of the voting shares of Western Community Bank of Corona, Corona, California.

Board of Governors of the Federal Reserve System, August 18, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19237 Filed 8-21-87; 8:45 am]

BILLING CODE 6201-01-M

Formation of, Acquisition by, or Merger of Bank Holding Companies and Acquisition of Nonbanking Company; Marshall & Ilsley Corp.

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 11, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Marshall & Ilsley Corporation,* Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Central Wisconsin Bankshares, Inc., Wausau, Wisconsin, and thereby indirectly acquire First American National Bank; Eagle River State Bank; Community State Bank; Mosinee Commercial Bank; Tri-County State Bank of Marshfield; The First National Bank of Neillsville; Community First Bank; Northern National Bank; Union National Bank of Ashland; Wisconsin Valley Trust Company; CWB Holdings—Onalaska, Inc.; Central National Bank of Wausau; Valley View Bank; and Bank of Plover.

In connection with this application, Applicant also proposes to acquire First American Investment, Inc., Wausau, Wisconsin, and thereby act as a broker or dealer retailing corporate securities over the counter; mutual funds retailer; put and call broker or dealer or option writer; underwriter or selling group participant; broker or dealer selling tax shelters or limited partnerships; broker or dealer selling oil and gas interest pursuant to § 225.25(b)(15) of the Board's Regulation Y; and Wisconsin Valley Trust Company, Wausau, Wisconsin, and thereby engage in trust services to individuals, corporations, and charitable institutions pursuant to § 225.25(b)(3) of the Board's Regulation Y. Tri-County State Bank of Marshfield engages in general insurance activities through its subsidiary, Greater Wisconsin Insurance Agency, Inc.

Board of Governors of the Federal Reserve System, August 18, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19238 Filed 8-21-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Shares of Banks or Bank Holding Companies; Ronald J. Sanders

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 4, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Ronald V. Sanders, Higginsville, Missouri, to acquire 18.2 percent; Ryan Galli, Springfield, Missouri, 4.55 percent; Robert G. Russell, Sedalia, Missouri, 4.55 percent; Stephen L. Abney, 12.73 percent; Alfonso Sicat, 18.2 percent; Charles Alan Cavaness, 9.1 percent; Arthur. F. McClure, 9.1 percent; Densil Allen, 5.45 percent; Forrest Yankee, 4.55 percent; A.L. Folkner, 4.55 percent; Russell W. Lotspeich, 2.73 percent; Robert A. Lotspeich, 1.82 percent; Charles M. Lederer, 1.82 percent; and Irwin L. Graves, 2.73 percent; all of Warrensburg, Missouri; to acquire voting shares of Warrensburg Bancshares, Inc., Warrensburg, Missouri, and thereby indirectly acquire Community Bank of Warrensburg, Warrensburg, Missouri.

Board of Governors of the Federal Reserve System, August 18, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19234 Filed 8-21-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Notice of Public Meeting Between the Centers for Disease Control (CDC) and the Cruise Ship Industry, Private Sanitation Consultants, and other Interested Parties

Time and Date: 9:00 a.m., Wednesday, September 23, 1987.

Place: Miami Port Authority Passenger Terminal No. 10, 1007 North American Way, Miami, Florida.

Status: Open to the Public for participation, comment, and observation, limited only by the space available.

SUPPLEMENTARY INFORMATION: A notice of two public meetings with the cruise ship industry, private sanitation consultants, and other interested parties to be convened by CDC was published in the **Federal Register**, Vol. 52, No. 115, pages 22848–22849, Tuesday, June 16, 1987.

The first of the two meetings was held in Miami, Florida, on Wednesday, June 24, 1987. Matters discussed at the meeting included the consideration of contracting, by CDC, the inspection portion of the Vessel Sanitation Program; the proposal to establish an advisory committee with representation from the cruise ship industry, private sanitation consultants, local health departments, and other interested parties; the minimum qualifications to be required of the Contractor's inspectors; and CDC's intent to begin charging fees, to conduct sanitation inspections of cruise ships as part of the Vessel Sanitation Program.

Matters To Be Considered. Experience to date with the operation of the Vessel Sanitation Program. CDC's decision on the matter of contracting, by CDC, the inspection portion of the Vessel Sanitation Program. Analysis of data relating to diarrheal illness occurring on board passenger cruise ships during the period 1975–1985.

For a period of 30 days following the meeting, through October 23, 1987, the official record of the meeting will remain open so that additional material or comments may be submitted to be made part of the record of the meeting.

Contact Person for More Information: Vernon N. Houk, M.D., Director, Center for Environmental Health, CDC, Atlantic, Georgia 30333. Telephone: FTS: 236–4111; Commercial: (404) 452–4111.

Dated: August 18, 1987.

Glenda S. Cowart,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87–19223 Filed 8–19–87; 8:45 am]

BILLING CODE 4160–18–M

Open Meeting on Temporal Factors Influencing Carcinogenicity of Industrial Chemicals

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: September 23, 1987.

Time: 9 a.m.-4 p.m.

Place: Room B–21, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Purpose: To review and discuss a project protocol which will compare tumorigenic, cytogenetic, and DNA adduct formation following inhalation of ethylene oxide at differing dose-rates. Viewpoints and suggestions from industry, organized labor, academic, other government agencies, and the public are invited.

Additional information may be obtained from: Mr. William J. Moorman, Division of Biomedical and Behavioral Sciences, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS:648–8275. Commercial: 513/533–8275.

Dated: August 18, 1987.

Glenda S. Cowart,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87–19224 Filed 8–21–87; 8:45 am]

BILLING CODE 4160–19–M

Health Care Financing Administration

[BERC–420–N]

Changes to Rural Referral Center Discharge Standards; Medicare Program

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

ACTION: Notice.

SUMMARY: We are changing the way we determine the regional median urban number of discharges for hospitals to qualify as rural referral centers. The median urban discharge standards are to be determined based on the most current data available.

EFFECTIVE DATE: This notice is effective on August 24, 1987.

FOR FURTHER INFORMATION, CONTACT: Linda Magno, (301) 594–9343.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1886(d) of the Social Security Act (the Act), hospitals generally are paid by the Medicare program for inpatient hospital services covered by Medicare in accordance with the prospective payment system. Certain hospitals, however, receive special treatment under that system. Section 1886(d)(5)(C)(i) of the Act specifically provides for exceptions and adjustments to prospective payment amounts, as the Secretary deems appropriate, to take into account the special needs of regional (including rural) and national referral centers. As one of the ways that a hospital may qualify as a rural referral center, a hospital must meet two mandatory criteria (specifying a minimum case-mix index and a minimum number of discharges) and at least one of three optional criteria (relating to specialty composition of medical staff, source of inpatients, or volume of referrals), in addition to being located in a rural area. These criteria are described in detail in 42 CFR 412.96(c).

In an August 31, 1984 final rule, we amended § 412.96 to provide that, with respect to the mandatory discharge criterion, a hospital's number of discharges for the specified cost reporting year must be at least equal to the national discharge criterion or to the regional discharge criteria (49 CFR 34762). Section 412.96 goes on to state that HCFA announces the number of discharges for each criterion, to be effective with cost reporting periods beginning during the next Federal fiscal year (FY), in the annual notice of prospective payment rates required by § 412.8(b).

In a final rule published on September 3, 1986 to update the inpatient hospital prospective payment system for FY 1987, we provided that, in order to qualify for rural referral center status for cost reporting periods beginning during FY 1987, a hospital's number of discharges for its cost reporting period beginning during Federal FY 1985 would have to be at least 5,369 or the applicable number of discharges for the census region in which the hospital is located, whichever is lower. We published a list (set forth below) of regional discharge values to be effective with cost reporting periods beginning on or after October 1, 1986. The values were derived from the 1981

median number of discharges from urban hospitals, which had applied previously. However, in recognition of the fact that total discharges had declined nationally and that rural hospitals had experienced a greater than average decline in discharges, we established the national and regional discharge values by adjusting the regional median urban discharge values from 1981 by the national decline (10.51 percent) in the number of discharges from rural hospitals from their 1981 levels through cost reporting periods beginning in Federal FY 1984.

REGIONAL MEDIAN URBAN DISCHARGE LEVELS PUBLISHED IN THE SEPTEMBER 3, 1986 FINAL RULE (51 FR 31471)

Region	Discharges
1	6,682
2	7,697
3	6,967
4	8,331
5	7,455
6	7,620
7	5,269
8	8,885
9	4,979

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) was enacted. Section 9302(d)(1) of Pub. L. 99–509 amended section 1886(d)(5)(C)(i) of the Act to specify that the criterion for the number of discharges must be 5,000 discharges per year, or the median number of discharges for urban hospitals in the region in which the hospital is located, whichever is lower.

To implement the provisions of Pub. L. 99–509 concerning the prospective payment system update that had been published on September 3, 1986, we published a final rule with comment period on November 24, 1986 (51 FR 42231). In that final rule, we implemented section 9302(d)(1) of Pub. L. 99–509 by specifically stating in regulations text (§ 412.96(c)(2)(i)(B)) that, for cost reporting periods beginning on or after October 1, 1986, a hospital applying for rural referral center status must have discharges of at least 5,000 or the median number of discharges for urban hospitals located in its region, whichever is lower. No changes were made to the regional discharge values at that time.

II. Changes Concerning the Method of Establishing the Regional Median Numbers of Discharges

In publishing the November 24, 1986 final rule, we stated that the changes to the regulations that we promulgated under section 9302 of Pub. L. 99–509 (including the changes to § 412.96(c)(2)(i)(B) concerning rural referral center discharge criteria) were mandated by statute and required little interpretation. Nonetheless, the decision announced in the final rule concerning the definition of approved teaching programs, necessary for purposes of establishing rural referral center case-mix index criteria, did require interpretation, and we provided a period for public comment about the provision. Several commenters, however, took the opportunity to submit comments concerning the method we used to establish the regional median urban number of discharges, as announced in the September 3, 1986 and the November 24, 1986 final rules. The commenters made the following suggestions:

- It would be more equitable to determine the "actual" median urban discharges by census region rather than by adjusting the original regional discharge criteria by the national average decrease in discharges for rural hospitals from 1981 through 1984.
- The median number of discharges should be adjusted to reflect the greater decline in discharges for rural hospitals as compared to urban hospitals.

In light of the importance attached by Congress to the discharge criteria, we carefully considered these suggestions. We agree with the first suggestion that it is more appropriate to determine actual median urban discharge levels by census region. Therefore, we have recalculated the discharge standards to reflect the decline in the number of discharges using the most current data available, that is, total discharges from hospitals for cost reporting periods beginning in Federal FY 1984, the first year of the inpatient hospital prospective payment system. The revised values are listed below.

REVISED REGIONAL MEDIAN URBAN DISCHARGE LEVELS EFFECTIVE WITH COST REPORTING PERIODS OCCURRING DURING THE PERIOD OCTOBER 1, 1986–SEPTEMBER 30, 1987

Region	Discharges
1	7,386
2	8,435
3	7,415
4	8,337
5	6,647
6	6,557
7	5,216
8	8,773
9	4,491

We note that the regional discharge values are higher in some regions and lower in other regions than the standards published in the September 3, 1986 final rule (51 FR 31471). However, only hospitals in Census Region 9 are affected by the revised value since it is the only region in which the regional median urban discharge standard is lower than the national standard of 5,000 discharges, as provided in section 1886(d)(5)(C)(i) of the Act. For hospitals in Census Region 9 that qualify based on the lower (regional) discharge standard, we are allowing 60 days from the date of publication of this final notice to file an application for referral center status. As with other hospitals that submitted timely applications to qualify as rural referral centers pursuant to section 9302(d)(1)(B)(ii) of Pub. L. 99–509, for hospitals in Census Region 9 that submit to the HCFA regional office a timely application that is subsequently approved, payment to the hospitals as referral centers will be effective with discharges occurring on or after October 1, 1986.

We do not agree with the second suggestion that the regional number of discharges should be adjusted by the greater percentage decline in the number of discharges for rural hospitals versus urban hospitals. Section 1886(d)(5)(C)(i) of the Act requires that the regional number of discharges standard be based on the ". . . median number of discharges in *urban* hospitals in the region in which the hospital is located . . ." (Emphasis added.) Thus, we do not believe that we have authority to adjust these urban median discharge values.

III. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any notice such as this that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a notice such as this will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all hospitals as small entities.

This notice will affect only those few hospitals in Census Region 9 that had fewer than 4,979 discharges and more than 4,491 discharges. However, it is unlikely that this change in the

methodology for determining discharge standards would affect hospitals in other regions, with the possible exception of Census Region 7 in the foreseeable future. Thus, although payment as a rural referral center is certainly a significant financial advantage for an affected hospital, this change would affect only a few hospitals.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on a substantial number of small entities. We have therefore not prepared a regulatory flexibility analysis.

IV. Other Required Information

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511) requires that any information collection requirements included in a document such as this must be submitted to and approved by the Executive Office of Management and Budget (EOMB). The requirements of this final notice do not impose any information collection requirements that must be approved under the Paperwork Reduction Act. Therefore, the notice need not be reviewed by EOMB for that purpose.

B. Waiver of 30-day Delay in Effective Date

We customarily provide a 30-day delay in the effective date. However, we may waive the delay if we find it to be impractical, unnecessary, or contrary to the public interest. We are applying the revised regional median urban discharge levels to hospital discharges occurring on or after October 1, 1986, as authorized under section 1886(d)(5)(C)(i) of the Act. We believe that the change we have adopted represents a better interpretation of the statutory provision. Furthermore, the change benefits hospitals in Census Region 9 applying for referral center status (in that it lowers the criterion) without disadvantaging any other hospitals. Accordingly, we believe that the revised discharge levels are in the best interest of the public and that they should be made retroactive to cost reporting periods occurring on or after October 1, 1986. For these reasons, we believe that a delay in the effective date is unnecessary and contrary to the public interest, and we find good cause to waive the delay.

(Section 1886(d)(5)(C)(i) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(C)(i)), 42 CFR 412.96)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: June 26, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: July 28, 1987.

Otis R. Bowen,

Secretary.

[FR Doc 87–19248 Filed 8–21–87; 8:45 am]

BILLING CODE 4120–01–M

[IOA–012–N]

Task Force on Technology-Dependent Children; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), this notice announces a meeting of the Task Force on Technology-Dependent Children.

DATE: The meeting will be held on September 22, 1987 from 9:00 a.m. to 8:00 p.m., C.D.T., and on September 23, 1987 from 9:00 a.m. to 2:00 p.m., C.D.T. The meeting will be open to the public.

ADDRESS: The meeting will be held in the Ramada Executive House, 71 East Wacker Drive, Chicago, IL 60601.

FOR FURTHER INFORMATION CONTACT: Bill Pickens, Executive Director, Task Force on Technology-Dependent Children, Department of Health and Human Services, Room 4414, HHS North Building, 330 Independence Avenue SW., Washington, DC 20201, (202) 245–0070.

SUPPLEMENTARY INFORMATION:

Purpose

The Task Force on Technology-Dependent Children, established under section 9520 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), investigates alternatives to institutional care for technology-dependent children. Technology-dependent children are those with chronic conditions requiring continuing use of medical technology.

The Task Force must report to the Secretary of Health and Human Services, the Administrator of the Health Care Financing Administration (HCFA), and to the Congress concerning alternatives to institutional care for technology-dependent children. The Task Force must develop recommendations designed to—

(1) Identify barriers that prevent the provision of appropriate care in a home or community setting to meet the special needs of technology/dependent children; and

(2) Recommend changes in the provision and financing of health care in private and public health care programs (including appropriate joint public-private initiatives) so as to provide home an community-based alternatives to the institutionalization of technology-dependent children.

The Task Force will address fully the two specified goals before it takes up any other question. To the extent that time and resources permit, the Task Force may develop recommendations that would address additional concerns regarding technology-dependent children. The Task Force recommendations are intended to be use only at the option of the Department of Health and Human Services and the Congress.

Agenda

The Task Force will conduct a business meeting to evaluate and review testimony, data, and information that has been received to date. It will consider barriers, recommendations, and possible solutions for technology-dependent children.

The public is invited to present testimony to the Task Force. We request those wishing to testify to contact the Task Force by September 11, 1987.

Agenda items are subject to change as priorities dictate.

(Sec. 10(a)(2) of Pub. L. 92–463, as amended (5 U.S.C. App. 1, Sec. 1–15) and Sec. 9520 of Pub. L. 99–272 (42 U.S.C. 1395a note); 45 CFR Part 11)

Dated: August 7, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87–19339 filed 8–21–87; 8:45 am]

BILLING CODE 4120–01–M

Statement of Organization, Functions and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) **Federal Register** Vol. 52, No. 91, pp. 17832–17833, dated Tuesday, May 12, 1987) is amended to reflect a reorganization within the Office of the Associate Administrator for Management and Support Services. The reorganization within the Office of Statistics and Data Management, Bureau of Data Management and Strategy, will centralize part of the effort needed to

carry out the Project to Redesign Information Systems Management (PRISM).

The specific changes to Part F. are as follows:

• Section FH.20.D.4.b., Division of Statistical Analysis (FHE72) is deleted in its entirety and replaced by an updated functional statement to read as follows:

b. Division of Statistical Analysis (FHE76)

Performs planning, organization, and coordination activities required to build and control HCFA's program data needs. Formulates and administers policy necessary for developing strategies to identify, organize, store (inventory), and maintain security over the Agency's program data resources. Performs strategic data resource planning to develop long-range plans to meet future data requirements. Coordinates requirements definitions for data base and non-data base systems design and implementation, ensuring consistency with long-term Agency goals. Establishes and maintains a data dictionary system to store documentation on all systems, programs, and databases. Assists operational components in the development and design of databases to ensure that informational needs are adequately addressed. Plans, organizes, coordinates, and controls activities required to assure the timely, accurate, cost-effective, and successful development and implementation of new and revised decision support systems to support Medicare statistical policy and program management information development. Plans and conducts comprehensive analyses of complex and diversified areas such as systems analysis and design methodologies, computer programming methods and techniques, software testing, validation and systems acceptance, configuration of HCFA automated data processing (ADP) and data communications resources, and data base security and integrity. Formulates contracting strategies and prepares procurement packages for major contractual agreements concerning Office workload. Provides highly technical data analysis and processing support needed to analyze current and proposed health care delivery systems, the implications of experimental financing methods on providers and physicians, the quality and accessibility of care being received by beneficiaries, the monetary effects of new legislation on alternative reimbursement methodologies, and related research studies of concern to policymakers and program managers. Develops data bases and computer software for addressing research initiatives; ad hoc data request; statistical, legislative, and policy issues; and computer-based simulations in support of studies by HCFA's researchers and program managers. Manages the Hospital Cost Report Information System which is the national data base of all Medicare hospital cost reports. Collects, validates, and processes automated and hard copy cost reports; generates routine and user-specific research, actuarial, and budgetary reports; and incorporates modifications to the systems that will handle revised user requirements and changes in cost reports. Prepares documentation for and participates in the preparation of fiscal intermediary manual instructions. Coordinates program support to Office staff in such areas as disk space requirements, ADP equipment acquisition, and tape handling. Provides Office focus for ADP systems standards and documentation.

• Section FH.20.D.4.d., Division of Data Administration (FHE74) is deleted in its entirety and replaced by a new division whose functional statement reads as follows:

d. Division of Coding and Standardization Policy (FHE75)

Develops policy by which the quality of data is to be measured to improve the efficiency and effectiveness of information management in HCFA. Develops and implements procedures to ensure the integrity and proper usage of data and provides counsel on data collection policy and procedures, forms design, and forms clearance. Participates in the development and establishment of data standards used for areas such as uniform billing, uniform reporting, and uniform coding systems. Develops, maintains, and coordinates the publication and dissemination of manuals such as the Statistical Files Manual and HCFA Data Profiles to inform other government agencies and non-government organizations of the data maintained in the HCFA statistical files. Provides advice, consultation, and coordination on the availability and use of HCFA's data files. Develops and implements data release policies and costing methodologies to be used when releasing information to the public. Works with components of the health care industry in the development of medical coding policies to improve the efficiency and effectiveness of information management in HCFA. Serves as the Agency focal point, and provides staff support for the Director, BDMS, for data policy task forces and advisory groups such as the National Committee on Vital and Health Statistics, the Interagency Task Force on the Uniform Ambulatory Medical Care Minimum Data Set, the Task Force on Long-Term Care Policies, the Health Information Policy Council, and the Washington Business Group on Health. Formulates HCFA policy for the development and maintenance of new and revised codes for the International Classification of Diseases—Ninth Revision—Clinical Modification (ICD-9-CM) function. Serves as the Bureau's focal point for the development of HCFA's Common Procedure Coding System. Coordinates changes in medical codes and coding policy with Federal and non-Federal organizations. Develops and analyzes profiles of diagnostic and procedural information reported by providers (institutional and non-institutional), intermediaries, and carriers. Participates in the development of medical coding related training materials. Advises other Federal agencies regarding medical coding and policy. Assists user groups in defining medical coding requirements.

Date: August 4, 1987.

Bartlett S. Fleming,

Associate Administrator for Management and Support Services.

[FR Doc. 87-19249 Filed 8-21-87; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee, National Heart, Lung, and Blood Institute, October 29-30, 1987, Federal Building, Conference Room B119, 7550 Wisconsin Avenue, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. to approximately 5:00 p.m. on Thursday, October 29, and from 8:30 a.m. to adjournment on Friday, October 30, to evaluate program support in Arteriosclerosis, Hypertension and Lipid Metabolism. Attendance by the public will be limited on a space available basis.

Ms. Terry Bellicha, Chief, Communication and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda,

Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. G.C. McMillan, Associate Director, Arteriosclerosis, Hypertension and Lipid Metabolism Program, NHLBI, Room 4C12, Federal Building, National Institutes of Health, Bethesda, MD 20892, (301) 496–1613, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: August 17, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87–19350 Filed 8–21–87; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Blood Diseases and Resources Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, October 26–27, 1987, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The Committee will meet in Building 31, Conference Room 6, C Wing.

The entire meeting will be open to the public from 9 a.m. to recess on October 26, and from 9 a.m. to adjournment on October 27 to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 5A–08, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 17, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–19348 Filed 8–21–87; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Cardiology Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, October 26–27, 1987, Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:00 a.m. on October 26 to adjournment on October 27. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Eugene R. Passamani, M.D., Acting Associate Director for Cardiology, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Room 320, Federal Building, Bethesda, Maryland 20892, telephone (301) 496–5421, will furnish substantive program information upon request.

Dated: August 17, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87–19349 Filed 8–21–87; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Clinical Applications and Prevention Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute, National Institutes of Health, on October 5–6, 1987, in Building 31, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on October 5 from 9 a.m. to recess and from 8:30 a.m. to adjournment on October 6 to discuss new initiatives, program policies, and issues. Attendance by the public will be limited to space available.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of committee members upon request.

Dr. Lawrence Friedman, Acting Director, Division of Epidemiology and Clinical Applications, Federal Building, Room 212, Bethesda, Maryland 20892, (301) 496–2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health.)

Dated: August 17, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH

[FR Doc. 87–19347 Filed 8–21–87; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Meeting of the National Committee on Vital and Health Statistics, Subcommittee on Long Term Care Statistics

Pursuant to the Federal Advisory Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Long Term Care Statistics established pursuant to 42 USC 242k, section 306(k)(2) of the Public Health Service Act, as amended, will meet on Monday, September 28, 1987 from 1:00 p.m. to 5:00 p.m. and Tuesday, September 29, 1987 from 9:00 a.m. to 3:00 p.m. in Room 303A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The Subcommittee will conduct a Board and Care Survey review and begin the direct service and the classification review.

Further information regarding the Subcommittee may be obtained by contacting Richard Havlik, National Center for Health Statistics, Room 2–12, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Date: August 12, 1987.

Robert A. Israel,

Deputy Director, National Center for Health Statistics.

[FR Doc. 87-19250 Filed 8-21-87; 8:45 am]

BILLING CODE 4160-17-M

Meeting of the National Committee on Vital and Health Statistics, Subcommittee on Medical Classification Systems

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Medical Classification Systems established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will meet on Wednesday, September 16, 1987 from 8:45 a.m. to 5:00 p.m. and Thursday, September 17, 1987 from 8:45 a.m. to 1:30 p.m. in Room 303A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The Subcommittee will review the current and future plans for the International Classification of Diseases.

Further information regarding this meeting of the Subcommittee may be obtained by contacting Richard Havlik, National Center for Health Statistics, Room 2-12, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: August 12, 1987.

Robert A. Israel,

Deputy Director, National Center for Health Statistics.

[FR Doc. 87-19251 Filed 8-21-87; 8:45 am]

BILLING CODE 4160-17-M

Statement of Organization, Functions and Delegations of Authority; Office of the Assistant Secretary for Health

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health), of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 52 FR 23502, June 22, 1987), is amended to reflect the establishment of a National Vaccine Program Office in the Office of the Assistant Secretary for Health reporting directly to the Assistant Secretary for Health who also serves as the Director of the National Vaccine Program. The Office will provide support to the activities of the National Vaccine Program as described in subtitle 1 of Title III, Pub. L. 99-660.

Office of the Assistant Secretary for Health

Under Part H, Chapter HA, Office of the Assistant Secretary for Health (OASH), Section HA-10, Organization, add to the list of organizations, item 20, National Vaccine Program Office (HA2).

Under Section HA-20, Functions, after the statement for the *National Aids Program Office (HAA),* add the following title and statement:

National Vaccine Program Office (HA2)

The National Vaccine Coordinator serves as the head of the Office and reports directly to the Director of the National Vaccine Program for activities regarding the National Vaccine Program (NVP). The Office: (1) Serves as PHS focus in coordinating a national vaccine program including governmental and nongovernmental vaccine activities; (2) identifies issues, and makes recommendations to the Director, NVP, concerning vaccine activities; (3) develops the NVP Implementation Plan for approval by the Director; (4) develops and maintains a directory of organizations and calendar of events involved in vaccine activities; (5) coordinates PHS public education activities related to vaccines; (6) monitors Federal spending for vaccine activities; (7) provides executive secretary and administrative support to the National Vaccine Advisory Committee; and (8) prepares the National Vaccine Report for the Director, NVP to submit to Congress.

Date: August 13, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87-19252 Filed 8-21-87; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-87-857]

Office of the Manager, Milwaukee Office; Designation of Succession

AGENCY: Department of Housing & Urban Development.

ACTION: Designation of Succession.

SUMMARY: The Manager is designating officials who may serve as the Acting Manager during the absence, disability or vacancy in the position of the Manager.

EFFECTIVE DATE: The designation is effective August 4, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis M. Nixon, Regional Counsel, Chicago Regional Office, Department of Housing & Urban Development, 300 South Wacker Drive, Chicago, Illinois 60606-6765, 312-353-4681. (This is not a toll-free number.)

Designation:

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability or vacancy in the position.

1. Deputy Manager
2. Chief Counsel
3. Director, Housing Development
4. Director, Housing Management
5. Director, CPD Division
6. Director FHEO Division
7. Chief, Valuation

This designation supersedes the designation published at Docket No. D-86-0822, **Federal Register** Vol. 51, No. 174, dated Tuesday, September 9, 1986.

Authority: Delegation of Authority, 27 FR 4319 (1962); Sec. 9(c), Department of Housing and Urban Development Act, 42 U.S.C. 3531 note; and Interim Order 11, 31 FR 615 (1966).

Delbert F. Reynolds,

Manager, Milwaukee Office.

Gertrude W. Jordan,

Regional Administrator—Regional Housing Commissioner, Region No. 5.

FR Doc. 87-19370 Filed 8-21-87; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-87-4333-10]

Meeting of the California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting notice for California Desert District Advisory Council and agenda item additions for the meeting.

SUMMARY: The September 3, 1987, scheduled meeting of the California Desert District Advisory Council will begin at 1:00 p.m. instead of 2:00 p.m. due to an agenda item addition. The meeting will be held in the Victoria Room, Park Inn, 1150 University Avenue, Riverside, California and will be divided

into two sessions: 1:00 p.m. to 5:00 p.m. and 7:00 p.m. to 9:00 p.m.

SUPPLEMENTARY INFORMATION: The regular meeting for the California Desert District Advisory Council, scheduled for September 3, 1987, at the Park Inn, 1150 University Avenue, Riverside, California, was originally scheduled with only one agenda item: final public meeting to receive public comment on the East Mojave National Scenic Area Draft Management Plan and Environmental Assessment.

The meeting agenda has now been expanded to include one additional item: the presentation of a preliminary recommendation of future recreation use at Windy Point near Palm Springs in Riverside County. The meeting will now open at 1:00 p.m., instead of 2:00 p.m., with presentation of this preliminary recommendation followed by discussion and public comment.

The remainder of the meeting, from 2:00 p.m to 5:00 p.m. and from 7:00 p.m. to 9:00 p.m., will be devoted to receiving public comment on the East Mojave National Scenic Area Draft Management Plan and Environmental Assessment. This will be the last of 10 public meetings and informal workshops on the Draft Plan. The public review and comment period is scheduled to close September 11, 1987.

Written comments should be sent to the Bureau of Land Management, Needles Resource Area, 101 West Spike's Road, P.O. Box 888, Needles, California 92363. Copies of the Draft Plan and Assessment are available at Bureau of Land Management offices throughout Southern California.

FOR FURTHER INFORMATION, CONTACT: Bureau of Land Management Public Affairs Office, California Desert District, 1695 Spruce Street, Riverside, California 92507, (714) 351–6383.

Dated: August 17, 1987.

Gerald E. Hillier,

District Manager.

[FR Doc. 87–19222 Filed 8–21–87; 8:45 am]

BILLING CODE 4310–40–M

Minerals Management Service

Development Operations Coordination Document; ARCO Oil and Gas 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 ARCO Oil and Gas Company has submitted a DOCD describing the activities its proposes to conduct on Lease OSC–G 3386, Block 601, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on August 13, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 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; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 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 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.

Date: August 14, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–19229 Filed 8–21–87; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; ODECO Oil & Gas 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 ODECO Oil & Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 074, Block 20, South Pelto Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Dulac and Houma, Louisiana.

DATE: The subject DOCD was deemed submitted on August 13, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 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; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 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.

Date: August 14, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–19230 Filed 8–21–87; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Samedan Oil Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Samedan Oil Corporation has submitted a DOCD describing the activities it porposes to conduct on Lease OCS–G 2898, Block 242, 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 Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 17, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 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; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 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.

Date: August 17, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–19231 Filed 8–21–87; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Samedan Oil Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Samedan Oil Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5537, Block 80, Ship Shoal Area, offshore Louisiana. Proposed plan for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 13, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also avaiable for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 14, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–19232 Filed 8–21–87; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf; Availability of Proposed Notice of Sale for Beaufort Sea Oil and Gas Lease Sale 97

The proposed Notice of Sale for Sale 97, Beaufort Sea, may be obtained by written request to the Alaska Outer Continental Shelf (OCS) Region, Minerals Management Service, Room 544, 949 East 36th Avenue, Anchorage, Alaska 99508–4302, or by telephone (907) 261–4691.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is scheduled for January 1988.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Land Act, as amended, has provided the affected States the opportunity to review the proposed Notice of Sale.

Comments should be submitted to the Minerals Management Service, 18th and C Streets NW., Room 4230 (MS–645), Washington, DC 20240, within 60 days of this Notice.

This notice of Availability is hereby published pursuant to 30 CFR 256.29, as amended (51 FR 37177 on October 20, 1986), as a matter of information to the public.

Dated: August 20, 1987.

David W. Crow,

Acting Director, Minerals Management Service.

[FR Doc. 87–19478 Filed 8–21–87; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Availability of an Environmental Assessment; Big Cypress National Preserve, FL

SUMMARY: Notice is hereby given pursuant to § 9.52(b) of Title 36, Part 9, Subpart B of the Code of Federal Regulations of the availability for review of and comment on an environmental assessment for an oil and gas Plan of Operations submitted by Shell Western E & P Inc., for the purpose of conducting geophysical seismic exploration surveys in the Big Cypress National Preserve.

DATE: Comments received on or before October 23, 1987, will be entered into the official records.

ADDRESSES: Copies of the environmental assessment are available for review at:

Big Cypress National Preserve, S.R. Box 110, Satinwood Drive, Ochopee, Florida 33943, Telephone (813) 695–2000

Office of Science and Natural Resources, Southeast Regional Office, National Park Service, 75 Spring Street SW., Atlanta, Georgia 30303, Telephone (404) 331–4916

Miami-Dade Public Library, 101 West Flagler, Miami, Florida 33130

Collier County Public Library, 650 Central Avenue, Naples, Florida 33940

FOR FURTHER INFORMATION CONTACT: Mr. Fred Fagergren, Superintendent, Big Cypress National Preserve.

Date: August 6, 1987.

C. W. Ogle,

Regional Director, Southeast Region.

[FR Doc. 87-19243 Filed 8-21-87; 8:45 am]

BILLING CODE 4310-70-M

Cape Cod National Seashore Advisory Commission, South Wellfleet, Meeting;

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1 s 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held Friday, September 11, 1987.

The Commission was reestablished pursuant to Pub. L. 99-349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The meeting will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts at 1:00 p.m. for the following reasons:

1. Commission Business
   (a) Adoption of Rules of Procedure
   (b) Election of Permanent Officers
2. Three Sisters Relocation
3. Parkwide Bicycle Trail Study

The meeting is open to the public. It is expected that 50 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting. Further information concerning this meeting may be obtained from the Superintendent, Cape Cod National Seashore, So. Wellfleet, MA 02663.

Herbert S. Cables, Jr.,

Regional Director.

August 12, 1987

[FR Doc. 87-19242 Filed 8-21-87; 8:45 am]

BILLING CODE 4310-70-M

Illinois and Michigan Canal National Heritage Corridor Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Illinois and Michigan Canal National Heritage Corridor Commission will be held September 3, 1987, beginning at 1:30 p.m. at the Illinois Waterway Visitor Center, Rural Route 1, Dee Bennet Road, Ottawa, Illinois.

The Commission was originally established on August 24, 1984, pursuant to provisions of the Illinois and Michigan Canal National Heritage Corridor Act of 1984, 98 Stat. 1456, 16 U.S.C. sec. 461 note, to implement and support the conceptual plan.

Matters to be discussed at the meeting will include the budget for fiscal year 1988 and the revolving loan fund.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting. Further information concerning the meeting may be obtained from Alan M. Hutchings, Chief, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402-221-3481 (FTS 864-3481). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 87-19240 Filed 8-21-87; 8:45 am]

BILLING CODE 4160-70-M

Receipt of Mining Plans of Operations; Wrangell-St. Elias National Park and Preserve; Alaska Region

AGENCY: National Park Service, Alaska region, Interior.

SUMMARY: The Wrangell-St. Elias National Park and Preserve in the Alaska Region of the National Park Service has received mining Plans of Operation from Mr. James R. Moody and Mr. Donald E. Dippel, operators on the Bonanza Creek Claims and the Big Eldorado Creek Claims respectively, in the Gold Hill area of the Chisana Mining District within the National Preserve. Engineering Analyses and Environmental Assessments for these Plans have been prepared and are being processed. The Plans of Operations and related agency prepared documents are on file at Headquarters, Wrangell-St. Elias NP/P, mile 105.2, Richardson Highway, Glennallen, Alaska, or at the Alaska Regional Office, 2525 Gambell, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Richard H. Martin, Superintendent, Wrangell-St. Elias NP/P, P.O. Box 29, Glennallen, Alaska 99588.

Dated: August 11, 1987.

Richard J. Stenmark,

Acting Regional Director, Alaska Region.

[FR Doc. 87-19241 Filed 8-21-87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 466]

Railroad Cost of Capital—1986

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: On August 21, 1987, the Commission served a decision to update its estimate of the railroad industry's cost of capital for 1986. The composite cost of capital rate for 1986 is found to be 11.7 percent, based on a current cost of debt of 8.9 percent, a cost of preferred equity capital of 8.7 percent, a cost of common equity capital of 13.4 percent, and a 34.8 percent debt/1.6 percent preferred equity/63.6 percent common equity capital structure mix. The cost of capital finding made in this proceeding will enable the Commission to make its annual determination of railroad revenue adequacy for 1986.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275-7489.

SUPPLEMENTARY INFORMATION: The cost of capital finding in this decision should be utilized to evaluate the adequacy of railroad revenues for 1986 under the standards and procedures promulgated in Ex Parte No. 393 (Sub-No. 1), *Standards for Railroad Revenue Adequacy*, served December 31, 1986. This finding may also be utilized in proceedings involving the prescription of maximum reasonable rate levels.

To purchase a copy of the full decision write to: T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, 12th & Constitution Avenue NW., Washington, DC 20423 (202) 289-4357 (DC Metropolitan Area) (202) 275-1721 TDD for hearing impaired.

Decided: August 12, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Simmons dissented in part with a separate expression. Vice Chairman Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-19363 Filed 8-21-87; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 472]

Railroad Revenue Adequacy; 1986 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Notice of 1986 determination of rail revenue adequacy.

SUMMARY: In Ex Parte No. 393, *Standards for Railroad Revenue Adequacy*, 364 I.C.C. 803 (1981), as modified in Ex Parte No. 393 (Sub. No. 1), *Standards for Railroad Revenue Adequacy*, served December 31, 1986, the Commission determined that a railroad would be considered revenue adequate under 49 U.S.C. 10704(a) if the railroad achieved a rate of return at least equal to the current cost of capital. This decision applies the rate of return standard to data for the year 1986. Using these data, the Commission has now determined that none of the 18 Class I freight carriers are revenue adequate.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275–7489.

SUPPLEMENTARY INFORMATION: To purchase a copy of the full decision write to: T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, 12th & Constitution Avenue NW., Washington, DC 20423 (202) 289–4357 (DC Metropolitan Area) TDD for hearing impaired: (202) 275–1721.

Decided: August 12, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87–19364 Filed 8–21–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31024]

The Durango & Silverton Narrow Gauge Railroad Company; Petition for Declaratory Order or Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts the Durango & Silverton Narrow Gauge Railroad Company from the requirements of 49 U.S.C. Subtitle IV with respect to operation of its 49.35-mile line, known as the Silverton Branch, between Durango and Silverton, CO, subject to the condition that it consult with the Colorado State Historic Preservation Officer for compliance with section 106 of the National Preservation Act, 16 U.S.C. 470.

DATES: The exemption is effective on September 23, 1987. Petitions for stay must be filed by September 3, 1987. Petitions for reconsideration must be filed by September 14, 1987.

ADDRESSES: Send pleadings, referring to Finance Docket No. 31024 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Edward T. Lyons, Jr., 1600 Lincoln Center, Lincoln Street, Denver, CO 80264

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call (202) 275–4357. For hearing impaired, call (202) 275–1721.

Decided: August 14, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Andre commented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87–19365 Filed 8–21–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31067]

Dissolution of Lake Superior Terminal and Transfer Railway Co.; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 11343(a)(1), the dissolution of Lake Superior Terminal and Tranfer Railway Company, which in effect merges it into its rail carrier owners Burlington Northern Railroad Company, Chicago and North Western Transportation Company, and Soo Line Railroad Company. The exemption is subject to standard labor protective conditions.

DATES: The exemption will be effective on September 23, 1987. Petitions for stay must be filed by September 3, 1987, and petitions for reconsideration must be filed by September 14, 1987.

ADDRESSES: Send pleadings, referring to Finance Docket No. 31067, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 67102

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245. (TDD for hearing impaired: (202) 275–1721.

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 (202) 289–4357 (assistance for the hearing impaired is available through TDD services (202) 275–1721) or by pickup from TSI in Room 2229 at Commission headquarters.

Decided: August 14, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–19366 Filed 8–21–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31063]

Midsouth Corp.; Control Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 11343 the continuance of control of MidLouisiana Rail Corporation by MidSouth Corporation, which already controls MidSouth Rail Corporation, subject to employee protective conditions.

DATES: This exemption will be effective on September 3, 1987. Petitions for reconsideration must be filed by September 14, 1987.

ADDRESSES: Send pleadings referring to Finance Docket No. 31063 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
Petitioner's representative: Mark M. Levin, Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New York Avenue NW., Washington, DC 20005–4797

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721).

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 (202) 289–4357 (assistance for the hearing impaired is available through TDD services (202) 275–1721) or by pickup from TSI in Room 2229 at Commission headquarters.

Decided: August 17, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–19367 Filed 8–21–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31089]

Montana Rail Link, Inc.; Exemption Acquisition and Operation

Montana Rail Link, Inc. (MRL) has filed a notice of exemption to acquire and operate certain properties of Burlington Northern Railroad Company (BN).[1] The properties consist of 544.30 miles of non-contiguous BN main rail line (which MRL will lease and have an option to purchase) extending: From Huntley, MT (milepost 209.91) to west of Helena, MT at mainline number one (milepost 2.95) and mainline number two (milepost 5.02); from Laurel, MT (milepost 15.15) to south of Laurel, MT (milepost 514.47); from Moss Main MT (milepost 0.00) to a point north of Moss Main, MT (milepost 0.50); and from Phosphate, MT (milepost 52.94) to Sand Point, ID (milepost 2.79). The transaction will also include MRL's acquisition and operation of 286.32 miles of BN branch rail lines extending: From De Smet, MT (milepost 0.00) to Paradise, MT (milepost 64.27); from Missoula, MT (milepost 0.02) to Darby, MT (milepost 64.66); from Dixon, MT (milepost 0.46) to Polson, MT (milepost 33.40); from Sappington, MT (milepost 0.00) to Harrison, MT (milepost 9.48); from Whitehall, MT (milepost 0.00) to Alder, MT (milepost 45.58); from Helena, MT (milepost 218.05) to Montana City, MT (milepost 222.76); from Logan, MT (milepost 0.26) to Whitehall, MT (milepost 39.00); and from Drummond, MT (milepost 0.00) to Philipsburg, MT (milepost 25.96).

MRL will also operate pursuant to bridge-only trackage rights over BN's rail line upon lease of the property from BN, from Sand Point, ID (milepost 2.79) to Spokane, WA (milepost 68.17); from mainline number one west of Helena, MT (milepost 2.95) to Phosphate, MT (milepost 52.94); and from mainline number two west of Helena, MT (milepost 5.02) to Phosphate, MT (milepost 52.94). BN will retain bridge-only trackage rights from Huntley, MT (milepost 209.91) to Moss Main, MT (milepost 0.50) and to the yard at Laurel, MT, and between Moss Main, MT (milepost 0.50) and south of Laurel, MT (milepost 514.47).

Any comments must be filed with the Commission and served on R. Lawrence McCaffery, Jr., Weiner, McCaffrey, Brodsky & Kaplan, P.C. Suite 800, 1350 New York Avenue, NW., Washington, DC 20005–4797, (202) 628–2000, and Douglas J. Babb, Burlington Northern Railroad Company, Continental Plaza, 777 Main Street, Fort Worth TX 76102, (817) 878–2000. This transaction will also involve the issuance of securities by MRL which will be Class II carrier. The issuance of these securities is exempt under 49 CFR 1175.1.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 13, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–19368 Filed 8–21–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31093]

Valley Forge Railways, Ltd.; Acquisition and Operation Exemption; Certain Lines of Consolidated Rail Corp.

Valley Forge Railways, Ltd. (VFR) has filed a notice of exemption to acquire and operate certain properties of Consolidated Rail Corporation (Conrail). The properties consist of 7.27 miles of rail line extending: (1) From Oaks, PA (milepost 23.90) to Cromby, PA (milepost 29.20); (2) from Perkiomen Junction, PA (milepost 0.12) to Oaks, PA (milepost 1.71); and (3) in Phoenixville Borough, PA (milepost 0.00 to milepost 0.38). Any comments must be filed with the Commission and served on Kimberly A. Madigan, Weiner, McCaffrey, Brodsky & Kaplan, P.C., Suite 800, 1350 New Avenue, NW., Washington, DC 20005–4797, (202) 628–2000; and Charles Mecham, Consolidated Rail Corporation, 6 Penn Center Plaza, Philadelphia, PA, 19103, (215) 977–5017. This transaction may also involve the issuance of securities by VFR which will be a Class III carrier. The issuance of these securities, if any, is exempt under 49 CFR 1175.1.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 14, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–19369 Filed 8–21–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

[Civil Action No. 87–1089D]

Pollution Control; Lodging of Consent Decree Pursuant to the Clean Water Act; City of Anacortes, WA

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on August 10, 1987, a proposed consent decree in *United States of America and the State of Washington v. City of Anacortes, Washington*, Civil Action No. 87–1089D, was lodged with the United States District Court for the Western District of Washington. The complaint sought the imposition of injunctive relief and civil penalties under the Clean Water Act against the City of Anacortes for violations of the secondary treatment standards of the Clean Water Act in the operation of its wastewater treatment facility.

The consent decree provides that the City of Anacortes will construct a wastewater treatment facility capable of achieving secondary treatment levels, attain compliance with its National Pollutant Discharge Elimination System permit, maintain compliance with interim effluent limitations during construction of the new facility, and pay a civil penalty of $5,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments

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[1] By decision served July 31, 1987, the Commission denied petitions filed by the Montana Public Service Commission and the Transportation Division of the Department of Commerce, State of Montana, requesting a stay of the effective date of this exemption (July 31, 1987). A petition to stay was also filed jointly by Citizens Alliance to Save the Southline, United Transportation Union, Brotherhood of Locomotive Engineers, and Brotherhood of Maintenance of Way Employees, but the Commission did not have the opportunity to consider it prior to reaching its decision served on the effective date of the exemption.

relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and the State of Washington v. City of Anacortes, Washington*, D.J. Ref. 90–5–1–1–2670.

The proposed consent decree may be examined at the office of the United States Attorney, 3600 Seafirst 5th Avenue Plaza, 800 5th Avenue, Seattle, Washington 98104, or the Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $1.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–19300 Filed 8–21–87; 8:45 am]

BILLING CODE 4410–01–M

[Civil Action No. 87–1088C]

Pollution Control; Lodging of Consent Degree Pursuant to the Clean Water Act; City of Lynnwood, WA

In accordance with Department policy, 28 C.F.R. § 50.7, notice is hereby given that on August 10, 1987, a proposed consent decree in *United States of America and the State of Washington v. City of Lynnwood, Washington*, Civil Action No. 87–1088C, was lodged with the United States District Court for the Western District of Washington. The complaint sought the imposition of injunctive relief and civil penalties under the Clean Water Act against the City of Lynnwood for violations of the secondary treatment standards of the Clean Water Act in the operation of its wastewater treatment facility.

The consent decree provides that the City of Lynnwood will constuct a wastewater treatment facility capable of achieving secondary treatment levels, attain compliance with its National Pollutant Discharge Elimination System permit, maintain compliance with interim effluent limitations during constuction of the new facility, and pay a civil penalty of $12,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and the State of Washington v. City of Lynnwood, Washington*, D.J. Ref. 90–5–1–1–2673.

The proposed consent decree may be examined at the office of the United States Attorney, 3600 Seafirst 5th Avenue Plaza, 800 5th Avenue, Seattle, Washington 98104, or the Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $1.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–19201 Filed 8–21–87; 8:45 am]

BILLING CODE 4410–01–M

[Civil Action No. 87–1087R]

Pollution Control; Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on August 10, 1987, a proposed consent decree in *United States of America and the State of Washington v. City of Port Angeles, Washington*, Civil Action No. 87–1087R, was lodged with the United States District Court for the Western District of Washington. The complaint sought the imposition of injunctive relief and civil penalties under the Clean Water Act against the City of Port Angeles for violations of the secondary treatment standards of the Clean Water Act in the operation of its wastewater treatment facility.

The consent decree provides that the City of Port Angeles will construct a wastewater treatment facility capable of achieving secondary treatment levels, attain compliance with its National Pollutant Discharge Elimination System permit, maintain compliance with interim effluent limitations during construction of the new facility, and pay a civil penalty of $8,500.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and the State of Washington v. City of Port Angeles, Washington*, D.J. Ref. 90–5–1–1–2672.

The proposed consent decree may be examined at the office of the United States Attorney, 3600 Seafirst 5th Avenue Plaza, 800 5th Avenue, Seattle, Washington 98104, or the Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

In requesting a copy, please enclose a check in the amount of $1.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–19302 Filed 8–21–87; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Ad Hoc Advisory Committee on Arts Education Study; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Ad Hoc Advisory Committee on Arts Education Study (1987) to the National Council on the Arts will be held on September 19, 1987 from 12:00 p.m.—5:30 p.m. and on September 20, 1987 from 9:00 a.m.—5:30 p.m. in room MO–9 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The

topic of discussion will be a Draft of Arts Education Study to be submitted to Congress by December 20, 1987 by the National Endowment for the Arts.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

August 18, 1987.

[FR Doc. 87–19303 Filed 8–21–87; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel (Music Festival Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Music Festivals Section) to the National Council on the Arts will be held on September 9, 1987 from 9:00 a.m.–6:30 p.m. and on September 10, 1987 from 9:00 a.m.–6:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 10, 1987 from 1:00 p.m.–3:00 p.m. The topics for discussion will be guidelines and policy issues.

The remaining sessions of this meeting on September 9, 1987 from 9:00 a.m.–6:30 p.m. and September 10, 1987 from 9:00 a.m.–1:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9) (B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

August 18, 1987.

[FR Doc. 87–19304 Filed 8–21–87; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Future LWR Designs; Meeting; Change of Date

The ACRS Future LWR Designs Subcommittee meeting scheduled for September 8, 1987 has been rescheduled for 8:30 a.m., Wednesday, September 9, 1987. All other items pertaining to this meeting remain the same as previously published in the Federal Register dated Friday, August 14, 1987 (52 FR 80473).

Date: August 18, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87–19360 Filed 8–21–87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–270]

Confirmatory Order Modifying License (Effective Immediately); Duke Power Co., (Oconee Nuclear Station, Unit 2)

I.

Duke Power Company (DPC or the licensee) is the holder of Facility Operating License No. DPR–47, which authorizes the operation of Oconee Nuclear Station, Unit 2 (the facility) at a power level not to exceed 2568 megawatts thermal. The facility consists of a pressurized water reactor plant located at the licensee's site in Oconee County, South Carolina.

II.

For Oconee Unit 2, the reactor building cooling units (RBCUs) provide decay heat removal after the design-basis accident, which is the loss-of-coolant accident (LOCA). In a post-accident situation, all three coolers operate continuously circulating the steam-air mixture past the cooling tubes of the RBCU to transfer heat from the containment atmosphere to the low-pressure service water (LPSW) system. Also, the low-pressure injection (LPI) system (in the recirculation mode) cools the water from the reactor building sump. For long-term cooling, the LPI pumps recirculate injected water from the reactor building sump to the core. Heat is transferred through the LPI coolers to the LPSW system.

By telephone on April 3, 1987, and by letter dated April 6, 1987, the licensee informed the NRC staff that recent fouling in the LPSW system (lake water) side of the RBCUs and LPI coolers had resulted in an inability to transfer the total LOCA heat loads. Consequently, the licensee has reduced power level in Unit 2 to a maximum of 81.7% to match LOCA heat transfer requirements with the capability of the degraded heat exchangers.

In its letter of April 6, 1987, the licensee committed (1) to establish new interim maximum allowable power levels, (2) to change the reactor protection system (RPS) high-flux trip setpoints for Unit 2, and (3) to specify that the third non-engineered safeguards LPI pump for Unit 2 must be operable.

On April 10, 1987, the NRC issued an immediately effective Order confirming the licensee's commitments and establishing new interim maximum allowable power levels and corresponding changes to the RPS high-flux trip setpoint for Unit 2 while the LPI system coolers and the RBCUs are in a degraded mode.

By letters dated July 24, 28, 29, 31, and August 13, 1987, the licensee informed the NRC of the effects for Unit 2 of elevated water temperatures of Lake Keowee. In the letter dated July 24, 1987, the licensee stated that the lake water temperature was increasing and was expected to exceed the design-basis water temperature (75°F) used in the accident analysis documented in the Final Safety Analysis Report (FSAR) for the plant. The licensee stated that the lake temperature has exceeded 75°F in 9 of the past 11 years. Oconee Unit 2 will have to reduce power when the lake water temperature reaches 80°F.

To determine the impact of higher lake water temperatures on station systems and components, the licensee evaluated the effects of temperatures of 80 °F and 85 °F. The results of the evaluation indicated that under elevated lake water temperature conditions, there is a need to reduce the maximum allowable power level below that specified by the Order of April 10, 1987. The licensee has committed to reduce power level until all the Unit 2 heat exchangers have been fully cleaned and tested. The commitment is confirmed by this Order which will be in place until the unit shuts down for refueling at the end of Cycle 9, which is currently scheduled for January 1988. In accordance with the April 10, 1987 Order, the LPI coolers were cleaned, tested, evaluated for full-power operation, and approved for full-power operation by the Region II Regional

Administrator before they were returned to service following a brief shutdown before April 22, 1987. The RPS high flux trip setpoint has to be reduced to account for the higher lake water temperatures and the fouling of the RBCU coolers. The RPS high flux trip setpoint will be reduced to correspond to the appropriate maximum allowable power level to ensure that the power level will be maintained below the allowed maximum power level.

III.

In the July 24, 29, and August 13, 1987 letters, the licensee stated that the calculational methods used in determining the heat exchanger performance at the higher lake temperatures were the same as those used and documented in the April 6, 1987 submittal on heat exchanger fouling. The staff had reviewed these methods and found them acceptable before issuing the Confirmatory Order dated April 10, 1987. Using this same calculational technique, the licensee has determined that for Unit 2, power level reduction to 93% is appropriate when the lake water temperature is between 80°F and 85°F. These restrictions apply only until the end of Cycle 9 for Unit 2, when the RBCU heat exchangers will be cleaned and tested.

The licensee provided a conservative calculation that compared the LOCA heat removal requirements with the current degraded heat exchanger capacity to ensure (1) that the post-LOCA equipment qualification temperature limits will not be exceeded and (2) that required decay heat removal requirements can be satisfied. This calculation indicated that a scram from the power level set out above will produce decay heat levels within the heat exchanger capabilities. Actual heat transfer and flow rates through the degraded heat exchangers have been confirmed by testing. The licensee has committed to reduce the RPS high-flux trip setpoint to 93% of rated power for lake water temperatures between 80°F and 85°F. The setpoint reduction will ensure that this power level is not exceeded until the heat exchanger fouling is corrected. If lake temperatures exceed 85°F, Unit 2 will be shutdown.

The staff has reviewed the licensee's heat transfer calculational method and assumptions and has reviewed the overpower trip setpoint. On the basis of these reviews, the staff concurs that, with this setpoint, adequate accident heart removal capacity will be maintained with the current degraded heat exchangers and the projected elevated lake water temperatures.

The licensee has also evaluated the effects of the higher lake water temperature on other equipment and has concluded that the accident analysis is not affected. In the submittals dated July 28 and August 13, 1987, the licensee stated that all of the equipment served by the service water system was purchased with a design inlet water temperature specification of 85°F, except for the turbine-driven emergency feedwater pump lube oil cooler. This cooler has a design inlet temperature of 78°F and is designed to control the lube oil temperature to between 130°F and 160°F. With the 78°F inlet temperature, the lube oil cooler has been tested to verify its capability to maintain an oil temperature of 130°F. Thus a 7°F increase in inlet water temperature will result in an oil temperature of approximately 137°F, which is within the 130°F–160°F temperature range for acceptable turbine operation. The staff concurs with the licensee's assessment.

In the July 28 and August 13, 1987 submittals, the licensee also stated that there are 18 temperature sensors that monitor lake water temperature, with the results printed hourly by the plant computer system. The temperature monitoring instrumentation is calibrated during every refueling outage. The peak lake water temperature is also recorded daily. The licensee committed to reduce the power level setpoint to the values indicated above when the lake temperature reaches 79.5°F, as appropriate, to provide assurance that the plant will be operated in accordance with its design basis and within the requirements of the Order.

In the July 28, 29, and August 13, 1987 submittals, the licensee further stated that all of the design-basis accidents identified in the FSAR for Oconee Unit 2, and their attending single active failures, have been reviewed. This review confimed that, with an assumed 85°F lake water temperature and appropriate reduction in power level, there will be no adverse impact on the public health and safety beyond that identified in the FSAR.

On the basis of the staff's previous approval of the licensee's calculational methodology, the verification of the operability of the components with an increased lake water temperature of 85°F based upon reduced power level, and the licensee's assurance that the lake water temperature is being appropriately monitored with action taken to reduce power level and the high-flux reactor trip setpoint as required, I conclude that there is reasonable assurance for safe plant operation until the end of Cycle 9. I further conclude that the heat removal capability provided at the reduced power level is adequate to ensure that no adverse consequences to the health and safety of the public will result beyond those identified in the FSAR.

I find the licensee's commitments acceptable and conclude that the plant's safety can be maintained until the fouling can be corrected and lake water temperatures decrease, and the unit returns to full power. I have determined that these commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV.

Accordingly, pursuant to sections 103, 161b, and 161i, of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and Part 50, it is hereby ordered, effective immediately, that license DPR–47, is amended as follows:

1. If the lake water temperature exceeds 79.5°F, Oconee Unit 2 operation will be at reduced power levels and the RPS high flux trip setpoint will be reduced, as follows:

a. If the lake water temperature is greater than 79.5°F but equal to or less than 85°F, the RPS high flux trip setpoint shall be set so that the maximum allowable power level shall not exceed 93% rated power; and

b. If lake water temperature exceeds 85°F, Unit 2 shall proceed to shut down in accordance with Technical Specification 3.0.

2. The peak lake water temperature shall be recorded daily.

3. Oconee Unit 2 shall not operate at any power level after the end of Cycle 9 unless the Regional Administrator, Region II, has approved the LPI and RBCU coolers for full power operation.

The Regional Administrator, Region II may relax or rescind any of the above conditions upon a showing by the licensee of good cause.

The licensee or any other person who has an interest adversely affected by this Order may request a hearing on this Order within 20 days of the date of its issuance. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy shall be sent to the Office of the General Counsel, Assistant General Counsel for Enforcement, at the same address, and the Regional Administrator, Region II, at 101 Marietta Street, NW., Suite 2900, Atlanta, Georgia 30303. 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 to be held, 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 the hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland, this 19th day of August 1987.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 87-19335 Filed 8-21-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289 (CH)]

Atomic Safety and Licensing Appeal Board Hearing; Oral Argument; General Public Utilities Nuclear (Three Mile Island Nuclear Station, Unit No. 1)

Notice is hereby given that, in accordance with the Appeal Board's order of August 11, 1987, oral argument on the appeal of Charles Husted from the April 2, 1987 initial decision of the Administrative Law Judge will be heard at *10:00 a.m. on Wednesday, September 9, 1987, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.*

For The Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

Dated: August 18, 1987.

[FR Doc. 87-19361 Filed 8-21-87; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Pension Benefit Guaranty Corporation

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of self-evaluation; request for comments.

SUMMARY: Notice is hereby given that the Pension Benefit Guaranty Corporation is evaluating its current policies and practices to determine if discrimination against handicapped persons is present in its programs and activities. This notice also requests public comment from interested parties on the PBGC's policies and practices with respect to handicapped persons. The effect of this notice is to comply with the PBGC's regulation on Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Pension Benefit Guaranty Corporation, 29 CFR Part 2608, which requires the PBGC to conduct this self-evaluation and to permit interested parties to participate in the project.

DATES: Comments must be received on or before September 24, 1987.

ADDRESSES: Written comments should be addressed to the General Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. Comments will be available for public inspection in the PBGC Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8851, or Peggy Anne Hansen, Equal Opportunity Manager, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Room 3700A, Washington, DC 20006, 202-778-8808 (202-778-8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The regulation of the Pension Benefit Guaranty Corporation (PBGC) on Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs, 29 CFR Part 2608, which was issued pursuant to 29 U.S.C. 794, prohibits discrimination on the basis of handicap in its programs and activities.

Section 2608.110(a) of that regulation requires the PBGC to evaluate, by August 24, 1987, its current policies and practices, and the effects thereof, in order to determine if they result in discrimination against handicapped persons in employment, program accessibility, communication, or otherwise. Section 2608.110(b) requires that the PBGC "provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in this self-evaluation process by submitting comments (both oral and written)."

Four hundred forty-one questionnaires were distributed to 100 percent of all full-time and part-time permanent PBGC employees occupying all or part of five floors of the PBGC's sole facility at 2020 K Street, NW., Washington, DC, with provision for both written and oral responses. The questionnaire was designed to determine whether an employee is physically or mentally handicapped by a mobility, hearing, visual, speech, mental, emotional, or other impairment and, if so, to find out whether the employee has been adversely affected by the PBGC's action or inaction, by the absence of aids, or by structural impediments at the work site.

Employees also were asked to describe any complaints received in the past two years from applicants, participants, beneficiaries, or other persons on non-accessibility of sites where PBGC activities have been held.

Finally, employees were encouraged to advise the PBGC of anything that might give handicapped persons an equal opportunity to participate in all PBGC programs and activities.

Forty-four written and two oral responses were received, representing 10.8 percent of the PBGC employees. Six responders identified themselves as either mobility, hearing, visually, or speech impaired. Four employees said that they had been adversely affected—two by PBGC action or inaction, one by absence of aids, and one by structural impediments.

Two employees indicated that they had received complaints from persons who are not PBGC employees. One complaint was that the water fountains are too high for persons in wheel chairs; the other was that maneuvering wheel chairs is a problem in corridors where boxes or "other debris" are placed temporarily.

Suggestions for facilitating equal participation of handicapped persons in PBGC programs and activities included placing braille markers in elevators and stairways and providing awareness training, suitable space within the facility for all-employee gatherings, and appropriate chairs for individuals with back problems.

The PBGC has examined its work site facilities for impediments, and has requested that building modifications, such as elevator markings and water fountain heights, be made wherever possible. Complementary valet parking and retrieval is offered to employees and visitors in wheel chairs by the building's parking operator, and the PBGC is working toward impediment-

free corridors. The international handicap symbol is used to mark accessible rest rooms. The PBGC also has provided special chairs and computer accommodations as needed by impaired employees.

The PBGC has published its TTY/TDD telephone number in the International Telephone Directory of the Deaf and on forms and stationery mailed to the public. All hearing-impaired and speech-impaired employees and employees with impaired family members have access to the device. Interpreters and telephone amplifiers are provided on request.

Although there is insufficient space on the work site for activities involving large numbers of employees, it is the PBGC's policy to schedule off-site activities in barrier-free facilities whenever possible.

Comments on the PBGC's programs and policies as they affect handicapped persons or on the PBGC's self-evaluation, a summary of which is set forth above, are invited. Please send written comments to the General Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. Oral comments may be submitted to Peggy Anne Hansen, Equal Opportunity Manager, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Room 3700A, Washington, DC 20006, 202–778–8808 (202–778–8859 for TTY and TDD). These are not toll-free numbers.

Upon completion of this self-evaluation and comment period, the PBGC will carefully review all comments and will take appropriate steps to collect deficiencies in its programs or activities. In addition, the PBGC will maintain on file a description of areas examined and any problems identified, and a description of any modifications made. This file will be maintained for a period of three years following the completion of this self-evaluation, and will be made available for public inspection upon request.

Issued in Washington, DC, this 5th day of August, 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87–19322 Filed 8–21–87; 8:45 am]

BILLING CODE 7708–01–M

PRESIDENTIAL COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and at the request of W. Eugene Mayberry, M.D., Chairman, announcement is made of the following national advisory body scheduled to meet during the month of September 1987:

Name: Presidential Commission on the Human Immunodeficiency Virus Epidemic.

Date, Time, and Place: September 9, 1987; 9:00 a.m.; National Press Club-National Press Building, 14th & F Streets, NW., 13th Floor, Washington, DC

September 10, 1987; 9:00 a.m.—3:00 p.m.; Department of Commerce Auditorium, 14th Street and Constitution Avenue, NW., Washington, DC

Purpose: The Commission was formed as the result of Executive Order 12601 to advise the President, the Secretary of Health and Human Services, and other relevant Cabinet heads on the public health dangers including the medical, legal, ethical, social, and economic impact from the spread of the HIV and resulting illnesses including AIDS, AIDS-related complex, and other related conditions. The primary focus of the Commission shall be to recommend measures that Federal, State, and local officials can take to: (1) Protect the public from contracting the HIV; (2) assist in finding a cure for AIDS: and (3) care for those who already have the disease.

The Commission is required to: (1) Evaluate efforts by educational institutions and other public and private entities to provide education and information concerning AIDS; (2) analyze the efforts currently underway by Federal, State, and local authorities to combat AIDS; (3) examine long-term impact of AIDS treatment needs on the health care delivery system, including the effect on non-AIDS patients in need of medical care; (4) review the United States history of dealing with communicable disease epidemics; (5) evaluate research activities relating to the prevention and treatment of AIDS; (6) identify future areas of research that might be needed to address the AIDS epidemic; (7) examine policies for development and release of drugs and vaccines to combat AIDS; (8) assess the progression of AIDS among the general population and among specific risk groups; (9) study legal and ethical issues relating to AIDS; and (10) review the role of the United States in the international AIDS pandemic.

The Commission is required to make a preliminary report to the President no later than 90 days after the date the members of the Commission are first appointed or designated. The Commission shall submit its final report no later than one year from the date the Executive Order was signed.

Agenda: Overview of Federal activities relating to the spread of the HIV and AIDS in the United States. Invited speakers will discuss activities relevant to their agency mission. Other knowledgeable individuals from the private sector will discuss activities underway within the private sector. Commission members are expected to report on any site visits that were held prior to the first meeting of the Commission.

Public comment will begin at 4:30 p.m. on September 9. Anyone wishing to make a statement should notify the Executive Assistant to the Chairman, so that appropriate arrangements can be made.

Anyone wishing to obtain a roster of members should notify the Executive Assistant to the Chairman, Presidential Commission on the HIV Epidemic, Room 13C–26, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (202) 245–2437.

Agenda items are subject to change as priorities dictate.

Dated: August 14, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87–19340 Filed 8–21–87; 8:45 am]

BILLING CODE 4160–15–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24812; File No. SR–CBOE–87–37]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc.; RAES Pilot Program in Equity Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 5, 1987, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

The Exchange's pilot program for its Retail Automatic Execution System ("RAES") in equity options has been in operation since October 27, 1986,

pursuant to SR–CBOE–85–16.[1] RAES automatically executes, at the prevailing disseminated inside quote, certain size market and marketable limit orders submitted by public customers. The CBOE has filed a proposed rule change, File No. SR–CBOE–87–35, with the Commission to make this a permanent program allowing for RAES' use in such option classes as the Exchange deems appropriate.[2] Pursant to the current proposed rule change, the pilot program in RAES in equity options will be extended through November 30, 1987 or approval of SR–CBOE–87–35. During the extension of the pilot program, the Exchange has proposed to allow the use of RAES, as it deems appropriate, in up to an additional 75 equity option classes.

The pilot program will continue as described in SR–CBOE–85–16.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

This is a four month extension of the pilot program for RAES in equity options, pending Commission approval of SR–CBOE–87–35, the proposed rule change to make this a permanent program and allowing its use in such option classes as the Exchange deems appropriate. The extension of this pilot will enable the Exchange to continue the RAES pilot without interruption and to extend the use of RAES pilot with interruption and to extend the use of RAES to up to an additional 75 option classes.

The Exchange believes that the continuation and expansion of the RAES program in equity options is appropriate and in the public interest. The Exchange further believes that the proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934, and, in particular, section 6(b)(5) thereof in that the proposal is designed to improve market efficiency and enhance the market functioning of the Exchange's automatic execution system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Chicago Board Options Exchange, Inc., has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act, because the Exchange would like to continue and expand the use of RAES in equity options while a proposed rule change to make RAES in equity options a permanent program is under consideration. *See* SR–CBOE–87–35.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. The Commission believes that the proposed rule change will benefit public customers by affording them a more efficient means than was previously available at CBOE to execute small orders in a select group of equity options. In addition, the Commission notes that the proposed expansion of RAES will not negatively affect public customer limit orders in that these orders will not be bypassed by the operation of RAES, but rather will receive the customary limit order protection afforded public customer orders placed on the book.

The Commission finds good cause for approving the proposed change prior to the thirtieth day after the date of publication of notice of filing thereof in that the Exchange previously has demonstrated the operational efficiencies of RAES for an extended period. Moreover the Commission previously has solicited comments on RAES on several occasions. Finally, the Commission's approval is limited to a fourth month pilot program while the Commission considers the CBOE's proposed rule change to make RAES a permanent program. The expanded use of RAES should provide more data in evaluating the program.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 14, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 18, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–19354 Filed 8–21–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24811; File No. SR–CBOE–87–36]

Self-Regulatory Organizations; Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc.; RAES Eligibility in Equity Options Pilot Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 5, 1987, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

The Exchange's pilot program for Retail Automatic Execution Service ("RAES") Eligibility in Equity Options has been in operation since October 27, 1986, pursuant to SR–CBOE–86–22. By

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[1] *See* Securities Exchange Act Release No. 23490 (August 1, 1986), 51 FR 28788.

[2] A copy of File No. SR–CBOE–87–35 may be obtained in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

this rule change, this pilot program in RASE in Equity Options will be extended for a ninety-day period.

The pilot program will continue as described in SR–CBOE–86–22.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

This is a ninety day extension of a pilot program for RAES eligibility in equity options. RAES is designed to accept and execute automatically, at the best prevailing quotes, small market and marketable public limit orders in six equity options as well as two index options. The extension of the equity options pilot program will enable the Exchange to gather additional information before deciding whether to modify or extend the program.

The Exchange believes that continuation of the pilot program without interruption will assure the least disruption while RAES eligibility in equity options continues to be evaluated by the Exchange. The CBOE believes the proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934, and, in particular, section 6(b)(5) thereof in that the proposal is designed to improve market efficiency and enhance the market functioning of the Exchange's automatic execution system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

[1] SR–CBOE–86–22 was noticed in Securities Exchange Act Release No. 23474 (July 29, 1986), 51 FR 28148 and approved in Securities Exchange Act Release No. 23591 (September 4, 1986), 51 FR 32710.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested accelerated effectiveness of this proposed rule change pursuant to section 19(b)(2) of the Act. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the day of publication of notice of filing thereof in that the proposed rule change extends an existing pilot program which has been the subject of a solicitation for comments, and no comments thereon were received. Accelerated approval will also allow uninterrupted continuation of the pilot, which is designed to increase the ease and efficiency of small public order execution.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 14, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 18, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–19355 Filed 8–21–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24818; File No. SR–DTC–87–10]

Self-Regulatory Organizations; Depository Trust Co.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act"), 15 U.S.C. 78(b)(1), notice is hereby given that on July 15, 1987, the Depository Trust Company ("DTC") filed the proposed rule change described below. The proposal describes DTC's operational arrangements necessary for an issue settling in next-day funds to become eligible for DTC services. The Commission is publishing this notice to solicit comment on the rule change.

DTC's proposed rule change is a memorandum, attached as *Exhibit A*, that sets out DTC's current and new operational arrangements and requirements.[1] The new arrangements concern redemptions. DTC's proposed redemption standards generally require that: notice of municipal bond redemptions should contain certain items of information including CUSIP numbers; redemption notices should be sent in a secure fashion; redemption notices should provide 30 days from publication date to redemption date; redemption notices should be sent to registered securities depositories in advance of publication date; and CUSIP number identification should accompany all redemption payments. These operational arrangements apply to issues sought to be made eligible on or after August 1, 1987.

The memorandum's purpose is to inform participants, underwriters, agents, trustees, bond counsel, and others of what is necessary to make new issues eligible for DTC services. DTC expects that these operational arrangements will be considered when participants and others structure, distribute, and administer new issues.

DTC believes that the proposed rule change is consistent with the requirements of the Act in that it promotes maximization of the number of securities issues that can be made depository-eligible while maintaining orderly processing and permitting timely dividend, interest and principal payments. The redemptions requirements generally are the same as the voluntary minimum standards for

[1] Current operational arrangements described in the memorandum address such issues as the time frame for providing underwriting information for municipal bonds, transfer turnaround time, use of CUSIP numbers, and timeliness of payments and funds availability, among other things.

processing redemption of debt securities endorsed by the Commission and industry groups.[2] The voluntary standards were promulgated based on industry consensus developed at a meeting of representatives of industry organizations, self-regulatory organizations, and Federal regulatory agencies to discuss problems associated with municipal bond call processing.

The rule change has become effective pursuant to section 19(b)(3)(A) of the Act. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You may submit written comment within 21 days after notice is published im the **Federal Register**. Please file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–87–10.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 19, 1987.

Jonathan G. Katz,

Secretary.

Exhibit A—The Depository Trust Company

Memorandum

June 29, 1987.

To: Participants, Underwriters, Agents, Trustees, Bond Counsel, and Others Affected.

From: DTC Underwriting Department.

Subject: Operational arrangements necessary for an issue settling in next-day funds to become eligible for DTC services.

Introduction

Several years ago DTC established operational arrangements which must be met before a security issue can be made DTC-eligible. The purpose of these arrangements was to maximize the number of issues that can be made depository-eligible while maintaining orderly processing and permitting timely dividend, interest and principal payments.

With the support of Participants and the cooperation of other affected organizations, these arrangements gradually have been expanded. They are reported in this document to aid Participants, issuers, agents, trustees, and bond counsel seeking depository eligibility for new issues in structuring those issues.

These arrangements are sufficiently broad to be met by the vast majority of issues brought to market or already outstanding. Some unusual issues (e.g., variable coupon renewable notes, optional and mandatory repayment issues) may contain features which DTC must review on a case-by-case basis prior to eligibility approval, and for which certain representations may have to be made by issuers, underwriters, and/or agents.

The arrangements which follow are a revision—principally to deal with redemption notices and payments—to those published in DTC's Operational Arrangements memorandum of September 11, 1986. These arrangements will become effective on August 1, 1987.

Operational arrangements

For Issues Which Settle in Next-Day Funds

The operational arrangements are:

(1) *Standard Time Frames For Providing Underwriting Information For Municipal Bonds.*—In the latter part of 1985, DTC implemented standard time frames (specified in in Exhibit A) endorsed by the Municipal Securities Rulemaking Board (MDRB) for the submission of information to DTC by underwriters of new registered municipal bond issues so that DTC could pass this information on the Participants in a timely fashion. Underwriters should adhere to the standard time frames. Although compliance is voluntary, it is at a very high level. DTC will continue to monitor such compliance and will consider assessing strong disincentive fees if compliance is not maintained.

(2) *Certificate Format*—The certificate format for registered certificates (excluding those for book-entry-only issues) must comply with general American National Standards Institute (ANSI) standards. The certificate must have a standard assignment area.

(3) Timeliness of Payments and Funds Availability:

(a) *Dividend and Interest Payments*—DTC has acted in accordance with industry practice to seek receipt of *corporate* dividend and interest payments on payable date in *same-day* funds, (or the equivalent in accordance with existing arrangements between the paying agent and DTC) and receipt of *registered municipal* bond interest payments on payable date in *next day* funds. The agent must meet these standards for payment to DTC in all of the issues for which it acts if DTC is to make eligible a new issue for which the agent is acting as paying agent.

(b) *Maturity and Redemption Payments*—DTC requires receipt of maturity and redemption payments on the payable date in *next-day* funds, or in *same-day* funds if other holders receive those payments in *same-day* funds. An exception to the above are issues which pay principal and interest periodically througout the life of the issue (e.g. CMOs) instead of only at maturity. For those issues, DTC requires receipt of principal and interest payments on the payable date in *same-day* funds.

(c) *Other Payments*—DTC requires receipt of all other payments resulting from corporate actions (e.g. tender offers, merger) on the first payable date in *same-day* funds.

(4) *Short Term Maturities*—Bond underwritings may include securities scheduled to mature shortly after the closing date. DTC programmatically forecasts upcoming maturities according to predetermined timetables so that processing will begin in sufficient time to ensure efficient physical securities handling and timeliness of payments. Therefore, to assure that Participants continue to benefit from these efficiencies, DTC will not make eligible a security which will mature within three months of the closing date (short term maturities in BEO form are not subject to this provision).

(5) *Transfer Turnaround Time*—DTC requires written assurances from agents not registered with the SEC that they comply with the SEC's transfer turnaround rules (which generally require completion of normal transfers within 72 hours). DTC plans to monitor transfer turnaround for all agents and *may refuse to make eligible certain issues where the agent has a clear-cut record of failure to comply.*

(6) *Notification of Redemptions and Calls*—DTC requires that trustees and agents agree to meet the following standards for calls for all new issues to be made DTC-eligible.

(a) Notices of redemption must contain, at minimum: CUSIP number, and for partial calls certificate numbers and called amounts of each certificate; publication date; redemption date;

[2] *See* Securities Exchange Act Release No. 34–23856 (December 3, 1986) 51 FR 44398 (December 9, 1986).

redemption price; redemption agent name and address; interest rate; maturity date; and other descriptive information that accurately identifies the called security.

(b) All redemption notices must be sent to DTC in a secure fashion (e.g., *legible* facsimile transmission, registered or certified mail or overnight delivery service). The agent or issuer sending such notice shall have a method to verify subsequently the use of such means and timeliness of notice by forwarding each notice (for each CUSIP number) in a separate secure transmission to DTC, or forwarding multiple notices (or one notice for multiple CUSIPs) in a secure transmission to DTC which includes a manifest or list of each CUSIP submitted in that transmission. Agents choosing to use DTC's Redemption Call Notice Manifest (copy attached) may acquire a supply by contracting DTC's Call Notification Department at (516) 227–4070.

Redemption notices should be sent to:

The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, Attention: Call Notification Department, Fax (516) 227–4039 or 4190

(c) The publication date for redemption notices must be at least 30 days prior to redemption date.

(d) Redemption notices must be received by DTC during the *business day* prior to publication date or, if possible, two business days in advance of publication date.

(e) CUSIP number identification must accompany all redemption payments to DTC. DTC requires that agents which wire funds to DTC use its Redemption Payment Summary (RPS) from to identify all redemption payments. DTC will consider accepting this information through various appropriate means.

Agencts should facsimile transmit complete RPS forms to DTC at: Telecopier Number: (212) 709–1706/1707.

(7) *Use of CUSIP Numbers:*

(a) *CUSIP Number Assignment*—A unique CUSIP number must be assigned to each serial and term issue and be imprinted on each certificate.

(b) *CUSIP Identification on Payments*—DTC requires that for new issues to be made depository-eligible, paying agents will provide the CUSIP number on the payment advice accompanying *all* payments (dividend, interest and principal) to DTC for such issues.

(c) *Multiple-Purpose Municipal Issues*—For multiple-purpose municipal issues carrying a single CUSIP number to be made eligible, DTC must receive assurance from the agent that the agent will accept transfer instructions from DTC for multiple purposes and treat them without regard to purpose distinctions within a single CUSIP. Also the agent must assign separate and non-duplicate certificate numbers within a single CUSIP. The agent must assure DTC that interest and principal payments to DTC will be made by CUSIP and not by purpose.

(8) *Record Dates and Payable Dates for Certificated Issues*—The Dividend/Interest record date must not be less than 5 business days prior to the payable date. For new registered municipal issues, the first payable date must not be less than 30 days from the closing date.

If the Indenture provides for the solicitation of consents from and voting by holders of the issue under certain circumstances, DTC requires that the Trustee or Issuer shall establish a record date for such purposes and shall give DTC notice of such record date not less than 15 calendar days in advance of such record date to the extent possible.

(9) *Securities with Put Features*—For new issues of put securities DTC requires that agents supply letters of representations wherein the agent agrees that DTC can use its Repayment Option Procedure to submit tenders of the security to the agent. The letter of representations must be provided prior to the issue being made eligible.

Closely spaced partial call and put dates for an issue may force Participants to submit instructions to put securities before they can determine whether the securities have been called, increasing the possibility that the Participants' securities account at DTC will be driven into a short position. (DTC has experienced several instances in which agents have called securities and accepted puts on them concurrently.) DTC requires that at least two weeks separate the end of a put period and the start of a call (publication date) or vice versa.

(10) *Book-Entry-Only (BEO) Issues and Certificates of Deposit (CDs)*—For BEO issues and CDs DTC requires that it receive a letter of representations prior to the issue being made eligible.

(11) *Issues with Monthly Optional Redemptions*—DTC will consider for eligibility a new issue of registered securities containing provisions for monthly optional redemptions, by the issuer, only if the issue is brought to market in BEO form and DTC is in receipt of a letter of representations prior to the closing.

(12) *Issues Which Pay Principal and Interest Periodically*—Collateralized Mortgage Obligations (CMOs) and other issues which pay principal and interest periodically present a unique problem in that DTC has not been able to obtain the current interest rate and principal pay down amount from published or other sources to effect timely crediting of such payments to Participants. DTC therefore requires that it receive from the paying agent in writing this information, calculated on the *original principal amount of $1,000 per bond* preferably 5 business days, but no less than 2 business days, prior to the payable date. DTC will accept this information via telephone, provided that it receives written confirmation prior to the payable date.

(13) *Foreign Currency-Denominated Issues*—DTC requires that all payments to DTC be in U.S. dollars, and that notification of the payment rate expressed in U.S. dollars (per 1,000 units of principal amount or share) be received by DTC at least 2 business days before the corresponding payment date.

Such Notices regarding interest or dividend rates shall be sent by telephone or facsimile transmission to:

Manager, Announcements, Dividend Department, The Depository Trust Company, 7 Hanover Square—22nd Floor, New York, New York 10004

Telephone Number: (212) 709–1264

Telecopier Number: (212) 709–1270

Any telephone communication shall be followed-up by hard copy confirmation.

(14) *Uniquely Denominated Issues*—Certain issues provide that certificates are available in specified minimum denominations (e.g., $100,000) and integral multiples of a specified denomination (e.g., $1,000) in excess thereof. For such issues DTC is unable to maintain reasonably sufficient certificate inventory in denominations to satisfy Participant urgent COD withdrawal requests. DTC will make such issues eligible only with the stipulation that DTC will not process COD requests in such issues but will effect withdrawals-by-transfer (W/Ts) only. DTC will continue to make such issues eligible so long as such restriction will not impose an undue hardship on Participants. The Underwriter must agree to have the "withdrawal by WT-only" reference made in DTC's Important Notice of the underwriting. DTC must review uniquely denominated issues on a case by basis particularly where those issues may be callable.

(15) *Unusual Issue Types*—These issues (e.g., variable coupon renewable notes, optional and mandatory repayment issues) often contain features

which DTC must review on a case-by-case basis as it considers the issue for eligibility. In addition to meeting DTC's standard operational arrangements, DTC may require of underwriters, trustees and agents for such issues that special representations be made to DTC to protect it and its Participants from excessive risks.

(16) *Special Operational Arrangements*—

(a) *Possession and Inspection*—DTC requests that it receive possession of securities for inspection by noon on the day prior to an issue's distribution. DTC cannot assure an issue's distribution on closing date if this condition is not met.

(b) *Legal Opinions*—DTC requests that any legal opinion required be printed on the certificate.

(c) *Issuance Date on Transfers*—DTC requires transfer agents to provide the authentication date (the date transfer is effected) on all credit certificates returned to DTC. In some cases payable dates rather than authentication dates appear on bonds, complicating record date accounting.

(17) *Fast Automated Securities Transfer (FAST)*—DTC will not accept into the FAST program any municipal bonds except under certain circumstances such as extraordinary issue size. Muni issues generally must be in book-entry-only form or in fully certificated [non-FAST] form. Transfer agents wishing to include a *corporate* issue in FAST must adopt current DTC FAST procedures.

Participants and others wishing to discuss these arrangements are encouraged to contact their Participant Services representative or Vincent A. Mauro, Vice President, at (212) 558-8702.

[FR Doc. 87-19356 Filed 8-21-87; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-24799; File No. SR-NASD-87-27]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on June 24, 1987, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend Schedule A to the NASD By-Laws to allow a New York Stock Exchange examination development fee of $10.00 to be charged against each person taking a Series 7 examination for registration as a general securities representative.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 24685, July 8, 1987) and by publication in the **Federal Register** (52 FR 26617, July 15, 1987). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It Is Therefore, Ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: August 14, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-9294 Filed 8-21-87; 8:45 am]
BILLING CODE 8010-01-M

[File Nos. 7-0346 et al.]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

August 18, 1987.

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:

American Real Estate Partners, L.P.
Depository Receipts, No Par Value (File No. 7-0346)
Amre Inc.
Common Stock, $.01 Par Value (File No. 7-0347)
Global Government Plus Fund Inc.
Common Stock, $.01 Par Value (File No. 7-0348)
Goldome
Common Stock, $1.00 Par Value (File No. 7-0349)
Harcourt Brace Jovanovich
$12 Preferred Stock, $1.00 Par Value (File No. 7-0350)
Carnival Cruise Lines, Inc.
Class A Common Stock, $.01 Par Value (File No. 7-0351)

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 September 9, 1987 written data, views and agruments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19295 Filed 8-21-87; 8:45 am]
BILLING CODE 8010-01-M

[File No. 7-0359 et al.]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

August 18, 1987.

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:

Bet Public Limited Co.
American Depositary Shares, each representing four ordinary shares of 25 P each (File No. 7-0359)
Stepan Company
Common Stock, $1.00 Par Value (File No. 7-0360)
Beverly Enterprises, Inc. (Del.)
Common Stock, $.10 Par Value (File No. 7-0361)
McKesson Corporation (Del.)
Common Stock, $2.00 Par Value (File No. 7-0362)
JWP Inc. (Del.)
Common Stock, $.10 Par Value (File No. 7-363)

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 sumbit on or before September 9, 1987 written data, views and arguments

concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19296 Filed 8-21-87; 8:45 am]

BILLING CODE 8010-01-M

[File Nos. 7-0352 et al.]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

August 18, 1987.

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:

Amax Gold, Inc.
Common Stock, $.01 Par Value (File No. 7-0352)
Banco De Santander Sociedad Anonima De Credito
American Depositary Shares Representing Capital Stock (File No. 7-0353)
United Kingdom Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-0354)
The Quick & Reilly Group, Inc.
Common Stock, $.10 Par Value (File No. 7-0355)
Sprague Technologies, Inc.
Common Stock, $1.00 Par Value (File No. 7-0356)
The Union Corporation (Delaware)
Common Stock, $.50 Par Value (File No. 7-0357)
Banctexas Group Inc.
Common Stock, $.10 Par Value (File No. 7-0358)

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 September 9, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Security and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19297 Filed 8-21-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 7-0345]

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 18, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

AMAX Gold Inc.
Common Stock, $.01 Par Value (File No. 7-0345

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 9, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19298 Filed 8-21-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15936; File No. 812-6723]

Self-Regulatory Organizations; Application for Exemption, Pacific Mutual Life Insurance Co.

August 18, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption and approval under the Investment Company Act of 1940 (the "1940 Act").

Applicants: The Pacific Mutual Life Insurance Company ("Pacific Mutual"), the Pacific Select Separate Account of Pacific Mutual Life Insurance Company (the "Separate Account") and the Pacific Select Fund (the "Fund").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(41), 9(a), 13(a), 15(a), 15(b), 22(c), 27(c)(1), and 27(d) and Rules 2a-4 and 22c-1 and Paragraphs (b)(12), (b)(13) and (b)(15) of Rule 6e-3(T).

Summary of Application: Applicants seek an order granting exemptive relief to the extent necessary to permit unrecovered state and local premium tax charges to be deducted upon lapse or surrender of a policy, to allow the securities in the Money Market Series portfolio to be valued using the amortized cost method of valuation without maintenance of a constant net asset value per share, and to allow for shares of the Series of the Fund to be sold to Separate Accounts of other affiliated or unaffiliated insurance companies ("shared funding").

Filing Date: The application was filed on May 15, 1987 and was amended on August 11, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 14, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for

lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Allan S. Mostoff, Esq., 1730 Pennsylvania Avenue, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: David S. Goldstein, Staff Attorney (202) 272–2622 or Lewis B. Reich, Special Counsel (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (in Maryland (301) 252–4300).

Applicants' Representations

1. Pacific Mutual is a mutual life insurance company organized under the laws of the State of California; Separate Account is a separate account of Pacific Mutual established under California law and is divided into eight subaccounts called "Variable Accounts" and will be registered as a unit investment trust under the 1940 Act. The Fund is a diversified, open-end management investment company of the series type which will be registered on Form N–1A. The Fund currently has eight separate portfolios ("Series"), each of which will sell shares to a corresponding Variable Account.

2. Shares of the Series may in the future be offered to other separate accounts including separate accounts of Pacific Mutual or other affiliated or unaffiliated insurance companies offering variable annuities or other variable life insurance policies.

3. Pacific Mutual serves as Investment Adviser to each Series of the Fund, and various sub-advisers will be used for several Series of the Fund.

4. Pacific Mutual intends to issue a flexible premium variable life insurance policy (the "Policy" or "Policies") providing lifetime insurance protection on an Insured through the Policy's Maturity Date so long as the Policy is not surrendered or in default beyond the Grace Period. The Policy also provides for a cash surrender during the lifetime of the Insured, and Policy Owners may obtain loans secured by Accumulated Value. The Policy can be purchased for a minimum initial premium payment of the greater of $10,000 or 50% of the Guideline Single Premium.

5. The death benefit under the Policy will be the greater of the Face Amount under the Policy or the Accumulated Value multiplied by a specified percentage.

6. The total Accumulated Value will be the amount that a Policy provides for investment at any time. It equals the sum of the amounts under the Policy held in each Variable Account of the Separate Account and the Fixed Account, as well as the amount set aside in Pacific Mutual's Loan Account to secure any Policy Indebtedness. A Policy Owner may allocate premium payments among the various Variable Accounts.

7. The Cash Surrender Value of the Policy equals the Accumulated Value less any unrecovered deferred load. Once all deferred load has been recovered, the Accumulated Value will equal the Cash Surrender Value. Net Cash Surrender Value equals Cash Surrender Value minus any outstanding Policy Indebtedness.

8. A sales charge equal to 4.15% of the initial premium, a deduction for premium taxes equal to 2.35% of initial premium and an administrative charge of between 3.00% and .5% of initial premium are deferred and deducted from Accumulated Value in equal monthly deductions from the first monthly policy anniversary to the eleventh.

9. The same level of charges is deducted directly from premium payments subsequent to the initial premium payment.

10. A monthly cost of insurance charge as well as a monthly administrative charge of $5.00 is deducted from Accumulated Value.

11. Pacific Mutual makes a daily charge (equal to. 70% on an annual basis) against the Variable Accounts to compensate Pacific Mutual for mortality and expense risks assumed. Investment advisory fees and operating expenses of the Fund are paid by the Fund.

12. Imposition of the charge for premium taxes in this manner is more favorable to Policy Owners than a charge that is deducted entirely from the initial premium.

13. Pacific Mutual will not make a profit on the deferred premium tax charge. The amount of the charge is the same as it would have been if it were designed as a front-end charge and, in particular, does not take into account the time value of money and the consequential cost to Pacific Mutual for deferring the charge.

14. The Money Market Series will not maintain a constant net asset value for its shares. This will save administrative costs associated with valuing such instruments at market value on a daily basis. Dividends will be paid quarterly, therefore a constant per share net asset value is not required.

15. There is no necessary relationship between the use of the amortized cost method of valuation and the maintenance of a constant net asset value for each share of an investment company.

16. Conditions contained in this application will provide participants in the Money Market Series with no less protection against dilution than is provided to investors in conventional money market funds and will, in fact, protect participants in the Series against dilution.

17. In the event that monitoring reveals a deviation of more than .5 percent in the value of the obligations held in the Money Market Series using the alternative valuation methods, the same range of steps open to the directors of a conventional money market fund could be taken by the Trustees of Pacific Select Fund, but the Trustees could find it simpler to abandon the amortized cost method of pricing of all securities or only of those which have a maturity of 60 days or more (depending on circumstances) until such time as interest rates stabilize.

18. Shared funding does not create any issues not already existing where a single insurance company offers its product in several states.

19. Shared funding by unaffiliated insurers is no different than the use of the same investment company as the funding vehicle by affiliated insurers because affiliation does not reduce the risk, if any exists, of differences in state regulatory requirements.

20. The Fund will not, as a result of shared funding, be managed with the intent to favor or adversely affect one insurance company over another.

21. The exemptions requested are appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

If the requested order is granted the Applicants agree to the following conditions:

1. The Board of Trustees will establish procedures to minimize the deviation between the Money Market Series' net asset value per share as computed through use of the amortized cost method of valuation and through use of available market quotations.

2. The Board of Trustees will adopt procedures to determine and monitor the extent of deviation of the Series' current net asset value per share calculated by

using available market quotations from the Series' current net asset value per share as computed through use of the amortized cost method of valuation at such intervals as the Board deems appropriate in light of current market conditions; to periodically review the amount of deviation; and, to maintain records of the determinations of the deviation. In the event such deviation from the Series' amortized cost price per share exceeds 0.5%, the Board will promptly consider what action, if any, it should initiate.

3. Where the Board believes the extent of any deviation may result in material dilution or other unfair results to policy owners, it shall take such action as it deems appropriate to eliminate or reduce, to the extent reasonably practicable, such dilution or unfair results, which may include selling portfolio instruments prior to maturity to realize capital gains or losses or to shorten the Series average maturity; withholding the crediting of additional shares in lieu of dividends; or using market quotations to calculate net asset value.

4. The Money Market Series will maintain a dollar-weighted average portfolio maturity appropriate to its objective of minimizing the deviation from its net asset value per share as determined through use of the amortized cost method of valuation from its net asset value per share as determined through use of available market quotations. The Series will not (A) purchase any instrument with a remaining maturity of greater than one year or (B) maintain a dollar-weighted average portfolio maturity which exceeds 120 days. The maturity of portfolio securities held by the Series shall be calculated as set forth in Rule 2a-7 under the Act.

5. The Series will limit its portfolio investments, including puts and repurchase agreements, to those United States dollar-denominated instruments which the Board of Trustees determines present minimal credit risks and which are of "high quality" as determined by recognized statistical rating organizations or of comparable quality as determined by the Board of Trustees.

6. The Fund will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures described in condition 1 and will record, maintain, and preserve for a period of not less than six years a written record of the Board of Trustees' considerations and actions taken in connection with the discharge of its responsibilities.

7. The Fund will report any action taken pursuant to conditions 2 and 3 on Form N-SAR covering the period in which the action was taken and will attach a statement to the Form describing with specificity the nature and circumstances of such action.

8. A majority of the Board of Trustees of the Fund shall consist of persons who are not "interested persons" of the Fund, as defined by section 2(a)(19) of the Act.

9. The Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of contractowners (including variable annuity contractowners and variable life contractowners) of all separate accounts investing in the Fund.

10. The life insurers whose separate accounts invest in the Fund and the Fund's adviser shall report any potential or existing conflicts to the Fund's Board of Trustees. Participating insurance companies and the Fund's adviser will be responsible for assisting the Board in carrying out its responsibilities under these conditions, by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility will be a contractual obligation of all insurers investing in the Fund under their participation agreements.

11. If a majority of the Board of the Fund or a majority of its disinterested Trustees determines that a material irreconcilable conflict exists, the relevent insurance companies shall, to the extent reasonably practicable, take whatever steps are necessary to eliminate the irreconcilable material conflict. If a material irreconcilable conflict arises because of an insurer's decision to disregard contractowner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund and no charge or penalty will be imposed as a result of such withdrawals.

12. The Board shall prompty make known its determination of the existence of an irreconcilable material conflict and the implications thereof in writing to all participating insurance companies and the Fund's adviser.

13. Participating insurance companies will provide pass-through voting privileges to all contractowners so long as the Commission continues to interpret the Act to require pass-through voting in such cases. Participating insurance companies will vote Fund shares owned by the respective companies that are not attributable to contractowners in the same proportion as instructions received in a timely fashion from contractowners.

14. Participating insurance companies will assure that each of their separate accounts participating in the Fund calculates voting privileges in a manner consistent with the participation of separate accounts of other insurance companies. This obligation shall be a contractual obligation of all participating insurance companies under their participation agreements with the Fund.

15. If and when applicable, the Fund shall disclose in its prospectus that: (a) Shares of the Fund are offered to affiliated or unaffiliated insurance company separate accounts which fund both annuity and life insurance contracts; (b) due to differences in tax treatment or other considerations, the interests of various contractowners participating in the Fund or a Series might at some time be in conflict; and (c) the Board will monitor for any material conflicts and determine what action, if any, should be taken.

16. If and to the extent Rule 6e-3(T) is amended or Rule 6e-3 is adopted in final form, the Fund and/or the participating insurance companies, as appropriate, shall take such steps as may be necessary to comply with the Rule as amended or adopted in final form.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19299 Filed 8-21-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-16849]

Application and Opportunity for Hearing; Mobil Corp.

August 17, 1987.

Notice is hereby given that Mobil Corporation, a Delaware corporation (the "Applicant"), has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeships of Manufacturers Hanover Trust Company (the "Indenture Trusted") under four indentures, all heretofore qualified under the Act, are not so likely to involve a material conflict of interest under the Act as to make it necessary in the public interest or for the protection of investors to disqualify the Indenture Trustee from acting as trustee under any of such indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall,

within ninety days after ascertaining the conflicting interest, either eliminate such conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which other securities of an obligor upon the indenture securities are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of the subsection other indentures under which other securities of the same obligor are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under both the qualified indenture and such other indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under more than one of such indentures.

The Applicant alleges that:

(1) Socony Mobil Oil Company, Inc. (now known as Mobil Oil Corporation), a New York corporation (the "Company"), has issued and outstanding as of the close of business on February 27, 1987, $60,512,000 principal amount held by the public and $20,738,000 principal amount held by the Company of its thirty year 4¼% Debentures due 1993 (the "1963 Debentures") under an Indenture, dated April 1, 1963 (the "1963 Indenture"), between the Company and First National City Bank, Trustee. The 1963 Indenture was filed as Exhibit 4–C to Registration Statement No. 2–21145 of the Company under the Securities Act of 1933 and has been qualified under the Trust Indenture Act of 1939.

(2) On May 18, 1966 the Company changed its name to Mobil Oil Corporation.

(3) First National City Bank, on September 22, 1982, gave written notice of its intention to resign as Trustee under the 1963 Indenture because of a conflict arising under section 708(c) of the 1963 Indenture. On December 15, 1982 Bankers Trust accepted appointment as Successor Trustee. Bankers Trust on August 14, 1985 gave written notice of its intention to resign as Trustee under the 1963 Indenture because of a conflict arising under section 708(c) of the 1963 Indenture. The Company requested Manufacturers Hanover Trust Company to accept appointment as Successor Trustee under the 1963 Indenture. As of July 15, 1985 Manufacturers Hanover Trust Company accepted appointment as Successor Trustee under the 1963 Indenture.

(4) The Company has issued and outstanding, as of the close of business on February 27, 1987, $73,240,000 principal amount held by the public and $86,560,000 principal amount held by the Company of its thirty year 7⅜% Debentures Due 2001 (the "1971 Debentures") under an Indenture dated as of October 1, 1971 (the "1971 Indenture"), between the Company and Bankers Trust Company, Trustee. The 1971 Indenture was filed as Exhibit 2 to the Registration Statement No. 2–41598 of the Company under the Securities Act of 1933 and has been qualified under the Trust Indenture Act of 1939. Bankers Trust on August 14, 1985 gave written notice of its intention to resign as Trustee under the 1971 Indenture because of a conflict arising under section § 7.08(c) of the 1971 Indenture. The Company requested Manufacturers Hanover Trust Company to accept appointment as Successor Trustee under the 1971 Indenture. As of July 15, 1985, Manufacturers Hanover Trust Company accepted appointment as Successor Trustee under the 1971 Indenture.

(5) Mobil, a Delaware corporation, entered into an Indenture dated as of June 15, 1984 with Manufacturers Hanover Trust Company, Trustee, to provide for the issuance of securities in series (the "1984 Indenture"). Mobil issued and there is presently outstanding as of the close of buisness on February 27, 1987, $899,776,800 principal amount of Mobil's 14.40% Debentures due June 15, 2004 and there is presently issued and outstanding as of the close of business on February 27, 1987, $1,099,872,500 principal amount of Mobil's 13.765% Debentures due September 15, 2004 (2d Series) (collectively, the "1984 Debentures"). The 1984 Indenture was filed as Exhibit 4(a) to the Registration Statement No. 2–90288 of the Company under the Securities Act of 1933 and has been qualified under the Trust Indenture Act of 1939.

(6) Mobil entered into an Indenture dated as of October 1, 1986 (the "1986 Indenture") with Manufacturers Hanover Trust Company, Trustee, to provide for the issuance of securities in series. Mobil has issued and there is presently outstanding as of the close of business on February 27, 1987, $95,400,000 principal amount of Mobil's 7⅝% Notes due December 15, 1993 (the "1986 Notes") under a Supplemental Indenture No. 1 dated as of December 15, 1986 between Mobil and Manufacturers Hanover Trust Company, Trustee. Mobil also has issued and there is presently outstanding as of February 27, 1987, $200,000,000 principal amount of Mobil's 7⅛% Notes due March 1, 1992 (the "1987 Notes") under a Supplemental Indenture No. 2 dated as of March 2, 1987 between Mobil and Manufacturers Hanover Trust Company, Trustee. The Indenture as supplemented by the above-referenced Supplemental Indentures will hereinafter be referred to as the "1986 Indenture." The Indenture was filed as Exhibit 4(a) to the Registration Statement No. 33–9619 of the Company under the Securities Act of 1933 and has been qualified under the Trust Indenture Act of 1939.

(7) As of March 15, 1987 Mobil agreed to guarantee Mobil Oil's obligations under the 1963 Indenture and the 1971 Indenture with respect to the due and punctual payment of principal of and premium, if any, and interest on the 1963 Debentures and the 1971 Debentures, respectively. The Company has requested Manufacturers Hanover Trust Company, as Trustee, to join in the execution and delivery of the First Supplemental Indenture dated as of March 15, 1987 to the 1963 Indenture and the First Supplemental Indenture dated as of March 15, 1987 to the 1971 Indenture (collectively the "Supplemental Indentures") to incorporate the terms of Mobil's guarantee.

(8) As required by section 310(b) of the Trust Indenture Act of 1939, § 7.08 of each of the 1963 Indenture and the 1971 Indenture provides in applicable part (with the bracketed material containing language from the 1971 Indenture not found in the 1963 Indenture) as follows:

(a) If the Trustee has or shall acquire any conflicting interest, as defined in this Section, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign in the manner and with the effect specified in Section 7.10.

(b) In the event that the Trustee shall fail to comply with the provisions of § 7.08(a), the Trustee shall, within 10 days after the expiration of such 90-day period, transmit notice of such failure to the Debentureholders (as the names and addresses of such holders may appear upon the registration books of the Company) in the manner and to the extent provided in § 3.04(c) with respect to reports pursuant to § 3.04(a).

(c) For the purposes of this § 7.08 the Trustee shall be deemed to have a conflicting interest if

(1) the Trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the Company, are outstanding, unless such other indenture is a collateral trust indenture under which the only collateral consists of Debentures issued under this Indenture, provided that there shall be excluded from the operation of this

paragraph (the Indenture Due June 1, 1946 under which the Company's Thirty Year 2½% Debentures Due June 1, 1976 are outstanding and provided, further, that there shall be excluded from the operation of this paragraph) any indenture or indentures under which other securities, or certificates of interest or participation in other securities of the Company are outstanding if (i) this Indenture and such other indenture or indentures are wholly unsecured and such other indenture or indentures are hereafter qualified under the Trust Indentures Act of 1939, unless the Securities and Exchange Commission shall have found and declared by order pursuant to section 305(b) or section 307(c) of the Trust Indenture Act of 1939 that differences exist between the provisions of such other indentures which are so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under this Indenture or such other indenture or indentures, or (ii) the Company shall have sustained the burden of proving, on application to the Securities and Exchange Commission and after opportunity for hearing thereon, that the Trusteeship under this Indenture and such other indenture or indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under one of such indentures.

Section 7.10 of the 1984 Indenture and the 1986 Indenture incorporates the provisions of Section 310(b) of the Trust Indenture Act of 1939.

(9) Manufacturers Hanover Trust Company believes that if it executes and delivers the Supplemental Indentures, it may have a conflict of interest within the meaning of § 7.08 of the 1963 and 1971 Indentures and § 7.10 of the 1984 Indenture and the 1986 Indenture because the 1984 Indenture and the 1986 Indenture do not explicitly exclude from the operation of § 7.10 thereof the 1963 Debenture and the 1971 Indenture.

(10) The 1963 Debentures, the 1971 Debentures, the 1984 Debentures, the 1986 Notes and the 1987 Notes are all wholly unsecured and are *pari passu* with respect to the obligations of Mobil. The trusteeships of Manufacturers Hanover Trust Company under the 1963 Indenture and the 1971 Indenture, the 1984 Indenture and the 1986 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors that Manufacturers Hanover Trust Company be disqualified from acting as trustee under the 1963 Indenture, the 1971 Indenture, the 1984 Indenture or the 1986 Indenture.

(11) The Applicant has waived notice of hearing and hearing.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22–16849, which is a public document on file in the office of the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is Further Given that any interested person may, not later than September 9, 1987 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application which he desires to controvert or may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed to: Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan Katz,

Secretary.

[FR Doc. 87–19357 Filed 8–21–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region V Advisory Council Executive Board Public Meeting

The U.S. Small Business Administration Region V Advisory Council Executive Board will hold a public meeting from 6:00 p.m. Thursday, September 10 to 3:00 p.m. Friday, September 11, 1987 at the Pheasant Run Hotel, St. Charles, Illinois 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 James N. Thomson, Regional Administrator, U.S. Small Business Administration, 230 S. Dearborn Street, Room 510, Chicago, Illinois 60604–1593, (312) 353–0357.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 13, 1987.

[FR Doc. 87–19225 Filed 8–21–87; 8:45 am]

BILLING CODE 8025–01–M

Region IX Advisory Council Executive Board Public Meeting

The U.S. Small Business Administration Region IX Advisory Council Executive Board will hold a public meeting at 10:00 a.m., on Friday, September 4, 1987, at the Federal Building, 450 Golden Gate Avenue, Room 15018 (15th Floor), San Francisco, California, 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 Thomas Topuzes, Regional Administrator, U.S. Small Business Administration, 450 Golden Gate Avenue, Box 36044, San Francisco, California 94102—(415) 556–7487.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 13, 1987.

[FR Doc. 87–19226 Filed 8–21–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[CM–8/1101]

Meeting of the National Committee of the U.S. Organization for the International Radio Consultative Committee

The Department of State announces that the National Committee of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on September 10, 1987, at 9:00 a.m. in Room 1207, Department of State, 2201 C Street NW., Washington, DC.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCIR activities; provides advice on matters of policy and positions in preparation for CCIR Plenary Assemblies and meetings of the international Study Groups; and recommends the disposition of proposed U.S. contributions to the international CCIR which are submitted to the Committee for consideration.

The main purposes of the meeting will be:

1. Report on preparations for the Block A Interim Study Group meetings, October-December, 1987 (Study Groups 2, 3, 4, 9, 10, 11, and CMTT).

2. Committee preparations for the International Telecommunication Union's Plenipotentiary Conference, Nice, 1989.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public

members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Richard Shrum, Department of State, Washington, DC; telephone (202) 647–5841. All attendees must use the C Street entrance to the building.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

August 11, 1987.

[FR Doc. 87–19305 Filed 8–21–87; 8:45 am]

BILLING CODE 4710–07–M

[CM–8/1100]

Meeting of the Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Working Group on Standards of Training and Watchkeeping

The Working Group on Standards of Training and Watchkeeping of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on September 23, 1987 at 10:00 A.M. in Room 6319 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593.

The purpose of the meeting will be a general review of the agenda items for the 20th Session of the International Maritime Organization (IMO) Subcommittee on Standards of Training and Watchkeeping, scheduled for January 11–15, 1988 in London.

Members of the public may attend up to the seating capacity of the room.

For further information contact: Captain F. J. Grady, U.S. Coast Guard Headquarters (G–MVP/12) 2100 Second Street S.W., Washington, DC 20593 or by calling: (202) 267–0214.

Date: August 12, 1987.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 87–19306 Filed 8–21–87; 8:45 am]

BILLING CODE 4710–07–M

Partially Closed Meeting of the Reform Observation Panel for UNESCO

The Reform Observation Panel for UNESCO will meet on September 11, 1987 in Room 1408 of the Department of State, 2101 C Street, NW., Washington, D.C. The meeting will begin at 11:00 a.m.

The principal agenda items will be:

—A report by the U.S. Observer to UNESCO on the status of reform of UNESCO and on the election campaign for the post of Director General.

—Discussion of the agendas of the 127th Session of the UNESCO Executive Board and the 24th Session of the General Conference.

The purpose of the meeting will be to discuss the progress of reform at UNESCO and the possibilities of continued reform of the Organization, particularly at the 127th Session of the Executive Board and the 24th Session of the General Conference. Because the meeting will include a classified briefing by the U.S. Observer to UNESCO and Department of State officers and discussion of documents classified pursuant to Executive Order 12356, a determination has been made that the meeting be closed in part to the public pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c)(1) and (c)(9)(B). The initial portion of the meeting will be open to the public until approximately 12:00 p.m.

Access to the Department of State is controlled for security reasons. Members of the public who wish to attend the open portion of the meeting or who have requests for further information on the meeting should be directed to the Panel's Executive Secretary, Mr. Raymond E. Wanner, Room 5331, Department of State, 2101 C Street, NW., Washington, DC 20520 (202) 647–6878.

Dated: August 12, 1987.

Raymond E. Wanner,

Executive Secretary, Reform Observation Panel.

[FR Doc. 87–19307 Filed 8–21–87; 8:45 am]

BILLING CODE 4710–19–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 14, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45076.

Date Filed: August 12, 1987.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 9, 1987.

Description: Application of United Air Lines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, requests renewal of an experimental certificate of public convenience and necessity to engage in foreign air transportation of persons, property, and mail as follows: Between the terminal points Los Angeles, California, New York, New York, San Francisco, California, and Honolulu, Hawaii; the intermediate point Tokyo or another intermediate point in Japan; and the coterminal points Beijing and Shanghai, the People's Republic of China.

Docket No. 45098.

Date Filed: August 14, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 11, 1987.

Description: Application of Air New Zealand Limited, pursuant to Section 402 of the Act and Subpart Q of the Regulations, requests an amendment to its foreign air carrier permit authorizing it to engage in charter foreign air transportation of persons and/or property, separately or in combination, as follows: Between a point or points in New Zealand, intermediate points, any point or points in the United States, and beyond points.

Docket No. 42131.

Date Filed: August 14, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 11, 1987.

Description: Application of The Flying Tiger Line Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests that the authority to serve Japan contained in its certificate of public convenience and necessity for Route 205F be renewed for a period of at least five years.

Docket No. 41869.

Date Filed: August 12, 1987.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 9, 1987.

Description: Amendment No. 1 to the Application of Liat (1974) Limited, for renewal of its Foreign Air Carrier Permit, pursuant to section 402 of the Act.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87–19328 Filed 8–21–87; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement; Howard County, MD

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement is being prepared for the proposed construction of a 6-lane expressway on new location in Howard County, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Edward A. Terry, Jr., Field Operations Engineer, Federal Highway Administration, The Rotunda, Suite 220, 711 W. 40th Street, Baltimore, Maryland 21211, telephone 301/962-4010, and/or Mr. Louis Ege, Jr., Deputy Director, Project Development Division, Maryland State Highway Administration, 707 North Calvert Street, Room 310, Baltimore, Maryland 21202, telephone 301/333-1130.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland State Highway Administration, is preparing an environmental impact statement to study a five (5) mile extension of Maryland Route 100 between Interstate I-95 and U.S. Route 29 in Howard County.

Between I-95 and MD Route 104, the six-lane divided facility would be on new location. Between MD Route 104 and U.S. 29, the build alternative would follow the alignment of the two-lane roadway which is currently being built by developers west of MD Route 104. The proposed U.S. Route 29/MD Route 103 interchange would be designed to connect into MD Route 100 instead of MD Route 103. A connector from MD Route 100 to MD Route 103 would be provided. Of particular concern will be the impacts on the wetlands and flood plains of Red Hill Branch and Deep Run Creek, and impacts to Brampton Hills Park.

A public meeting to discuss the preliminary alternatives has been held. A public hearing will be held after circulation of the DEIS. A public notice will give the time and place of the public hearing, and individual notices will be sent to those agencies, groups, and individuals on the mailing list. The DEIS will be available for public and agency review and comment prior to the public hearing. To ensure that the full range of issues relating to this proposal are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

(Catalog of Federal Domestic Assistance Program Number 20.025, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and Local review of Federal and Federally assisted programs and projects apply to this program.)

Emil Elinsky,

Division Administrator, Baltimore, Maryland.

[FR Doc. 87-19308 Filed 8-21-87; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[Docket No. PB-87-7]

Petition for Exemption or Waiver of Compliance; Longview Switching Co.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for an exemption from or waiver of compliance with a requirement of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provision involved, and the nature of the relief being requested.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FDA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST-84-21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before October 8, 1987, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petition seeking an exemption or waiver of compliance is as follows:

Longview Switching Company

(Waiver Petition Docket Number PB-87-7)

The Longview Switching Company (LSC) seeks a permanent waiver of compliance with certain provisions of the Power Brakes Regulations, as set forth in 49 CFR 232.12, "Initial terminal and road train air brake tests," and 49 CFR 232.13(e)(1), "Transfer train and yard train movements not exceeding 20 miles."

LSC is a wholly owned subsidiary of Union Pacific Railroad Company (UP) and Burlington Northern Railroad Company (BN). LSC performs switching service between Longview Junction and Longview. LSC is not a main line railroad, and its operations are confined exclusively to yard limits over approximately 40 miles of trackage, 37.5 miles of which are dedicated to industry and yard switching tracks.

At present time, air tests and walking inspection are performed in compliance with Federal safety regulations before each transfer train movement is undertaken. Six to eight such movements are made each day at speeds not to exceed 10 mph. The trackage between Longview Junction and Longview Yard is reported as flat and with one slight curve. It is built with 115 pound rail on tock ballast and is rated as Class 1, under FRA standards.

There is one public highway crossing involved, which is known as Duke Road, which provides entrance to an industrial area and is not considered as a major thoroughfare. This crossing is protected by cantilevered flashing lights and gongs, and each transfer train comes to a complete stop before proceeding over Duke Road. The petitioner states that there have been no accidents at this crossing over the past 10 years.

The transfer train traverse a 1,690 foot drawbridge en route, which is held in a locked position for rail traffic and cannot be opened without a 24-hour notice.

The petitioner states that granting of this petition would not create safety hazards and would result in savings of approximately $385 per day, which will enable LSC and its parent lines to operate more efficiently and price their services more competitively.

Issued in Washington, DC, August 18, 1987

J.W. Walsh,

Associate Administrator for Safety

[FR Doc. 87-19358 Filed 8-21-87; 8:45 am]

BILLING CODE 4910-06-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 163
Monday, August 24, 1987

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).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 18, 1987.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 52, No. ——, August ——, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Thursday, August 20, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. & 552(c)(10)].

CHANGES: The meeting originally scheduled for August 20 has been changed to August 27, 1987. The Commission will consider and act upon the following:

1. White County Coal Corporation, Docket No. LAKE 86–58–R, etc. (Issues include consideration of requirements for taking enforcement action under Section 104(d) of the Mine Act, 30 U.S.C. § 814(c)).

2. Greenwich Collieries, Docket No. PENN 85–188–R, etc. (Issues are the same as above).

It was determined by a unanimous vote of Commissioners that these items be determined in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629.

Jean Ellen,

Clerk.

[FR Doc. 87–19466 Filed 8–20–87; 8:45 am]

BILLING CODE 6735–01–M

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1391)

TIME AND DATE: 10:00 a.m. (EDT), Wednesday, August 26, 1987.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on July 24, 1987.

Action Items

Old Business

1. Final Rate Review.

New Business

A—Budget and Financing

A1. Fiscal Year 1988 Capital Budget Financed from Power Proceeds and Borrowings, Comprising Expenditures for Ongoing and New Projects During the Fiscal Year and the Estimated Total Project Cost for those Projects.

A2. Fiscal Year 1988 Operating Budget Financed from Power Revenues.

A3. Adoption of Supplemental Resolution Authorizing 1987 Series D Power Bonds.

A4. Resolution Authorizing the Chairman and Other Executive Officers To Take Further Action Relating to Issuance and Sale of 1987 Series D Power Bonds.

A5. Payments from New Power Proceeds for Fiscal Year 1987 to the Treasury of the United States.

C—Power Items

C1. Supplement to Contract No. TV–62311A Between Tennessee Emergency Management Agency and TVA for Cooperation in the Development and Implementation of Radiological Emergency Plans as Required by the Nuclear Regulatory Commission and the Federal Emergency Management Agency.

C2. Subagreement to Contract No. TV–50942A with Electric Power Research Institute Covering Arrangemetns for Participation in a Project for Operational Testing of the 10–MW Spray Dryer/Electrostatic Precipitator Facility at Shawnee Steam Plant.

C3. Revision of TVA's General Guidelines for Use in Developing Facility Ownership Arrangements with the Distributors of TVA Power.

C4. Arrangements for an Alternative Seasonal Service Rate Schedule which Distributors Would have the Option of Making Available to Customers that Take Power on a Seasonal Basis.

D—Personnel Items

D1. Retroactive Implementation of an Increase in the Reactor Operator License Incentive Payment for Certain Trades and Labor Annual Employees.

D2. Consulting Contract with Virgil C. Summer, of West Columbia, South Carolina, for Advice and Assistance in Connection with Various Power Program Activities, Requested by the Office of Power.

D3. Personal Services Contract with McCann-Erickson, Inc., of Atlanta, Georgia, for Advertising Services Relating to Conservation and Wise Energy Use Programs, Requested by Office of Power.

D4. Supplement to Personal Services Contract No. TV–71448A with Enercon Services, Inc., of Atlanta, Georgia, for Engineering Services Related to Nuclear Plant Licensing Activities, Requested by Office of Nuclear Power.

D5. Personal Services Contract No. TV–73027A with M. H. Sturdivant & Associates, Inc., of Chattanooga, Tennessee, for Nuclear Procedures Support, Requested by the Office of Nuclear Power.

D6. Personal Services Contract with Sargent & Lundy of Chicago, Illinois, for Integration Effort at Browns Ferry Nuclear Plant, Requested by the Office of Nuclear Power.

D7. Personal Services Contracts for General and Specialized Tasks Related to the TVA Nuclear Program, requested by the Office of Nuclear Power.

E—Real Property Transactions

E1. Abandonment of Transmission Line Easements to the City of Johnson City, Tennessee, Affecting Portions of the Northeast Johnson City-Bluff City District 69–kV Transmission Line, Located in Washington County, Tennessee.

E2. Sale of Permanent Easement to the City of DeKalb, Mississippi, Affecting a .13-acre Portion of TVA's DeKalb, Mississippi, Substation Property.

E3. Sale of Permanent Railroad Easement to the Metropolitan Government of Nashville and Davidson County, Affecting 2.4 Acreas of TVA's Cockrill Bend Property in Nashville, Tennessee—Tract No. XNTPSC–2RR.

E4. Public Auction Sale of the Eads Mine Property in South Central Illinois.

E5. Abandonment of Flowage Easement Rights Affecting 0.34 Acre of Nickajack Reservoir Land in Marion County, Tennessee.

E6. Grant of Term Easement to the Commonwealth of Kentucky for Public Recreation and Outdoor Education Affecting Approximately 304 Acres of Kentucky Reservoir Land in Marshall County, Kentucky.

E7. Conveyance to TVA of Rights of Access over TVA Shoreline Land Fronting Chickamauga Reservoir in Rhea County, Tennessee, in Order to Accommodate the Development of a Proposed Waterfowl Habitat Project—Tract NO. XCR–199.

E8. Filing of Condemnation Cases.

F—Unclassified

[1] F1. Cooperative Agreement No. TV–72591A with Tennessee Center for Research and Development Providing for Support of the Power Electronics Applications Center.

F2. Supplement to Cooperative Agreement No. TV–65181A Between the American Welding Institute and TVA Covering Arrangements for TVA to Provide AWI with Certain Welding and Testing Equipment, Workspace, Office Space, Secretarial Services, and Office Equipment and Supplies for a Two-year Period in Exchange for a 15-year Membership.

F3. Supplement to Contract No. TV–69733A Between Parkway Services and TVA Covering Arrangements for Assistance in Connection with Modern Technology

[1] Item approved by individual Board members. This would give formal ratification to the Board's action.

Development which Would Expand and Generate New Employment Opportunities for Residents in the Tennessee Valley Region.

F4. Supplement to Agreement No. TV-69085A with Olin Chemicals Covering Arrangements for Stream Gate Monitoring Activities for Olin at Huntsville Spring Branch and Indian Creek Tributaries of the Tennessee River on the Redstone Arsenal.

F5. Supplement to Subagreement No. 23 to Memorandum of Agreement No. TV-23928A between TVA and the U.S. Department of the Army, Corps of Engineers, Covering Arrangements for Engineering Analysis of Widening Navigation Channel below Pickwick Lock.

F6. Revised TVA Code Relating to Cost Allocation.

F7. Proposed Amendments to the Rules and Regulations of the TVA Retirement System and of the Provisions of the TVA Savings and Deferral Retirement Plan.

F8. Procedures Providing for Drug and Alcohol Testing of Persons in Certain Critical Positions Related to TVA's Nuclear Program.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: August 19, 1987.

W.F. Willis,

General Manager.

[FR Doc. 87-19414 Filed 8-20-87; 12:27 pm]

BILLING CODE 8120-01-M

Corrections

Federal Register
Vol. 52, No. 163
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This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 5H5470/R893; FRL-3242-4]

Pesticide Tolerances for Cyano(4-Fluoro-3-Phenoxyphenyl)Methyl-3-(2,2-Dichloroethenyl)-2,2-Dimethyl-Cyclopropanecarboxylate

Correction

In rule document 87-17737 beginning on page 29008 in the issue of Wednesday, August 5, 1987, make the following correction:

§ 193.98 [Corrected]

On page 29009, in the second column, in § 193.98(b), in the last two lines, the permit number should read "3125-EUP-194".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[PP 6G3445/T547; FRL-3226-2]

Ethephon; Establishment of Temporary Tolerances

Correction

In notice document 87-14913 appearing on page 24524 in the issue of Wednesday, July 1, 1987, make the following correction:

In the third column, in the fourth complete paragraph, in the third line, insert "5" before "U.S.C. 610-612".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50670; FRL-3218-4]

Issuance of Experimental Use Permits

Correction

In notice document 87-13480 beginning on page 23078 in the issue of Wednesday, June 17, 1987, make the following correction:

On page 23079, in the first column, in the sixth line from the bottom, "1989" should read "1988".

BILLING CODE 1505-01-D

PANAMA CANAL COMMISSION

Privacy Act of 1974; Systems of Records

Correction

In the correction to notice document 87-17297 appearing on page 30766 in the issue of Monday, August 17, 1987, make the following correction:

In the third column, following amendatory instruction 3, at the beginning of the quoted material, a portion of the omitted text was not included in the correction. The two captions and data elements are republished in full as follows:

"RECORD ACCESS PROCEDURES:

Requests should be addressed to either of addressees designated in Notification Procedure, preceding.

CONTESTING RECORD PROCEDURES:

See rules published in 35 CFR Part 10."

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-31; SFAR 51]

Alteration of the Los Angeles Terminal Control Area; California

Correction

In rule document 87-18795 beginning on page 30914 in the issue of Tuesday, August 18, 1987, make the following correction:

On page 30916, in the second column, under the heading **The Amendment**, in the 10th line, "August 18, 1987" should read "August 19, 1987".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-31]

Proposed Alteration of the Los Angeles Terminal Control Area; California

Correction

In proposed rule document 87-18117 beginning on page 29612 in the issue of Monday, August 10, 1987, make the following correction:

On page 29612, in the first column, in the **SUMMARY**, in the 19th line, "dual" should read "visual".

BILLING CODE 1505-01-D

federal register

Monday
August 24, 1987

Part II

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research; Actions Under Guidelines; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research; Action Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Action under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth an action to be taken by the Director, National Institutes of Health (NIH), under the May 7, 1986, NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958).

EFFECTIVE DATE: August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. William J. Gartland, Office of Recombinant DNA Activities, 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, (301) 770–0131.

SUPPLEMENTARY INFORMATION: Today an action is being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules.

This proposed action was published for comment in the **Federal Register** of August 15, 1986 (51 FR 29423), and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on September 29, 1986. Minutes of that meeting are available from the Office of Recombinant DNA Activities at the address given above.

In accordance with Section IV–C–1–b of the NIH Guidelines this action has been found to comply with the NIH Guidelines, and to present no significant risk to health or the environment.

I. Decision on Action Under NIH Guidelines

Proposal to Add Bacillus Sphaericus to Appendix C–V of the NIH Guidelines

Dr. William F. Burke, Jr., of Arizona State University, Tempe, Arizona, in a letter dated July 28, 1986, requested that *Bacillus sphaericus* be added to the list of Gram positive bacteria in Appendix C–V of the NIH Guidelines. References to published articles providing relevant data were included in his submission.

This proposal was published in the August 15, 1986, **Federal Register** (51 FR 29423) for public comment. No comments on the proposal were received.

The RAC considered this proposal at the September 29, 1986, meeting. By a vote of nineteen in favor, none opposed, and no abstentions, RAC recommended approval of the proposal.

I accept this recommendation and Appendix C–V has been modified accordingly.

II. Summary of Actions

Revision of Appendix C–V

Appendix C–V, *Extrachromosomal Elements of Gram Positive Organisms*, is modified by the addition of *Bacillus sphaericus* to the list of organisms.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: August 12, 1987.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 87–19118 Filed 8–21–87; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Research; Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Actions under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth two actions to be taken by the Director, National Institutes of Health (NIH), under the May 7, 1986, NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958).

EFFECTIVE DATE: August 24, 1987.

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. William J. Gartland, Office of Recombinant DNA Activities, 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, (301) 770–0131.

SUPPLEMENTARY INFORMATION: Today two actions are being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules. These two proposed actions were published for comment in the **Federal Register** of December 19, 1986 (51 FR 45650), and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on February 2, 1987. A transcript of that meeting is available from the Office of Recombinant DNA Activities at the address given above.

In accordance with Section IV–C–1–b of the NIH Guidelines, these actions have been found to comply with the NIH Guidelines and to present no significant risk to health or the environment.

I. Decisions on Actions Under NIH Guidelines

A. Proposed Amendments of Sections I–A and III–A of the NIH Guidelines

Dr. Bernard Talbot, then Deputy Director, National Institute of Allergy and Infectious Diseases, requested in a memorandum dated December 1, 1986, that the following proposed amendments of the NIH Guidelines and rationale be published for comment and considered by the RAC:

The current NIH Guidelines for Research Involving Recombinant DNA Molecules (Guidelines) contain the following text in Section III–A of the Guidelines.

If the experiments in this category are submitted for review to another Federal agency, the submitter shall notify ORDA; ORDA may then determine that such review serves the same purpose, and based on that determination, notify the submitter that no RAC review will take place, no NIH approval is necessary, and the experiment may proceed upon approval from the other Federal agency.

This text appears in Section III–A of the Guidelines and is applicable only to experiments covered by Section III–A.

It requires that: (1) An investigator who has submitted a proposal to another Federal agency notify the NIH Office of Recombinant DNA Activities (ORDA); (2) ORDA determine if the review serves the same purpose (as NIH review); (3) and, if so, ORDA notify the submitter that the experiment may proceed upon approval from the other Federal agency.

On June 26, 1986, the Office of Science and Technology Policy published in the **Federal Register** (51 FR 23302) a "Coordinated Framework for Regulation of Biotechnology." It contains a Preamble, followed by Statements of Policy from the Food and Drug Administration, Environmental Protection Agency, U.S. Department of Agriculture, Occupational Safety and Health Administration, and the National Institutes of

Health. The Preamble states that, ". . . for contained federally funded research for biomedical and agricultural purposes, research approval will be granted by the funding agency . . . . Jurisdiction for release may be under S&E, NSF, APHIS, or EPA."

There is no mention in the June 26 **Federal Register** document of any requirement, once approval for a recombinant DNA experiment is obtained from a Federal agency other than NIH, for communication with the NIH Office of Recombinant DNA Activities. And indeed, I believe that the absence of such a requirement should be the case; not only for experiments covered by Section III–A of the Guidelines, but for all recombinant DNA experiments.

Therefore, I propose the following changes in the NIH Guidelines for Research Involving Recombinant DNA Molecules.

1. Delete from Section III–A of the Guidelines the following paragraph:

If the experiments in this category are submitted for review to another Federal agency, the submitter shall notify ORDA; ORDA may then determine that such review serves the same purpose, and based on that determination, notify the submitter that no RAC review will take place, no NIH approval is necessary, and the experiment may proceed upon approval from the other Federal agency.

2. Add at the end of Section I–A of the Guidelines the following paragraph:

Any recombinant DNA experiment which according to these Guidelines requires approval by the National Institutes of Health (NIH), may be sent by the submitter to the NIH or to another Federal agency that has jurisdiction for review and approval. Once approval for a recombinant DNA experiment has been given by a Federal agency other than the NIH (whether referred to that agency by the NIH or sent directly there by the submitter), the experiment may proceed without the necessity for NIH review or approval.

This proposal was published for comment in the **Federal Register** of December 19, 1986 (51 FR 45650).

Eleven letters were received with comments on this proposal. Ten of the letters provided unqualified support for the proposal. One letter suggested an alternative mechanism in which NIH and another agency would confer and decide which agency would conduct the review.

The RAC considered this proposal at the February 2, 1987, meeting. The RAC supported the proposal and recommended the incorporation of amendments proposed at the meeting. One RAC member moved that the following sentence be added at the end of proposed revised Section I–A:

However, any experiment that involves the administration of gene therapy to human subjects (see Section III–A–4 of the Guidelines) may not proceed without prior review by the NIH Recombinant DNA Advisory Committee and NIH approval.

Dr. Talbot supported the amendment. By a vote of 12 in favor, 1 opposed, and 3 abstentions, the RAC accepted the amendment.

Another RAC member proposed that the second sentence of proposed revised Section I–A be amended to read as follows:

Once approval, or other applicable clearances, have been obtained from a Federal agency other than the NIH (whether the experiment is referred to that agency by the NIH, or sent directly there by the submitter), the experiment may proceed without the necessity for NIH review or approval.

The RAC then voted 17 in favor, none opposed, and no abstentions to recommend approval of the proposal as amended.

I accept this recommendation and Sections I–A and III–A have been modified accordingly.

B. Proposed Revisions of Appendices C–II, C–III, and C–IV

Dr. Frank E. Young, Commissioner of Food and Drugs, submitted in a letter dated December 4, 1986, the following proposed revisions of Appendices C–II, C–III, and C–IV, and rationale:

On June 26, 1986, a major statement of federal policy, the "Coordinated Framework for Regulation of Biotechnology," was published (51 FR 23301–93). We believe that important clarifications of regulatory policy are to be found there, but that some minor changes in the NIH Guidelines are required for consistency and clarity.

As noted on page 23304 of the June 26 document, Appendices C–II, C–III, and C–IV of the NIH Guidelines contain the statement that:

For large scale (LS) fermentation experiments BL1–LS physical containment conditions are recommended. However, following review by the IBC of appropriate data for a particular host-vector system, some latitude in the application of BL1–LS requirements as outlined in Appendices K–II–A through K–II–F is permitted.

The document continues:

The appropriate large-scale containment requirements of many low-risk [r]DNA derived industral microorganisms will be no greater than those appropriate for the unmodified parental organisms.

Together, these statements imply that the actions of IBCs should ensure that requirements for physical containment of low-risk microorganisms should be appropriately minimal, i.e., only those that are employed routinely for organisms such as *E. coli* K–12, *B. subtilis*, or *Saccharomyces cerevisiae*. It should be noted that industrial fermentation has a long and distinguished history and currently accounts for products valued at more than $2 billion annually. . . . All but a minuscule proportion of this production employs non-pathogenic organisms and is carried out safely under conditions significantly less restrictive than the NIH Guidelines' BL1–LS, which requires that recombinant organisms be handled in a closed system, that culture fluids containing viable organisms not be removed from a closed system, that exhaust gases removed from a closed system be treated by filters equivalent to HEPA filters, etc.

To ensure compliance with the NIH Guidelines, the *E. coli* and *Saccharomyces cerevisiae* production organisms used to manufacture the five DNA-derived pharmaceuticals approved by FDA (human insulin, human growth hormone, two alpha-interferons, and hepatitis B vaccine), are indeed grown under containment conditions at least BL1–LS. This degree of containment is expensive, unwieldy and unnecessary.

Despite the interpretation discussed above of the language in the June 26 document, FDA has received numerous inquiries and requests from academics, industrial representatives, and others who have found the language in the June 26 document and the NIH Guidelines not explicit enough for purposes of strategic planning. Therefore, we propose the following amendment to the NIH Guidelines:

In Appendices C–II, C–III, and C–IV, delete the following language:

For these exempt laboratory experiments, BL1 physical containment conditions are recommended.

For large-scale (LS) fermentation experiments BL1–LS physical containment conditions are recommended. However, following review by the IBC of appropriate data for a particular host-vector system, some latitude in the application of BL1–LS requirements as outlined in Appendices K–II–A through K–II–F is permitted.

And substitute: For these exempt laboratory experiments, the appropriate physical containment conditions need be no greater than those for the host organism unmodified by recombinant DNA techniques.

For large-scale (LS) fermentation experiments, the appropriate physical containment conditions need be no greater than those for the host organism unmodified by recombinant DNA techniques.

This proposal was published for comment in the **Federal Register** of December 19, 1986 (51 FR 45650).

Eighteen letters were received with comments on this proposal. Comments in sixteen letters supported adoption of the proposal. One letter questioned why BL1 containment should be relaxed for laboratory experiments covered by Appendices C–II, C–III, and C–IV, and suggested that "unwieldy, expensive, and unnecessary" requirements for large-scale containment could be replaced by less stringent requirements. One letter opposed the lessening of BL1–LS containment for large-scale experiments.

The RAC considered this proposal at the February 2, 1987, meeting. It was noted that there are two aspects to the proposal. One deals with containment recommended for exempt laboratory

experiments, the other deals with containment recommended for large-scale fermentation. One *ad hoc* consultant said that the proposed language was not an improvement and recommended not changing the current wording regarding laboratory experiments. A RAC member felt that the proposal clarifies the wording of this section, noting that the "latitude" allowed in the application of BL1–LS requirements is somewhat subjective. Another RAC member said that the part of the proposal dealing with laboratory experiments is not necessary, but that some version of the wording regarding large-scale fermentation should be adopted. It was agreed that the laboratory-scale and large-scale aspects should be considered separately.

The RAC then moved that in Appendices C–II, C–III, and C–IV, the paragraph regarding containment for laboratory experiments should be retained as currently worded in the NIH Guidelines, and the proposed paragraph regarding large-scale fermentation should be accepted with the addition of the word "generally" after "conditions," as follows:

> For large-scale (LS) fermentation experiments, the appropriate physical containment conditions generally need be no greater than those for the host organism unmodified by recombinant DNA techniques.

The RAC voted to accept this motion by a vote of 13 in favor, none opposed, and 2 abstentions.

In reviewing this recommendation and in agreement with the intent of the RAC, I conclude that it would be appropriate for clarity to remove the word "generally" and include a statement that the Institutional Biosafety Committee (IBC) may choose to specify a higher level of containment. Accordingly, I accept the RAC's recommendation as modified as follows:

> For large-scale (LS) fermentation experiments, the appropriate physical containment conditions need be no greater than those for the host organism unmodified by recombinant DNA techniques; the IBC can specify higher containment if it deems it necessary.

Appendices C–II, C–III, and C–IV are modified accordingly.

II. Summary of Actions

A. Revisions of Sections I–A and III–A of the NIH Guidelines

The following paragraph is added as the second paragraph to Section I–A of the NIH Guidelines:

> Any recombinant DNA experiment which according to these Guidelines requires approval by the National Institutes of Health (NIH), may be sent by the submitter to the NIH or to another Federal agency that has jurisdiction for review and approval. Once approval, or other applicable clearances, has been obtained from a Federal agency other than the NIH (whether the experiment is referred to that agency by the NIH, or sent directly there by the submitter), the experiment may proceed without the necessity for NIH review or approval. However, any experiment that involves the administration of gene therapy to human subjects (see Section III–A–4 of the Guidelines) may not proceed without prior review by the NIH Recombinant DNA Advisory Committee and NIH approval.

The following paragraph is deleted from Section III–A:

> If the experiments in this category are submitted for review to another Federal agency, the submitter shall notify ORDA; ORDA may then determine that such review serves the same purpose, and based on that determination, notify the submitter that no RAC review will take place, no NIH approval is necessary, and the experiment may proceed upon approval from the other Federal agency.

B. Revisions of Appendices C–II, C–III, and C–IV

The third paragraph of Appendix C–II, the fourth paragraph of Appendix C–III, and the third paragraph of Appendix C–IV are modified to read as follows:

> For large-scale (LS) fermentation experiments, the appropriate physical containment conditions need be no greater than those for the host organism unmodified by recombinant DNA techniques; the IBC can specify higher containment if it deems it necessary.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual Programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: August 12, 1987.

James B. Wyngaarden,

Director, National Institutes of Health.

[FR Doc. 87–19119 Filed 8–21–87; 8:45 am]

BILLING CODE 4140–01–M

Federal Register

Monday
August 24, 1987

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

Hazard Communication; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

[Docket No. H-022D]

Hazard Communication

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Final rule.

SUMMARY: OSHA is revising its Hazard Communication Standard (HCS) (29 CFR 1910.1200), which currently applies to the manufacturing sector, to cover all employers with employees exposed to hazardous chemicals in their workplaces. Expansion of the scope of the HCS requires non-manufacturing employers to establish hazard communication programs to transmit information on the hazards of chemicals to their employees by means of labels on containers, material safety data sheets, and training programs. This action will reduce the incidence of chemically-related occupational illnesses and injuries in non-manufacturing workplaces.

DATES: Effective September 23, 1987. The revised standard published today requires that chemical manufacturers, importers, and distributors ensure that material safety data sheets are provided with the next shipment of hazardous chemicals to non-manufacturing employers or distributors after September 23, 1987. All employers in the non-manufacturing sector are to be in compliance with all provisions of the standard by May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N3637, Washington, DC, 20210; telephone (202)523-8151.

SUPPLEMENTARY INFORMATION: References to the rulemaking record are made in the text of this preamble, and the following abbreviations have been used:

H-022, Ex.: Exhibit number in Docket H-022, which includes Dockets H-022A and H-022B.

Ex.: Exhibit number in Docket H-022D for exhibits collected since the 1985 Court remand.

Tr.: Public hearing transcript page number.

Copies of the official list of entries in the record, as well as the exhibits themselves, are available from the OSHA Docket Office, Dockets H-022 and H-022D, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N3670, Washington, DC, 20210; telephone (202)523-7894.

I. Background

A. History of OSHA's Hazard Communication Standard

When Congress passed the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.* (the Act), it included language in section 6(b)(7) stating that any occupational safety or health standard promulgated by the Secretary of Labor under section 6(b) rulemaking authority "shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure." Whenever OSHA has promulgated a substance-specific rule to address the hazards of a particular chemical, this Congressional directive has been followed. However, given the universe of chemicals present in American workplaces (as many as 575,000 hazardous chemical products), and the time-consuming nature of OSHA's rulemaking process, it soon became clear that little information would be available to employees if this substance-by-substance approach were the only one pursued. The Agency thus decided to address the issue of hazard information transmittal on a generic basis. OSHA's experience, as well as our rulemaking record to date, supports the view that when employees have access to, and understand, the nature of the chemical hazards they are exposed to during the course of their employment, they are better able to participate in their employers' protective programs, and take steps to protect themselves. In addition, providing employers with complete chemical hazard information enables them to better design and implement protective programs. Together these actions will result in more effective worker protection and the occurrence of fewer illnesses and injuries due to exposure to chemicals. *See, e.g.*, 48 FR 53282-84, 53321, 53323-24, 53327-29 (Nov. 25, 1983); 47 FR 12093-12101 (Mar. 19, 1982).

In 1974, OSHA established a Standards Advisory Committee on Hazardous Materials Labeling under section 7(b) of the Act to develop guidelines for the implementation of section 6(b)(7). On June 6, 1975, the Committee submitted its final report to the Assistant Secretary for Occupational Safety and Health which recommended categorization and ranking of chemical hazards, as well as provisions for labels, material safety data sheets, and training programs for all workers.

The National Institute for Occupational Safety and Health (NIOSH) published a criteria document in 1974 which also recommended a standard to OSHA. The document, entitled "A Recommended Standard . . . An Identification System for Occupationally Hazardous Materials," included provisions for labels and material safety data sheets.

In 1976, Congressman Andrew Maguire from New Jersey and the Health Research Group petitioned OSHA to issue a standard to require the labeling of all workplace chemicals. The House of Representatives' Committee on Government Operations (1976 and 1977) recommended that OSHA enforce the health provisions of the Act by requiring manufacturers to disclose any toxic ingredients in their products, and by requiring all employers to disclose this information to workers.

On January 28, 1977, OSHA initiated the public participation phase of the rulemaking process on these issues by publishing an advance notice of proposed rulemaking (ANPR) on chemical labeling in the **Federal Register** (42 FR 5372). The ANPR requested comments and information on the need for such a standard, and the particular provisions that should be included. The Agency received eighty-one comments. Most supported the need for the rule, but opinions as to the specific approaches to be pursued varied significantly.

On January 16, 1981, OSHA published a notice of proposed rulemaking (NPRM) entitled "Hazards Identification" (46 FR 4412). The rule would have required manufacturing employers to assess the hazards in their workplaces using specified procedures, and to label containers. The requirements were quite different from the comprehensive approach previously recommended by the Standards Advisory Committee and NIOSH as they did not include provisions for material safety data sheet development or training.

OSHA withdrew the NPRM on February 12, 1981 (46 FR 12214) for further consideration of regulatory alternatives. A new NPRM was published on March 19, 1982, and was entitled "Hazard Communication" (47 FR 12092). It proposed to require producers of chemicals to evaluate them to determine their hazards, label

containers, and provide material safety data sheets to manufacturing purchasers of their products. The standard also proposed that all employers in the manufacturing sector have a hazard communication program, label in-plant containers, maintain and provide access to material safety data sheets, and train workers. The proposal also invited comments on whether non-manufacturing employers should be subject to the rule.

Following a period for written comments, informal public hearings, and a post-hearing comment period, OSHA published the final Hazard Communication Standard on November 25, 1983 (48 FR 53280). The provisions of the final rule are very similar to those described above for the proposal, *i.e.*, chemical manufacturers and importers are required to evaluate the hazards of the chemicals they produce or import, and all manufacturers are required to have hazard communication programs for their employees exposed to hazardous chemicals. This comprehensive standard was designed to reduce the hazards faced by manufacturing workers when they handle chemicals without adequate information on, among other things, the physical and health hazards of the chemicals, safe handling precautions, and emergency and first aid procedures. *See, e.g.*, 48 FR 53321. OSHA found that inadequate communication regarding chemical hazards presents a significant risk to workers. *See, e.g.*, 48 FR 53321. *Accord United Steelworkers of America v. Auchter*, 763 F.2d 728, 735 (3d cir. 1985) (*United Steelworkers I*) ("[I]nadequate communication is itself a hazard, which the standard can eliminate or mitigate.").

OSHA decided to limit the scope of coverage of the HCS to the manufacturing sector based on an analysis of the chemical source illnesses and injuries occurring in each industrial sector. (*See* discussion at 48 FR 53284–86.) In particular, since the purpose of the standard is to reduce the occurrence of such incidents, OSHA determined that the rule should focus on those industrial sectors where they are recorded most frequently. The Agency found that over half of these incidents occur in manufacturing, although manufacturing accounts for only about 30 percent of total employment. Thus OSHA decided that the greatest need for transmittal of chemical hazard information is in the manufacturing sector. The Agency further recognized that since chemicals are developed and produced in the manufacturing sector, the hazard information would have to be developed in the manufacturing sector first, regardless of the eventual coverage of the rule. OSHA believed that requiring the development of the chemical hazard information in manufacturing would lead to its increased availability in the other sectors without the standard specifically requiring the transmittal of hazard information to those sectors. The Agency acknowledged that hazardous chemicals are pervasive throughout industry and that chemical source injuries and illnesses have been recorded in all industry sectors. *See, e.g.*, 48 FR 53282–87. *See also United Steelworkers I*, 763 F.2d at 737. The Agency planned to make a decision regarding the explicit coverage of the non-manufacturing sectors once the HCS was in effect, and a determination could be made as to whether the other industries were, in fact, obtaining the information they needed. OSHA believed that the Act gives the Secretary of Labor and the Agency the authority to regulate the most hazardous industry first under section 6(g), 29 U.S.C. 655(g), which states in part:

> In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments.

B. Court Challenges

The HCS was challenged in the U.S. Court of Appeals for the Third Circuit (hereinafter referrred to as "the Court" or "the Third Circuit") on several grounds. The Court issued its decision on May 24, 1985 (*United Steelworkers I*, 763 F.2d 728 (3d Cir. 1985)). The standard was upheld in most respects, but three issues were remanded to the Agency for reconsideration. The decision was not appealed.

First, the Court concluded that the definition of trade secrets incorporated by OSHA included chemical identity information that was readily discoverable through reverse engineering and, therefore, was "broader than the protection afforded trade secrets by state law." The Court directed the Secretary of Labor to reconsider a trade secret definition which would not include chemical identity information that is readily discoverable through reverse engineering. Second, the Court held the trade secret access rule in the standard invalid insofar as it limited access to health professionals, but found the access rule otherwise valid. The Secretary was directed to adopt a rule permitting access by employees and their collective bargaining representatives to trade secret chemical identities. OSHA complied with the Court orders regarding the two trade secret issues in a separate rule, published in final form on September 30, 1986 (51 FR 34590).

The third issue remanded to OSHA involved the scope of the standard's coverage. As noted, the HCS currently applies to employers and employees in the manufacturing sector. The Court rejected the Secretary's contention that section 6(g) gave him the flexibility to regulate the most hazardous sector first before commencing rulemaking for other sectors in which workers are exposed, to a lesser extent, to the same hazards. The Court agreed that section 6(g) "clearly permits the Secretary to set priorities for the use of the Agency's resources, and to promulgate standards sequentially." 763 F.2d at 738. The Court also acknowledged that "there is substantial evidence in the record that the manufacturing sector has the highest incidence rate of chemical exposures which the Agency has authority to regulate." *Id.* at 737. However, the Court held that it is not enough merely to establish that the sector selected for coverage presents greater hazards than those that have been left for later rulemaking. Given the record evidence of high levels of exposure to hazardous chemicals in several job settings outside the manufacturing sector, the Secretary was required to explain "why coverage of workers outside the manufacturing sector would have seriously impeded the rulemaking process" or "why it is not feasible for the same standard to be applied in other sectors where workers are exposed to similar hazards." *Id.* at 738.

The Court was not persuaded that the HCS would provide protection to uncovered workers because chemical hazard warnings would be found on container labels and detailed information on material safety data sheets would become increasingly available in the unregulated sectors as a result of being required in manufacturing. *Id.* There was considerable record evidence that indicated that workers in the non-manufacturing industries are exposed to chemical hazards. The Court concluded that the Secretary had not stated why it would not be feasible to require employers in non-manufacturing industries to give workers material safety data sheets and training as required in the manufacturing sector. *Id.* The Court maintained that the Act required an explanation why the same information, that is, labels, material

safety data sheets, and training, is not needed for workers in other sectors similarly exposed to hazardous chemicals. *Id.* at 738–39. Therefore, as previously indicated, OSHA was directed by the Court to reconsider the application of the standard to employees in the non-manufacturing industries and to order its application to these other sectors unless the Secretary can state reasons why this application would not be feasible. It should be noted that in previous OSHA litigation, the Courts have defined "feasibility" in terms of OSHA rules as meaning "capable of being done." *American Textile Manufacturers Institute v. Donovan*, 452 U.S. 490, 508–509 (1980)(ATMI).

OSHA decided not to appeal this decision. As stated in the preamble to the final rule (48 FR 53286):

> It should be emphasized that the Agency does not believe that employees in other industries are not exposed to hazardous chemicals, or that they should not be informed of those hazards. OSHA has merely exercised its discretion to establish rulemaking priorities, and chosen to first regulate those industries with the greatest demonstrated need.

OSHA was prepared to evaluate the HCS' effectiveness in getting information to downstream employers, and to extend the standard if necessary. In fact, the Agency initiated the process on March 4, 1985, prior to the Court decision, when the Assistant Secretary asked the National Advisory Committee on Occupational Safety and Health (NACOSH) to give OSHA its recommendation on the need and feasibility of expanding the scope of the HCS to other industries. On June 21, 1985, NACOSH adopted the following recommendation:

> [NACOSH] strongly endorses the OSHA effort to promulgate a Hazard Communication Standard and selection of the manufacturing sector for its initial scope of coverage. It is the consensus recommendation of the Committee that the scope of the current Hazard Communication Standard should be expanded to cover all employees in all industries at as early a time as possible. Complete implementation may require phasing in gradually. The BLS [Bureau of Labor Statistics] incidence rates of occupational illnesses, and other appropriate factors, should be primary considerations in expanding the coverage. The Committee further recommends that OSHA establish a task force to address these issues.

Meanwhile, OSHA's review of the rulemaking record showed that while there was considerable evidence concerning the need for hazard communication in other industries, and general support for a finding that the HCS would be feasible for non-manufacturing, there was a need for more direct evidence of the feasibility of expanded coverage, particularly in the area of economic feasibility. Accordingly, OSHA believed it was necessary and appropriate to initiate further rulemaking. OSHA commissioned a study of the economic impact of extending the HCS to the fifty major non-manufacturing industry groups within its jurisdiction, and issued an Advance Notice of Proposed Rulemaking (ANPR) seeking public comment on present hazard communication practices outside manufacturing, and the likely impact of extending the HCS to industries significantly different from the prototypical manufacturing worksites on which the original standard was based. 50 FR 48794 (Nov. 27, 1985). Over two hundred responses were received. Based on this newly acquired evidence and on the previous rulemaking record, OSHA was in the process of drafting a proposed rule which it expected to publish for notice and comment, followed by promulgation of a final rule in early 1988.

On January 27, 1987, however, the United Steelworkers of America, AFL–CIO–CLC and Public Citizen, Inc., petitioners in the 1985 challenge, filed a Motion For An Order Enforcing The Court's Judgment and Holding Respondent In Civil Contempt. Petitioners claimed that the Court's 1985 order had not authorized OSHA to embark on further fact gathering; that OSHA should have made a feasibility determination on the 1985 rulemaking record. Petitioners also argued that even if further fact gathering had been allowed by the Court's order, OSHA's pace was unduly slow.

In response, OSHA noted that the Court's 1985 order did not specify that OSHA should act on the then-existing record. OSHA believed that seeking further evidence on feasibility in non-manufacturing was appropriate in light of its statutory obligation to issue rules that are well grounded in a factual record. OSHA also asserted that, consistent with Supreme Court precedent, the Agency should be permitted to exercise its discretion in determining the appropriate rulemaking procedures for complying with the Court's remand order. Lastly, the Agency argued that its schedule to complete the rulemaking was reasonable and did not constitute undue delay.

On May 29, 1987, the Court issued a decision holding that the Court's 1985 remand order required consideration of the feasibility of an expanded standard without further rulemaking. *United Steelworkers of America, AFL–CIO–CLC v. Pendergrass*, No. 83–3554 (3d Cir.) (*United Steelworkers II*). The Court declared that adequate notice had been provided to non-manufacturers during the original rulemaking that they might be covered by the HCS, *id.* slip op. at 7–10, 16–17, that the answers to the remaining questions OSHA may have had regarding feasibility were "self-evident" or "readily ascertainable" from the original record, *id.* at 15, 17, and that further fact finding was "unnecessary", *id.* at 15. The Court ordered the Agency to issue, within 60 days of its order, "a hazard communication standard applicable to all workers covered by the OSHA Act, including those which have not been covered in the hazard communication standard as presently written, or a statement of reasons why, on the basis of the present administrative record, a hazard communication standard is not feasible." *Id.* at 19. OSHA is responding to the Court order by issuing this final rule expanding the scope of the HCS' coverage to all workers within OSHA's jurisdiction.

OSHA continues to believe that it should have been permitted to follow the rulemaking procedures in the Act by issuing a notice of proposed rulemaking and developing a public record prior to promulgating a final rule. However, as discussed in the following section regarding feasibility, the Agency does not have sufficient evidence in the current record to indicate that the rule would be infeasible for any part of the non-manufacturing sector. OSHA recognizes that information submitted during a normal rulemaking process might have resulted in further changes to the provisions to better address feasibility or practicality concerns.

In light of the fact that there may be additional information regarding the feasibility or practicality of the rule as it applies to some non-manufacturing sectors, the Agency invites persons to provide such information and any recommendations for further rulemaking within sixty days of the date of publication of this final rule. OSHA will then evaluate these submissions and determine whether any additional rulemaking is required. Data or evidence related to feasibility should be addressed to: Directorate of Health Standards Programs, Occupational Safety and Health Administration, Attention: Hazard Communication, 200 Constitution Avenue, NW., Room N3718, Washington, DC, 20210.

C. Feasibility of the Standard

In the context of OSHA standard setting, feasibility constraints limit the extent to which standards can address health and safety concerns within the workplace. Section 6(b)(5) of the Act, 29 U.S.C 655(b)(5). Feasibility analysis involves an inquiry to determine whether a standard is both technologically and economically capable of being done. *ATMI*, 452 U.S. at 512–13 and 513 n.31 (1980). As the Third Circuit has indicated, "the Secretary was able to determine that the hazard communication standard could feasibly be applied in the manufacturing sector." *United Steelworkers II*, slip op. at 16. The Court further noted that OSHA had concluded in the final rule that importers and distributors could feasibly comply with the HCS based on the evidence in the record and that "this is equally true of all non-manufacturer user employers. Plainly, the ease with which the same information can be utilized by those employers can be easily determined from the information already in the record." *Id.* at 18. The Third Circuit has ordered expansion of the HCS to all workers *unless* OSHA can give reasons why the HCS is infeasible for particular industries, and has forbidden OSHA from gathering further evidence.

OSHA concludes that the original HCS rulemaking record (Docket H–022), does not contain credible evidence indicating the standard would be infeasible for any industrial sector. In fact, OSHA believes that the original record on the whole supports a finding that the performance-oriented HCS is feasible for all industries. In addition, the Agency's experience under the present HCS and other pertinent OSHA standards, the promulgation and implementation of State and local right-to-know laws, and evidence and data gathered by the Agency since the 1985 Court order (Docket H–022D), further supports OSHA's conclusion that non-manufacturing employers are "capable" of implementing the HCS for their employees potentially exposed to hazardous chemicals.

OSHA found that the HCS is technologically feasible for manufacturers, and believes it is clearly technologically feasible for non-manufacturers as well. Twelve of the OSHA-approved State plan States have already extended the rule to cover the non-manufacturing sector, and the requirements are being enforced in those States as workplace standards. This experience provides practical evidence of the technological feasibility of the requirements of the rule. The more technical aspects of the standard—scientific evaluation of chemicals to determine their hazards and creation of material safety data sheets and warning labels—remain a burden on those producing or importing hazardous chemicals. The technical expertise needed to develop the chemical hazard information, and its associated costs, is subsumed within the current rule covering manufacturers, and it has been found feasible. All other requirements in the HCS, such as maintaining material safety data sheets, developing a written hazard communication program, and designing and implementing chemical hazard training, are conventional and common business practices that are administrative in nature, and no technological barriers prevent their development and implementation. OSHA has mandated such practices for some non-manufacturing workplaces since the early 1970's. *See, e.g.*, 29 CFR 1915.97 (requiring material safety data sheets and chemical hazard training for shipyard workers); 1917.22 (requiring marine terminal workers be instructed as to the chemical hazards presented by cargo); 1918.86 (requiring chemical hazard instruction for longshore workers); 1926.21 (requiring chemical hazard training for construction workers). *See, also*, H–022, Ex. 99 (journal article regarding usefulness of material safety data sheets, written by Dow Chemical Company representatives and published in December 1957).

OSHA also believes that the economic feasibility of extending the current HCS to the non-manufacturing sector is supported by the record. Simply put, economic feasibility is established by evidence that the standard will not threaten the regulated industry's "long-term profitability." *ATMI*, 452 U.S. at 531 n.55. Costs associated with expanding the standard to cover non-manufacturing workplaces will stem from the initial start-up costs and the less substantial recurring program implementation and upkeep costs for: maintaining material safety data sheets received from manufacturers, importers, distributors, and other employers; creating labels for in-house containers of hazardous chemicals; developing a written hazard communication program, including a list of hazardous chemicals present in the workplace; and developing and implementing chemical hazard training.

After careful analysis of the original HCS rulemaking record, OSHA concludes that, as a whole, it supports a finding that non-manufacturers are economically capable of providing employees chemical hazard information in the manner prescribed by the HCS. As noted previously, development of the evidentiary record for the HCS began as early as 1974. In that year, NIOSH recommended that OSHA adopt a standard requiring *all* employers to implement a system of labels, placards and material safety data sheets in their workplaces to inform employees about the chemical hazards to which they may be exposed. (H–022, Ex. 4). The NIOSH recommended standard, like the HCS, included requirements that employers ensure that chemicals in the workplace are marked with hazard warnings and that material safety data sheets are "filed in the establishment" where they are "readily available for examination by workers". *Id.* at 3. This hazard identification and warning system was designed to additionally "help in the education of employees and provide the data necessary for employers to take proper action to safeguard their employees." *Id.* at 1. NIOSH concluded that such a chemical hazard communication program was appropriate for all employers. *See, also* comments of the Air Transport Association, H–022, Ex. 5–3 ("[T]he airlines have no general objection to the [NIOSH] Criteria . . . [except that it] should clearly delineate the responsibility of the manufacturer supplying the necessary data on the Material Safety Data Sheets.").

The 1975 report of the Standards Advisory Committee on Hazardous Materials Labeling (H–022, Ex. 3), recommended a "total system" approach to chemical hazard communication not unlike the comprehensive approach of the current HCS. The Advisory Committee, which included representatives of non-manufacturers, recommended labeling and placarding systems, the creation and availability of material safety data sheets, and employee education and training programs for all workers potentially exposed to hazardous chemicals. The Committee recognized that these practices "are not new and novel concepts" but "well established in many industries and professional associations as well as regulated by various governmental agencies and international agreements." *Id.* at 3. The Advisory Committee made "no distinction among employees in different sectors of the economy." *United Steelworkers II*, at 7.

As the Court has stated, *id.* at 8, the 1977 ANPR requested public comment from all interested persons on whether a chemical hazard communication standard should be promulgated by

OSHA. Comments on the Standards Advisory Committee's recommended standard were specifically requested. Although OSHA did not receive comment from employers in every industrial sector, those non-manufacturers that did respond supported a comprehensive hazard communication system for their workplaces. For example, Sea-Land Service, Inc. (H–022, Ex. 2A–6), supported requirements for container labels (consistent with transportation labels already in place), the availability of material safety data sheets to persons in the workplace, and individual training programs. Panhandle Eastern Pipe Line Company (H–022, Ex. 2A–7) and Truckline Gas Company (H–022, Ex. 2A–9) both "agree[d] that employees need information about the product with which they work" and that this could be accomplished by requiring suppliers of hazardous chemicals to label containers with the "degree and nature of the hazard" and by requiring user employers to "inform employees of the hazard." Those companies had already developed "a special manual of data for all chemicals, solvents and cleaners used in [their] operations and maintenance."

Wisconsin Electric Power Company (H–022, Ex. 2A–30), stated that given adequate labels and material safety data sheets from chemical manufacturers and suppliers, chemical users such as they "would be in a position to prepare their own Material Safety Data Sheets, hazard placard systems, proper labeling of auxiliary and secondary containers and training of personnel who may use or otherwise contact this material." Recognizing the need for "proper labeling, storage, handling and instructions in the use of hazardous materials," Wisconsin Electric Power Company had already "developed and put into effect a Hazardous Materials Control Program." Southern Gas Association (SGA) (H–022, Ex. 2A–75) also believed that suppliers and manufacturers of hazardous materials should be required to provide proper labeling, warnings and other hazard information to all employers using these materials. SGA further suggested that OSHA promulgate a standard directing all employers "to establish required training for employees that may handle or otherwise be exposed to any hazardous materials." These comments and others filed in response to OSHA's 1977 ANPR indicate that many non-manufacturers consider maintaining labels received on chemical containers, making material safety data sheets received from suppliers available to employees, and providing information and training to employees regarding the chemical hazards present in the workplace to be economically feasible. *See, also* H–022, Exs. 2A–2 (Schirmer Engineering Corporation); 2A–31 (Union Electric Company); 2A–32 (Texaco); 2A–36 (American Trucking Association, Inc.).

Moreover, comments received from non-manufacturers at later stages of the original rulemaking also indicate they are capable of implementing the performance-oriented HCS. In fact, there are comments which indicate that many of these requirements were already being implemented in the non-manufacturing sector.

For example, the Western Agricultural Chemicals Association indicated that its members provide material safety data sheets to anyone who requests them, including customers in the non-manufacturing sector (Tr. 2873). Their representative further stated that "[i]n the agricultural field, I would say most technical products have material safety data sheets. I would say maybe 75% to 80% of the inerts have them . . ." (Tr. 2881).

There was also testimony from employee representatives, including those in the non-manufacturing sector such as airline mechanics, that they requested and were able to obtain material safety data sheets from manufacturers for products in use in their facilities. Tr. 2819–21, 3131, 3828. One union testified that a joint employee-employer safety committee received every material safety data sheet it requested, and that the union then trained workers to be able to use the information. Tr. 2824–A.

Another non-manufacturing union representative, the International Brotherhood of Painters and Allied Trades, indicated that it shared collected material safety data sheets with employers who needed such information. "[T]o contractors who make requests of us for information, we do provide them material safety data sheets, write-ups on the chemicals and the products . . . We do everything—our union does everything they can as a service to our contractor members to provide them with the information they need to operate safely. . . ." Tr. 2101–2.

Other large companies with manufacturing as well as non-manufacturing establishments testified that information was made available throughout their corporations, and they provide information to all customers regardless of industry. For example, Atlantic Richfield Company testified that they have a company-wide material safety data sheet policy and program. "[U]nder this program, a material safety data sheet is recognized as a basic source of information for practical health, safety and environmental information. The MSDS whether generated internally or obtained from a supplier is used to communicate relevant data within the company and to outside customers. It is the responsibility of our various operating companies to distribute copies of each MSDS to customers and company facilities for employee instruction and/or information." Tr. 2439. Their company facilities include such non-manufacturing operations as petroleum production.

Similarly, Exxon, Inc. testified that it too provides material safety data sheets to all customers: "[W]e consider a material safety data sheet a matter of public information that's part of our literature, regularly available to anyone who requests it." Tr. 1708–09. *See, also,* Shell testimony at Tr. 1712 and 2500, and Uniroyal Chemicals at Tr. 1464.

Therefore, based on the recommendations of NIOSH, the Standards Advisory Committee and the comments received from non-manufacturers and their representatives participating in the lengthy rulemaking, OSHA concludes that the original record as a whole indicates that non-manufacturers are capable of complying with the HCS. As long as chemical suppliers provide adequate chemical hazard information in the form of labels and material safety data sheets to non-manufacturers using the chemicals, those user employers, like the manufacturers who use hazardous chemicals which they themselves did not manufacture or import, can develop hazard communication programs and provide employees information and training on the chemical hazards in the workplace.

In light of the evidence in the original rulemaking record, OSHA concludes that non-manufacturers can incorporate the HCS' administrative practices and provide chemical hazard information to their employees. OSHA believes all employers can ensure that containers of chemicals are maintained with proper hazard warnings just as an employer would maintain labels or marks on containers to ensure that employees comprehend their contents and intended uses. Likewise, all employers are able to acquire and maintain up-to-date material safety data sheets for hazardous chemicals just as they are able to acquire and maintain up-to-date cost information and performance specifications on those very same

chemicals. OSHA also concludes that it is feasible for employers to inform and train their workers regarding the chemical hazards present in the workplace just as employers are capable of training their workers to perform their jobs in an efficient and speedy manner. These conclusions are further supported by the experience and evidence gathered by the Agency since promulgation of the HCS for manufacturers in 1983.

At this time, OSHA has no evidence indicating that the profitability of manufacturers generally, or even chemical manufacturers in SIC 28 (by far the most economically burdened by the HCS, *see* 48 FR 53333), has been threatened by complying with the HCS. Manufacturers have had the considerable costs of evaluating, collectively, hundreds of thousands of chemicals for their hazards and creating corresponding labels and material safety data sheets since November 1985, as well as the costs of implementing an in-plant program by May 1986. After thorough analysis, OSHA determined that the current HCS would not impose a substantial burden on manufacturers and that the HCS was economically feasible for them. *See* 48 FR 53333. Experience to date in implementation of the rule supports that finding. For example, if manufacturers were experiencing significant feasibility problems in complying with the rule, OSHA would have expected to receive numerous substantive comments regarding those problems in response to the 1985 ANPR questions addressing feasibility concerns. However, although some manufacturing employers objected to some requirements, substantive comments demonstrating infeasibility were not received, which appears to support OSHA's conclusion that compliance with the HCS was, and continues to be, economically feasible for manufacturers and indicates the standard is also feasible for non-manufacturers. In fact, some manufacturers took the opportunity to state their continuing support for the rule and its requirements. *See, e.g.*, H–022D, Ex. 2–14, (The Chemical Manufacturers Association "strongly believes that the substantive provisions of the Hazard Communication Standard are sound as a matter of science and policy."); Ex. 2–67 (Economics Laboratory, Inc. "considers hazard communication worth the effort.")

Generally, the HCS costs to non-manufacturers would be a function of the number of hazardous chemicals in the workplace, and the number of employees exposed to hazardous chemicals. If employees are not potentially exposed to hazardous chemicals in a particular work operation, the proposed standard does not apply. Also, to the extent that employers are voluntarily providing information, or providing information in order to comply with other regulations or laws, this should significantly reduce the burden of compliance with this rule. Approximately 32 States and several localities already have hazard communication/right-to-know laws covering non-manufacturing industries indicating that many others seeking to protect the safety and health of workers have concluded that industry can comply with these types of requirements. In fact, as evidenced in the original rulemaking record, many companies involved in interstate commerce would benefit from promulgation of a uniform Federal standard as it would preempt different and potentially conflicting State and local laws and lessen overall compliance burdens. 48 FR 53283. *See also, e.g.*, H–022D, Ex. 2–83 (The American Gas Association "believes that a Federal Standard, rather than a variety of differing state regulations, would best serve the needs of the natural gas industry, the employees in our industry, and the general public as well."); Ex. 2–108 (The National Constructors Association has found that "[i]t has been nearly impossible to establish uniform interstate policy" and "can clearly see the wisdom of having one workable/cost-effective government regulation that addresses hazard communication.")

Although the original HCS record contained no evidence to indicate the HCS would be economically infeasible for non-manufacturing, OSHA recognized that potential feasibility concerns could arise, for example, with small businesses, businesses with large employee turnover (such as retail stores and construction companies), and businesses with rapid turnover of hazardous chemicals in the workplace (such as warehouses and marine cargo operations). However, based on the original HCS rulemaking record, and additionally based on: (1) The apparent successful implementation of the present HCS by manufacturers; (2) the implementation of other Federal communication standards and of State plan States' laws by non-manfacturers; and, (3) on regulatory impact and regulatory flexibility analyses prepared by the Agency since the 1985 Court order and summarized in Section III of this document, OSHA concludes that the provisions in the current Hazard Communication Standard are economically feasible for all of the non-manufacturing industries.

OSHA is also aware that many employers in the manufacturing sector have been able to satisfy some of their responsibilities under the HCS by using compliance materials obtained from various sources. Trade associations, for example, have frequently been instrumental in assisting their members in developing programs suitable for their type of industrial facility. This is particularly appropriate given the performance orientation of the HCS, and the flexibility employers are permitted to design appropriate compliance programs. Sample written programs and other written materials, as well as training programs regarding the requirements of the rule, have been developed and provided to association members and have facilitated compliance efforts. The ability of associations to accomplish this successfully demonstrates technical feasibility and enhances economic feasibility. Trade associations in states covering non-manufacturing workplaces under their right-to-know rules have also been able to develop materials to assist their members to comply. Materials developed for these State laws or for the manufacturing sector under the current HCS could be adapted for the non-manufacturing workplaces newly covered by the HCS.

There have also been a number of services provided by consultants in the private sector. These range from very specific items, such as computer programs to manage information, to a comprehensive compliance strategy, where a consultant will devise an entire program to enable a facility to comply. Such services will often minimize the burden of compliance by minimizing the time the facility staff must spend to develop and implement a program. The availability of such programs also provides support for the conclusion that the rule is feasible.

For large companies, the burden per facility will often be minimized by corporate development of a standardized program. It can be expected that most corporations with multiple facilities will use this approach (this has occurred in the manufacturing sector as well).

Therefore, OSHA concludes that similar resources will be available to employers in the non-manufacturing sectors, which further demonstrates that the rule is feasible for implementation in all sectors. In fact, given the pre-existing coverage of non-manufacturing under various state rules, and the extent of the

materials developed in response to the current HCS which would also be applicable in non-manufacturing, additional development of such materials should require considerably less effort and be easier for non-manufacturers to obtain.

Nevertheless, OSHA recognizes that the unique characteristics of some businesses render certain provisions of the current standard unnecessary or ineffective in communicating the hazards of chemicals to workers. The Agency has thus made some modifications to the standard to ensure that its provisions are practical and effective in communicating hazards to all workers. *Cf. ATMI*, 452 U.S. at 531 n.32 (OSHA may use cost-effectiveness analyses and choose the less costly of two equally effective standards). The inclusion of these "tailoring" provisions is consistent with the Agency's action in tailoring the original HCS to make it practical and cost-effective for all manufacturers. *See* 29 CFR 1910.1200(b)(3)–(5). Now that the coverage of the standard is being expanded to non-manufacturing employers as well, it is necessary to tailor the standard to the unique characteristics of these non-manufacturing employers. The tailoring provisions, explained in Section II of this preamble, are based on the original record in the HCS rulemaking, and also on Agency experience in implementing the current rule; State plan State experience in implementing expanded versions of the current rule; and comments submitted to the Agency in response to the ANPR published in November 1985. OSHA believes that the knowledge and experience gained during the past few years of implementation and enforcement of the current rule must be taken into consideration when crafting a rule to appropriately apply to the non-manufacturing sector.

The Agency's position is that all employees are entitled to information regarding the chemical hazards they are exposed to in the workplace, and that a uniform Federal hazard communication standard is the best method to ensure that information is provided. This position is consistent with the Act (protecting all employees to the extent feasible), as well as with the Court's decision upon review of the rule. Therefore, this final rule addresses communicating chemical hazards to all exposed employees.

It should be emphasized that in preparing a detailed regulatory impact analysis for the expansion of the scope of the HCS, OSHA has accumulated evidence to indicate that some employees in every SIC code designation are exposed to hazardous chemicals, and that it is therefore not appropriate to exempt any particular industry sector. For example, OSHA has received suggestions that retail establishments be exempted since employee exposure to chemicals is believed to be unlikely in these types of facilities. However, there is testimony in the original rulemaking record from the United Food and Commercial Workers International Union (Tr. 3088–97) that demonstrates that workers in such facilities are exposed to hazardous chemicals, and therefore do need the protections afforded by coverage under the HCS:

> While supermarkets don't use hundreds of hazardous chemicals like some manufacturing industries, a large number of workers are exposed to the dozen or so they do use. Chemicals used include caustic and acid cleaning compounds, solvents, waxes, paints and disinfectants . . . Let me relate to you one case within our union where workers were overexposed to an unidentified substance. A group of supermarket workers began experiencing dizziness, upper respiratory tract irritation and headaches . . . Not until workers started to talk with one another did they start to suspect a possible link between their illness and a certain solvent that was used to remove old price labels from merchandise called Garvey XC–36.

See Tr. 3088–89. *See also* Tr. 414 and Tr. 1840–43. The testimony further relates other incidents, as well as the various activities the union had to pursue to obtain information for exposed workers—including chemical analysis of products to determine their contents. This illustrates the need for application of the standard in industries such as retail stores, as well as those industries where chemical exposures are more obvious. For additional testimony regarding the extent of chemical exposures in the non-manufacturing sector, *see, e.g.*, hospital workers: Tr. 411–14, 2738–41, and 3036 (". . . hospital workers are exposed to formaldehyde, ethylene oxide, cleaning agents which are often very caustic . . ."); (Tr. 411); barbers and beauticians: Tr. 415–16 (". . . work around hair dyes . . . known to cause cancer . . ."); longshore workers: Tr. 3143; utility workers: Tr. 417, 3078, 3130; workers in dry cleaners and laundries: Tr. 416, 4084–90 (" . . . [B]eyond the chlorinated solvents that your dry cleaners use, some cleaners and laundries also use dyes . . ."); farmworkers: Tr. 2260.

D. Construction Advisory Committee Recommendations

On June 23, 1987, the Construction Advisory Committee on Occupational Safety and Health met to discuss a draft proposed standard prepared by OSHA to expand the scope of the HCS to the non-manufacturing industries. The draft proposed rule was very similar to the final standard being promulgated herein. OSHA has reviewed the recommendations of the Construction Advisory Committee, and incorporated a number of the suggested revisions into this document to tailor the rule for the construction industry, and for other industries which have similar concerns due to similar differences in work operations from the typical manufacturing establishment. Other recommendations called for more substantive changes to the HCS, affecting the obligations of chemical manufacturers and others, and OSHA does not believe they are supported by the record or appropriate to incorporate into this final rule without further opportunity for notice and comment from those affected. It is important to note, however, that despite the recommended changes there were no indications that members of the Construction Advisory Committee believe that it is infeasible to implement hazard communication programs in the construction industry. In fact, as OSHA has noted previously, the construction industry has been subject to training requirements concerning chemical hazards for many years (*see* 29 CFR 1926.21).

In preparing the draft proposed rule, and subsequently this final rule, OSHA did review the *Report on Occupational Health Standards for the Construction Industry* which was submitted by the Construction Advisory Committee to the Assistant Secretary on May 16, 1980. In that report, the Committee addressed recommendations for labels, material safety data sheets, and training—all of the major components of the HCS.

Of particular concern to the Committee at that time was that construction employers do not have access to the necessary information upon which to develop appropriate signs and labels or material safety data sheets, and therefore must depend upon suppliers for such information. "[C]onstruction employers may not always be aware of the hazard associated with a particular product or device if the items are not accompanied upon purchase by appropriate labels and data sheets. . . ." OSHA agrees that this lack of information has been a problem for all downstream users of chemicals, and thus developed the approach incorporated into the HCS—producers or importers of chemicals are responsible for evaluating the hazards

and transmitting that information to downstream employers or users of the materials. Under the expanded rule, construction employers would be the recipients in this downstream flow of information.

The HCS did not exist at the time of the report, and the Committee thus recommended that a solution to the problem of lack of information "would be to modify and extend the existing OSHA standard for material safety data sheets which now applies only to ship repairing, shipbuilding, and ship breaking (29 CFR 1915, 1916 and 1917). The modified standard would require manufacturers or formulators of harmful materials or agents to supply material safety data sheets along with their products in such a fashion that they reach construction employers." Shipbuilding and ship repairing are in the manufacturing sector, and covered by the requirements of the 1983 final rule—ship breaking will be covered by these expanded provisions. Therefore, OSHA is doing what was recommended in 1980, *i.e.*, extending the existing OSHA standard for material safety data sheets to construction. The Advisory Committee concluded that although the hazard information may have been difficult for construction employers to acquire in the past, "such information was fundamental to the preparation of warning signs, labels, training programs, and other important job safety and health activities."

The Construction Advisory Committee is now recommending that the construction industry be regulated under a separate standard for Hazard Communication, rather than being treated as any other downstream employer who uses chemicals. The rationale is that construction sites are unique among industrial workplaces and should be addressed in a vertical standard specific to the industry. Although OSHA has found this argument persuasive for a few health standards, where there are fundamental differences in control strategies to achieve permissible exposures for a chemical in a fixed site facility versus the construction site, it does not appear to be appropriate in this situation which simply involves transmittal of information, that can be accomplished on any type of site. Arguments regarding transient workers, mobile work sites, etc. can appropriately be made for other non-manufacturing users of chemicals as well. The problems raised can be dealt with more effectively by modifying the provisions of the current rule to address them, rather than preparing completely separate standards for each industry.

It was interesting to note that although the Construction Advisory Committee was essentially maintaining that hazard communication in construction could be treated as a separate issue, many of the changes the members were recommending would often have required substantive changes in the requirements for the manufacturing sector. As noted above, the Committee expects to receive lables on containers and material safety data sheets from its suppliers. This is certainly consistent with OSHA's approach in the rule. But the Committee is also recommending that the labels on containers being shipped to construction contain additional information, and that the requirements for material safety data sheets be slightly different as well. They also recommended changes in the hazard determination provisions, while maintaining that hazard determinations must be accomplished in the manufacturing sector. These recommendations serve to support OSHA's view that in an approach which requires a downstream flow of information, the relationship between the requirements for producers and downstream users are so inter-dependent that separation of them into two separate standards would be logically inconsistent. And furthermore, since the requirements for hazard determinations, labels, and material safety data sheets were based on an extensive rulemaking record, and are not industry-specific, it would not be appropriate to modify those requirements at this point.

Two separate standards would also require cross-referencing provisions from one rule to another to ensure proper information transmittal, a regulatory format which would be unnecessarily confusing to the regulated community. OSHA believes it is more effective to list, in one standard, the obligations of chemical producers, importers, and suppliers with those of the users so that employers using hazardous chemicals will be aware of the content and quality of the hazard information they are entitled to receive from their suppliers. Furthermore, it would not be appropriate to indicate requirements for chemical manufacturers and importers in a standard which purports to cover solely the construction industry, as would have to be done to accommodate all of the recommendations of the Committee. Therefore, construction employers are included with all other employers in this standard. However, OSHA will print the rule in full in 29 CFR Part 1926 (in § 1926.59) for ease of reference for construction employers and employees. In addition, it will also be printed in 29 CFR Parts 1915, 1917, and 1918, for the use of maritime employers and employees (at new § 1915.99, 1917.28, and 1918.90, respectively), and will be referenced in Part 1928 covering agricultural employments.

E. Federal Community Right-to-Know Law

Expansion of OSHA's HCS will also have an impact on employers' obligations under another Federal law to inform State and local communities of the hazardous chemicals present in the workplace. On October 17, 1986, the President signed into law the Supefund Amendments and Reauthorization Act of 1986 ("SARA"). Part of the new law, Title III, the Emergency Planning and Community Right-to-Know Act of 1986, encourages and supports emergency planning efforts at the State and local level and provides citizens and local governments with information concerning potential chemical hazards present in their communities.

Two provisions in the new law, sections 311 and 312, mandate that employers required under the Occupational Safety and Health Act of 1970 and regulations under that Act to prepare or have available material safety data sheets for hazardous chemicals in their workplaces, must also submit chemical hazard information to State and local governments. Specifically, employers required by the OSHA HCS to create or maintain material safety data sheets for employees must also submit to the State emergency response commissions, the local emergency planning committee and the local fire department: (1) A material safety data sheet for each hazardous chemical for which a data sheet is available (section 311); and (2) an emergency and hazardous chemical inventory form (section 312). The public may request material safety data sheets and inventory information from the local planning committee.

Because all manufacturing employers are currently subject to the OSHA HCS and required to create or maintain data sheets for the hazardous chemicals present in their workplaces, they must also comply with the community reporting requirements of the Emergency Planning and Community Right-to-Know Act. An expanded HCS covering non-manufacturers will require non-manufacturers to provide chemical hazard information not only to their employees but also to the surrounding communities.

On January 27, 1987, EPA proposed regulations to implement the community data sheet and inventory reporting requirements. A detailed explanation of the EPA proposal can be found at 52 FR 2836 (January 27, 1987). A final rule is expected to be published in the near future. OSHA has prepared a preliminary estimate of the costs of expansion of the EPA requirements into the non-manufacturing sector. This estimate is addressed further in the section of this preamble dealing with the regulatory impact analysis for the final rule.

EPA has established a toll-free hotline to answer questions concerning the requirements: Chemical Emergency Preparedness Program Hotline, 1–800/535–0202; in Washington, DC at 1–202/479–2449.

II. Summary and Explanation of the Issues and the Provisions of the Final Standard

This final rule is both an expansion and revision of the current HCS. The regulatory text presented herein includes the unchanged provisions of the present rule, as well as those which OSHA is changing. This was done to ensure that readers can clearly follow where these changes would appear in the standard. As explained below, the substantive changes were found to be necessary and appropriate for a hazard communication standard covering all workers exposed to hazardous chemicals. OSHA is also making several corrections and minor technical amendments to the standard. OSHA finds prior public notice and comment for these minor amendments to the unnecessary because of their non-substantive nature. 5 U.S.C. 553(b); 29 CFR 1911.5.

The discussion which follows will address the changed provisions of the rule, as well as the issues related to these changes. A detailed summary and explanation of the current rule's provisions is only provided when necessary for the discussion of the modification. For a complete explanation of the existing provisions, please see the preamble to the current HCS (48 FR 53334–40). The current rule is codified at 29 CFR 1910.1200, and was published at 48 FR 53340–48. The modified trade secret provisions are discussed at 51 FR 34590.

This discussion is organized by paragraph of the standard, and is presented in the order these paragraphs appear in the HCS.

For ease of reference, OSHA will be printing the same rule in full in 29 CFR Part 1910 (in § 1910.1200) for general industry, 29 CFR Part 1926 (in § 1926.59) for construction, and in 29 CFR Parts 1915, 1917, and 1918, for the use of the maritime industry (at new §§ 1915.99, 1917.28, and 1918.90, respectively).

(a) Purpose

All references to the manufacturing sector, SIC Codes 20 to 39, have been deleted to reflect the expansion of the scope to all employers and employees. It should be noted that these changes have been made throughout the provisions of the rule, wherever the HCS currently addresses employers and employees in the manufacturing sector rather than employers and employees in general. Despite the expansion of covered employers from manufacturers to all employers, however, OSHA retains in this final rule the distinction between chemical manufacturers and importers who produce or import hazardous chemicals, and downstream employers who merely use the chemicals. Only the former are to prepare the technical hazard information for labels and materials safety data sheets accompanying hazardous chemicals, whereas all employers are to pass this information on to their workers potentially exposed to the chemicals through a comprehensive hazard communication program which includes individual training.

The original Hazard Communication Standard included, at 29 CFR 1910.1200(a)(2), a generally-worded statement concerning the Agency's position regarding the preemptive effect of the standard. This paragraph has been revised to more explicitly state the Agency's position regarding preemption based on the provisions of the Act and related legal actions. This final rule significantly expands the number of industrial groups to which the Federal standard applies, and thus it significantly expands the area in which state and local laws will be preempted.

Section 18(a) of the Act, 29 U.S.C. 667(a), provides that a state may assert jurisdiction through any court or agency over "any occupational safety or health issue with respect to which no standard is in effect under section 6." Conversely, where OSHA has issued a standard, section 18 expressly preempts states from asserting jurisdiction through any court or agency over the issue addressed by that standard, unless a Federally-approved State plan is in effect. 29 U.S.C. 667(a) and (b); 29 CFR 1901.2.

The express preemption provisions of the Act apply to all state or local laws which relate to an issue covered by a Federal standard, without regard to whether the state law would conflict with, complement, or supplement the Federal standard, and without regard to whether the state law appears to be "at least as effective as" the Federal standard. The "at least as effective as" test applies only to state standards adopted under an approved State plan. 29 U.S.C. 667(c)(2). In enacting OSHA, Congress rejected provisions which would have permitted states to enforce laws which were "not in conflict with" or "at least as effective as" Federal OSHA standards. *See* Senate Comm. on Labor and Public Welfare, 92d Cong., 1st Sess., Legislative History of the Occupational Safety and Health Act of 1970, at 58, 706 (Comm. Print 1971). Instead, Congress enacted section 18 providing that Federally-approved State plans are the exclusive alternative to preemption.

Since the promulgation of OSHA's original Hazard Communication Standard, a number of court decisions have dealt with the effect of express and implied Federal preemption upon state and local hazard communication or "right-to-know" laws. *United Steelworkers of America* v. *Auchter*, 763 F.2d 728, 733–36 (3d Cir. 1985) (Federal Hazard Communication Standard expressly preempts state hazard disclosure laws in manufacturing sector); *New Jersey State Chamber of Commerce* v. *Hughey*, 774 F.2d 587 (3d Cir. 1985) (provisions of New Jersey right-to-know law which pertain primarily to community or environmental safety and health are not expressly preempted; right-to-know laws subject to implied preemption if they make it impossible to comply with Federal law or pose an obstacle to objectives of the Federal Act); *Manufacturers Association of Tri-County* v. *Knepper*, 801 F.2d 130 (3d Cir. 1986) (similar holding in connection with Pennsylvania right-to-know law).

The revised paragraph (a)(2) specifically provides that both state and local laws pertaining to occupational hazard communication are preempted by the Federal standard. In the one court decision which has addressed the question, the United States Court of Appeals for the Sixth Circuit ruled that the Federal Hazard Communication Standard preempts local as well as state laws. *Ohio Manufacturers Association v. City of Akron*, 801 F.2d 824 (1986). The court noted that the text of § 1910.1200(a)(2) did not mention localities and referred only to preemption of "state" laws. *Id.* at 827, 831–832. Nevertheless, relying upon references to local as well as state laws in the preamble to the 1983 standard, the court correctly inferred that OSHA had intended to preempt all non-Federal occupational hazard communication

laws. *Id.* at 832. Therefore, in accordance with the Court decision, OSHA is making a technical amendment to paragraph (a)(2) so that it explicitly states that the HCS preempts local worker right-to-know laws.

The revised § 1910.1200(a)(2) not only defines hazard communication as an "issue" under the terms of the Act, but also enumerates the generic areas addressed by the standard for purposes of establishing the parameters of preemption. Thus any State or local government provision requiring the preparation of material safety data sheets, labeling of chemicals and identification of their hazards, development of written hazard communication programs including lists of hazardous chemicals present in the workplace, and development and implementation of worker chemical hazard training for the primary purpose of assuring worker safety and health, would be preempted by the HCS unless it was established under the authority of an OSHA-approved State plan.

(b) Scope and Application

Laboratories. With regard to the coverage of laboratories, specifically addressed in paragraph (b)(3), OSHA concludes that the current rule's provisions, requiring only that labels and material safety data sheets received with incoming chemicals be maintained and that the general training of paragraph (h) be provided, are feasible for non-manufacturing laboratories as well. *See, e.g.,* comments of the Massachusetts Institute of Technology, H-022D, Ex. 2-120 ("We agree that the Hazard Communication Standard's requirements for labs are adequate. . . . We expect our compliance costs to remain at the current level of spending because the majority of these are start-up costs and some activities have been absorbed and integrated within existing programs.") OSHA believes that these somewhat limited hazard communication requirements for manufacturing laboratories are also appropriate for non-manufacturing laboratories because both share the operating conditions that distinguish them from the typical industrial workplace: they commonly use small quantities of many different hazardous chemicals for short periods of time; the conditions and purposes of the use of the chemicals frequently change, often unpredictably; many substances are of unknown toxicity; and many workers are highly trained. *Compare* 48 FR 53287-89, *with* 51 FR 26663-64. OSHA concludes that the same HCS provisions tailored for manufacturing laboratories are appropriate for the protection of all laboratory workers within OSHA's jurisdiction.

It should also be noted that OSHA is currently proceeding with a specific rulemaking to directly address "Occupational Exposure to Toxic Substances in Laboratories" (51 FR 26660; July 24, 1986). When that rule becomes final, its provisions may supplement the information transmittal requirements of the HCS by directly reducing hazardous chemical exposures in laboratories by requiring, among other things, safe work practices. As noted in that proposal, the final rule might modify the general information and training requirements in the HCS to incorporate other aspects of that standard. Any changes in the application of the HCS provisions to laboratories will be addressed in detail in the final rule for laboratories and will be based on that rulemaking record (Docket H-150).

Coverage determined by "exposure." The HCS covers situations where employees "may be exposed" to hazardous chemicals (paragraph (b)(2)), and such exposure is defined to include potential exposure as well as actual exposure. This is to ensure that employees receive information about all chemical hazards in their work areas, and that they are prepared to deal with any unexpected releases or emergency situations, as well as exposures during the normal course of employment. OSHA concluded that employees are entitled to information regarding the chemicals to which they are exposed in their work areas. It should be noted, however, that individual facilities and workplaces may have some employees who are covered since their work involves exposure to hazardous chemicals, and others who are not covered because their work does not. For example, in a retail department store, maintenance workers or workers in a graphic arts department may be covered since their jobs involve exposure to chemicals, but an accountant in the billing department would not be likely to experience exposure that would require coverage by the HCS.

There are a number of work situations where employees only handle sealed containers of chemicals, and under normal conditions of use would not open the containers and would not expect to experience any measurable exposure to the chemicals. Such work operations include, for example, warehousing, retail sales, marine cargo handling, and trucking terminals. It is reasonable to assume, however, that all such containers are subject to leakage and breakage, and these employees are in fact potentially exposed by virtue of the presence of these hazardous chemicals in their workplaces. Because of this potential exposure, they need information to protect themselves from the hazards of these chemicals in the event such an emergency situation occurs.

However, OSHA has considered the extent of information necessary or appropriate in this type of operation, and the practicality of requiring such work operations to be subject to all of the provisions of the rule. The primary need is to ensure that these employees know how to acquire and use the hazard information available to them, and to handle an emergency exposure situation. As in laboratory operations, maintaining lists of chemicals where the chemicals present may change on short notice, sometimes on a daily basis, is not a useful requirement. Similarly, obtaining material safety data sheets for every chemical in a sealed container that passes through a facility—even if it is there less than a day in some situations—would result in a considerable amount of paperwork, with little discernable benefit for the employees involved. Therefore, OSHA has added a provision, paragraph (b)(4), to limit the duties of employers for those work operations where employees only handle sealed containers that are not intended to be opened under normal conditions of use. (Some States which have adopted right-to-know laws have also recognized the practical problems of coverage in this area, and have included provisions limiting coverage of workplaces where chemicals are handled in sealed containers. *See, e.g.,* Tennessee Hazardous Chemical Right to Know Law, Tennessee Code Annotated, 50-3-2001 through 50-3-20019.) In these situations, employers must not remove labels affixed to incoming containers of hazardous chemicals; must maintain and provide access to material safety data sheets that are received for hazardous chemicals while the chemicals are in the workplace, and obtain material safety data sheets when they are not received but an employee requests one; and must train employees in accordance with the provisions of the rule to ensure they are protected in the event of a spill or leak.

The employees in these operations will always have access to the label information, which will provide appropriate hazard warnings and be a visual reminder of the potential hazards if exposure occurs. Employees will also be trained regarding the general classes of chemical hazards faced and the means by which they can protect

themselves from these hazards when there is a spill or leak. The training must also address the availability and use of substance-specific information found on labels and material safety data sheets, where available. These requirements should provide employees handling only sealed containers of chemicals with the information they need.

This limited provision also addresses some of the concerns raised by representatives of industries with these types of workplaces. (*See, e.g.* Exs. 2–53, 2–75, 2–201, and 2–214). Although they generally were arguing that this type of operation warrants exclusion from the rule, OSHA does not agree that no protection under the HCS is required in these situations. As already described, a potential for exposure does exist, and therefore such employees must be appropriately covered. OSHA believes the limited coverage described will effectively protect employees while recognizing the constraints of the particular work operations involved with regard to the applicability of the current rule to these types of work.

Labeling exemptions. The HCS includes a number of labeling exemptions to ensure that OSHA does not provide duplicative coverage for products which are already labeled under the rules of another Federal agency. It should be reemphasized that these exemptions (in paragraph (b)(4) of the original rule; paragraph (b)(5) in this final rule) are only from the container labeling requirements under paragraph (f)—all other provisions of the rule are still in effect. A minor correction is being made, however, to these exemptions to indicate that when medical or veterinary devices are labeled in accordance with the labeling requirements of the Food and Drug Administration (FDA) under authority of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), those items are exempted from HCS labeling requirements. All other items regulated by FDA under that Act were listed in the HCS labeling exemption. Medical and veterinary devices were inadvertently omitted from the list of items that might be subject to FDA labeling requirements under the Federal Food, Drug, and Cosmetic Act, and they are exempted from HCS labels for the same reasons that the other items are exempt when subject to labeling under FDA. *See* 48 FR 53289. To ensure that all these FDA regulated items are treated in the same manner and that devices are exempted from HCS labeling if subject to FDA labeling, paragraph (b)(5)(ii) is amended by adding medical and veterinary devices.

Other exemptions. The HCS includes a number of specific, total exemptions from the requirements of the rule for certain types of chemicals. This rule adds three categories of exemptions: food, drugs, cosmetics, or alcoholic beverages in a retail establishment packaged for retail sale (paragraph (b)(6)(vi); consumer products (paragraph (b)(6)(vii)); and certain pharmaceuticals (paragraph (b)(6)(viii)).

Food, drugs, cosmetics, alcoholic beverages. The current HCS includes an exemption for food, drugs, or cosmetics brought into the workplace for employee consumption. These types of exposures are not related to an employee's work, and therefore do not need to be covered under the HCS.

The expansion of the HCS into the non-manufacturing sector will result in many of these types of products being present in workplaces (*e.g.*, liquor stores) where they are not intended for employee consumption, and where they normally would not result in employee exposure because they are packaged for sale to consumers. Although some of these products may meet the definition of a "hazardous chemical" (*e.g.*, vinegar is acetic acid), when packaged for retail sale they do not pose a hazard to workers that is any different than the hazards of such products in their homes. The label information required by other Federal agencies for foods, drugs, cosmetics, and alcoholic beverages should thus provide sufficient protection for workers, and OSHA has exempted these products from coverage under the rule. It should be noted that this is not an exemption for facilities of any particular industry, as all facilities may have other chemicals in use that would be covered by the HCS. In addition, since these products are exempted, employers which package them for retail sale would not have to furnish material safety data sheets to distributors receiving the products.

Consumer products. The current rule provides a labeling exemption for consumer products when they are labeled in accordance with the requirements of the Consumer Product Safety Commission (CPSC). CPSC requires consumer products which contain hazardous substances to be appropriately labeled. Examples of consumer products would include such items as oven cleaner, paint stripper, and adhesive, which may be found in various types of workplaces. In addition to the specific labeling exemption, OSHA has been interpreting the rule as not being applicable to consumer products when used as a consumer would use them. OSHA is now adding this interpretation to the rule itself, paragraph (b)(6)(vi), stating that where such consumer products are used in the workplace in a a manner comparable to normal conditions of consumer use, resulting in a duration and frequency of exposure to employees which is no greater than exposures experienced by ordinary consumers, under such conditions the chemical would not have to be included in the employer's hazard communication program. This position is consistent with OSHA's reason for orginally limiting the exemption for hazardous consumer products used in the course of employment to only an exemption from HCS labeling, and not material safety data sheet and training requirments. "OSHA recognizes . . . that there may be situations where worker exposure is significantly greater than that of consumers, and that under these circumstances, substances which are safe for contemplated consumer use may pose unique hazards in the workplace." 48 FR 53289. However, to the extent that workers are exposed to the substances in a manner similar to that of the general public, there is no need for any HCS requirements.

One example of such a differentiation in exposure situations involves the use of abrasive cleaners in the workplace. Where these are used intermittently to clean a sink, much as they would be used at home, the cleaners would not be covered under the standard. But if they are used to clean out reactor vessels, thus resulting in a much greater level of exposure, they would be covered. Or if an employee cleans sinks all day long, thus resulting in more frequent exposures, the abrasive would also be included in the hazard communication program. Thus workplaces which only have chemicals which are consumer products used in the same way and as frequently as the general public would normally use them, would not have to have a hazard communication program.

It should be noted that OSHA intends to read this exemption narrowly. Where an employer is uncertain whether the duration and frequency of exposure to these products is comparable to consumer use, an employer should obtain or develop the material safety data sheet and make it available to employees.

In response to questions raised in the 1985 ANPR, OSHA received a few comments on the use of consumer products in the non-manufacturing sector. A number indicated that overexposure may occur from the use of such products, or that the frequency and duration of workplace exposure is typically greater than that experienced

by consumers (Exs. 2–59, 2–83, 2–100, 2–120, and 2–164). Others stated that the exposure was comparable to consumer use (Exs. 2–46 and 2–63). There were several that felt the label provided enough information, and no additional requirements were needed to protect employees (Exs. 2–75, 2–79, 2–99, 2–107, and 2–116), while others felt the employer should be required to request material safety data sheets because employees are not getting enough information (Exs. 2–109, 2–128, and 2–169). One suggested that the label note that a material safety data sheet is available on request (Ex. 2–100), while another contended that when a product is used by a professional, it is no longer a consumer product (Ex. 2–199). OSHA believes that the consumer product exemption in this final rule takes all of these concerns into consideration, and strikes a balance between the practical considerations of acquiring and maintaining material safety data sheets on CPSC regulated products which employees are exposed to at home as well as at work, and the worker's need for more hazard information than a CPSC label when exposures are greater or more frequent than typical public use of the chemical would generate.

A number of States adopting right-to-work laws have also developed consumer product exemptions. (*See, e.g.*, Wisconsin "Employees' Right to Know Law"; Illinois "Toxic Substances Disclosure to Employees Act.") However, most of these rules have taken a broader approach to the consumer product exemption, generally eliminating coverage of such products unless exposure is "significantly greater" than consumer exposure during the "principal consumer use." OSHA considered and rejected such language for the consumer product exemption. It would be very difficult from an enforcement perspective to determine when exposure to a consumer product is "significantly greater" than consumer exposure. The key elements of concern to OSHA are as stated in the consumer product exemption included in this rule—that the consumer product be used in the same manner as a consumer would use it (and therefore as intended by the manufacturer when preparing the label information), and that the duration and frequency of exposure be essentially the same as would be experienced by a consumer (and thus the label warnings would provide adequate protection.) A broader exemption than this would not be appropriate to protect workers from occupational exposures that were not anticipated by the manufacturer when the labels, and thus the protective measures, were developed.

Application to Office Products. A number of questions have been raised about the application of the rule to office products that may contain hazardous chemicals. It is OSHA's determination that office products such as pencils, pens, typewriter ribbons, and the like, are "articles" under the rule and therefore exempted, paragraph (b)(6)(iv). Employers are not therefore required to implement a program for such products. OSHA has also determined that intermittent, occasional use of a copying machine to make copies is not covered by the rule. The copying machine would also be considered an article for purposes of this standard. However, if a firm has a copying machine operator who is responsible for handling the chemicals associated with its use, or who operates the machine frequently, that individual would be entitled to information under the rule.

Medicine. The rule, paragraph (b)(6)(vii), also includes an exemption for drugs when they are solid, and are in final form for direct administration to the patient (*i.e.*, pills or tablets). Employees handling such finished drug products would not be exposed to the chemicals involved, and would not need information other than that supplied on the container label under FDA requirements. (The State of North Carolina adopted a similar exemption in their Hazard Communication Standard, 13 NCAC s7C.101(a)(99)).

Wood dust. As OSHA has received a number of questions regarding the application of the wood and wood products exemption to wood dust, OSHA would like to reiterate its interpretation regarding the wood and wood product exemption in paragraph (b)(6)(iii) of this final rule. The wood and wood products exemption was included in the HCS for two reasons. First, the presence and identity of wood and wood products in the workplace is "unmistakable" and second, their hazards (*i.e.*, flammability or combustibility) are well-known to workers. 48 FR 53289. Because wood and wood products, characteristic hazards are self-evident, regulations requiring formal notification were not thought to be necessary. Wood and wood products "are not expected to be hazardous for purposes of this standard." *Id.* at 53335. OSHA never intended, however, that wood dust be excluded from the standard's coverage under the wood and wood products exemption. Wood dust is not generally a wood "product," but is created as a byproduct during manufacturing operations involving sawing, sanding, and shaping of wood. Wood dust does not share solid wood products' "self-evident" hazard characteristics that supported the exemption of wood products from the HCS' coverage. Except for the chemical additives present in the wood, products such as lumber, plywood, and paper are easily recognizable in the workplace and pose a risk of fire that is obvious and well-known to the employees working with them. The potential for exposure to wood dust within the workplace, especially with regard to respirable particles, is not self-evident, nor are its hazards through inhalation so well-known that hazard communication programs are unnecessary.

"Wood dust" is a recognized health hazard, with exposure limits recommended by the American Conference of Governmental Industrial Hygienists (ACGIH) to control employee exposures to the substance. Under the provisions of the HCS, this means that wood dust is to be considered a hazardous chemical (paragraph (d)(3)(ii)), and therefore subject to the requirements of the rule including material safety data sheets and training.

(c) Definitions

The only changes to the definitions in the current HCS are those that need to be made to accomplish the expansion of the HCS.

The reference to SIC Codes 20 through 39 is being deleted from the definition of "chemical manufacturer" to be consistent with the extent scope of the rule. Any employer who produces a hazardous chemical for "use or distribution" is considered a "chemical manufacturer" under the HCS, and must prepare and provide the appropriate hazard information.

OSHA has modified the definition of "container" to exempt "engines, fuel tanks, or other operating systems in a vehicle." The Agency has received some questions regarding the need for labeling such parts of a vehicle in applying the rule to the manufacturing sector. Expansion into non-manufacturing will greatly increase the number of vehicles involved in work operations, and thus OSHA determined that this clarification will ensure that the Agency's position regarding this issue is clear—vehicles do not have to bear labels regarding hazardous chemicals used to operate them. This does not exempt such chemicals from coverage by the rule—it simply eliminates the need to label once they are placed into the vehicle.

The definition of "distributor" has also been changed to reflect the

extended scope of the rule. A "distributor" means "a business, other than a chemical manufacturer or importer, which supplies hazardous chemicals to other distributors or to employers." Among other things, distributors must transmit hazard information they receive from chemical manufacturers and importers to all their employer customers.

Under the current rule, OSHA defined "employee" as someone working in the manufacturing sector, and stated that those employees in manufacturing whose jobs did not involve routine potential exposure to hazardous chemicals would not generally be covered by the rule. Examples related to the manufacturing sector were provided. This was intended to limit the coverage primarily to those employees in the industry who were actually involved in production operations. However, since the scope of the entire standard is being expanded to cover employees in all types of work operations, the definition has been modified to clarify that workers who are exposed to hazardous chemicals as part of their assigned jobs would generally be covered under the rule, except for those who only encounter hazardous chemicals in non-routine, isolated instances. OSHA believes most office workers, and many other workers, are not exposed to the hazardous chemicals covered by the HCS in such a way that the rule would apply to those types of work operations. The rule, therefore, simply defines a covered "employee" as any "worker who is exposed to hazardous chemicals under normal operating conditions or in forseeable emergencies" and further states that "workers such as office workers or bank tellers who encounter hazardous chemicals only in non-routine, isolated instances are not covered." "Normal operating conditions" are those which employees encounter in performing their job duties in their assigned work areas. For example, if the receptionist in a facility receives and delivers a telephone message for someone in a different work area where hazardous chemicals are present, this does not mean that the receptionist would be covered under the rule by virtue of the one potential exposure from delivering the message. However, if performance of the receptionist's job entails walking through the production area every day, and thus being potentially exposed during the performance of regular duties, that job would be covered under the rule.

The definitions of "employer" and "importer" are also amended to indicate that all employers are covered by the standard. In addition, the definition of "employer" is amended to indicate that the term includes contractors and subcontractors. This reflects the definition of employer used in OSHA's construction standards. Similarly, the definition of "workplace" has been modified to specifically include job sites and projects.

Hazard warning. While OSHA is not modifying the definition of "hazard warning" contained in the current rule, the Agency wishes to reiterate the intent to help employers better understand and comply with the requirements. "Hazard warning" means "any words, pictures, symbols, or combination thereof which convey the hazard(s) of the chemical(s) in the container(s)." "Appropriate hazard warnings" are to be put on container labels. (*See* final rule paragraphs (f)(1)(ii) and (f)(5)(ii)). Since the rule covers "physical" and "health" *hazards*, specific information regarding these would be required on a label to comply.

Many labels at the time the HCS was promulgated includes only precautionary statements, rather than providing necessary information about the specific hazards of the chemicals. Thus employees encountered statements such as "avoid inhalation" on virtually every chemical container, but were not provided with statements regarding what type or severity of effect inhalation could be expected to produce.

Therefore, OSHA's standard requires identity and hazard information on labels. Although employers can choose to provide additional statements, OSHA's requirements are limited to that required to convey the hazards to the workers. Under the OSHA scheme, other data regarding protective measures, first aid, etc., are to be included on the material safety data sheet or in training, rather than appearing on the label itself. This approach is in keeping with the Agency's evaluation of available data on effectiveness of labels which indicates that the more detail there is on a label, the less likely it is that employees will read and act on the information. The purpose of the label is to serve as an immediate visual warning of the chemical hazards in the workplace. (*See generally*, 48 FR 53300–03).

There have been misinterpretations of the requirements made based on statements in the preamble to the current rule concerning various labeling systems (*see* 48 FR 53301). This preamble discussion involves format of labels, and is not an unqualified endorsement of any particular labeling system. It simply states that any format may be used, as long as the label includes the information regarding the chemical hazards required by the standard. It should be noted that it can be expected that some labels prepared in accordance with any of the available labeling systems can be expected to be found to be deficient. Again, the preamble discussion cited merely reemphasized that employers are not constrained to use any particular format or wording, but are constrained by the necessity to comply with the requirements of the rule concerning the information to be provided—the identity, the hazards, and for containers leaving the workplace, the name and address of the responsible party.

The terms "physical" and "health" hazards are already defined in the rule, and these are the specific hazards that are to be "conveyed" in an "appropriate" hazard warning. There are some situations where the specific target organ effect is not known. Where this is the case, a more general warning statement would be permitted. For example, if the only information available is an LC_{50} test result, "harmful if inhaled" may be the only type of statement supported by the data and thus may be appropriate.

It will not necessarily be "appropriate" to warn on the label about every hazard listed in the MSDS. The data sheet is to address essentially everything that is known about the chemical. The selection of hazards to be highlighted on the label will involve some assessment of the weight of the evidence regarding each hazard reported on the data sheet. This does not mean, however, that only acute hazards are to be covered on the label, or that well-substantiated hazards can be omitted from the label because they appear on the data sheet.

It may be "appropriate" to provide less detailed information on the chemical hazards in an in-plant labeling system, where MSDSs and training are readily available, than on a label placed on a container leaving the workplace, where it may provide the only hazard information in certain situations and where there is no guarantee that the downstream employees handling or using the chemical will fully understand the less detailed label. This difference in appropriateness allows employers to establish standardized in-plant labeling systems, as long as training regarding the use of these systems is conducted, and MSDSs provide the required, detailed information.

Article. OSHA is not modifying the definition of "article" but would like to provide some clarification regarding the Agency's interpretation. Releases of very small quantities of chemicals are not considered to be covered by the rule. So if a few molecules or a trace amount are released, the item is still an article and therefore exempted. In an earlier discussion in this preamble, application of the rule to office products was discussed and it was stated that items such as pens or pencils are to be considered articles. Other examples would be: emissions from tires when in use; emissions from toner on pieces of paper; or emissions from newly varnished furniture.

Furthermore, it should be reiterated that the HCS is limited to hazardous chemicals "known to be present" (paragraph (b)(2)), and does not require any chemical analysis or testing to determine or verify such presence. *See* 48 FR 53334–35. Thus although one may assume that molecules are being emitted from an item, under the standard one does not "know" that a particular hazardous chemical is "present."

The article exemption applies solely to the ultimate end use—intermediate users which result in exposure are covered and require hazard information to be provided. The following are examples of items which would require information for intermediate use prior to being finally installed: encapsulated asbestos insulation where the normal installation involves hammering the material into openings, thus releasing the asbestos; tiles to be placed on a ship's hull which contain lead that is released during installation; and glass mercury switches to be installed in equipment, a percentage of which are expected to break during this installation process. In these cases, installation is the "normal condition of use" for the employees installing the items, and thus hazard information is required for these intermediate uses. Once installed, these items would be articles and thus exempted.

Although installation of an item may render the exemption temporarily void (until the item is installed, information must still be provided if there is a potential for exposure), OSHA does not believe that the possibility that exposure could occur when the item is repaired or worked on need be considered in the determination of when information must be transmitted downstream. Employers of employees performing repairs must provide the best information they have concerning the potential exposures. There would be no way to ensure, for example, that a material safety data sheet prepared for a lead pipe would be available to a worker repairing the pipe some years following installation. The employer would provide the employees with general information concerning the hazards of the operations they were performing in lieu of specific information on the pipe itself.

(d) Hazard Determination

OSHA is not modifying the current rule's hazard determination requirements. The burden of evaluating chemicals to determine whether they are hazardous remains on the chemical manufacturers and importers who produce or import them and on those user employers who choose not to rely on the evaluations made by their suppliers and instead evaluate the chemicals themselves. A detailed explanation of these provisions can be found at 48 FR 53296–99, 53335–36.

(e) Written Hazard Communication Program

Under the current rule, a written hazard communication program must be developed and implemented for each workplace. Since the current rule covers fixed manufacturing sites, it did not appear to be necessary to specifically state that the written program be available at the site. With expansion to non-manufacturing, however, particularly in the construction industry where a firm may have multiple sites, the standard must be tailored to specifically state that the intent is to maintain the written program at each site. Employees will then be able to access the information as required.

The current written hazard communication program requirements include a provision that requires manufacturing employers to provide hazard information to on-site contractor employers who have employees who may be exposed to the hazards generated by the manufacturer (current paragraph (e)(1)(iii)). The current standard does not address the reverse situation, *i.e.*, where a contractor employer brings hazardous materials on-site, and exposes the manufacturer's employees to them. Since the expanded rule will affect more worksites with work arrangements of this type (*e.g.*, construction), and the need for an exchange of hazard information is obvious, OSHA has revised the requirements to tailor it to address the multi-employer workplace. (This was suggested in comments submitted in response to the ANPR. *See* Ex. 2–225, comments from the National Constructors Association. In addition, this situation has also been addressed in existing State right-to-know laws. *See, e.g.*, Alabama Act 85–658; Tennessee "Hazardous Chemical Right to Know Law.")

Under these provisions (paragraph (e)(2)), the employers must exchange material safety data sheets, as well as information about precautionary measures necessary to protect employees and an indication of the type of labeling system in use, where exposures may occur to another employer's employees. Each employer will then have the information necessary to inform and train their employees. This will help ensure that all employees have sufficient information to protect themselves in the workplace, regardless of which employer uses the hazardous chemical.

Consistent with the performance-orientation of the rule, the provisions do not specify how this coordination is to be accomplished. This is best left to the discretion of the parties involved. In many cases, it would probably be most efficient for the general contractor to coordinate the function. For example, the general contractor could keep and make available material safety data sheets in the office on the site.

It should be emphasized that the exchange of information is limited to those situations where exposures of other employers' employees may occur. Given the nature of multi-employer work sites in construction, there would be many situations where subcontractors responsible for various phases of the building project would not have employees present during other phases and thus no such exchange would be required. For example, if the electricians are not working near, or at the same time as, the paving contractor, then no interchange is required. But if a painting contractor's workers are using flammable solvents in an area where another subcontractor is welding pipes, this information exchange is vital to ensure proper protection of employees.

(f) Labels and Other Forms of Warning

A tailoring provision has been added concerning shipments which consist of solid metal. OSHA considers this change to be necessary since the problem addressed will occur more frequently in shipments to the nonmanufacturing sector than has been the case in the manufacturing sector. (Paragraph (f)(2)). Solid metal is often considered to be an "article" under the rule, and thus exempt. Where the metal is not an "article" since its downstream use results in hazardous chemical exposure to employees working with it, a provision has been added which allows shippers of this type of material

to send the label information once, similar to material safety data sheet transmittal, as long as the material is the same and it is being shipped to the same customer. In these situations, there should be no hazard to anyone handling the metal from the time it is produced in solid form, until the time someone works on it in a way that releases a chemical hazard. Since the label information transmitted would only reflect the chemical hazards released when it is later worked on, the label would not provide any hazard information that is needed by those handling the material in transit. It must be emphasized that this exception is only for the solid metal itself—any hazardous chemicals present in conjunction with the metal in such a form that employees may be exposed when handling the material (*e.g.*, cutting fluids, lubricants, and greases), require labels with each shipment. This tailoring provision, therefore, does not diminish worker protection—workers get the hazard information they need.

(g) Material Safety Data Sheets

Under the hazard determination provisions, a requirement is included which indicates that there are situations where the percentage cut-off for mixtures would not apply—when the released chemical is particularly hazardous, or when it could exceed an established permissible exposure limit or Threshold Limit Value when released (paragraph (d)(5)(iv)). Although this is clearly a requirement of the rule, *see also* 48 FR 53336, the material safety data sheet provisions for disclosure of hazardous ingredient identities did not address that particular situation. Clearly it was OSHA's intent to have all hazardous ingredients of mixtures listed on a material safety data sheet, even those in very small concentrations, when the hazard determination provisions of paragraph (d) mandate that they are to be considered hazardous for purposes of the HCS. As noted in the HCS preamble discussion of the material safety data sheet provisions: "Employers must also list ingredients present in concentrations of less than one percent if there is evidence that the permissible exposure limit may be exceeded or if it could present a health hazard in those concentrations." *Id.* at 53337. This obvious oversight has been corrected by a minor amendment to the rule. Paragraph (g)(2)(i)(C)(*2*).

Another situation which raises practicality concerns because of the expansion of the scope of the rule involves employers who purchase hazardous chemicals from local retail distributors, rather than directly from the chemical manufacturer or importer, or from wholesale distributors as is more commonly done in the manufacturing sector. Under the current HCS, distributors of hazardous chemicals must automatically provide commercial customers material safety data sheets (paragraph (g)(7)). Retail distributors, however, often sell to businesses and the general public and frequently have no way of knowing who a particular purchaser is. Under the current rule, retail distributors might have to give material safety data sheets to each customer to ensure that commercial customers get the information they need under the HCS. A specific statement regarding retail distributors is, therefore, included in paragraph (g)(7) to address this practical problem. Those retail distributors who sell hazardous chemicals to employers must provide a material safety data sheet upon request, and must post a sign or otherwise inform the employers that an MSDS is available. According to Schneider Hardware of Banksville, Inc., this is a reasonable approach (Ex. 2–179):

> If OSHA does require commercial customers to get information through a retail outlet, I do not foresee any problems with that arrangement. The manufacturers could supply us with the information, as they are required to now for shipments to manufacturing plants, and we could make it available to customers upon request. We would merely keep the sheets in a file drawer and post a sign informing customers of their availability. We have less than 100 chemicals that would probably be affected, and keeping information on those would require at most, one file drawer. It would not be burdensome.

The retail distributors likely affected are those selling building supplies, hardware, etc. Retail distributors will have to assess their product lines, and whether or not they have commercial accounts, to determine whether they must comply with this provision. It is clear that most other types of retail establishments (*e.g.*, grocery stores, clothing stores, etc.) would not.

With regard to the maintenance of material safety data sheets so that they are readily available to employees, whereas manufacturing facilities are generally fixed work sites with fixed locations for these materials, in some types of nonmanufacturing work operations, employees must travel between work areas during a workshift. For example, employees involved in servicing oil and gas wells may have a central office location, but then travel by truck to the wells to perform their work. These remote locations may not have any staff, or may not have an office facility. OSHA has added a provision to the MSDS requirements to allow MSDSs to be kept at a central location in this type of situation, as along as the employer ensures that the employees can immediately obtain the information in an emergency, paragraph (g)(9). OSHA believes that this provision tailors the HCS so that it remains practical, yet effective, in getting workers the hazard information they need. This was also supported by a number of ANPR commenters (*see, e.g.*, Exs. 2–83, 2–107, 2–114, 2–116, and 2–117).

The current rule, as well as the expanded standard, allows downstream employers to rely on upstream chemical manufacturers and importers to provide MSDSs. However, there is a duty for downstream users to request an MSDS when they don't receive one at the time of the first shipment. There have been some questions regarding how the downstream user will know a data sheet is required without doing a hazard evaluation. Such an evaluation is not necessary. If the label indicates a hazard, the employer will know he needs a data sheet and must request one if it is not received. If there are no hazards on the label, the downstream user can assume the product is not hazardous and a data sheet is not required.

(h) Employee Information and Training

OSHA is not making any modifications to the current rule's information and training provisions. These requirements remain performance-oriented and designed so that each employer will adequately address the hazards posed by chemicals in the workplace. An explanation of these provisions can be found at 48 FR 53310–12, 53337–38.

One question that does arise regarding training is whether it needs to be done specifically on each chemical, or whether employers can train regarding categories of hazards. Either method would be acceptable. *See* 48 FR 53312, 53338. If employees are exposed to a small number of chemicals, the employer may wish to discuss the particular hazards of each one. Where there are large numbers of chemicals, the training regarding hazards could be done on categories (*e.g.*, flammable liquids; carcinogens), with employees being referred to substance-specific information on the labels and MSDSs. Similarly, the re-training occurs when the hazard changes, not just when a new chemical is introduced into the workplace. If the new chemical has hazards which employees have been trained about, no re-training occurs. If the chemical has a hazard they have not

been trained about, re-training would be limited to that hazard.

(i) Trade Secrets

Paragraph (i)(11) of the current rule states that "[i]f, following the issuance of a citation and any protective orders, the chemical manufacturer, importer, or employer continues to withhold the information, the matter is referrable to the Occupational Safety and Health Review Commission for enforcement of the citation. . . ." This provision was worded in such a manner that it left the impression that OSHA could refer the matter to the Review Commission. This is incorrect as a matter of law. An enforcement proceeding is referred to the Review Commission when a citation is issued by OSHA, and is subsequently contested by the employer receiving the citation. Therefore, OSHA has made a technical amendment to paragraph (i)(11) to reflect the applicable procedural law.

(j) Effective Dates

The expansion of the rule to cover all employers becomes effective nine months from the date of promulgation of the final standard. Since the chemical hazard information for labels and material safety data sheets has already been generated in the manufacturing sector, and in many cases has also been distributed in non-manufacturing due to State law requirements and voluntary transmittal by suppliers, one month should be sufficient time for chemical manufacturers, importers, and distributors to initiate provision of material safety data sheets to other distributors and to customers in the non-manufacturing sector. An additional eight months is being provided for non-manufacturers to complete preparation of a written hazard communication program for each facility and to conduct employee training. It should be noted that this eight month period for compliance only applies to those employers which are newly covered under the expanded provisions—employers in SIC Codes 20 through 39 are covered under the current HCS and are already required to be in compliance with the provisions of that rule. Those tailoring provisions that apply to manufacturing workplaces, such as the consumer product exemption, go into effect immediately for those facilities.

Appendices A and B

OSHA is not amending Appendix A's discussion of the health hazards posed by chemicals, or Appendix B's discussion of hazard determination. They remain applicable to all chemical manufacturers, importers, and employers performing hazard determinations.

Appendix C

The reference sources listed in this non-mandatory appendix have been updated to reflect currently available sources.

Appendix D

The recent rulemaking on trade secrets added a new Appendix D regarding the evaluation of the validity of trade secret claims. 51 FR 34590. The full text of this appendix has been reprinted in this document as well.

III. Analyses of Regulatory Impact, Regulatory Flexibility, and Environmental Impact

The following is a summary of the regulatory impact and regulatory flexibility analysis prepared by OSHA for the revision of the Hazard Communication Standard which extends the scope of the existing standard to the nonmanufacturing sector. The full text of the document may be examined and copied in OSHA's Docket Office, 200 Constitution Avenue, NW., Room N3670, Washington, DC 20210; telephone (202) 523–7894.

Economic Analysis

As part of OSHA's efforts to gather information concerning the economic feasibility of extending the coverage of the HCS to include workplaces in the nonmanufacturing sector, the JACA Corporation performed a study examining the benefits, costs, and overall economic impact of such a revision. This report was used as the basis for the regulatory impact analysis prepared by OSHA.

The analysis reflects the extent to which employers in the nonmanufacturing sector are currently subject to state right-to-know laws and are voluntarily implementing their own hazard communication programs. The analysis also takes into account OSHA's existing policy regarding the use of consumer products and training requirements already imposed on employers by other OSHA standards. With respect to consumer products covered by the HCS, OSHA Instruction CPL 2–2.38A ("Inspection Procedures for the Hazard Communication Standard, 29 CFR 1910.1200") states:

> A common sense approach must be employed whenever a product is used in a manner similar to which it could be used by a consumer, thus resulting in levels of exposure comparable to consumer exposure. The frequency and duration of use should be considered. For example, it may not be necessary to have a data sheet for a can of cleanser used to clean the sink in an employee restroom. However, if such cleanser is used in large quantities to clean process equipment, it should be addressed in the Hazard Communication Program.

This policy has been incorporated into the revisions to the HCS, and was taken into account when evaluating data describing the number of hazardous chemicals in the various two-digit SIC groups that could be affected by extension of the HCS to the nonmanufacturing sector.

Assessing the net impact of the training provisions required identifying and deducting the costs of existing OSHA standards which already require employers to provide the types of information and training activities prescribed in the HCS. This was done for construction (§ 1926.21), shipbreaking (§ 1915.97), marine terminals (§ 1917.22), and longshoring (§ 1918.86). However, it was not possible to separately identify and deduct the existing training costs for substance-specific standards that currently apply to the nonmanufacturing sector. Thus, the compliance costs presented in this analysis are somewhat overstated.

In extending the rule for manufacturing to the nonmanufacturing sector, OSHA has made revisions to reflect unique aspects of some work operations. For example, the standard allows MSDSs to be maintained at central locations in circumstances where employees must travel between work operations during a workshift, provided that the information can be obtained immediately in an emergency. This provision is expected to lower costs in SIC groups 07, 08, 09, 13, 46, 49, and 73. (*See* Table 1 for a description of the SICs.)

The standard also allows for limited coverage in those work situations where employees handle chemicals in sealed containers that are not opened under normal conditions of use, and thus have little potential for measurable exposures. Employers would be required to leave warning labels on containers, and make available any MSDSs received with the containers. Employers would also have to be trained in accordance with the standard, with particular emphasis on procedures to follow if there is a spill or leak of the hazardous chemicals in the normally sealed containers. Affected establishments would not have to make special efforts to obtain and keep MSDSs that are not received with the chemicals, and no written plan for complying with the HCS would be required. This provision is expected to

result in lower costs in SIC groups 42, 44, 45, 47, 51, and 52.

Thus the changes made to establish more appropriate provisions for unique work situations should result in lower costs than would be experienced if the HCS for manufacturing were extended to the nonmanufacturing sector without revision.

Table 1.—SIC Groups Covered in the OSHA Analysis

Division A. Agriculture, Forestry, and Fishing

Major Group 01. Agricultural production—crops
Major Group 02. Agricultural production—livestock
Major Group 07. Agricultural services
Major Group 08. Forestry
Major Group 09. Fishing, hunting, and trapping

Division B. Mining

Major Group 13. Oil and gas extraction

Division C. Construction

Major Group 15. Building construction—general contractors and operative builders
Major Group 16. Construction other than building construction—general contractors
Major Group 17. Construction—special trade contractors

Division E. Transportation, Communication, Electric, Gas, and Sanitary Services

Major Group 40. Railroad transportation
Major Group 41. Local and suburban transmit and interurban highway passenger transportation
Major Group 42. Motor freight transportation and warehousing
Major Group 44. Water transportation
Major Group 45. Transportation by air
Major Group 46. Pipe lines, except natural gas
Major Group 47. Transportation services
Major Group 48. Communication
Major Group 49. Electric, gas, and sanitary services

Division F. Wholesale Trade

Major Group 50. Wholesale trade—durable goods
Major Group 51. Wholesale trade—nondurable goods

Division G. Retail Trade

Major Group 52. Building materials, hardware, garden supply, and mobile home dealers
Major Group 53. General merchandise stores
Major Group 54. Food stores
Major Group 55. Automotive dealers and gasoline service stations
Major Group 56. Apparel and accessory stores
Major Group 57. Furniture, home furnishing, and equipment stores
Major Group 58. Eating and drinking places
Major Group 59. Miscellaneous retail

Division H. Finance, Insurance, and Real Estate

Major Group 60. Banking
Major Group 61. Credit agencies other than banks
Major Group 62. Security and commodity brokers, dealers, exchanges, and services
Major Group 63. Insurance
Major Group 64. Insurance agents, brokers, and service
Major Group 65. Real estate
Major Group 66. Combinations of real estate, insurance, loans, law office
Major Group 67. Holding and other investment offices

Division I. Services

Major Group 70. Hotels, rooming houses, camps, and other lodging places
Major Group 72. Personal services
Major Group 73. Business services
Major Group 75. Automotive repair, services, and garages
Major Group 76. Miscellaneous repair services
Major Group 78. Motion pictures
Major Group 79. Amusement and recreation services, except motion pictures
Major Group 80. Health Services
Major Group 81. Legal Services
Major Group 82. Education Services
Major Group 83. Social Services
Major Group 84. Museums, art galleries, botanical and zoological gardens
Major Group 86. Membership organizations
Major Group 89. Miscellaneous services

The analysis of the benefits, costs, and economic impacts of extending the HCS to the nonmanufacturing sector are projected for 40 years. As indicated, the analysis reflects requirements of state right-to-know laws and voluntarily implemented hazard communication programs.

Risk Evaluation/Benefits Analysis

For this analysis OSHA estimated the percentage of workers exposed to hazardous chemicals. The percentage and numbers of exposed workers are shown in Table 2 [1] by SIC group. The analysis of risks and benefits proceeds from the current annual incidence of chemical-related injuries and illnesses in the nonmanufacturing sector. For workers in this sector, measures of acute chemical source injuries and illnesses included nonlost workday (NLWD) injuries (13,671) and LWD illnesses (38,249); and fatalities (102). Measures for chronic illnesses include: chronic illness cases (17,153), cancer cases (25,388), and cancer deaths (12,890). The cancer cases category includes cancer deaths. (Note that tables used in the computer models for this analysis may vary slightly from these figures due to rounding.)

The benefits of the standard result from its expected reduction of occupational injuries and illnesses that are chemically related. Specifically, OSHA projects that the standard will avert 20 percent of these injuries and illnesses. (Five percent of all cancer cases are assumed to be occupationally related; the 20 percent reduction is applied to this 5 percent of all cases among occupationally exposed workers in the nonmanufacturing sector.) However, the full reduction of chronic illnesses and cancers will not occur immediately; rather, the reduction for these cases is phased in over time. For chronic illnesses, the standard is expected to reduce 1 percent of the cases in the first year, 2 percent in the second year, and so on, until it reaches the full reduction of 20 percent. For cancer cases and cancer deaths, the standard is expected not to have an effect for the first 10 years, then it is expected to reduce 2 percent of the cases in the eleventh year, 4 percent in the twelfth year, and so on until it reaches the full reduction of 20 percent.

Benefits were monetized using two independent approaches. The first took into account medical costs and lost earnings incurred by each victim. This "human capital" approach resulted in first-year benefits of $56.3 million, and a 40 year present value of $6.66 billion (summarized in Table 3).

A second estimate of benefits was made using the "willingness-to-pay" approach. This approach resulted in first-year benefits of $568.7 million, and a 40 year present value of $54.6 billion (Table 3).

To provide comparability with the estimates of compliance costs, benefits were attributed to the states with right-to-know laws in proportion to the share of hazard communication costs projected for firms in those states. Under the "human capital" approach the present value of the 40 year stream of benefits from the extension of the HCS, after deducting states with right-to-know-laws, is $3.80 billion (1985 dollars). Under the willingness-to-pay approach, the present value of the 40-year stream of benefits from extension of the HCS is $31.0 billion, after deducting the amount attributable to states with right-to-know laws.

The monetized benefits of hazard communication in the nonmanufacturing sector, whether monetized in terms of human capital or willingness to pay, are presented after discounting (at 10 percent). Such discounting does not convey the magnitude of the expected number of injuries, illnesses and deaths that should be averted by the extension of hazard communication to the nonmanufacturing sector. The actual number of NLWD cases, LWD cases, chronic illness cases, cancer cases, cancer deaths, and other fatalities that are expected to be averted in the first,

[1] Tables 2 to 10 appear at the end of this article.

twentieth, and fortieth years are presented in Table 4.

The numbers of cases presented in Table 4 are projections of cases that will be averted by the state right-to-know laws and the extension of the HCS. Approximately 43 percent of these cases will be averted as a result of the hazard communication (*i.e.*, right-to-know) laws of the states. The remaining 57 percent uniquely relate to the extension of HCS and translate into the following: 148,400 cancer cases and 74,200 cancer deaths, 119,200 chronic disabling illnesses, 448,500 lost work day cases, 702,000 non-lost work day cases, and about 653 non-cancer fatalities avoided over the next 40 years. This estimate is believed to be conservative since OSHA assumed that only 5 percent of all cancers are occupationally related.

The original Regulatory Impact Analysis (RIA) for the HCS in manufacturing included estimates of benefits arising from the reduction of the incidence of chemical fires in the manufacturing sector. Using the RIA's methodology and newer data obtained from the U.S. Fire Administration's National Fire Incidence Reporting System, OSHA has determined that extension of the HCS to the nonmanufacturing sector would yield first-year benefits (*i.e.*, the value of property damages and losses avoided) of $1.6 million (1985 dollars). For the twentieth and fortieth years, the estimates are $2.2 and $2.9 million, respectively. The present value of the 40-year stream of benefits is $20.3 million (using a 10 percent discount rate).

Extending the HCS to the nonmanufacturing sector will also yield benefits by eliminating the need for employers to comply with multiple state and local right-to-know laws with differing requirements. The estimated benefits for the first year amount to $39.6 million (1985 dollars). For the twentieth and fortieth years, the benefits are $69.5 and $125.5 million, respectively. The present value of the 40-year stream of benefits is $578 million (using a 10 percent discount rate).

Compliance Costs

Compliance costs were estimated for five items: preparation of a written hazard communication program; container labeling; provision of MSDSs; maintenance of MSDSs; and information and training.

Table 5 provides a summary of total regulatory costs, the costs attributable to state right-to-know laws and the costs attributable to the extension of the OSHA standard. Costs are presented for the first, twentieth, and fortieth year of the standard, as well as in terms of total present value over forty years. Present values were calculated using a 10 percent discount rate. Table 6 presents the costs by provision.

The total cost attributable to hazard communication laws during the first year the expanded HCS is effective is $1.28 billion (1985 dollars). The first year cost associated with compliance with state right-to-know laws is $597.3 million and $687.3 million with the Federal HCS. The present value of the total HCS-related compliance costs over the 40 year period is $1.57 billion.

Recordkeeping activities are required in the maintenance of MSDSs. As shown in Table 6, the Year 1 costs for this function amount to $44.9 million (1985 dollars). The costs for the twentieth and fortieth years are $6.0 and $13.3 million. The present value of the costs over 40 years is $84.8 million.

Economic Impacts

In order to assess the potential economic impacts of expanding the hazard communication standard, OSHA studied the impact of the first year costs on typical establishments that have not implemented any of the provisions. No allowance was made for partial compliance. If establishments can pass through or absorb first year costs, it is assumed that they can afford the minimal recurring costs related to training new employees and the introduction of new hazards. Table 7 presents the average compliance costs, assuming no current compliance, for typical establishments in each SIC Code. Typical establishments in the preponderance for SICs (over 80 percent) would incur compliance costs of less than $700 in the first year.

In only one of the SICs does the average total first year cost exceed $800 per establishment. The average first year cost per exposed employee in all SICs is less than $250, or less than $5.00 per worker per week.

Table 8 presents a comparison of the post-tax compliance costs to a typical firm's revenues and profits. A typical establishment's pre-tax compliance cost will be a negligible percentage (less than one-half of one percent) of the establishment's average annual revenue in over 96 percent of the SICs. The only exceptions, SIC 83 (Social Service) and SIC 86 (Membership Organizations), are primarily composed of nonprofit establishments that are characterized by relatively inelastic demand for their services. Given the magnitude of the compliance costs in relation to revenue, and the fact that the affected industry sectors are predominantly service providers, which are necessarily characterized by localized markets, it appears likely that most firms will pass the compliance costs on to their customers. The post-tax compliance cost as a percent of profits is less than two percent in most (over 80 percent) of the SICs. Typical firms in these SICs should be able to absorb the costs even if they cannot pass them on to their customers. Given the small absolute magnitude of the compliance costs, and the fact that the analysis was conducted using first year compliance costs which are significantly higher than the recurring compliance costs for subsequent years, the expansion of the hazard communication standard should have little or no economic impact on typical firms.

Community Right-to-Know

The cost of extending the Superfund Amendments and Reauthorization Act (SARA) requirements for community right-to-know to the non-manufacturing sector was also estimated. Under Title III of SARA, establishments holding a given hazardous chemical in amounts greater than specified threshold quantities must report these chemicals and their quantities to State and local emergency planning committees and the local fire department. Cost estimates were based on EPA's projected phase-in threshold quantities of 10,000 pounds of hazardous chemicals in the first two years, and 500 pounds in the third and subsequent years that the requirements apply to the non-manufacturing sector. The estimated costs for the first and second years are $8,614,300 and $3,524,000, respectively. Third and fourth year costs were estimated to be $63,492,800 and $32,736,300.

The economic impact of extending SARA to nonmanufacturing was also estimated by OSHA. The third year average total cost of SARA was combined with OSHA's recurring average total costs of the Hazard Communication Standard to estimate the impact. The analysis indicated that the economic impact per facility of extending SARA to nonmanufacturing is minor, and that costs incurred by affected establishments could be passed on to the consumer. OSHA believes that the extension of SARA to nonmanufacturing will not affect the feasibility of the Hazard Communication Standard.

Regulatory Flexibility

As is shown in Table 9, a majority of establishments in all of the potentially impacted SICs are small businesses with fewer than 20 employees. Thus, the average compliance costs for small firms

are very similar to those for typical firms. No disproportionate economic impact is foreseen for small firms.

Most establishments in the potentially affected SICs are service providers, which typically compete on the basis of many factors (*e.g.*, location, specialized service, customer relations, etc.) in addition to price. Assuming all firms try to pass their compliance cost on to their customers, minor price differentials of less than one-half of one percent, shown in Table 10, are unlikely to adversely affect the overall competitive position of small entities.

As can be seen from Table 10, the cost differential between small and large firms in over 80 percent of the SICs is anticipated to be less than 0.2 percent of revenue. In SICs 83 and 86 the difference is about 2 percent. However, these SICs are dominated by non-profit firms which are less likely to be subject to price competition.

Environmental Impacts

At the time the current HCS was promulgated in the **Federal Register** (48 FR 53280), OSHA stated that the standard was unlikely to result in the occurrence of significant health or environmental impacts outside of the workplace. The extension of the HCS does not entail any change from the current HCS in terms of impacts outside the workplace. As concluded previously, the labeling of containers will not have a direct or significant impact on air or water quality, land or energy use, or solid waste disposal outside of the workplace. Similarly, the requirements for preparation of a written compliance plan, provision and maintenance of MSDSs, and provision of information and training should have no adverse environmental impact.

IV. Clearance of Information Collection Requirements

On March 31, 1983, the Office of Management and Budget (OMB) published a new 5 CFR Part 1320, implementing the information collection provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (48 FR 13666). Part 1320, which became effective on April 30, 1983, sets forth procedures for agencies to follow in obtaining OMB clearance for information collection requirements. The sections of the Hazard Communication Standard which may create recordkeeping requirements are paragraphs (d) hazard determination; (e) written hazard communication program; (f) labels and other appropriate forms of warning; (g) material safety data sheets; (h) information and training; and (i) trade secrets.

In accordance with the provisions of the Paperwork Reduction Act and the regulations issued pursuant thereto, OSHA certifies that it has submitted the information collection requirements contained in its rule on hazard communication to OMB for review under section 3504(h) of that Act.

V. State Plan Applicability

The 25 States with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of a final standard. These States include: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate. (Thirteen (13) of these States (Alaska, California, Iowa, Maryland, Michigan, Minnesota, New Mexico, North Carolina, Oregon, Tennessee, Vermont, Washington, and Wyoming) have already expanded the scope of their hazard communication standard/right-to-know law to cover private sector, non-manufacturing workplaces.)

Although a State HCS becomes effective in accordance with State promulgation provisions, and is enforceable upon promulgation, OSHA must also review and approve the standard to assure that it is "at least as effective" as the Federal standard. OSHA intends to closely scrutinize State standards submitted under current or future State plans to assure not only equal or greater effectivenss, but also that any additional requirements do not conflict with, or adversely affect, the effectiveness of the national application of OSHA's standard. Because the HCS is "appliable to products" in that it permits the distribution and use of hazardous chemicals in commerce only if they are in labeled containers accompanied by material safety data sheets, OSHA must determine in its review whether any State plan standard provisions which differ from the Federal are "required by compelling local conditions and do not unduly burden interstate commerce." Section 18(c) of the Act, 29 U.S.C. 667(c).

VI. Authority, Signature, and the Final Rule

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For the reasons set out in the preamble, and under the authority of section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR Part 1911, and 5 U.S.C. 553, the Occupational Safety and Health Administration hereby amends Parts 1910, 1915, 1917, 1918, 1926, and 1928 of Title 29 of the Code of Federal Regulations, as set forth below.

List of Subjects in 29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

Hazard communication, Occupational safety and health, Right-to-know, Labeling, Material safety data sheets; Employee training.

Signed at Washington, DC, this 18th day of August 1987.

John A. Pendergrass,

Assistant Secretary for Occupational Safety and Health.

TABLE 2.—WORKER EXPOSURE TO HAZARDOUS CHEMICALS

Industry	Total number of establishment	Total employment	Percent of workers exposed to hazardous chemicals	Number of exposed employees
SIC 01	31,739	504,025	70	352,818
SIC 02	10,994	126,039	70	88,227

TABLE 2.—WORKER EXPOSURE TO HAZARDOUS CHEMICALS—Continued

Industry	Total number of establishment	Total employment	Percent of workers exposed to hazardous chemicals	Number of exposed employees
SIC 07	65,704	459,479	70	321,635
SIC 08	2,117	20,223	70	14,156
SIC 09	3,886	13,549	20	2,710
SIC 13	31,572	591,714	70	414,200
SIC 15	166,012	1,137,853	70	796,497
SIC 16	44,702	791,892	70	554,324
SIC 17	320,208	2,406,916	70	1,684,841
SIC 40	18,539	324,206	40	129,682
SIC 41	15,539	285,578	20	57,116
SIC 42	99,805	1,323,495	20	264,699
SIC 44	8,346	178,013	70	124,609
SIC 45	8,691	490,395	40	196,158
SIC 46	959	18,405	60	11,043
SIC 47	30,783	267,113	40	106,845
SIC 48	22,910	1,321,116	5	66,056
SIC 49	15,571	890,586	40	356,234
SIC 50	300,972	3,357,168	10	335,717
SIC 51	191,745	2,295,451	25	573,863
SIC 52	66,756	662,051	50	331,026
SIC 53	29,818	2,230,449	5	111,522
SIC 54	137,393	2,696,839	20	539,368
SIC 55	173,902	1,850,359	60	1,110,215
SIC 56	99,022	1,004,666	5	50,233
SIC 57	93,338	714,264	5	35,713
SIC 58	309,650	5,479,633	25	1,369,908
SIC 59	261,694	2,133,614	20	426,723
SIC 60	24,949	1,681,408	5	84,070
SIC 61	43,408	733,201	5	36,660
SIC 62	17,995	346,214	5	17,311
SIC 63	30,139	1,190,103	5	59,505
SIC 64	96,706	536,223	5	26,811
SIC 65	191,400	1,077,550	5	53,878
SIC 66	2,937	13,752	5	688
SIC 67	15,792	138,488	5	6,924
SIC 70	44,697	1,273,343	25	318,336
SIC 72	158,272	1,068,670	50	534,335
SIC 73	284,684	4,092,820	50	2,046,410
SIC 75	121,431	713,798	50	356,899
SIC 76	57,900	316,365	60	189,819
SIC 78	15,338	216,806	30	65,042
SIC 79	58,064	757,287	20	151,457
SIC 80	365,758	6,167,908	60	3,700,745
SIC 81	119,861	670,317	5	33,516
SIC 82	23,280	1,174,052	10	117,405
SIC 83	66,380	1,182,651	5	59,133
SIC 84	1,592	39,021	25	9,755
SIC 86	83,774	724,283	5	36,214
SIC 89	117,155	1,200,885	5	60,044
Totals	4,503,879	58,890,236		18,391,096

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

TABLE 3.—ESTIMATED BENEFITS OF HAZARD COMMUNICATION

[Millions of 1985 dollars]

Type of injury/illness	Benefits—Year			
	1	20	40	TPV
HUMAN CAPITAL APPROACH				
NLWD:				
Lost earnings	0.7	1.3	2.5	9.3
Medical costs	1.7	4.6	13.4	30.3
LWD:				
Lost earnings	15.2	28.3	57.1	209.3

TABLE 3.—ESTIMATED BENEFITS OF HAZARD COMMUNICATION—Continued

[Millions of 1985 dollars]

Type of injury/illness	Benefits—Year			
	1	20	40	TPV
Medical costs	10.9	29.2	86.5	192.2
Chronic:				
Lost earnings	20.5	722.8	1,365.8	2,967.5
Medical costs	2.8	143.4	404.1	582.8
Cancer:				
Lost earnings	0	651.6	1,309.6	1,735.2
Medical costs	0	298.9	906.4	875.8
Fatalities: Lost earnings	4.4	7.3	13.0	56.6
Total	56.3	1,887.3	4,158.3	6,659.1
WILLINGNESS-TO-PAY APPROACH				
NLWD	59.6	107.8	211.9	804.5
LWD	374.4	686.4	1,371.1	5,099.8
Chronic	61.7	2,173.7	4,121.6	8,924.3
Cancer	0	14,529.0	29,651.2	38,812.0
Fatalities	72.9	123.4	255.3	946.9
Total	568.7	17,620.7	35,581.2	54,587.4

Source: JACA Corporation Report.

TABLE 4.—INJURIES, ILLNESSES, AND FATALITIES AVERTED BY HAZARD COMMUNICATION IN THE NONMANUFACTURING SECTOR

Year	1	20	40	Commulative total
FEDERAL AND STATE STANDARDS COMBINED				
NLWD	17,000	30,800	60,600	1,354,500
LWD	10,700	19,600	39,200	865,800
Chronic	150	6,200	11,800	230,100
Cancer cases	0	8,200	17,000	286,500
Cancer deaths	0	4,100	8,500	143,300
Noncancer deaths	0	20	80	1,260
IMPACT OF FEDERAL STANDARD ALONE				
NLWD	8,800	16,000	31,400	702,000
LWD	5,500	10,200	20,300	448,500
Chronic	78	3,200	6,100	119,200
Cancer cases	0	4,248	8,806	148,400
Cancer deaths	0	2,100	4,400	74,200
Noncancer deaths	0	10	41	653

Source: U.S. Department of Labor, OHSA, Office of Regulatory Analysis.

TABLE 5.—SUMMARY OF HAZARD COMMUNICATION COSTS

[Millions of 1985 dollars]

Year	Total	State	OHSA
1	1,284.5	597.3	687.2
20	214.5	101.3	113.2
40	384.0	184.0	200.0

TABLE 5.—SUMMARY OF HAZARD COMMUNICATION COSTS—Continued

[Millions of 1985 dollars]

Year	Total	State	OHSA
Total present value	2,926.4	1,356.3	1,570.1

Source: U.S. Department of Labor, OHSA, Office of Regulatory Analysis.

TABLE 6.—SUMMARY OF FEDERAL HCS COSTS BY PROVISION

[Millions of 1985 dollars]

Year	Maintain MSDS's	Labeling	Written	Training	Provide MSDS's	Totals
1	44.9	12.8	137.4	472.9	19.3	687.2
20	6.0	20.3	5.7	78.7	2.5	113.2
40	13.3	35.2	9.4	136.5	5.6	200.0
TPV	84.8	170.9	170.9	1054.6	88.9	1570.1

Source: U.S. Department of Labor, OHSA, Office of Regulatory Analysis.

TABLE 7.—SUMMARY OF HCS COSTS PER ESTABLISHMENT NOT IN COMPLIANCE WITH HCS

[1985 dollars]

Industry	First year		Second year	
	Average costs per establishment	Average costs per exposed employee	Average costs per establishment	Average costs per exposed employee
SIC 01	502	45	32	3
SIC 02	475	59	23	3
SIC 07	490	100	28	6
SIC 08	358	54	26	4
SIC 09	304	242	6	5
SIC 13	497	38	72	5
SIC 15	150	31	12	3
SIC 16	225	18	34	3
SIC 17	169	32	14	3
SIC 40	603	86	51	7
SIC 41	285	76	11	3
SIC 42	273	98	12	4
SIC 44	442	30	55	4
SIC 45	892	40	72	3
SIC 46	461	40	55	5
SIC 47	398	115	15	4
SIC 48	319	50	15	2
SIC 49	798	35	64	3
SIC 50	472	238	14	7
SIC 51	700	234	32	11
SIC 52	335	68	20	4
SIC 53	372	50	27	4
SIC 54	323	82	18	5
SIC 55	437	68	31	5
SIC 56	265	149	6	3
SIC 57	288	190	6	4
SIC 58	337	76	17	4
SIC 59	321	184	7	4
SIC 60	410	61	21	3
SIC 61	217	76	9	3
SIC 62	312	79	18	5
SIC 63	250	46	16	3
SIC 64	236	155	5	3
SIC 65	306	186	8	5
SIC 66	238	181	5	4
SIC 67	415	167	12	5
SIC 70	408	57	37	5
SIC 72	500	148	16	5
SIC 73	444	62	43	6
SIC 75	381	130	14	5
SIC 76	325	99	15	5
SIC 78	351	83	26	6
SIC 79	346	117	20	7
SIC 80	581	57	57	6
SIC 81	242	153	7	5
SIC 82	287	46	10	2
SIC 83	337	132	11	4
SIC 84	608	99	39	6
SIC 86	273	149	6	3

TABLE 7.—SUMMARY OF HCS COSTS PER ESTABLISHMENT NOT IN COMPLIANCE WITH HCS—Continued

[1985 dollars]

Industry	First year		Second year	
	Average costs per establishment	Average costs per exposed employee	Average costs per establishment	Average costs per exposed employee
SIC 89	312	146	10	5

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

TABLE 8.—ANALYSIS OF POST-TAX FIRST-YEAR COMPLIANCE COSTS

[1985 dollars]

Industry	Average annual revenue per establishment	Average cost as a percent of revenue per establishment	Average net income per establishment	Average post-tax cost per establishment	Post tax cost as a percent of net income per establishment
SIC 01	2,794,100	0.018	103,382	377	0.36
SIC 02	11,275,400	0.004	417,190	356	0.09
SIC 07	286,600	0.171	7,165	368	5.13
SIC 08	1,689,100	0.021	42,228	268	0.64
SIC 09	797,500	0.038	19,938	228	1.14
SIC 13	6,185,800	0.008	346,405	373	0.11
SIC 15	816,700	0.018	19,601	113	0.57
SIC 16	1,419,700	0.016	56,788	169	0.30
SIC 17	372,400	0.045	10,800	127	1.17
SIC 40	2,584,100	0.023	111,116	453	0.41
SIC 41	411,400	0.069	13,165	214	1.62
SIC 42	730,100	0.037	21,903	205	0.94
SIC 44	2,214,300	0.020	141,715	331	0.23
SIC 45	5,900,000	0.015	70,800	669	0.94
SIC 46	20,569,600	0.002	1,069,619	346	0.03
SIC 47	831,900	0.048	14,974	299	1.99
SIC 48	5,347,900	0.006	390,397	239	0.06
SIC 49	16,269,000	0.005	732,105	599	0.08
SIC 50	1,866,900	0.025	28,004	354	1.26
SIC 51	3,371,500	0.021	57,316	525	0.92
SIC 52	793,800	0.042	20,639	251	1.22
SIC 53	5,702,000	0.007	136,848	279	0.20
SIC 54	2,089,700	0.015	25,076	242	0.96
SIC 55	2,016,100	0.022	16,129	327	2.03
SIC 56	507,600	0.052	19,796	199	1.00
SIC 57	371,400	0.078	11,513	216	1.88
SIC 58	383,500	0.088	11,122	252	2.27
SIC 59	829,100	0.039	20,728	241	1.16
SIC 60	14,970,800	0.003	509,007	307	0.06
SIC 61	2,585,300	0.008	41,365	163	0.39
SIC 62	1,856,900	0.017	135,554	234	0.17
SIC 63	12,911,400	0.002	438,988	187	0.04
SIC 64	220,400	0.107	15,869	177	1.11
SIC 65	338,400	0.090	27,749	230	0.83
SIC 66	661,600	0.036	54,251	178	0.33
SIC 67	798,300	0.052	167,643	311	0.19
SIC 70	607,000	0.067	34,599	306	0.88
SIC 72	228,500	0.219	10,283	375	3.64
SIC 73	531,600	0.084	21,264	333	1.57
SIC 75	351,800	0.108	8,795	286	3.25
SIC 76	187,100	0.174	7,671	244	3.18
SIC 78	815,900	0.043	31,820	263	0.83
SIC 79	782,100	0.044	51,619	260	0.50
SIC 80	198,200	0.293	6,342	436	6.87
SIC 81	456,000	0.053	10,032	182	1.81
SIC 82	NA	0.168	NA	215	NA
SIC 83	NA	1.763	NA	252	NA
SIC 83	NA	1.763	NA	252	NA
SIC 84	NA	0.094	NA	456	NA
SIC 86	NA	1.007	NA	205	NA

TABLE 8.—ANALYSIS OF POST-TAX FIRST-YEAR COMPLIANCE COSTS—Continued

[1985 dollars]

Industry	Average annual revenue per establishment	Average cost as a percent of revenue per establishment	Average net income per establishment	Average post-tax cost per establishment	Post tax cost as a percent of net income per establishment
SIC 89	290,500	0.107	11,039	234	2.12

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

TABLE 9.—ESTABLISHMENTS WITH FEWER THAN TWENTY EMPLOYEES

SIC code	Total number of establishments	Number of establishments with 1 to 19 employees	Percent of establishments with 1 to 19 employees
01	31,739	27,440	86
02	10,994	9,574	87
07	65,704	61,928	94
08	2,117	1,852	87
09	2,160	2,088	97
13	31,572	26,037	82
15	166,012	154,819	93
16	44,702	37,484	84
17	320,208	294,850	92
40	18,539	15,756	85
41	15,267	11,998	79
42	94,561	80,822	85
44	8,346	6,917	83
45	8,691	6,514	75
46	959	724	75
47	30,783	28,420	92
48	10,319	6,612	64
49	15,571	10,922	70
50	169,451	133,233	79
51	191,745	166,562	87
52	66,756	60,097	90
53	14,909	8,963	60
54	137,393	114,738	84
55	173,902	152,920	88
56	28,181	23,874	85
57	23,582	20,474	87
58	309,650	241,282	78
59	244,849	227,803	93
60	12,475	6,318	51
61	12,912	9,561	74
62	4,380	3,079	70
63	10,998	7,263	66
64	17,577	15,608	89
65	32,714	28,099	86
66	524	488	93
67	2,790	2,239	80
70	44,697	34,693	78
72	158,272	149,812	95
73	284,684	249,553	88
75	121,431	116,344	96
76	57,900	55,543	96
78	15,338	13,314	87
79	50,981	42,916	84
80	365,758	338,396	93
81	21,210	18,659	88
82	18,661	11,197	60
83	23,148	17,068	74
84	1,592	1,250	79
86	19,757	16,416	83
89	28,103	23,179	82

TABLE 9.—ESTABLISHMENTS WITH FEWER THAN TWENTY EMPLOYEES—Continued

TABLE 9.—ESTABLISHMENTS WITH FEWER THAN TWENTY EMPLOYEES—Continued

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

[a] From Chapter 5 of the JACA Report [4].

[b] Column 2 divided by Column 1.

TABLE 10.—ANALYSIS OF IMPACT ON SMALLEST VERSUS LARGEST ESTABLISHMENTS

[Comparing average costs as a percent of revenue]

SIC code	Average cost as a percent of revenue per establishment 250+ employees	Average cost as a percent of revenue per establishment 1–19 employees	Difference in cost as a percent of revenue due to size of establishments
01	0.003	0.044	0.040
02	0.001	0.009	0.008
07	0.038	0.189	0.151
08	0.007	0.018	0.011
09	0.002	0.021	0.019
13	0.002	0.035	0.033
15	0.003	0.044	0.042
16	0.007	0.064	0.057
17	0.017	0.065	0.048
40	0.008	0.082	0.075
41	0.007	0.248	0.240
42	0.007	0.103	0.096
44	0.007	0.060	0.053
45	0.009	0.105	0.096
46	0.000	0.174	0.174
47	0.003	0.101	0.098
48	0.002	0.041	0.039

TABLE 10.—ANALYSIS OF IMPACT ON SMALLEST VERSUS LARGEST ESTABLISHMENTS—Continued

[Comparing average costs as a percent of revenue]

SIC code	Average cost as a percent of revenue per establishment 250+ employees	Average cost as a percent of revenue per establishment 1-19 employees	Difference in cost as a percent of revenue due to size of establishments
49	0.002	0.049	0.047
50	0.003	0.037	0.034
51	0.006	0.038	0.032
52	0.008	0.046	0.038
53	0.002	0.029	0.026
54	0.002	0.054	0.052
55	0.006	0.044	0.038
56	0.002	0.104	0.102
57	0.003	0.117	0.114
58	0.008	0.158	0.150
59	0.003	0.055	0.051
60	0.001	0.012	0.011
61	0.000	0.038	0.038
62	0.003	0.028	0.025
63	0.000	0.069	0.069
64	0.002	0.179	0.177
65	0.005	0.124	0.119
66	0.001	0.054	0.053
67	0.003	0.096	0.093
70	0.021	0.283	0.262
72	0.007	0.346	0.339
73	0.028	0.204	0.175
75	0.004	0.151	0.148
76	0.099	0.205	0.106
78	0.007	0.113	0.106
79	0.016	0.071	0.055
80	0.269	0.370	0.101
81	0.118	0.077	−0.041
82	0.025	0.915	0.890
83	0.428	2.293	1.865
84	0.033	0.259	0.226
86	0.035	2.109	2.074
89	0.008	0.210	0.202

Source: U.S. Department of Labor, OHSA, Office of Regulatory Analysis.

OSHA is amending Parts 1910, 1915, 1917, 1918, 1926, and 1928 of Title 29 of the Code of Federal Regulations as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart Z of Part 1910 continues to read as follows:

Authority: Secs. 6, 8, Occupational Safety and Health Act (29 U.S.C. 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754); 8–76 (41 FR 2509); or 9–83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

Section 1910.1000 Tables Z–1, Z–2, Z–3 also issued under 5 U.S.C. 553.

Section 1910.1000 not issued under 29 CFR Part 1911, except for "Arsenic" and "Cotton Dust" listings in Table Z–1.

Section 1910.1001 not issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Sections 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1043 also issued under 5 U.S.C. 551 *et seq.*

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

2. The authority citation for Part 1915 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; 29 CFR Part 1911.

Section 1915.99 also issued under 5 U.S.C. 553.

PART 1917—MARINE TERMINALS

3. The authority citation for Part 1917 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; 29 CFR Part 1911.

Section 1917.28 also issued under 5 U.S.C. 553.

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

4. The authority citation for Part 1918 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941);

secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

Section 1918.90 also issued under 5 U.S.C. 553 and 29 CFR Part 1911.

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

5. The authority citation for Subpart D of Part 1926 is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

Section 1926.59 also issued under 5 U.S.C. 553 and 29 CFR Part 1911.

PART 1928—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE

6. The authority citation for Part 1928 is revised to read as follows:

Authority: Secs. 6 and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657); Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; 29 CFR Part 1911.

Section 1928.21 also issued under 5 U.S.C. 553.

PARTS 1910, 1915, 1917, 1918, 1926 and 1928—[AMENDED]

7. Parts 1910, 1915, 1917, 1918, and 1926 are amended by revising § 1910.1200 as set forth below, and by adding §§ 1915.99, 1917.28, 1918.90, and 1926.59 to contain the identical text of the revised § 1910.1200, including Apendices A, B, C, and D of 1910.1200:

§ —— Hazard communication.

(a) *Purpose.* (1) The purpose of this section is to ensure that the hazards of all chemicals produced or imported are evaluated, and that information concerning their hazards is transmitted to employers and employees. This transmittal of information is to be accomplished by means of comprehensive hazard communication programs, which are to include container labeling and other forms of warning, material safety data sheets and employee training.

(2) This occupational safety and health standard is intended to address comprehensively the issue of evaluating the potential hazards of chemicals, and communicating information concerning hazards and appropriate protective measures to employees, and to preempt any legal requirements of a state, or political subdivision of a state, pertaining to the subject. Evaluating the potential hazards of chemicals, and communicating information concerning hazards and appropriate protective measures to employees, may include, for example, but is not limited to, provisions for: developing and maintaining a written hazard communication program for the workplace, including lists of hazardous chemicals present; labeling of containers of chemicals in the workplace, as well as of containers of chemicals being shipped to other workplaces; preparation and distribution of material safety data sheets to employees and downstream employers; and development and implementation of employee training programs regarding hazards of chemicals and protective measures. Under section 18 of the Act, no state or political subdivision of a state may adopt or enforce, through any court or agency, any requirement relating to the issue addressed by this Federal standard, except pursuant to a Federally-approved state plan.

(b) *Scope and application.* (1) This section requires chemical manufacturers or importers to assess the hazards of chemicals which they produce or import, and all employers to provide information to their employees about the hazardous chemicals to which they are exposed, by means of a hazard communication program, labels and other forms of warning, material safety data sheets, and information and training. In addition, this section requires distributors to transmit the required information to employers.

(2) This section applies to any chemical which is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency.

(3) This section applies to laboratories only as follows:

(i) Employers shall ensure that labels on incoming containers of hazardous chemicals are not removed or defaced;

(ii) Employers shall maintain any material safety data sheets that are received with incoming shipments of hazardous chemicals, and ensure that they are readily accessible to laboratory employees; and,

(iii) Employers shall ensure that laboratory employees are apprised of the hazards of the chemicals in their workplaces in accordance with paragraph (h) of this section.

(4) In work operations where employees only handle chemicals in sealed containers which are not opened under normal conditions of use (such as are found in marine cargo handling, warehousing, or retail sales), this section applies to these operations only as follows:

(i) Employers shall ensure that labels on incoming containers of hazardous chemicals are not removed or defaced;

(ii) Employers shall maintain copies of any material safety data sheets that are received with incoming shipments of the sealed containers of hazardous chemicals, shall obtain a material safety data sheet for sealed containers of hazardous chemicals received without a material safety data sheet if an employee requests the material safety data sheet, and shall ensure that the material safety data sheets are readily accessible during each work shift to employees when they are in their work area(s); and,

(iii) Employers shall ensure that employees are provided with information and training in accordance with paragraph (h) of this section (except for the location and availability of the written hazard communication program under paragraph (h)(1)(iii)), to the extent necessary to protect them in the event of a spill or leak of a hazardous chemical from a sealed container.

(5) This section does not require labeling of the following chemicals:

(i) Any pesticide as such term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Environmental Protection Agency;

(ii) Any food, food additive, color additive, drug, cosmetic, or medical or veterinary device, including materials intended for use as ingredients in such products (e.g. flavors and fragrances), as such terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) and regulations issued under that Act, when they are subject to the labeling requirements under that Act by the Food and Drug Administration;

(iii) Any distilled spirits (beverage alcohols), wine, or malt beverage intended for nonindustrial use, as such terms are defined in the Federal Alcohol Administration Act (27 U.S.C. 201 *et seq.*) and regulations issued under that Act, when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Bureau of Alcohol Tobacco, and Firearms; and,

(iv) Any consumer product or hazardous substance as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) respectively, when subject to a consumer product safety standard or labeling requirement of those Acts, or regulations issued under those Acts by

the Consumer Product Safety Commission.

(6) This section does not apply to:

(i) Any hazardous waste as such term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901 et seq.), when subject to regulations issued under that Act by the Environmental Protection Agency;

(ii) Tobacco or tobacco products;

(iii) Wood or wood products;

(iv) Articles;

(v) Food, drugs, cosmetics, or alcoholic beverages in a retail establishment which are packaged for sale to consumers;

(vi) Foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace;

(vii) Any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*) and Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*) respectively, where the employer can demonstrate it is used in the workplace in the same manner as normal consumer use, and which use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers; and,

(viii) Any drug, as that term is defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), when it is in solid, final form for direct administration to the patient (i.e. tablets or pills).

(c) *Definitions.*

"Article" means a manufactured item: (i) Which is formed to a specific shape or design during manufacture; (ii) which has end use function(s) dependent in whole or in part upon its shape or design during end use; and (iii) which does not release, or otherwise result in exposure to, a hazardous chemical, under normal conditions of use.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

"Chemical" means any element, chemical compound or mixture of elements and/or compounds.

"Chemical manufacturer" means an employer with a workplace where chemical(s) are produced for use or distribution.

"Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature, or a name which will clearly identify the chemical for the purpose of conducting a hazard evaluation.

"Combustible liquid" means any liquid having a flashpoint at or above 100 °F (37.8 °C), but below 200 ° F (93.3 ° C), except any mixture having components with flashpoints of 200 °F (93.3 °C), or higher, the total volume of which make up 99 percent or more of the total volume of the mixture.

"Common name" means any designation or identification such as code name, code number, trade name, brand name or generic name used to identify a chemical other than by its chemical name.

"Compressed gas" means:

(i) A gas or mixture of gases having, in a container, an absolute pressure exceeding 40 psi at 70 °F (21.1 °C); or

(ii) a gas or mixture of gases having, in a container, an absolute pressure exceeding 104 psi at 130 °F (54.4 °C) regardless of the pressure at 70 °F (21.1 °C); or

(iii) A liquid having a vapor pressure exceeding 40 psi at 100 °F (37.8 °C) as determined by ASTM D–323–72.

"Container" means any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like that contains a hazardous chemical. For purposes of this section, pipes or piping systems, and engines, fuel tanks, or other operating systems in a vehicle, are not considered to be containers.

"Designated representative" means any individual or organization to whom an employee gives written authorization to exercise such employee's rights under this section. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

"Director" means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

"Distributor" means a business, other than a chemical manufacturer or importer, which supplies hazardous chemicals to other distributors or to employers.

"Employee" means a worker who may be exposed to hazardous chemicals under normal operating conditions or in foreseeable emergencies. Workers such as office workers or bank tellers who encounter hazardous chemicals only in non-routine, isolated instances are not covered.

"Employer" means a person engaged in a business where chemicals are either used, distributed, or are produced for use or distribution, including a contractor or subcontractor.

"Explosive" means a chemical that causes a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature.

"Exposure" or "exposed" means that an employee is subjected to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes potential (e.g. accidental or possible) exposure.

"Flammable" means a chemical that falls into one of the following categories:

(i) "Aerosol, flammable" means an aerosol that, when tested by the method described in 16 CFR 1500.45, yields a flame projection exceeding 18 inches at full valve opening, or a flashback (a flame extending back to the valve) at any degree of valve opening;

(ii) "Gas, flammable" means:

(A) A gas that, at ambient temperature and pressure, forms a flammable mixture with air at a concentration of thirteen (13) percent by volume or less; or

(B) A gas that, at ambient temperature and pressure, forms a range of flammable mixtures with air wider than twelve (12) percent by volume, regardless of the lower limit;

(iii) "Liquid, flammable" means any liquid having a flashpoint below 100 °F (37.8 °C), except any mixture having components with flashpoints of 100 °F (37.8 °C) or higher, the total of which make up 99 percent or more of the total volume of the mixture;

(iv) "Solid, flammable" means a solid, other than a blasting agent or explosive as defined in § 190.109(a), that is liable to cause fire through friction, absorption of moisture, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious hazard. A chemical shall be considered to be a flammable solid if, when tested by the method described in 16 CFR 1500.44, it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

"Flashpoint" means the minimum temperature at which a liquid gives off a vapor in sufficient concentration to ignite when tested as follows:

(i) Tagliabue Closed Tester (See American National Standard Method of Test for Flash Point by Tag Closed Tester, Z11.24–1979 (ASTM D 56–79)) for liquids with a viscosity of less than 45 Saybolt University Seconds (SUS) at 100 °F (37.8 °C), that do not contain suspended solids and do not have a

tendency to form a surface film under test; or

(ii) Pensky-Martens Closed Tester (See American National Standard Method of Test for Flash Point by Pensky-Martens Closed Tester, Z11.7–1979 (ASTM D 93–79)) for liquids with a viscosity equal to or greater than 45 SUS at 100 °F (37.8 °C), or that contain suspended solids, or that have a tendency to form a surface film under test; or

(iii) Setaflash Closed Tester (see American National Standard Method of Test for Flash Point by Setaflash Closed Tester (ASTMD 3278–78))

Organic peroxides, which undergo autoaccelerating thermal decomposition, are excluded from any of the flashpoint determination methods specified above.

"Foreseeable emergency" means any potential occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment which could result in an uncontrolled release of a hazardous chemical into the workplace.

"Hazardous chemical" means any chemical which is a physical hazard or a health hazard.

"Hazard warning" means any words, pictures, symbols, or combination thereof appearing on a label or other appropriate form of warning which convey the hazard(s) of the chemical(s) in the container(s).

"Health hazard" means a chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. Appendix A provides further definitions and explanations of the scope of health hazards covered by this section, and Appendix B describes the criteria to be used to determine whether or not a chemical is to be considered hazardous for purposes of this standard.

"Identity" means any chemical or common name which is indicated on the material safety data sheet (MSDS) for the chemical. The identity used shall permit cross-references to be made among the required list of hazardous chemicals, the label and the MSDS.

"Immediate use" means that the hazardous chemical will be under the control of and used only by the person who transfers it from a labeled container and only within the work shift in which it is transferred.

"Importer" means the first business with employees within the Customs Territory of the United States which receives hazardous chemicals produced in other countries for the purpose of supplying them to distributors or employers within the United States.

"Label" means any written, printed, or graphic material, displayed on or affixed to containers of hazardous chemicals.

"Material safety data sheet (MSDS)" means written or printed material concerning a hazardous chemical which is prepared in accordance with paragraph (g) of this section.

"Mixture" means any combination of two or more chemicals if the combination is not, in whole or in part, the result of a chemical reaction.

"Organic peroxide" means an organic compound that contains the bivalent -O-O-structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

"Oxidizer" means a chemical other than a blasting agent or explosive as defined in § 1910.109(a), that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases.

"Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water-reactive.

"Produce" means to manufacture, process, formulate, or repackage.

"Pyrophoric" means a chemical that will ignite spontaneously in air at a temperature of 130 °F (54.4 °C) or below.

"Responsible party" means someone who can provide additional information on the hazardous chemical and appropriate emergency procedures, if necessary.

"Specific chemical identity" means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

"Trade secret" means any confidential formula, pattern, process, device, information or compilation of information that is used in an employer's business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it. Appendix D sets out the criteria to be used in evaluating trade secrets.

"Unstable (reactive)" means a chemical which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self-reactive under conditions of shocks, pressure or temperature.

"Use" means to package, handle, react, or transfer.

"Water-reactive" means a chemical that reacts with water to release a gas that is either flammable or presents a health hazard.

"Work area" means a room or defined space in a workplace where hazardous chemicals are produced or used, and where employees are present.

"Workplace" means an establishment, job site, or project, at one geographical location containing one or more work areas.

(d) *Hazard determination.* (1) Chemical manufacturers and importers shall evaluate chemicals produced in their workplaces or imported by them to determine if they are hazardous. Employers are not required to evaluate chemicals unless they choose not to rely on the evaluation performed by the chemical manufacturer or importer for the chemical to satisfy this requirement.

(2) Chemical manufacturers, importers or employers evaluating chemicals shall identify and consider the available scientific evidence concerning such hazards. For health hazards, evidence which is statistically significant and which is based on at least one positive study conducted in accordance with established scientific principles is considered to be sufficient to establish a hazardous effect if the results of the study meet the definitions of health hazards in this section. Appendix A shall be consulted for the scope of health hazards covered, and Appendix B shall be consulted for the criteria to be followed with respect to the completeness of the evaluation, and the data to be reported.

(3) The chemical manufacturer, importer or employer evaluating chemicals shall treat the following sources as establishing that the chemicals listed in them are hazardous:

(i) 29 CFR Part 1910, Subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration (OSHA); or,

(ii) *Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment,* American Conference of Governmental Industrial Hygienists (ACGIH) (latest edition).

The chemical manufacturer, importer, or employer is still responsible for evaluating the hazards associated with the chemicals in these source lists in accordance with the requirements of this standard.

(4) Chemical manufacturers, importers and employers evaluating chemicals shall treat the following sources as establishing that a chemical is a carcinogen or potential carcinogen for hazard communication purposes:

(i) National Toxicology Program (NTP), *Annual Report on Carcinogens* (latest edition);

(ii) International Agency for Research on Cancer (IARC) *Monographs* (latest editions); or

(iii) 29 CFR Part 1910, Subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration.

Note.—The *Registry of Toxic Effects of Chemical Substances* published by the National Institute for Occupational Safety and Health indicates whether a chemical has been found by NTP or IARC to be a potential carcinogen.

(5) The chemical manufacturer, importer or employer shall determine the hazards of mixtures of chemicals as follows:

(i) If a mixture has been tested as a whole to determine its hazards, the results of such testing shall be used to determine whether the mixture is hazardous;

(ii) If a mixture has not been tested as a whole to determine whether the mixture is a health hazard, the mixture shall be assumed to present the same health hazards as do the components which comprise one percent (by weight or volume) or greater of the mixture, except that the mixture shall be assumed to present a carcinogenic hazard if it contains a component in concentrations of 0.1 percent or greater which is considered to be a carcinogen under paragraph (d)(4) of this section;

(iii) If a mixture has not been tested as a whole to determine whether the mixture is a physical hazard, the chemical manufacturer, importer, or employer may use whatever scientifically valid data is available to evaluate the physical hazard potential of the mixture; and,

(iv) If the chemical manufacturer, importer, or employer has evidence to indicate that a component present in the mixture in concentrations of less than one percent (or in the case of carcinogens, less than 0.1 percent) could be released in concentrations which would exceed an established OSHA permissible exposure limit or ACGIH Threshold Limit Value, or could present a health hazard to employees in those concentrations, the mixture shall be assumed to present the same hazard.

(6) Chemical manufacturers, importers, or employers evaluating chemicals shall describe in writing the procedures they use to determine the hazards of the chemical they evaluate. The written procedures are to be made available, upon request, to employees, their designated representatives, the Assistant Secretary and the Director. The written description may be incorporated into the written hazard communication program required under paragraph (e) of this section.

(e) *Written hazard communication program.* (1) Employers shall develop, implement, and maintain at the workplace, a written hazard communication program for their workplaces which at least describes how the criteria specified in paragraphs (f), (g), and (h) of this section for labels and other forms of warning, material safety data sheets, and employee information and training will be met, and which also includes the following:

(i) A list of the hazardous chemicals known to be present using an identity that is referenced on the appropriate material safety data sheet (the list may be compiled for the workplace as a whole or for individual work areas); and,

(ii) The methods the employer will use to inform employees of the hazards of non-routine tasks (for example, the cleaning of reactor vessels), and the hazards associated with chemicals contained in unlabeled pipes in their work areas.

(2) *Multi-employer workplaces.* Employers who produce, use, or store hazardous chemicals at a workplace in such a way that the employees of other employer(s) may be exposed (for example, employees of a construction contractor working on-site) shall additionally ensure that the hazard communication programs developed and implemented under this paragraph (e) include the following:

(i) The methods the employer will use to provide the other employer(s) with a copy of the material safety data sheet, or to make it available at a central location in the workplace, for each hazardous chemical the other employer(s)' employees may be exposed to while working;

(ii) The methods the employer will use to inform the other employer(s) of any precautionary measures that need to be taken to protect employees during the workplace's normal operating conditions and in foreseeable emergencies; and,

(iii) The methods the employer will use to inform the other employer(s) of the labeling system used in the workplace.

(3) The employer may rely on an existing hazard communication program to comply with these requirements, provided that it meets the criteria established in this paragraph (e).

(4) The employer shall make the written hazard communication program available, upon request, to employees, their designated representatives, the Assistant Secretary and the Director, in accordance with the requirements of 29 CFR 1910.20(e).

(f) *Labels and other forms of warning.* (1) The chemical manufacturer, importer, or distributor shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged or marked with the following information:

(i) Identity of the hazardous chemical(s);

(ii) Appropriate hazard warnings; and

(iii) Name and address of the chemical manufacturer, importer, or other responsible party.

(2) For solid metal (such as a steel beam or a metal casting) that is not exempted as an article due to its downstream use, the required label may be transmitted to the customer at the time of the intial shipment, and need not be included with subsequent shipments to the same employer unless the information on the label changes. The label may be transmitted with the initial shipment itself, or with the material safety data sheet that is to be provided prior to or at the time of the first shipment. This exception to requiring labels on every container of hazardous chemicals is only for the solid metal itself and does not apply to hazardous chemicals used in conjunction with, or known to be present with, the metal and to which employees handling the metal may be exposed (for example, cutting fluids or lubricants).

(3) Chemical manufacturers, importers, or distributors shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged, or marked in accordance with this section in a manner which does not conflict with the requirements of the Hazardous Materials Transportation Act (49 U.S.C. 1801 *et seq.*) and regulations issued under that Act by the Department of Transportation.

(4) If the hazardous chemical is regulated by OSHA in a substance-specific health standard, the chemical manufacturer, importer, distributor or employer shall ensure that the labels or

other forms of warning used are in accordance with the requirements of that standard.

(5) Except as provided in paragraphs (f)(6) and (f)(7) the employer shall ensure that each container of hazardous chemicals in the workplace is labeled, tagged or marked with the following information:

(i) Identity of the hazardous chemical(s) contained therein; and

(ii) Appropriate hazard warnings.

(6) The employer may use signs, placards, process sheets, batch tickets, operating procedures, or other such written materials in lieu of affixing labels to individual stationary process containers, as long as the alternative method identifies the containers to which it is applicable and conveys the information required by paragraph (f)(5) of this section to be on a label. The written materials shall be readily accessible to the employees in their work area throughout each work shift.

(7) The employer is not required to label portable containers into which hazardous chemicals are transferred from labeled containers, and which are intended only for the immediate use of the employee who performs the transfer.

(8) The employer shall not remove or deface existing labels on incoming containers of hazardous chemicals, unless the container is immediately marked with the required information.

(9) The employer shall ensure that labels or other forms of warning are legible, in English, and prominently displayed on the container, or readily available in the work area throughout each work shift. Employers having employees who speak other languages may add the information in their language to the material presented, as long as the information is presented in English as well.

(10) The chemical manufacturer, importer, distributor or employer need not affix new labels to comply with this section if existing labels already convey the required information.

(g) *Material safety data sheets.* (1) Chemical manufacturers and importers shall obtain or develop a material safety data sheet for each hazardous chemical they produce or import. Employers shall have a material safety data sheet for each hazardous chemical which they use.

(2) Each material safety data sheet shall be in English and shall contain at least the following information:

(i) The identity used on the label, and, except as provided for in paragraph (i) of this section on trade secrets:

(A) If the hazardous chemical is a single substance, its chemical and common name(s);

(B) If the hazardous chemical is a mixture which has been tested as a whole to determine its hazards, the chemical and common name(s) of the ingredients which contribute to these known hazards, and the common name(s) of the mixture itself; or,

(C) If the hazardous chemical is a mixture which has not been tested as a whole:

(*1*) The chemical and common name(s) of all ingredients which have been determined to be health hazards, and which comprise 1% or greater of the composition, except that chemicals identified as carcinogens under paragraph (d)(4) of this section shall be listed if the concentrations are 0.1% or greater; and,

(*2*) The chemical and common name(s) of all ingredients which have been determined to be health hazards, and which comprise less than 1% (0.1% for carcinogens) of the mixture, if there is evidence that the ingredient(s) could be released from the mixture in concentrations which would exceed an established OSHA permissible exposure limit or ACGIH Threshold Limit Value, or could present a health hazard to employees; and,

(*3*) The chemical and common name(s) of all ingredients which have been determined to present a physical hazard when present in the mixture;

(ii) Physical and chemical characteristics of the hazardous chemical (such as vapor pressure, flash point);

(iii) The physical hazards of the hazardous chemical, including the potential for fire, explosion, and reactivity;

(iv) The health hazards of the hazardous chemical, including signs and symptoms of exposure, and any medical conditions which are generally recognized as being aggravated by exposure to the chemical;

(v) The primary route(s) of entry;

(vi) The OSHA permissible exposure limit, ACGIH Threshold Limit Value, and any other exposure limit used or recommended by the chemical manufacturer, importer, or employer preparing the material safety data sheet, where available;

(vii) Whether the hazardous chemical is listed in the National Toxicology Program (NTP) *Annual Report on Carcinogens* (latest edition) or has been found to be a potential carcinogen in the International Agency for Research on Cancer (IARC) *Monographs* (latest editions), or by OSHA;

(viii) Any generally applicable precautions for safe handling and use which are known to the chemical manufacturer, importer or employer preparing the material safety data sheet, including appropriate hygienic practices, protective measures during repair and maintenance of contaminated equipment, and procedures for clean-up of spills and leaks;

(ix) Any generally applicable control measures which are known to the chemical manufacturer, importer or employer preparing the material safety data sheet, such as appropriate engineering controls, work practices, or personal protective equipment;

(x) Emergency and first aid procedures;

(xi) The date of preparation of the material safety data sheet or the last change to it; and,

(xii) The name, address and telephone number of the chemical manufacturer, importer, employer or other responsible party preparing or distributing the material safety data sheet, who can provide additional information on the hazardous chemical and appropriate emergency procedures, if necessary.

(3) If not relevant information is found for any given category on the material safety data sheet, the chemical manufacturer, importer or employer preparing the material safety data sheet shall mark it to indicate that no applicable information was found.

(4) Where complex mixtures have similar hazards and contents (i.e. the chemical ingredients are essentially the same, but the specific composition varies from mixture to mixture), the chemical manufacturer, importer or employer may prepare one material safety data sheet to apply to all of these similar mixtures.

(5) The chemical manufacturer, importer or employer preparing the material safety data sheet shall ensure that the information recorded accurately reflects the scientific evidence used in making the hazard determination. If the chemical manufacturer, importer or employer preparing the material safety data sheet becomes newly aware of any significant information regarding the hazards of a chemical, or ways to protect against the hazards, this new information shall be added to the material safety data sheet within three months. If the chemical is not currently being produced or imported the chemical manufacturer or importer shall add the information to the material safety data sheet before the chemical is introduced into the workplace again.

(6) Chemical manufacturers or importers shall ensure that distributors and employers are provided an appropriate material safety data sheet with their intitial shipment, and with the first shipment after a material safety

data sheet is updated. The chemical manufacturer or importer shall either provide material safety data sheets with the shipped containers or send them to the employer prior to or at the time of the shipment. If the material safety data sheet is not provided with a shipment that has been labeled as a hazardous chemical, the employer shall obtain one from the chemical manufacturer, importer, or distributor as soon as possible.

(7) Distributors shall ensure that material safety data sheets, and updated information, are provided to other distributors and employers. Retail distributors which sell hazardous chemicals to commercial customers shall provide a material safety data sheet to such employers upon request, and shall post a sign or otherwise inform them that a material safety data sheet is available. Chemical manufacturers, importers, and distributors need not provide material safety data sheets to retail distributors which have informed them that the retail distributor does not sell the product to commercial customers or open the sealed container to use it in their own workplaces.

(8) The employer shall maintain copies of the required material safety data sheets for each hazardous chemical in the workplace, and shall ensure that they are readily accessible during each work shift to employees when they are in their work area(s).

(9) Where employees must travel between workplaces during a workshift, *i.e.*, their work is carried out at more than one geographical location, the material safety data sheets may be kept at a central location at the primary workplace facility. In this situation, the employer shall ensure that employees can immediately obtain the required information in an emergency.

(10) Material safety data sheets may be kept in any form, including operating procedures, and may be designed to cover groups of hazardous chemicals in a work area where it may be more appropriate to address the hazards of a process rather than individual hazardous chemicals. However, the employer shall ensure that in all cases the required information is provided for each hazardous chemical, and is readily accessible during each work shift to employees when they are in in their work areas(s).

(11) Material safety data sheets shall also be made readily available, upon request, to designated representatives and to the Assistant Secretary, in accordance with the requirements of 29 CFR 1910.20 (e). The Director shall also be given access to material safety data sheets in the same manner.

(h) *Employee information and training.* Employers shall provide employees with information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new hazard is introduced into their work area.

(1) *Information.* Employees shall be informed of:

(i) The requirements of this section;

(ii) Any operations in their work area where hazardous chemicals are present; and,

(iii) The location and availability of the written hazard communication program, including the required list(s) of hazardous chemicals, and material safety data sheets required by this section.

(2) *Training.* Employee training shall include at least:

(i) Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.);

(ii) The physical and health hazards of the chemicals in the work area;

(iii) The measures employees can take to protect themselves from these hazards, including specific procedures the employer has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used; and,

(iv) The details of the hazard communication program developed by the employer, including an explanation of the labeling system and the material safety data sheet, and how employees can obtain and use the appropriate hazard information.

(i) *Trade secrets.* (1) The chemical manufacturer, importer, or employer may withhold the specific chemical identity, including the chemical name and other specific identification of a hazardous chemical, from the material safety data sheet, provided that:

(i) The claim that the information withheld is a trade secret can be supported;

(ii) Information contained in the material safety data sheet concerning the properties and effects of the hazardous chemical is disclosed;

(iii) The material safety data sheet indicates that the specific chemical identity is being withheld as a trade secret; and,

(iv) The specific chemical identity is made available to health professionals, employees, and designated representatives in accordance with the applicable provisions of this paragraph.

(2) Where a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a hazardous chemical is necessary for emergency or first-aid treatment, the chemical manufacturer, importer, or employer shall immediately disclose the specific chemical identity of a trade secret chemical to that treating physician or nurse, regardless of the existence of a written statement of need of a confidentiality agreement. The chemical manufacturer, importer, or employer may require a written statement of need and confidentiality agreement, in accordance with the provisions of paragraphs (i)(3) and (4) of this section, as soon as circumstances permit.

(3) In non-emergency situations, a chemical manufacturer, importer, or employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under paragraph (i)(1) of this section, to a health professional (i.e. physician, industrial hygienist, toxicologist, epidemiologist, or occupational health nurse) providing medical or other occupational health services to exposed employee(s), and to employees or designated representatives, if:

(i) The request is in writing;

(ii) The request describes with reasonable detail one or more of the following occupational health needs for the information:

(A) To assess the hazards of the chemicals to which employees will be exposed;

(B) To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels;

(C) To conduct pre-assignment or periodic medical surveillance of exposed employees;

(D) To provide medical treatment to exposed employees;

(E) To select or assess appropriate personal protective equipment for exposed employees;

(F) To design or assess engineering controls or other protective measures for exposed employees; and,

(G) To conduct studies to determine the health effects of exposure.

(iii) The request explains in detail why the disclosure of the specific chemical identity is essential and that, in lieu thereof, the disclosure of the following information to the health professional, employee, or designated representative, would not satisfy the purposes described in paragraph (i)(3)(ii) of this section:

(A) The properties and effects of the chemical;

(B) Measures for controlling workers' exposure to the chemical;

(C) Methods of monitoring and analyzing worker exposure to the chemical; and,

(D) Methods of diagnosing and treating harmful exposures to the chemical;

(iv) The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information; and,

(v) The health professional, and the employer or contractor of the services of the health professional (i.e. downstream employer, labor organization, or individual employee), employee, or designated representative, agree in a written confidentiality agreement that the health professional, employee, or designated representative, will not use the trade secret information for any purpose other than the health need(s) asserted and agree not to release the information under any circumstances other than to OSHA, as provided in paragraph (i)(6) of this section, except as authorized by the terms of the agreement or by the chemical manufacturer, importer, or employer.

(4) The confidentiality agreement authorized by paragraph (i)(3)(iv) of this section:

(i) May restrict the use of the information to the health purposes indicated in the written statement of need;

(ii) May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and,

(iii) May not include requirements for the posting of a penalty bond.

(5) Nothing in this standard is meant to preclude the parties from pursuing non-contractual remedies to the extent permitted by law.

(6) If the health professional, employee, or designated representative receiving the trade secret information decides that there is a need to disclose it to OSHA, the chemical manufacturer, importer, or employer who provided the information shall be informed by the health professional, employee, or designated representative prior to, or at the same time as, such disclosure.

(7) If the chemical manufacturer, importer, or employer denies a written request for disclosure of a specific chemical identity, the denial must:

(i) Be provided to the health professional, employee, or designated representative, within thirty days of the request;

(ii) Be in writing;

(iii) Include evidence to support the claim that the specific chemical identity is a trade secret;

(iv) State the specific reasons why the request is being denied; and,

(v) Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.

(8) The health professional, employee, or designated representative whose request for information is denied under paragraph (i)(3) of this section may refer the request and the written denial of the request to OSHA for consideration.

(9) When a health professional, employee, or designated representative refers the denial to OSHA under paragraph (i)(8) of this section, OSHA shall consider the evidence to determine if:

(i) The chemical manufacturer, importer, or employer has supported the claim that the specific chemical identity is a trade secret;

(ii) The health professional, employee, or designated representative has supported the claim that there is a medical or occupational health need for the information; and,

(iii) The health professional, employee, or designated representative has demonstrated adequate means to protect the confidentiality.

(10)(i) If OSHA determines that the specific chemical identity requested under paragraph (i)(3) of this section is not a *bona fide* trade secret, or that it is a trade secret, but the requesting health professional, employee, or designated representative has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means to protect the confidentiality of the information, the chemical manufacturer, importer, or employer will be subject to citation by OSHA.

(ii) If a chemical manufacturer, importer, or employer demonstrates to OSHA that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of a trade secret specific chemical identity, the Assistant Secretary may issue such orders or impose such additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to assure that the occupational health services are provided without an undue risk of harm to the chemical manufacturer, importer, or employer.

(11) If a citation for a failure to release specific chemical identity information is contested by the chemical manufacturer, importer, or employer, the matter will be adjudicated before the Occupational Safety and Health Review Commission in accordance with the Act's enforcement scheme and the applicable Commission rules of procedure. In accordance with the Commission rules, when a chemical manufacturer, importer, or employer continues to withhold the information during the contest, the Administrative Law Judge may review the citation and supporting documentation *in camera* or issue appropriate orders to protect the confidentiality or such matters.

(12) Notwithstanding the existence of a trade secret claim, a chemical manufacturer, importer, or employer shall, upon request, disclose to the Assistant Secretary any information which this section requires the chemical manufacturer, importer, or employer to make available. Where there is a trade secret claim, such claim shall be made no later than at the time the information is provided to the Assistant Secretary so that suitable determinations of trade secret status can be made and the necessary protections can be implemented.

(13) Nothing in this paragraph shall be construed as requiring the disclosure under any circumstances of process or percentage of mixture information which is a trade secret.

(j) *Effective dates.* (1) Chemical manufacturers, importers, and distributors shall ensure that material safety data sheets are provided with the next shipment of hazardous chemicals to employers after September 23, 1987.

(2) Employers in the non-manufacturing sector shall be in compliance with all provisions of this section by May 23, 1988. (Note: Employers in the manufacturing sector (SIC Codes 20 through 39) are already required to be in compliance with this section.)

Appendix A to § ——— Health Hazard Definitions (*Mandatory*)

Although safety hazards related to the physical characteristics of a chemical can be objectively defined in terms of testing requirements (e.g. flammability), health hazard definitions are less precise and more subjective. Health hazards may cause measurable changes in the body—such as decreased pulmonary function. These changes are generally indicated by the occurrence of signs and symptoms in the exposed employees—such as shortness of breath, a non-measurable, subjective feeling. Employees exposed to such hazards must be apprised of both the change in body function and the signs and symptoms that may occur to signal that change.

The determination of occupational health hazards is complicated by the fact that many of the effects or signs and symptoms occur commonly in non-occupationally exposed populations, so that effects of exposure are difficult to separate from normally occurring illnesses. Occasionally, a substance causes an effect that is rarely seen in the population at large, such as angiosarcomas caused by vinyl chloride exposure, thus making it easier to ascertain that the occupational exposure was the primary causative factor. More often, however, the effects are common, such as lung cancer. The situation is further complicated by the fact that most chemicals have not been adequately tested to determine their health hazard potential, and data do not exist to substantiate these effects.

There have been many attempts to categorize effects and to define them in various ways. Generally, the terms "acute" and "chronic" are used to delineate between effects on the basis of severity or duration. "Acute" effects usually occur rapidly as a result of short-term exposures, and are of short duration. "Chronic" effects generally occur as a result of long-term exposure, and are of long duration.

The acute effects referred to most frequently are those defined by the American National Standards Institute (ANSI) standard for Precautionary Labeling of Hazardous Industrial Chemicals (Z129.1–1982)—irritation, corrosivity, sensitization and lethal dose. Although these are important health effects, they do not adequately cover the considerable range of acute effects which may occur as a result of occupational exposure, such as, for example, narcosis.

Similarly, the term chronic effect is often used to cover only carcinogenicity, teratogenicity, and mutagenicity. These effects are obviously a concern in the workplace, but again, do not adequately cover the area of chronic effects, excluding, for example, blood dyscrasias (such as enemia), chronic bronchitis and liver atrophy.

The goal of defining precisely, in measurable terms, every possible health effect that may occur in the workplace as a result of chemical exposures cannot realistically be accomplished. This does not negate the need for employees to be informed of such effects and protected from them. Appendix B, which is also mandatory, outlines the principles and procedures of hazardous assessment.

For purposes of this section, any chemicals which meet any of the following definitions, as determined by the criteria set forth in Appendix B are health hazards:

1. *Carcinogen:* A chemical is considered to be a carcinogen if:

(a) It has been evaluated by the International Agency for Research on Cancer (IARC), and found to be a carcinogen or potential carcinogen; or

(b) It is listed as a carcinogen or potential carcinogen in the *Annual Report on Carcinogens* published by the National Toxicology Program (NTP) (latest edition); or,

(c) It is regulated by OSHA as a carcinogen.

2. *Corrosive:* A chemical that causes visible destruction of, or irreversible alterations in, living tissue by chemical action at the site of contact. For example, a chemical is considered to be corrosive if, when tested on the intact skin of albino rabbits by the method described by the U.S. Department of Transportation in Appendix A to 49 CFR Part 173, it destroys or changes irreversibly the structure of the tissue at the site of contact following an exposure period of four hours. This term shall not refer to action on inanimate surfaces.

3. *Highly toxic:* A chemical falling within any of the following categories:

(a) A chemical that has a median lethal dose (LD_{50}) of 50 milligrams or less per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each.

(b) A chemical that has a median lethal does (LD_{50}) of 200 milligrams or less per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between two and three kilograms each.

(c) A chemical that has a median lethal concentration (LC_{50}) in air of 200 parts per million by volume or less of gas or vapor, or 2 milligrams per liter or less of mist, fume, or dust, when administered by continuous inhalation for one hour (or less if death occurs within one hour) to albino rats weighing between 200 and 300 grams each.

4. *Irritant:* A chemical, which is not corrosive, but which causes a reversible inflammatory effect on living tissue by chemical action at the site of contact. A chemical is a skin irritant if, when tested on the intact skin of albino rabbits by the methods of 16 CFR 1500.41 for four hours exposure or by other appropriate techniques, it results in an empirical score of five or more. A chemical is an eye irritant if so determined under the procedure listed in 16 CFR 1500.42 or other appropriate techniques.

5. *Sensitizer:* A chemical that causes a substantial proportion of exposed people or animals to develop an allergic reaction in normal tissue after repeated exposure to the chemical.

6. *Toxic.* A chemical falling within any of the following categories:

(a) A chemical that has a median lethal dose (LD_{50}) of more than 50 milligrams per kilogram but not more than 500 milligrams per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each.

(b) A chemical that has a median lethal dose (LD_{50}) of more than 200 milligrams per kilogram but not more than 1,000 milligrams per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between two and three kilograms each.

(c) A chemical that has a median lethal concentration (LC_{50}) in air of more than 200 parts per million but not more than 2,000 parts per million by volume of gas or vapor, or more than two milligrams per liter but not more than 20 milligrams per liter of mist, fume, or dust, when administered by continuous inhalation for one hour (or less if death occurs within one hour) to albino rats weighing between 200 and 300 grams each.

7. *Target organ effects.* The following is a target organ categorization of effects which may occur, including examples of signs and symptoms and chemicals which have been found to cause such effects. These examples are presented to illustrate the range and diversity of effects and hazards found in the workplace, and the broad scope employers must consider in this area, but are not intended to be all-inclusive.

a. Hepatotoxins: Chemicals which produce liver damage
   Signs & Symptoms: Jaundice; liver enlargement
   Chemicals: Carbon tetrachloride; nitrosamines
b. Nephrotoxins: Chemicals which produce kidney damage
   Signs & Symptoms: Edema; proteinuria
   Chemicals: Halogenated hydrocarbons; uranium
c. Neurotoxins: Chemicals which produce their primary toxic effects on the nervous system
   Signs & Symptoms: Narcosis; behavioral changes; decrease in motor functions
   Chemicals: Mercury; carbon disulfide
d. Agents which act on the blood or hematopoietic system: Decrease hemoglobin function; deprive the body tissues of oxygen
   Signs & Symptoms: Cyanosis; loss of consciousness
   Chemicals: Carbon monoxide; cyanides
e. Agents which damage the lung: Chemicals which irritate or damage the pulmonary tissue
   Signs & Symptoms: Cough; tightness in chest; shortness of breath
   Chemicals: Silica; asbestos
f. Reproductive toxins: Chemicals which affect the reproductive capabilities including chromosomal damage (mutations) and effects on fetuses (teratogenesis)
   Signs & Symptoms: Birth defects; sterility
   Chemicals: Lead; DBCP
g. Cutaneous hazards: Chemicals which affect the dermal layer of the body
   Signs & Symptoms: Defatting of the skin; rashes; irritation
   Chemicals: Ketones; chlorinated compounds
h. Eye hazards: Chemicals which affect the eye or visual capacity
   Signs & Symptoms: Conjunctivitis; corneal damage
   Chemicals: Organic solvents; acids

Appendix B to § ——, Hazard Determination (Mandatory)

The quality of a hazard communication program is largely dependent upon the adequacy and accuracy of the hazard determination. The hazard determination requirement of this standard is performance-oriented. Chemical manufacturers, importers, and employers evaluating chemicals are not required to follow any specific methods for

determining hazards, but they must be able to demonstrate that they have adequately ascertained the hazards of the chemicals produced or imported in accordance with the criteria set forth in this Appendix.

Hazard evaluation is a process which relies heavily on the professional judgment of the evaluator, particularly in the area of chronic hazards. The performance-orientation of the hazard determination does not diminish the duty of the chemical manufacturer, importer or employer to conduct a thorough evaluation, examining all relevant data and producing a scientifically defensible evaluation. For purposes of this standard, the following criteria shall be used in making hazard determinations that meet the requirements of this standard.

1. *Carcinogenicity*: As described in paragraph (d)(4) and Appendix A of this section, a determination by the National Toxicology Program, the International Agency for Research on Cancer, or OSHA that a chemical is a carcinogen or potential carcinogen will be considered conclusive evidence for purposes of this section.

2. *Human data*: Where available, epidemiological studies and case reports of adverse health effects shall be considered in the evaluation.

3. *Animal data*: Human evidence of health effects in exposed populations is generally not available for the majority of chemicals produced or used in the workplace. Therefore, the available results of toxicological testing in animal populations shall be used to predict the health effects that may be experienced by exposed workers. In particular, the definitions of certain acute hazards refer to specific animal testing results (see Appendix A).

4. *Adequacy and reporting of data.* The results of any studies which are designed and conducted according to established scientific principles, and which report statistically significant conclusions regarding the health effects of a chemical, shall be a sufficient basis for a hazard determination and reported on any material safety data sheet. The chemical manufacturer, importer, or employer may also report the results of other scientifically valid studies which tend to refute the findings of hazard.

Appendix C to §— Information Sources (Advisory)

The following is a list of available data sources which the chemical manufacturer, importer, distributor, or employer may wish to consult to evaluate the hazards of chemicals they produce or import:

—Any information in their own company files, such as toxicity testing results or illness experience of company employees.

—Any information obtained from the supplier of the chemical, such as material safety data sheets or product safety bulletins.

—Any pertinent information obtained from the following source list (latest editions should be used):

Condensed Chemical Dictionary
Van Nostrand Reinhold Co., 135 West 50th Street, New York, NY 10020.

The Merck Index: An Encyclopedia of Chemicals and Drugs
Merck and Company, Inc., 126 E. Lincoln Ave., Rahway, NJ 07065.

IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Man
Geneva: World Health Organization, International Agency for Research on Cancer, 1972–Present. (Multivolume work). Summaries are available in supplement volumes. 49 Sheridan Street, Albany, NY 12210.

Industrial Hygiene and Toxicology, by F.A. Patty
John Wiley & Sons, Inc., New York, NY (Multivolume work).

Clinical Toxicology of Commercial Products
Gleason, Gosselin, and Hodge

Casarett and Doull's Toxicology: The Basic Science of Poisons
Doull, Klaassen, and Amdur, Macmillan Publishing Co., Inc., New York, NY.

Industrial Toxicology, by Alice Hamilton and Harriet L. Hardy
Publishing Sciences Group, Inc., Acton, MA.

Toxicology of the Eye, by W. Morton Grant
Charles C. Thomas, 301–327 East Lawrence Avenue, Springfield, IL.

Recognition of Health Hazards in Industry
William A. Burgess, John Wiley and Sons, 605 Third Avenue, New York, NY 10158.

Chemical Hazards of the Workplace
Nick H. Proctor and James P. Hughes, J.P. Lipincott Company, 6 Winchester Terrace, New York, NY 10022.

Handbook of Chemistry and Physics
Chemical Rubber Company, 18901 Cranwood Parkway, Cleveland, OH 44128.

Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment and Biological Exposure Indices with Intended Changes
American Conference of Governmental Industrial Hygienists (ACGIH). 6500 Glenway Avenue, Bldg. D–5, Cincinnati, OH 45211.

Information on the physical hazards of chemicals may be found in publications of the National Fire Protection Association, Boston, MA.

Note.—The following documents may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Occupational Health Guidelines
NIOSH/OSHA (NIOSH Pub. No. 81–123)

NIOSH Pocket Guide to Chemical Hazards
NIOSH Pub. No. 85–114

Registry of Toxic Effects of Chemical Substances
NIOSH Pub. No. 80–102

Miscellaneous Documents published by the National Institute for Occupational Safety and Health:
Criteria documents.
Special Hazard Reviews.
Occupational Hazard Assessments.
Current Intelligence Bulletins.

OSHA's General Industry Standards (29 CFR Part 1910)

NTP Annual Report on Carcinogens and *Summary of the Annual Report on Carcinogens.*
National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; (703) 487–4650.

BIBLIOGRAPHIC DATA BASES

Service provider	File name
Bibliographic Retrieval Services (BRS), 1200 Route 7, Latham, NY 12110.	Biosis Previews CA Search Medlars NTIS Hazardline American Chemical Society Journal Excerpta Medica IRCS Medical Science Journal Pre-Med Intl Pharmaceutical Abstracts Paper Chem
Lockheed—DIALOG Information Service, Inc., 3460 Hillview Avenue, Palo Alto, CA 94304.	Biosis Prev. Files CA Search Files CAB Abstracts Chemical Exposure Chemname Chemsis Files Chemzero Embase Files Environmental Bibliographies Enviroline Federal Research in Progress IRL Life Science Collection NTIS Occupational Safety and Health (NIOSH) Paper Chem
SDC—Orbit, SDC Information Service, 2500 Colorado Avenue, Santa Monica, CA 90406.	CAS Files Chemdex, 2, 3 NTIS
National Library of Medicine, Department of Health and Human Services, Public Health Service, National Institutes of Health, Bethesda, MD 20209.	Hazardous Substances Data Bank (NSDB) Medline files Toxline Files Cancerlit RTECS Chemline
Pergamon International Information Corp., 1340 Old Chain Bridge Rd., McLean, VA 22101.	Laboratory Hazard Bulletin
Questel, Inc., 1625 Eye Street, NW., Suite 818, Washington, DC 20006.	CIS/ILO Cancernet
Chemical Information System ICI (ICIS), Bureau of National Affairs, 1133 15th Street, NW., Suite 300, Washington, DC 20005.	Structure and Nomenclature Search System (SANSS) Acute Toxicity (RTECS) Clinical Toxicology of Commercial Products Oil and Hazardous Materials Technical Assistance Data System CCRIS CESARS
Occupational Health Services, 400 Plaza Drive, Secaucus, NJ 07094.	MSDS Hazardline

Appendix D to §_____Definition of "Trade Secret" (Mandatory)

The following is a reprint of the *Restatement of Torts* section 757, comment *b* (1939):

b. Definition of trade secret. A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business (see § 759 of the *Restatement of Torts* which is not included in this Appendix) in that it is not simply information as to single or ephemeral events in the conduct of the business, as, for example, the amount or

other terms of a secret bid for a contract or the salary of certain employees, or the security investments made or contemplated, or the date fixed for the announcement of a new policy or for bringing out a new model or the like. A trade secret is a process or device for continuous use in the operations of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

Secrecy. The subject matter of a trade secret must be secret. Matters of public knowledge or of general knowledge in an industry cannot be appropriated by one as his secret. Matters which are completely disclosed by the goods which one markets cannot be his secret. Substantially, a trade secret is known only in the particular business in which it is used. It is not requisite that only the proprietor of the business know it. He may, without losing his protection, communicate it to employees involved in its use. He may likewise communicate it to others pledged to secrecy. Others may also know of it independently, as, for example, when they have discovered the process or formula by independent invention and are keeping it secret. Nevertheless, a substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring the information. An exact definition of a trade secret is not possible. Some factors to be considered in determining whether given information is one's trade secret are: (1) The extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Novelty and prior art. A trade secret may be a device or process which is patentable; but it need not be that. It may be a device or process which is clearly anticipated in the prior art or one which is merely a mechanical improvement that a good mechanic can make. Novelty and invention are not requisite for a trade secret as they are for patentability. These requirements are essential to patentability because a patent protects against unlicensed use of the patented device or process even by one who discovers it properly through independent research. The patent monopoly is a reward to the inventor. But such is not the case with a trade secret. Its protection is not based on a policy of rewarding or otherwise encouraging the development of secret processes or devices. The protection is merely against breach of faith and reprehensible means of learning another's secret. For this limited protection it is not appropriate to require also the kind of novelty and invention which is a requisite of patentability. The nature of the secret is, however, an important factor in determining the kind of relief that is appropriate against one who is subject to liability under the rule stated in this section. Thus, if the secret consists of a device or process which is a novel invention, one who acquires the secret wrongfully is ordinarily enjoined from further use of it and is required to account for the profits derived from his past use. If, on the other hand, the secret consists of mechanical improvements that a good mechanic can make without resort to the secret, the wrongdoer's liability may be limited to damages, and an injunction against future use of the improvements made with the aid of the secret may be inappropriate.

8. Section 1915.97 would be revised to read as follows:

§ 1915.97 Health and sanitation.

The provisions of this section shall apply to ship repairing, shipbuilding and shipbreaking, except where indicated otherwise.

(a) The employer shall provide all necessary controls, and the employees shall be protected by suitable personal protective equipment against the hazards identified under § 1915.99 of this part and those hazards for which specific precautions are required in Subparts B, C, and D of this part.

(b) The employer shall provide adequate washing facilities for employees engaged in the application of paints or coatings or in other operations where contaminants can, by ingestion or absorption, be detrimental to the health of the employees. The employer shall encourage good personal hygiene practices by informing the employees of the need for removing surface contaminants by thorough washing or hands and face prior to eating or smoking.

(c) The employer shall not permit employees to eat or smoke in areas undergoing surface preparation or preservation or where shipbreaking operations produce atmospheric contaminants.

(d) The employer shall not permit employees engaged in ship repair work on a vessel to work in the immediate vicinity of uncovered garbage and shall ensure that employees working beneath or on the outboard side of a vessel are not subject to contamination by drainage or waste from overboard discharges.

(e) No minor under 18 years of age shall be employed in shipbreaking or related employments.

9. Section 1928.21 would be amended by adding paragraph (a)(5) as follows:

§ 1928.21 Applicable standards in 29 CFR Part 1910.

(a) * * *

(5) Hazard communication—§ 1910.1200.

* * * * *

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Monday
August 24, 1987

Part IV

Department of Education

Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant and Guaranteed Student Loan Programs; Notice of Revision of the Need Analysis System for the 1988-89 Academic Year

DEPARTMENT OF EDUCATION

Perkins Loan (Formerly the National Direct Student Loan), College Work-Study, Supplemental Educational Opportunity Grant and Guaranteed Student Loan Programs; Revision of the Need Analysis System for the 1988–89 Academic Year

AGENCY: Department of Education.

ACTION: Notice of revision of the need analysis system for the Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant and Guaranteed Student Loan Programs for the 1988–89 academic year.

SUMMARY: The Secretary of Education announces the need analysis system that an institution of higher education must use in calculating an expected family contribution for the 1988–89 academic year under the Perkins Loan, College Work-Study, Supplemental Educational Opportunity Grant and Guaranteed Student Loan Programs. The first three programs are known collectively as the campus-based programs. The Secretary takes this action under the authority of Part F of Title IV of the Higher Education Act of 1965 as amended (HEA).

FOR FURTHER INFORMATION CONTACT: Margaret O. Henry or Kathy S. Gause, Division of Policy and Program Development, Office of Student Financial Assistance, Department of Education, 400 Maryland Avenue SW., Room 4018, ROB–3, Washington, DC 20202, Telephone (202) 732–4490.

SUPPLEMENTARY INFORMATION:

Program Information

The campus-based and Guaranteed Student Loan Programs are "need-based" student financial aid programs. Under each program an institution must determine whether a student has financial need. It determines a student's financial need by subtracting, from the student's educational cost, his or her expected family contribution, i.e., the amount the student and his or her parents may reasonably be expected to contribute toward his or her educational costs.

Part F of Title IV of the HEA specifies the criteria, data elements and tables for a schedule of expected family contributions for these programs. In addition, Part F requires that, for award years after the 1987–88 award year, four of the tables set forth in that part (i.e., the Standard Maintenance Allowance, the Adjusted Net Worth of a Business or Farm, the Asset Protection Allowance and the Assessment Schedules and Rates) be increased to take into account inflation that has taken place after December 31, 1986, based, in general, upon increases in the Consumer Price Index.

Part F also requires the Secretary to increase the maximum value for the Employment Expense Allowance to account for inflation based upon increases in the Bureau of Labor Statistics budget of the marginal costs for meals away from home, apparel and upkeep, transportation and housekeeping services for a two-worker versus one-worker family. However, the Secretary has determined that significantly decreased employment-related costs, particularly in the transportation component of the Bureau of Labor Statistics budget, preclude increasing the maximum value for this allowance for the 1988–89 award year.

For award year 1988–89, the Secretary is charged with updating the indicated tables in Part F to account for inflation that took place between December 1986 and December 1987. However, since the Secretary must increase and publish these tables before December 1987, the increases in the tables must be based upon an estimate of the increase in the Consumer Price Index for 1987.

The Secretary estimates, based upon the actual and projected rates of inflation for 1986 and 1987, that the increase in the Consumer Price Index for the period December 1986, through December 1987, will be 2.4 percent. Therefore, for the 1988–89 award year for the campus-based and Guaranteed Student Loan Programs, the following tables set forth in Part F have been updated in accordance with that estimate and the other relevant provisions of Part F.

1. Employment Expense Allowance

This allowance for employment-related expenses recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based upon the marginal differences in costs for meals away from home, housekeeping services, clothing and transportation for a two-earner family compared to a one-earner family.

The Secretary is not increasing this allowance for the 1988–89 award year for the reasons stated above. The employment expense allowance for dependent students and independent students with dependents remains the lesser of $2,100 or 35 percent of earned income.

2. Standard Maintenance Allowance

This allowance is an offset against income for the family's basic living expenses and it varies by family size. The standard maintenance allowances for dependent students and independent students with dependents are:

Family size (including student)	Number in college				
	1	2	3	4	5
2	$8,580	$7,120			
3	10,690	9,230	$7,760		
4	13,200	11,730	10,270	$8,810	
5	15,570	14,110	12,650	11,180	$8,690
6	18,220	16,750	15,290	13,820	12,360

For each additional family member add $2,060.
For each additional college student subtract $1,460.

3. Adjusted Net Worth (NW) of a Business or Farm

Since business and farm assets are income-producing, a portion of the full net value is excluded from the calculation of the expected contribution. The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for dependent students, independent students without dependents and independent students with dependents.

If the net worth of a business or farm is—	Then the adjusted net worth is—
Less than $1	$0.
$1 to $60,000	$0 plus 40% of NW.
$60,001 to $185,000	$24,000 plus 50% of NW over $60,000.
$185,001 to $305,000	$86,500 plus 60% of NW over $185,000.
$305,001 or more	$158,500 plus 100% of NW over $305,000.

4. Asset Protection Allowance

This allowance protects a portion of the net worth (assets less debts) from being considered available for postsecondary education expenses. There are three asset protection allowance tables, one each for parents of dependent students, independent students without dependents and independent students with dependents.

DEPENDENT STUDENTS

If the age of the older parent is—	And there are	
	Two parents	One parent
		Then the asset protection allowance is—
25 or less	0	0
26	2,100	1,600
27	4,200	3,200
28	6,200	4,800
29	8,300	6,300
30	10,400	7,900
31	12,500	9,500
32	14,600	11,100
33	16,600	12,700
34	18,700	14,300
35	20,800	15,900
36	22,900	17,500

DEPENDENT STUDENTS—Continued

If the age of the older parent is—	And there are: Two parents	And there are: One parent — Then the asset protection allowance is—
37	25,000	19,000
38	27,000	20,600
39	29,100	22,200
40	31,200	23,800
41	32,100	24,400
42	32,900	24,900
43	33,800	25,500
44	34,700	26,200
45	35,600	26,600
46	36,600	27,300
47	37,600	28,000
48	38,600	28,700
49	39,600	29,400
50	40,900	30,200
51	42,000	30,900
52	43,400	31,700
53	44,800	32,500
54	46,000	33,500
55	47,500	34,300
56	49,100	35,200
57	51,000	36,200
58	52,700	37,400
59	54,400	38,300
60	56,500	39,400
61	58,600	40,600
62	60,500	41,900
63	62,700	43,300
64	65,100	44,600
65 or more	67,500	46,000

INDEPENDENT STUDENTS WITHOUT DEPENDENTS

If the age of the student is—	Then the asset protection allowance is—
25 or less	0
26	1,600
27	3,200
28	4,800
29	6,300
30	7,900
31	9,500
32	11,100
33	12,700
34	14,300
35	15,900
36	17,500
37	19,000
38	20,600
39	22,200
40	23,800
41	24,400
42	24,900
43	25,500
44	26,200
45	26,600
46	27,300
47	28,000
48	28,700
49	29,400
50	30,200
51	30,900
52	31,700
53	32,500
54	33,500
55	34,300
56	35,200
57	36,200
58	37,400
59	38,300
60	39,400
61	40,600
62	41,900
63	43,300
64	44,600
65 or more	46,000

INDEPENDENT STUDENTS WITHOUT DEPENDENTS—Continued

If the age of the student is—	Then the asset protection allowance is—
63	43,300
64	44,600
65 or more	46,000

INDEPENDENT STUDENTS WITH DEPENDENTS

If the age of the student is—	And the student is: Married	And the student is: Unmarried — Then the asset protection allowance is—
25 or less	0	0
26	2,100	1,600
27	4,200	3,200
28	6,200	4,800
29	8,300	6,300
30	10,400	7,900
31	12,500	9,500
32	14,600	11,100
33	16,600	12,700
34	18,700	14,300
35	20,800	15,900
36	22,900	17,500
37	25,000	19,000
38	27,000	20,600
39	29,100	22,200
40	31,200	23,800
41	32,100	24,400
42	32,900	24,900
43	33,800	25,500
44	34,700	26,200
45	35,600	26,600
46	36,600	27,300
47	37,600	28,000
48	38,600	28,700
49	39,600	29,400
50	40,900	30,200
51	42,000	30,900
52	43,400	31,700
53	44,800	32,500
54	46,000	33,500
55	47,500	34,300
56	49,100	35,200
57	51,000	36,200
58	52,700	37,400
59	54,400	38,300
60	56,500	39,400
61	58,600	40,600
62	60,500	41,900
63	62,700	43,300
64	65,100	44,600
65 or more	67,500	46,000

5. Assessment Schedules and Rates

Three schedules, one each for dependent students, independent students without dependents and independent students with dependents, are used to determine the expected contribution toward educational expenses from family financial resources.

For dependent students, the expected parental contribution is derived from the parents' adjusted available income (AAI). AAI represents a measure of a family's financial strength which considers both income and assets. The parents' contribution for a dependent student is computed according to the following schedule:

If AAI is—	Then the contribution is—
Less than —$3,409	—$750.
—$3,409 to $7,700	22% of AAI.
$7,701 to $9,900	$1,694 plus 25% of AAI over $7,700.
$9,901 to $11,800	$2,244 plus 29% of AAI over $9,900.
$11,801 to $13,800	$2,795 plus 34% of AAI over $11,800.
$13,801 to $15,500	$3,475 plus 40% of AAI over $13,800.
$15,501 or more	$4,155 plus 47% of AAI over $15,500.

For independent students without dependents, an increasing percentage of their available taxable income (ATI) is included in the expected contribution. ATI is adjusted gross income minus allowances for Federal, State and local income taxes and social security taxes. The contribution from ATI for an independent student without dependents is computed according to the following schedule:

If ATI is—	Then the contribution is—
Less than $8,800	70% of ATI.
$8,801 or more	$6,160 plus 90% of ATI over $8,800.

For independent students with dependents, the expected contribution is derived from the adjusted available income (AAI). AAI represents a measure of a family's financial strength which considers both income and assets. The contribution for an independent student with dependents is computed according to the following schedule:

If AAI is—	Then the contribution is—
Less than —$3,409	—$750.
—$3,409 to $7,700	22% of AAI.
$7,701 to $9,900	$1,694 plus 25% of AAI over $7,700.
$9,901 to $11,800	$2,244 plus 29% of AAI over $9,900.
$11,801 to $13,800	$2,795 plus 34% of AAI over $11,800.
$13,801 to $15,500	$3,475 plus 40% of AAI over $13,800.
$15,501 or more	$4,155 plus 47% of AAI over $15,500.

(20 U.S.C. 1087kk–1087vv)

(Catalog of Federal Domestic Assistance No. 84.038, National Direct Student Loan Program; 84.033, College Work-Study Program; 84.007, Supplemental Educational Opportunity Grant Program; and 84.032, Guaranteed Student Loan Program)

Dated: August 18, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-19183 Filed 8-21-87; 8:45 am]

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Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 201, 310, 341 and 369
Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph for OTC Antihistamine Drug Products; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 310, 341, and 369

[Docket No. 76N-052H]

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Tentative Final Monograph for OTC Antihistamine Drug Products

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that amends the tentative final monograph (proposed rule) for over-the-counter (OTC) antihistamine drug products (drug products used for the relief of the symptoms of hay fever and upper respiratory allergies (allergic rhinitis) and the symptoms of sneezing and runny nose associated with the common cold) to include chlorcyclizine hydrochloride and doxylamine succinate and to revise the proposed dosage for triprolidine hydrochloride. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products, public comments on an advance notice of proposed rulemaking that was based on those recommendations, and several comments submitted in response to the previous tentative final monograph for OTC antihistamine drug products that was published in the **Federal Register** of January 15, 1985 (50 FR 2200). This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by October 23, 1987. New data by August 24, 1988. Comments on the new data by October 25, 1988. Written comments on the agency's economic impact determination by December 22, 1987.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 9, 1976 (41 FR 3812), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products, together with the recommendations of the Advisory Review Panel on OTC Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products (Cough-Cold Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in these drug classes. Interested persons were invited to submit comments by December 8, 1976. Reply comments in response to comments filed in the initial comment period could be submitted by January 7, 1977.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above), after deletion of a small amount of trade secret information. Data and information received after the administrative record was reopened have also been put on display in the Dockets Management Branch.

In the advance notice of proposed rulemaking, the Cough-Cold Panel recommended that doxylamine succinate be generally recognized as safe and effective as an OTC antihistamine (41 FR 38419). After the Panel's report was published, controversy arose concerning whether or not there is an association of a prescription drug product containing doxylamine succinate with birth defects. This drug product was prescribed as an antinauseant for use during pregnancy. The scientific and medical communities were actively discussing and debating whether doxylamine succinate, in fact, plays a causal role in reported birth defects.

In the **Federal Register** of January 15, 1985 (50 FR 2200), FDA published a tentative final monograph (proposed rule) on OTC antihistamine drug products. Because of the unresolved issues concerning doxylamine succinate and birth defects, when this tentative final monograph was published in the **Federal Register**, the agency reserved detailed discussion and acknowledged the need to evaluate new data and information concerning the relationship between doxylamine succinate and birth defects (50 FR 2202). After reviewing and evaluating extensive data concerning the safety of doxylamine succinate, the agency is proposing in this document that this ingredient be Category I. (See comment 1 below.)

The agency is also proposing in this amendment that chlorcyolizine hydrochloride, an ingredient that was not reviewed by the Cough-Cold Panel, be generally recognized as safe and effective as an OTC antihistamine drug product. (See Part II. below—the Agency's proposals concerning Chlorcyclizine Hydrochloride.) In addition, the agency is revising the dosage for the ingredient triprolidine hydrochloride. (See comment 7 below.)

In response to the advance notice of proposed rulemaking, nine professionals, two manufacturers, two professional societies, and one individual submitted comments concerning doxylamine succinate. These comments are addressed in this document. In response to the tentative final monograph, one law firm and two manufacturers submitted comments that are also addressed in this document. Copies of the comments received are on public display in the Dockets Management Branch.

This proposed rule amends the previous tentative final monograph on antihistamine drug products that was published in the **Federal Register** of January 15, 1985 (50 FR 2200) in Subpart B, by adding the ingredients chlorcyolizine hydrochloride and doxylamine succinate in § 341.12; and in Subpart C, by adding warnings and directions for chlorcyolizine hydrochloride and doxylamine succinate and revised directions for triprolidine hydrochloride in §§ 341.72 and 341.90. In addition, parts of §§ 341.12, 341.72, and 341.90 have been redesignated to reflect the addition of these two additional antihistamine ingredients. This amendment constitutes FDA's tentative adoption of the Panel's conclusions and recommendations on OTC antihistamine drug products, as modified on the basis of the comments received and the agency's independent evaluation of the Panel's report. Modifications have been made for clarity and regulatory accuracy and to reflect new information. Such new information has been placed on file in the Dockets Management Branch (address above). These modifications are reflected in the following summary of the comments and FDA's responses to them.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the **Federal Register** of August 9, 1972 (37 FR 16029) or to additional information that has come to the agency's attention since

publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Tentative Conclusions on the Comments

A. Comments on Doxylamine Succinate

1. One comment, submitted in response to the tentative final monograph, provided data to support the Category I status of doxylamine succinate as an OTC antihistamine active ingredient. The comment contended that the results of available animal and human studies amply support the position that doxylamine succinate is safe for use during pregnancy. The comment discussed the results of two studies by Eskenazi and Bracken (Ref. 1) and Aselton et al. (Ref. 2), cited in the antihistamine tentative final monograph (50 FR 2201 to 2202). These studies found an association between a prescription drug product containing doxylamine succinate and the occurrence of pyloric stenosis in infants. The comment cited the following flaws in the Eskenazi and Bracken study (Ref. 1): (1) the "very small" numbers of subjects in the study, i.e., 1,747 pregnancies in which six cases of pyloric stenosis occurred in drug-exposed infants; (2) the lack of evaluation of other causative factors for pyloric stenosis such as a family history (particularly for the mother) of the occurrence of pyloric stenosis, psychological stress during pregnancy, low levels of the hormone gastrin in the mother, and the nausea and vomiting of pregnancy per se; (3) the patient selection for the study; and (4) the method of categorizing congenital defects in the study. The comment also stated that, although the findings of the second study by Aselton et al. (Ref. 2) were consistent with the Eskenazi and Bracken study (Ref. 1), the number of cases studied in the second study were also "very small." The comment also noted that the authors of the second study stated that the disorder could result from the underlying nausea and vomiting of pregnancy or some other cause.

The comment noted that the authors of both of these "small" studies (Refs. 1 and 2) warned against any interpretations of a causal relationship between maternal drug exposure and the occurrence of pyloric stenosis based upon their data. Aselton et al. (Ref. 2) stated in their study that "in view of the conflicting results and the absence of any apparent biologic basis for a connection between [the prescription drug containing doxylamine succinate] and pyloric stenosis, explanations for the current findings other than a causal relation must be considered and given substantial weight." Other explanations cited by the comment for the findings in the Eskenazi and Bracken and the Aselton et al. studies (Refs. 1 and 2) include Eskenazi and Bracken's recognition that pyloric stenosis may in fact result from a genetic predisposition, in which case a manifestation of the disease would then be precipitated by environmental factors. Also, mothers who themselves had had pyloric stenosis or were predisposed toward it may have been more nauseated and therefore more likely to have taken the prescription drug containing doxylamine succinate during pregnancy. The comment noted that this explanation of the cause of pyloric stenosis has also been recognized in a study (Ref. 3) whose authors include some of the authors in the Aselton et al. study (Ref. 2).

The comment discussed another much larger case-control study by Mitchell et al. (Ref. 4), also cited by the agency in the tentative final monograph, that compared the incidence of pyloric stenosis in infants exposed to the prescription drug containing doxylamine succinate with infants who were not exposed to the drug. According to the comment, the findings in this study, involving 325 infants with pyloric stenosis, showed there was no increase in the occurrence of pyloric stenosis among infants whose mothers took the prescription drug containing doxylamine succinate.

The comment also discussed a prospective study by Rosa et al. (Ref. 5), cited by the agency in the tentative final monograph that used Medicaid data from Michigan. According to the comment, this study also did not support an association between maternal exposure to the prescription drug containing doxylamine succinate and the occurrence of pyloric stenosis in infants. The comment noted that this study, like that of Mitchell et al. (Ref. 4), has a much higher statistical power than the Eskenazi and Bracken study (Ref. 1) and the Aselton et al. study (Ref. 2).

In addition, the comment cited a letter to the editor of the *American Journal of Obstetrics and Gynecology* (Ref. 6) that reviewed the experience of the Royal College of General Practitioners in England and concluded that pyloric stenosis is associated with nausea and vomiting in pregnancy rather than with any specific drug. The comment cited a personal communication from Michaelis (Ref. 7) containing a review of the extensive data of the German Research Society and concluding that there was no association between maternal exposure to the prescription drug containing doxylamine succinate and the occurrence of pyloric stenosis in infants. According to the comment, another study by Milkovich and Van Den Berg (Ref. 8) did not support an association between maternal exposure to the prescription drug and the occurrence of pyloric stenosis.

The comment also discussed expert testimony in a trial that focused on the sole question of whether the prescription antinauseant containing doxylamine succinate causes birth defects. The comment stated that this culminated on March 12, 1985 with a verdict firmly answering that question in the negative (*In re: Richardson-Merrell "Bendectin" Products Liability Litigation*, MDL No. 486 (S.D. Ohio 1985)). The comment explained that, in this trial, the alleged association between the prescription drug containing doxylamine succinate and pyloric stenosis was addressed by expert witnesses. One expert, who had published several papers concerning pyloric stenosis in scientific journals, testified that pyloric stenosis is not actually a birth defect but is triggered by something in the environment after birth and has nothing to do with doxylamine succinate. He also testified that the evidence from both case control and cohort studies on the prescription antinauseant containing doxylamine succinate indicates that the drug does not cause birth defects in children exposed to the drug in utero. Another expert was coauthor of the hypothesis generating study concerning exposure to the prescription drug containing doxylamine succinate and pyloric stenosis (Ref. 1). He testified that, based upon the epidemiologic data from his own study (Ref. 1), the Aselton et al. study (Ref. 2), and the Mitchell et al. study (Ref. 4), no association between the drug and pyloric stenosis has been established. He added that it cannot possibly be said that this drug has any causal relationship to pyloric stenosis, which results from a genetic predisposition to this condition. The comment concluded "that pyloric stenosis in newborns is not due to exposure to [the prescription drug product containing doxylamine succinate], but to the mother's predisposition toward both pyloric stenosis and nausea which caused the mothers to be prescribed [the drug product containing doxylamine succinate]."

The comment cited a large double-blind primate study, designed

specifically to examine a possible association between maternal exposure to the prescription drug containing doxylamine succinate and ventricular septal defects (Ref. 9). According to the comment, this study found no evidence in monkeys of an association between exposure to the prescription drug and birth defects of any kind, including the occurrence of pyloric stenosis.

The comment cited major reviews in the literature concerning possible teratogenicity of the prescription drug containing doxylamine succinate (Refs. 11 and 12). The comment stated that neither of these reviews found evidence of such a relationship. The comment submitted citations for several editorials in scientific journals that support the safety of the prescription drug (Refs. 13, 14, and 15). The comment also included additional citations for the published human experience with the drug (Refs. 16 through 39).

The comment concluded that the existing data support the safety of doxylamine succinate for OTC use and stated that an additional warning regarding the use of drug products containing doxylamine succinate during pregnancy is unwarranted. Therefore, according to the comment, the ingredient doxylamine succinate should not be eliminated from the tentative final monograph for OTC antihistamine drug products.

The agency has reviewed the extensive body of data available concerning the safety of doxylamine succinate and concludes that this ingredient is safe for use as an OTC antihistamine drug product. Based on the data, the agency is proposing a Category I classification for doxylamine succinate in this tentative final monograph.

Pyloric Stenosis

A major concern was identified in the previous tentative final monograph (50 FR 2200) regarding the safety of doxylamine succinate in OTC antihistamine drug products used during pregnancy. The concern related to a possible link between the use of antinauseant drugs containing doxylamine succinate and the occurrence of pyloric stenosis in infants. As noted above, Eskenazi and Bracken (Ref. 1) observed a significant association (odds ratio=1.40) between the occurrence of pyloric stenosis in infants and in utero exposure to an antinauseant drug containing doxylamine succinate. The investigators did not find other significantly increased risks for congenital malformations, except for a possible association of exposure to this drug in utero with heart valve anomalies (odds ratio=2.99). The case subjects were mothers of congenitally malformed infants, newborn or stillborn, at five urban hospitals in central Connecticut between May 1974, and November 1976, and mothers of malformed infants who were referred to one of the five hospitals before the child was 1 year of age. Control subjects were mothers of healthy newborn infants born in the five hospitals between November 1974, and November 1976. Case and control mothers were interviewed in the hospital or at home by trained interviewers using a standardized questionnaire. Data collected included demographic variables, smoking history, pregnancy history, drug use, and exposure to other possible risk factors. Data were analyzed from 1,369 cases and 2,968 controls. In 6.3 percent of the cases, mothers of malformed infants reported using the antinauseant drug containing doxylamine succinate. Also, 4.6 percent of control mothers (normal infants) reported using the drug. Therefore, mothers of malformed infants had a 40-percent overall increased chance of being exposed to the antinauseant drug in the first trimester of pregnancy (odds ratio=1.40 with 95 percent confidence limits of 0.96 and 2.05, $p=0.08$). The investigators found some evidence that there was a synergistic relationship between smoking and use of the antinauseant drug to case-control status, i.e., women who used the antinauseant drug and were smokers had increased odds ratios for the occurrence of birth defects of 2.36 (light smokers) and 6.39 (heavy smokers). However, the synergistic relationships were statistically significant only for the combined group of smokers, i.e., both light and heavy smokers (odds ratio=2.91 with 95 percent confidence limits of 1.14 and 7.46). The investigators also found that infants with pyloric stenosis were more than four times likely to have mothers who reported using the antinauseant drug (odds ratio=4.33 with 95 percent confidence of 1.75 and 10.75, $p<0.001$). Antinauseant drug use was also associated with a threefold increased risk for defective heart valves in the offspring (odds ratio=2.99 with 95 percent confidence limits of 1.02 and 8.74, $p<0.04$). No other associations between antinauseant drug use during the first trimester of pregnancy and the occurrence of specific birth defects were statistically significant. When additional statistical procedures were applied to the data to account for the number of associations evaluated in the study (16), it was found that $p=0.003$ was equivalent to the usual $p<0.05$ level for statistical significance. By this criterion, only the association between antinauseant drug use and pyloric stenosis was significantly larger than might be expected. Analysis for possible confounding variables for the association between antinauseant drug use and pyloric stenosis did not yield any statistically significant differences between case and control mothers. The investigators discussed other findings in the literature concerning associations between the use of the antinauseant drug containing doxylamine succinate and the occurrence of gastrointestinal malformations. The investigators stated that "because gastrointestinal atresias, like pyloric stenosis, are constrictions of the digestive tract, it is plausible that a similar mechanism, such as the faulty innervation of the abdominal visera either by the vagus or the parasympathetic ganglia, may be involved in the etiology of these malformations." The investigators concluded that "more than 1 in 10 cases of pyloric stenosis may be due to maternal use of [the antinauseant drug containing doxylamine succinate]." As the comment above pointed out, the investigators in this study also discussed possible confounding factors for the association between antinauseant drug use and the occurrence of pyloric stenosis. These factors included a genetic predisposition to pyloric stenosis that could be precipitated by environmental factors, the possibility that mothers who themselves had pyloric stenosis or were predisposed to it may be more likely to be nauseated during pregnancy and therefore more likely to use antinauseant drugs during pregnancy, and a strong sex differential observed among pyloric stenosis cases with 7.8 male cases per every female case. The investigators also stated that whether the association between use of the antinauseant drug and the occurrence of pyloric stenosis is a direct causal relationship is unclear.

In another study discussed by the comment above, Aselton et al. (Ref. 2) studied long-term follow up of structural disorders present at birth or shortly thereafter in infants born at the Group Health Cooperative of Puget Sound. Out of 13,346 births, the investigators identified all infants with a diagnosis of pyloric stenosis, confirmed by surgery, born between July 1, 1977, and June 30, 1982. Automated pharmacy profiles were examined for maternal use in the first trimester of pregnancy of an antinauseant drug containing doxylamine succinate. This examination was to determine if an association

existed between maternal use of the drug and the occurrence of pyloric stenosis in infants. Among the 3,835 mothers obtaining prescriptions for the antinauseant drug containing doxylamine succinate, 13 (3.4/1,000) delivered infants who developed pyloric stenosis. Among the 9,511 mothers who did not obtain the drug, 13 (1.4/1,000) delivered infants who developed pyloric stenosis. The resulting risk-ratio estimate for drug-exposed infants compared to nonexposed infants was 2.5 with a 95 percent confidence interval of 1.2 to 5.2. When the mothers were divided according to the number of prescriptions filled during pregnancy, risk ratio estimates increased with increased numbers of prescriptions filled. A case-control approach was used to analyze the data. Twenty-five infants out of a cohort of 26 infants with pyloric stenosis and no other serious defect were matched with 4 control infants per case. Factors matched included maternal age, race, season and year of birth, and the sex of the infant. The investigators found no difference in maternal age for users and nonusers of the prescription drug containing doxylamine succinate, that the incidence of pyloric stenosis was six times greater for male infants than for female infants, that there was no material association between drug use and the sex or race of the infant, and that the risk ratio estimate was 2.3 for drug-exposed infants when they controlled for calendar time of birth by stratifying the data into 2-year periods. The investigators concluded that maternal age and calendar time of birth were not important confounding factors in the cohort analysis. Matched analysis for case-control comparisons yielded a risk ratio estimate of 2.3 for infants born to mothers who had obtained the prescription drug. Stratification for birth weight, length of gestation, and birth order had little effect on this risk ratio estimate. The odds ratios for drug ingestion during the 8th, 9th, and 10th weeks of gestation were higher than for other weeks of gestation. However, the investigators stated that "these results should be interpreted with caution due to the imprecision in estimating gestational ages in the study and the fact that data for individual weeks are not independent of one another." The investigators concluded that the study provides additional evidence supporting a connection between the use of the prescription drug containing doxylamine succinate and the occurrence of pyloric stenosis in infants or between the occurrence of severe nausea during pregnancy and the occurrence of pyloric stenosis in infants. The authors state that "in the absence of a biologic explanation for this finding and in view of conflicting results from other studies, a causal interpretation for this association [between drug use and the occurrence of pyloric stenosis] is not yet warranted."

In a large case-control study, Mitchell et al. (Ref. 4) evaluated the hypothesis suggested by another study (Ref. 1) that maternal use during pregnancy of an antinauseant drug containing doxylamine succinate increases the risk of the occurrence of pyloric stenosis in infants. The investigators did not find evidence to support this hypothesis. The data were obtained through an ongoing surveillence program designed to detect previously unsuspected human teratogens and to evaluate existing hypotheses concerning the risks and safety of antenatal exposures to drugs. Three hundred twenty-five infants with pyloric stenosis, 3,153 control infants with other conditions, and a subset of 724 control infants, with defects that may have originated at any time in the pregnancy, were identified through a review of information obtained from hospital lists, surgical logs, and clinic or office records of hospitals, clinics, and physicians in participating centers in the surveillance program. Within 6 months of the birth of their child, mothers were interviewed by trained pediatric nurse interviewers, who used a structured questionnaire that elicits information on parental age, occupation, income, maternal medical history, and previous pregnancies. This study evaluated infants of mothers who were interviewed between March 1976 and October 1982. For analysis, the data were stratified by maternal decade of age and geographic region and were controlled for a large number of potentially confounding factors such as variables concerning family history of malformations, maternal characteristics, obstetric history, maternal disease, complications of pregnancy, exposures during pregnancy, infant characteristics, and maternal use during pregnancy of a three-component antinauseant drug (dioyolomine hydrochloride, doxylamine succinate, and pyridoxine hydrochloride) or a two-component antinauseant drug (doxylamine succinate and pyridoxine hydrochloride). Among the 325 infants with pyloric stenosis, 56 (17 percent) were exposed in utero to one of the antinauseant drugs containing doxylamine succinate, while among the 3,153 infants with other malformations, 616 (20 percent) were exposed. Analysis of these data yielded a relative risk estimate of 0.9 with a 95 percent confidence interval of 0.6 to 1.2 for the occurrence of pyloric stenosis in infants exposed to one of the antinauseant drugs. The corresponding data analysis for the 325 infants with pyloric stenosis and the 724 infants with defects that may have had their origins at any time in pregnancy yielded a relative risk estimate of 1.0 with a 95 percent confidence interval of 0.7 to 1.4. Because inguinal hernia, like pyloric stenosis, may develop late in pregnancy or soon after birth, the investigators compared the in utero rate of exposure to one of the antinauseant drugs containing doxylamine succinate for the 325 infants with pyloric stenosis and for 608 control infants with inguinal hernia. They found a relative risk estimate of 0.8 with a 95 percent confidence interval of 0.6 to 1.2. The investigators concluded that "the present findings suggest that exposure to [an antinauseant drug containing doxylamine succinate] during pregnancy, whether early or late, does not increase the risk of pyloric stenosis."

Cleft Lip and Cleft Palate

Several studies specifically evaluated a possible causal relationship between maternal use during pregnancy of antinauseant drugs containing doxylamine succinate and the occurrence of cleft lip and/or palate in infants. A case-control study involved mothers interviewed between March 1976 and June 1980, in 22 participating centers in three regions (Boston, Philadelphia, and Toronto). In this study, Mitchell et al. (Ref. 16) did not find an appreciable increase in the risk of the occurrence of cleft lip and/or cleft palate or of the occurrence of heart defects for infants exposed in utero early in pregnancy to an antinauseant drug containing doxylamine succinate. Infants with birth defects were identified through the review of records of participating hospitals, clinics, and physicians. Mothers of infants with birth defects were interviewed by trained pediatric nurse interviewers. They used a questionnaire to elicit information concerning a great number of factors that could influence the occurrence of birth defects, including possible confounding factors for the specific factors studied (e.g., drug exposure). The interviews included mothers of 98 infants with isolated cleft palate, mothers of 221 infants with cleft lip with or without cleft palate, mothers of 122 infants with selected heart defects (ventricular septal defect, patent ductus arteriosus, atrial septal defect, and coarctation of the aorta), and mothers of 970 infants with malformations other

than those studied that served as controls for the study. The investigators found the following relative risk estimates for infants exposed to the antinauseant drug containing doxylamine succinate in utero: for isolated cleft palate, a relative risk estimate of 0.9 with a 95 percent confidence interval of 0.5 to 1.5; for cleft lip with or without cleft palate, a relative risk estimate of 0.6 with a 95 percent confidence interval of 0.4 to 0.8; and for the selected heart defects, a relative risk estimate of 1.0 with a 95 percent confidence interval of 0.6 to 1.6. The investigators' evaluation of possible confounding factors did not demonstrate that any of these factors materially influenced the relative risk estimates found for drug-exposed infants with the birth defects studied.

In England, Golding et al. (Ref. 17) studied 196 index women, i.e., women who had infants with clefts of the lip or palate, and 407 control women (2 controls per index case) that were matched with the index women for age, parity, social class, and year of delivery. The study covered births between 1965 and 1974 and included approximately 14,000 births per year. The investigators found a significant excess ($p<0.02$) of women who had been prescribed a three-component antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride in early pregnancy in the index group when compared to the control group. Cases of clefts of lip or palate were ascertained through examination of diagnostic information on home and hospital deliveries, diagnostic details on records of stillbirths and death certificates, details from hospital admission records (usually for cleft repair), details from the malformation register kept by the Oxford Record Linkage study, and case records kept by the M. R. C. Population Genetics Research Unit. Data concerning maternal drug use in early pregnancy were obtained from the notes of attending physicians. The investigators confined their analysis to women presenting with nausea within 69 days of their last menstrual period, because any pathological event that influences the development of cleft lip or palate must take place by the end of the first 9 weeks of gestation. They found no significant differences between index and control women with respect to presenting with nausea during pregnancy, but found a statistically significant excess of index women who were prescribed the three-component antinauseant in comparison to all control women who were not prescribed the drug ($p<0.02$). The investigators also found a statistically significant excess of index women who had been prescribed the drug in comparison to all other women who had presented with nausea during pregnancy ($p<0.025$). A matched analysis of the index and control cases yielded a statistically significant excess of index women who had been prescribed the three-component antinauseant drug ($p<0.025$). Analysis of the significant excess of index women who had been prescribed the drug produced a relative risk of 2.88 for the occurrence of cleft lip or cleft palate for infants of mothers who had taken the drug. The investigators found that the mean of the times during gestation at which index women were first prescribed the three-component antinauseant drug (7.46 ± 0.37 weeks) was statistically different ($p<0.025$) from the mean of the times during gestation at which control women were first prescribed the drug (9.29 ± 0.62 weeks). Only 3 of the 12 index women had been prescribed other drugs in addition to the antinauseant drug. The investigators concluded that, in view of the lack of consistent agreement in the literature, and in spite of several case reports, the findings of this study alone do not prove the case against the three-component antinauseant drug. However, the investigators stated that it is worth questioning whether prescribing the drug for pregnant women with mild nausea and vomiting is advisable.

Heart Defects

Rothman et al. (Ref. 18) evaluated the effect of hormonal exposure before or during pregnancy on the risk of congenital heart disease. A case-control study of 390 mothers of infants with congenital heart disease and 1,254 mothers of normal infants was employed. This study also assessed the cardiovascular teratogenicity of other drugs taken during early pregnancy, including an antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride. The cases of congenital heart disease studied occurred during the period 1973 to 1975 in Massachusetts. The normal controls were randomly selected from the roster of all Massachusetts births for the same 3-year period of time. Most cases were obtained from the roster of the New England Regional Infant Cardiac Program (NERICP). Other cases were identified by examining death certificate files. Mothers of cases identified through death certificates were interviewed by telephone. Mothers of cases identified through NERICP and controls were mailed questionnaires which inquired about maternal age, education, reproductive history, contraceptive history, and exposure to tobacco, alcohol, and drugs prior to and during early pregnancy. The proportion of cases with a history of drug exposure was compared with the proportion of controls with a similar history. Based on these data, prevalence ratios were calculated, i.e., the prevalence of heart defects in exposed infants was divided by the prevalence of heart defects in unexposed infants. The data were analyzed for possible confounding variables for factors that strongly correlate with congenital heart disease, i.e., parity, maternal age, educational background, and insulin use. The data were found to be free of confounding by these factors. Accordingly, it was unnecessary to stratify the data for analysis to account for any of these factors. In the case of the antinauseant drug containing doxylamine succinate, 24 case mothers reported that they had used the drug, 366 case mothers reported that they had not used the drug, 46 control mothers reported that they had used the drug, and 1,208 control mothers reported that they had not used the drug. Analysis of these data to compare the prevalence of heart defects in drug exposed infants and unexposed infants yielded a prevalence ratio estimate of 1.8 with a 90 percent confidence interval of 1.2 to 2.7 at the $p<0.01$ level. The investigators described the possible association between the antinauseant drug, among other drugs, as "weak." The investigators cautioned that drug exposure information for such drugs was obtained from an open-ended question that would likely be subject to recall bias. In discussing possible associations between hormonal exposure and cardiac defects, the investigators noted that heterogeneity of diagnoses for specific heart defects in exposed cases of defects could be considered to be evidence against an association between exposure and the occurrence of defects. In the case of exposure to the antinauseant drug containing doxylamine succinate, the investigators reported five different types of cardiac defects. The numbers of the cases reported for each specific type of defect were evenly distributed over all five types of defects. The investigators also discussed inconsistencies between the results in this study and the results found in other published studies. The investigators concluded that resolution of these discrepancies would require considerably larger studies than those that were published at that time.

Limb Deformities

Other studies investigated the hypothesis that maternal use of an antinauseant drug containing doxylamine succinate is related to the occurrence of limb deformities in infants. Correy and Newman (Ref. 19) analyzed data concerning the occurrence of limb reduction deformities in Tasmania, Australia, during the period 1975 to 1980. Data included forms completed by nurses before mothers were discharged from the hospital that required information concerning congenital abnormalities of the infants. Details concerning maternal use of an antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride during pregnancy were obtained from attending physicians of mothers who gave birth to children with congenital anomalies, including limb reduction defects. Data were presented concerning the number of births each year, the number of reported congenital abnormalities, the specifics of 15 cases of limb reduction defects including a history of maternal antinauseant drug use, and the amount of the antinauseant drug distributed each year in Tasmania. The investigators discussed other published studies concerning maternal antinauseant drug use in relation to congenital anomalies and stated that the incidence of limb reduction deformities in Tasmania was 0.03 percent for the time period studied. Based on the evidence presented in this study and a review of the literature, the investigators concluded that ingestion of the antinauseant drug containing doxylamine succinate during pregnancy does not cause limb reduction deformities.

Aselton et al. (Ref. 20) examined drug use during pregnancy and its relationship to serious limb disorders in infants born between January 1980, and December 1981. This study was part of a long-term follow up study of pregnant women and their infants at the Group Health Cooperative of Puget Sound in Seattle. In the cohort of 5,255 women studied, 1,364 (26 percent) obtained one or more prescriptions for an antinauseant drug containing doxylamine succinate. Of these 1,364 women, 556 (41 percent) had two to four prescriptions filled for the antinauseant and 167 (12 percent) had five or more prescriptions filled for the antinauseant. Of the six infants who were born with serious limb disorders, two had syndromes with multiple defects, and the other four had either polydactyly or syndactyly. The mothers of the two infants with multiple defects had prescriptions filled for the antinauseant drug containing doxylamine succinate; the mothers of the other four infants with limb defects alone had not had prescriptions filled for the drug. The estimate of relative risk for the occurrence of limb defects in infants comparing mothers who had used the drug with mothers who had not used the drug was 1.4 with a 95 percent confidence interval between 0.26 and 7.71. None of the 167 mothers who had obtained five or more prescriptions of the drug containing doxylamine succinate gave birth to infants with limb defects. Using data from a study done by Jick et al. (Ref. 21) (discussed below) for the Group Health Cooperative of Puget Sound, the investigators identified eight infants with serious limb disorders from the offspring of the 6,837 pregnant women in that study that were born between July 1977, and December 1979. Among 2,255 mothers who had prescriptions filled for the antinauseant drug containing doxylamine succinate, 2 (0.9/1,000) had infants with limb disorders; among the 4,582 mothers who did not have prescriptions filled for the drug, 6 (1.3/1,000) had infants with limb disorders. The combined results of the Jick et al. study (Ref. 21) and this study (Ref. 20) yield a relative risk estimate of 0.9 with a 95 percent confidence interval between 0.29 and 2.98 for limb disorders when the antinauseant drug users are compared with nonusers. The investigators concluded that the combined results of these two studies provide evidence against a strong association between the use of the antinauseant drug containing doxylamine succinate in the first trimester of pregnancy and the occurrence of serious limb disorders in infants.

McCredie et al. (Ref. 22) investigated an alleged association between use during pregnancy of an antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride and congenital limb defects. The study included 155 mothers with limb-deficient children born during the years 1970 to 1981 and 274 mothers of matched normal children in Australia. Two controls were sought that matched each limb-deficient case for birthdate of the child within 2 months and for equivalent geographical area where mothers lived during the first trimester of their pregnancies. In 119 case-control sets, 2 control children per case were found, and in 36 case-control sets, 1 control child per case was found. Three team doctors interviewed all women studied and recorded data on a standardized questionnaire form concerning pregnancy history that included details of morning sickness and antinauseant drug use. Morning sickness was reported by 69 percent of the case mothers and 72 percent of the control mothers. Twenty-six percent (429) of all the women studied used the antinauseant drug containing doxylamine succinate in the first trimester of pregnancy. The estimate of relative risk for limb defects in children born to women who had used the antinauseant drug was 1.1 (95 percent confidence limit of 0.8 to 1.5), compared to the estimate of relative risk of 1.0 in children born to women who had not used the drug. In addition, the investigators did not find statistically significant differences in the relative risk estimates reported for analyses to determine if any risk is associated with commencement of use of the drug early in pregnancy or with duration of drug use during pregnancy. The investigators concluded that this study "provides no evidence that [the antinauseant drug containing doxylamine succinate] is implicated in the aetiology of congenital limit defects."

David (Ref. 23) studied the Poland anomaly in infants (a rare unilateral absence of the pectoralis major muscle with an ipsilateral hand defect at birth), and cases of the isolated absence of the pectoralis major muscle in infants at birth, which may be a malformation related to the Poland anomaly. This study was designed to determine whether a causal relationship exists between the occurrence of these malformations in infants and the use during pregnancy of a three-component antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride. David examined 46 cases of Poland anomaly and 32 case of the related abnormality which occurred between 1891 and 1977. The investigator noted that a drawback to the study is that it is retrospective, with no control group. He explained that it would be extremely difficult to obtain a control group for cases that spanned 90 years and that the rarity of the defects studied would make a prospective study of a large number of cases impossible. Data concerning maternal use of drugs during pregnancy were obtained from the mothers' hospital antenatal records and by obtaining details of drug prescription from the family doctor. Details of drug ingestion could not be obtained in six cases that occurred before 1924. The three-component antinauseant drug had been prescribed in 2 of the remaining 72 cases. Twenty-six (14 Poland anomaly and 12 isolated pectoralis absence)

cases were conceived before 1958, the year in which the three-component antinauseant drug was introduced into the United Kingdom, and the investigator concluded that these cases could not have a causal relationship to the drug. In addition, the critical period of embryogenesis for the Poland anomaly, and presumably for the absence of the pectoralis major muscle, has been estimated to be 44 to 48 days or 43 to 46 days after conception. In the two cases of birth defects studied where the mother had been prescribed the three-component drug, maternal use of the drug in one case was before the critical period of embryogenesis for the defect. The maternal use of the drug in the other case was after the critical period of embryogenesis for the defect. The investigator concluded that, despite theoretical disadvantages, "in none of the 46 cases of the Poland anomaly or 32 cases of isolated pectoralis absence was there any evidence that [the three-component antinauseant drug] could have caused the defect."

Spina Bifida and Anencephaly

In a case-control study, Hearey et al. (Ref. 24) investigated a five-fold increase in the incidence of the neural tube defects spina bifida and anencephaly during the years 1979 to 1980 in the Antioch-Pittsburg, CA area. The study included 9 cases of neural tube defects and 27 control mothers as well as 8 other cases of neural tube defects and 17 control fathers. The mothers and fathers were evaluated for factors such as place of residence, occupation, drug use, illnesses, and pesticide or chemical exposure. None of the factors evaluated in this study, except fathers' smoking ($p<0.05$), were associated with the occurrance of neural tube defects. The data evaluated included hospital records, birth and fetal death records, and interviews with parents of neural tube defect cases and the control mothers and fathers. Between March 1979, and November 1980, the investigators identified 10 cases of neural tube defects in an estimated 2,000 births in the Antioch-Pittsburg area during the study period, an incidence of approximately 0.005. Based on a reported annual incidence of approximately 0.001 for California, only two cases of neural tube defects would have been expected in the study population. Three control parents per each case of neural tube defect were randomly selected from patients in the Kaiser-Permanente Medical Care Program. These controls were matched with cases of neural tube defect for the sex of the child, the county of residence for the mother, and for the date of birth occurring within 1 year of the case child. The investigators evaluated the data in both matched and unmatched statistical analyses. The results of the unmatched analysis were presented for several exposure factors including maternal use during pregnancy of an antinauseant drug containing doxylamine succinate. Two of nine cases (22 percent) of neural tube defects occurred in infants who were exposed to this antinauseant drug in utero during the first trimester of pregnancy, while five of seven controls (15 percent) were exposed to the drug in utero during the first trimester of pregnancy. The difference between drug exposure (22 percent for cases and 15 percent for controls) in the cases and controls was not found to be statistically significant at the $p<0.05$ level. The investigators noted that the small sample size resulted in problems of low statistical power, i.e., only large odds ratios could be detected at the $p<0.05$ level. Therefore, the absence of statistically significant results in this study may have been due to a lack of statistical power as well as a lack of association with the factors studied. The investigators concluded that, "whereas it remains necessary to define the possible part that subtle environmental as well as genetic factors may have in the etiology of neural tube defects, it appears possible that the Antioch-Pittsburg cluster occurred by chance."

Absence of Anal, Genital, and Urinary Orifices

Robinson and Tross (Ref. 25) reported five cases of preterm infants (one male and four females) born without anal, genital, and urinary orifices that were identified among 8,241 total births from three counties in northeastern Ohio within a 7.5-month period. The infants were either stillborn or died within hours of delivery. None of the infants displayed any vestige of structures derived from either the embryonic anogenital folds or anal tubercles. The investigators searched for a possible explanation for the occurrence of the malformations studied. Based on cytogenetic and pedigree analysis, the investigators could not identify a genetic mechanism to explain the malformations. However, the malformations studied met the following criteria for the identification of a teratogen: (1) An abrupt increase in the incidence of the anomaly, (2) coincidence of the increased incidence with an environmental change, (3) exposure to the environmental change early in pregnancy yielding infants with the anomaly, and (4) absence of other factors common to all pregnancies yielding an infant with the anomaly. The investigators suspected the environmental agents doxylamine succinate, dextromethorphan, and acetaminophen as teratogens. Of these agents, only doxylamine succinate was common to all five cases. For this reason, doxylamine succinate was considered the most probable suspected teratogen. In four of the five cases, the mothers took OTC drugs containing doxylamine to treat symptoms of an upper respiratory infection within the first 8 weeks of pregnancy. In the fifth case, the mother took a prescription drug containing doxylamine succinate for nausea and vomiting. The investigators stated that in all five cases, the exposure to doxylamine succinate was within the first 50 days of pregnancy, which is the critical period for initiating the birth defects studied. The authors stated that "with data from only five cases, we are reluctant to make categorical statements about etiology, but the scant number of previous reports of the syndrome [seven reports in the previous 54-year period between 1926 and 1980] and the circumstances of its occurrence in our community warrant further evaluation."

Other Studies

Many studies have evaluated the relationship between maternal use of antinauseant drugs during pregnancy and the occurrence of birth defects in general and the occurrence of a variety of specific birth defects. Cordero et al. (Ref. 26) studied maternal exposure to an antinauseant drug containing doxylamine succinate for possible associations with several major categories of birth defects. However, no associations were found with any of these major categories. Data were obtained from the Metropolitan Atlanta Congenital Defects Program for births between January 1, 1970, and December 31, 1978. Birth defects that were diagnosed in the first year of life were ascertained by staff members of Metropolitan Atlanta Congenital Defects Program through regular visits to obstetric and pediatric wards of hospitals and to secondary and tertiary pediatric units in five central counties of the Atlanta metropolitan area. Data were analysed from 1,231 interviews of parents with infants who had selected defects. Between 1970 and 1978, the selected defects included the neural tube defects anencephaly, spina bifida, encephalocele; cleft lip and/or cleft palate; esophageal atresia; small-bowel atresia; rectal and anal atresia; diaphragmatic hernia; gastroschisis and omphalocele; and Down's syndrome. Between 1973 and 1978, interviews also

included parents of infants with limb reduction defects. Of the mothers interviewed, 117 (9.5 percent) had taken the antinauseant drug containing doxylamine succinate in the first trimester of pregnancy. There were not statistically significant differences in exposure to the antinauseant drug among any of the 12 birth defect categories analyzed. The rate of first trimester exposure to the antinauseant drug containing doxylamine succinate for each birth defect was compared with the rate of such drug exposure for a control group composed of infants with birth defects other than the birth defect being evaluated. Odds ratios for the occurrence of birth defects in infants whose mothers had taken the antinauseant drug containing doxylamine succinate in the first trimester of pregnancy were tested for statistical significance for each defect category. The authors stated that among the subgroups of limb defects, only the amniotic bands complex had a significantly increased first trimester exposure to the antinauseant drug (odds ratio 3.88, $p=0.015$). However, when the data were stratified by two time periods of drug exposure, the amniotic bands complex did not show a statistical association with drug exposure. The authors concluded that the data were insufficient to demonstrate a causal effect between drug exposure and the occurrence of the amniotic band complex, but that further studies are indicated to determine if there is a causal relationship. Stratification by two time periods of drug exposure yielded a statistically significant association between the occurrence of encephalocele and exposure to a two-component antinauseant drug product containing doxylamine succinate and pyridoxine hydrochloride ($p=0.038$). Also, there was a statistically significant association between esophogeal atresia and exposure to a three-component antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride ($p=0.044$). The authors concluded, however, that it seems unlikely that a causal relationship exists between first trimester exposure to these prescription drugs and the occurrence of encephalocele for the following reasons: (1) No other reports suggest such an association, (2) the association was found only for the two-component drug and not for the three-component drug, and (3) although a significant increase in the population rate of encephalocele should have been observed following the introduction of the two-component drug and discontinued use of the three-component drug in 1977, the data did not show such an increase in the rate of occurrence of encephalocele. The authors stated that the association between the three-component drug and the occurrence of esophogeal atresia is weak, but that they did not find, however, any confounding factors that would explain the association. The authors concluded that further studies would be required to evaluate this finding. In conclusion, the authors stated that "in our opinion, these data do not suggest that [either one of the antinauseant drugs studied that contain doxylamine succinate] is causally associated with the occurrence of the birth defect categories that we studied. If any causal association does exist between first trimester exposure to [the antinauseant drugs studied that contain doxylamine succinate] and the three particular defects amniotic bands, encephalocele, and esophageal atresia, the actual risks seem to be extremely small. Since it is impossible to prove any agent safe, our study should remind physicians that the potentia1 risk of drugs during pregnancy should be weighed against the potential benefits that they may have."

Cordero and Oakley (Ref. 27) discussed epidemiologic methodologies and their application to studies concerning relationships between the occurrence of birth defects and exposure to drugs during pregnancy. They reviewed several studies concerning use during pregnancy of an antinauseant drug containing doxylamine succinate. Based on the results of several cohort studies (refs. 6, 8, 21, 28, 29, 31, and 32) concerning possible associations between the antinauseant drug and the occurrence of birth defects, they concluded that it is possible to exclude a risk of birth defects of over 1.2 per 1,000, and stated that "if there is a risk in the use of that drug, it should be less than 0.12 percent, which is significantly less than the 2–3 percent risk that any pregnancy has just by chance for serious malformations." The authors also presented a preliminary unpublished analysis by Martinez-Frias et al. (Ref. 40) in a case-control analysis of the Spanish Collaborative Study of Congenital Malformations that showed a group of 53 cases of diaphragmatic hernias. Five cases (9.4 percent) in this group had been exposed in utero to an antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride. Of the 4,965 infants in the control group who were not born with diaphragmatic hernias, 633 infants (12.7 percent) had been exposed in utero to the drug. The difference between the two groups with respect to the proportion of infants who had been exposed to the antinauseant drug was not statistically significant.

Jick et al. (Ref. 21) found no strong associations between any of the drugs commonly used during pregnancy, including an antinauseant drug product containing doxylamine succinate, and the congenital disorders studied. The investigators evaluated computerized data that included all prescriptions the mothers had filled during the first trimester of pregnancy and congenital disorders diagnosed at birth, excluding those that were subsequently diagnosed as normal. The subjects were women and their infants in the Group Health Cooperative of Puget Sound in Seattle. The study covered births between July 1, 1977, and December 31, 1979. The data analyzed included 6,837 pregnancies that produced live births, 80 (1.2 percent) of which resulted in infants with the following congenital disorders: limb reduction deformity (4), other limb deformities (4), cleft lip/palate (5), rectal atresia (5), esophageal atresia (1), congenital heart disease (15), central nervous system disorders (3), undescended testicle (22), chromosome disorders (8), congenital cataract (1), choanal atresia (2), thyroglossal sinus (1), congenital ureteral obstruction (2), Potter's syndrome (1), familial Saethre-Chotzes syndrome (1), congenital eperlides (1), medulloblastoma (1), insulin-secreting tumor (1), and hypospadias (2). Disorders, such as pyloric stenosis, that were diagnosed subsequent to the hospital admission for childbirth were excluded from analysis in this study. Infants of mothers were considered exposed to a drug if the mother had one or more prescriptions for the drug filled. Prescriptions for a drug product containing doxylamine succinate and pyridoxine hydrochloride were filled for 33 percent of the 6,837 women studied. The prevalence of all disorders among drug exposed infants was found to be 24 per 2,255 live births (1.1 percent), which was closely similar to the prevalence of all disorders among infants who were not exposed to this drug, i.e., 56 disorders per 4,582 live births (1.2 percent). The investigators also evaluated the prevalence of particular disorders in infants exposed to the drug containing doxylamine succinate and pyridoxine hydrochloride. Only in the case of gastrointestinal atresia was the prevalence high for drug exposed infants. However, the 95 percent lower confidence bound (limit) found for this association was below unity, and there was little association

with the time of drug exposure during pregnancy and the occurrence of the disorder. Also, there was no positive correlation between increasing numbers of prescriptions filled for the drug and the occurrence of the disorder.

Aselton et al. (Ref. 33) updated the study by Jick et al. (Ref. 21, discussed above) concerning possible associations between any of the drugs commonly used during pregnancy and the major congenital disorders studied. This study included all live births of 6,509 mothers in the Group Health Cooperative of Puget Sound in Seattle between January 1, 1980, and June 30, 1982. The same study methods reported in the Jick et al. study (Ref. 21) were used in this study. Of the 6,509 women studied, 105 (1.6 percent) delivered infants with congenital disorders, and 1,580 (23 percent) had at least one prescription filled for an antinauseant drug containing doxylamine succinate. The investigators stated that the prevalence of any disorder among infants whose mothers had at least one prescription filled for the antinauseant drug containing doxylamine succinate (30 infants with disorders among 1,580 infants; 1.9 percent) was slightly higher than that of infants whose mothers had not had a prescription filled for the drug (75 infants with disorders among 4,929 infants; 1.5 percent). This factor resulted in an estimated risk ratio of 1.25, with a 95 percent confidence interval of 0.8 to 1.9, for infants whose mothers had at least one prescription filled for the drug. The investigators found no difference in the prevalence of disorders when they evaluated the gestational time when mothers had prescriptions filled for the antinauseant drug or when they evaluated how many prescriptions were filled. They found no strong positive association of the occurrence of the congenital disorders studied with maternal use of any of the drugs studied. When they evaluated the combined data from this study and the Jick et al. study (Ref. 21) covering experience over a 5-year period, they found that the rate of congenital disorders diagnosed at birth among infants born to mothers who had had at least one prescription filled for the antinauseant drug containing doxylamine succinate (14 per 1,000 births) was identical to that of infants born to mothers who had not had prescriptions filled for the drug (14 per 1,000 births). The investigators concluded that "although the data presented on most of the drugs in this study are insufficient to rule out a modest association, they do rule out a strong association with many commonly used drugs and the generally serious congenital defects included in this evaluation."

Michaelis et al. (Ref. 7) did a cohort study in West Germany that included 13,643 pregnancies occurring between 1964 and 1976. This study looked for the possible influence on pregnancy and child development of various factors, including the use of antiemetic drugs and sex hormones in early pregnancy. The investigators found no evidence of increased risk for major malformations in infants following the use of the antiemetic drugs studied or with the use of progesterone during early pregnancy. Data concerning drug use were collected in the form of diaries kept by almost 15,000 pregnant women recruited for the study and from medical records kept by the attending physicians. The diary information included exposure to drugs and other chemical agents such as detergents, insecticides, and fertilizers. Other factors considered were the daily work load of the women and the occurrence during pregnancy of diseases, accidents, or surgical operations. At each visit by the women, the attending physicians checked the diary information, particularly with respect to what drugs were prescribed for and ingested by the women. Data were also collected from detailed medical records concerning the course of the delivery of the infants. Data concerning aborted fetuses were collected when possible and included histological and chromosomal examinations of the fetus. Data concerning the children born consisted of information collected during examinations of the children immediately after birth; within 3 to 5 days of birth; at the ages: 6 weeks, 40 weeks, 18 months, 36 months; and for some children at 6 years. Detailed information was collected concerning the occurrence of diseases in the children and diaries were kept by the mothers regarding the physical and intellectual development of their children. All congenital malformations that occurred in the infants studied were judged by an expert committee (of pediatricians) on human genetics who classified the malformations as major, minor, or other abnormalities. The investigators used computers to analyze an average of 4,500 different data items per pregnancy for 13,643 pregnancies. They evaluated the frequency of the occurrence of malformations in infants of mothers who had taken specific drugs during the first trimester of pregnancy. That frequency was compared to the frequency of the occurrence of malformations in infants in a matched control group selected from the total cohort of women and infants studied that had not been exposed to the drug. The control women were matched with the drug exposed group for maternal age, parity, and marital status. An antinauseant drug containing doxylamine succinate, dicyclonine hydrochloride, and pyridoxine hydrochloride was taken by 1,001 women in the study group. Of these 1,001 pregnancies, 50 (5 percent) resulted in abortions and 20 (2 percent) resulted in the birth of an infant with major congenital malformations. Of the 1,001 pregnancies, including 18 that resulted in infants with major malformations, 874 could be matched with control pregnancies for analysis. Nineteen infants with major malformations were born to mothers in the control group. Analysis of the data resulted in an odds ratio of 0.95 with 90 percent confidence limits of 0.52 to 1.73 for the occurrence of major malformations in infants born to mothers who had taken the antinauseant drug containing doxylamine succinate during the first trimester of pregnancy. The malformations that occurred in infants exposed to this specific drug showed no common characteristics. An analysis was done of the impact of other factors for which data were collected in order to detect possible systematic selection factors that might have been introduced by selecting the matched controls. This analysis showed both groups to be comparable with respect to the factors which could not be controlled by matching. The only differences found were that women who used the drug containing doxylamine succinate practiced contraception prior to becoming pregnant and women in the control group who had not taken this particular drug smoked cigarettes more frequently.

In a study conducted in England, Smithells and Sheppard (Ref. 28) found no evidence to suggest that a three-component antinauseant drug containing doxylamine succinate, dicyclonine hydrochloride, and pyridoxine hydrochloride is teratogenic. The study included 2,298 pregnant women from either the Leeds area during the period between August 1974, and July 1975, or the Liverpool area during the period between June 1974 to July 1975. Data were obtained from the Prescription Pricing Authority, birth notification records, and hospital maternity records or midwives' records. Of the 2,298 pregnancies studied, there were 2,261 live infants (including 19 sets of live twins), 23 stillbirths and 1 stillborn twin (24 infants that did not survive birth), 21 spontaneous abortions, 1 therapeutic

abortion, and 1 maternal death. The investigators evaluated the estimated gestational age of the fetus at the time it was first exposed in utero to the antinauseant drug. They compared the incidence of the occurrence of major defects in infants first exposed to the drug at different estimated gestational ages. They found, for major defects, an incidence of 1.8 percent in 990 infants first exposed to the drug at approximately 1 to 8 weeks gestation, an incidence of 1.5 percent in 1,374 infants exposed at approximately 1 to 10 weeks gestation, and an incidence of 1.7 percent in 1,622 infants exposed at approximately 1 to 12 weeks gestation. For infants exposed after approximately 10 weeks gestation, the incidence of major defects was 1.5 percent; for infants exposed after approximately 12 weeks gestation, the incidence of major defects was 1.2 percent; and for infants exposed after approximately 14 weeks gestation, the incidence of major defects was 1.2 percent. When the investigators compared the incidence of major defects for births to mothers who had a prescription filled for the three-component drug with the incidence of major defects for all births in the study, they found (1) in Liverpool, an incidence of 2.2 percent for all births and an incidence of 2.1 percent for drug-exposed births; (2) in Leeds, an incidence of 1.5 percent for all births and an incidence of 1.3 percent for drug-exposed births; and (3) an overall incidence of 1.8 percent for all births studied and an incidence of 1.5 percent for all drug-exposed births studied. The incidence of major defects found for infants of mothers who had prescriptions filled for the three-component drug during approximately the first 10 weeks of gestation was the same as that found for infants of mothers who had prescriptions filled for the drug after the first 10 weeks of gestation, i.e., 1.5 percent for both groups. The investigators found a wide spread of common anomalies, rather than a characteristic malformation or group of malformations in infants of mothers who had filled prescriptions for the three-component drug. The investigators concluded that "this study provides substantial evidence that [the antinauseant drug containing doxylamine succinate] is not teratogenic in man."

In a prospective study to investigate maternal characteristics and habits during pregnancy and their impact on fetal development, Morelock et al. (Ref. 34) studied 1,690 mother/infant pairs, between February 1977, and October 1979, at the Boston City Hospital. The study group included 375 mothers who had indicated in interviews that they had used a prescription drug containing doxylamine succinate for nausea during pregnancy. In multivariate analyses that examined infant birth weight, birth length, head circumference at birth, gestational age at birth, and congenital malformations as dependent variables, the investigators found no associations between maternal use of the prescription antinauseant drug containing doxylamine succinate and adverse fetal outcome. Shortly after delivery, 1,962 mothers were interviewed about a variety of health behaviors associated with infant outcome within the medical literature. The infants of 272 of the women who were interviewed were not examined for the purposes of this study. Infants of 1,690 of the interviewed mothers were examined to assess growth, neurologic, and morphologic parameters by one of four pediatricians. These infants were classified according to birth weight, length, head circumference, gestational age, and the number of major or minor congenital malformations they exhibited. Infants were classified in two groups, i.e., (1) infants with three or more minor abnormalities and those with one or more major abnormalities that are life-threatening or that require surgery or (2) infants with abnormalities, such as skeletal abnormalities, limb deformities, cleft lip or palate, and cardiac defects, that had been attributed in the literature to the use during pregnancy of the antinauseant drug. Eight hundred twenty-four infants whose mothers were not interviewed were also examined and classified as described above. The infants of mothers interviewed and of mothers not interviewed did not differ in birth weight, length, gestational age, head circumference, or proportion exhibiting any congenital abnormalities or abnormalities associated in the literature with use of the antinauseant drug. Of the 1,690 mothers who were interviewed and whose infants were examined, 375 (22.2 percent) reported taking the antinauseant drug during pregnancy, and 21.2 percent of the 272 women who were interviewed but whose infants were not examined reported taking the drug during pregnancy. The investigators used discriminate analysis to explore whether mothers who reported using the antinauseant drug during pregnancy disproportionately exhibited behaviors or characteristics (e.g., complications and characteristics of pregnancy, environmental exposures, demographic, or reproductive characteristics) that would subsequently put their infants at risk. The investigators found that women who reported using the drug during pregnancy tended to be older, to consume more alcohol during pregnancy, to be more frequently x-rayed, and to smoke fewer cigarettes than women who did not report using the drug. The investigators stated that these factors have been associated with elevated malformation rates and lower birth weights for infants. They added that smoking and alcohol use during pregnancy had been reported to relate to shorter gestational age of the infant at birth. The investigators accounted for these confounders in their analysis of the data. Univariate comparisons showed that the mean birth weight of infants whose mothers had used the antinauseant drug during pregnancy was higher than the mean birth weight of infants whose mothers had not used the drug. Univariate comparisons did not show differences between infants whose mothers had used the drug and infants whose mothers had not used the drug with respect to birth length, head circumference, gestational age, 1- or 5-minute Apgar scores; infant medical illnesses at birth; distribution of male and female infants; or distribution of malformations in the infants. Because the investigators did not find sufficient numbers of cases of cleft lip or palate and limb deformities, these two categories of malformations were not analysed separately, but were included in the overall analysis of all abnormalities in infants attributed in the literature to maternal use of the antinauseant drug during pregnancy. The investigators concluded that the converging evidence from this and other studies strongly suggests that the use of the antinauseant drug containing doxylamine succinate during pregnancy does not adversely affect infant outcome.

In Northern Ireland, Harron, Griffiths, and Shank (Ref. 35) investigated the alleged association between fetal abnormalities and the use during pregnancy of an antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride. During the study period, the total number of births in Northern Ireland fell from 33,778 births per year in 1968 to 25,747 births per year in 1977 and then increased to 26,483 in 1978. The incidence of infants born with cleft lip, cleft palate, limb reduction deformities, and defects of the heart and great vessels also fell during the period 1966 to 1976 and increased in 1977 and 1978. During the same time period, the number of prescriptions for

the antinauseant drug increased more than four-fold from 3,841 prescriptions in 1966 to 15,954 prescriptions in 1978. When the overall incidence of specific congenital malformations was compared with use of the antinauseant drug during pregnancy, the incidence of these malformations over the years studied did not appear to change while the number of prescriptions for the drug per 100 births rose more than five-fold from 11.4 in 1966 to 60.2 in 1978. Data concerning all births (live and stillborn) and the number of tablets of the antinauseant drug prescribed were obtained from governmental records. The investigators stated that the results of the study suggest that there is no relationship between congenital malformations and the use of the antinauseant drug containing doxylamine succinate during pregnancy.

During the mid-1960's, Fleming, Knox, and Crombie (Ref. 6) followed prospectively 22,977 pregnant women in Scotland and England for the incidence of malformations in the infants born to these women. The investigators analyzed data collected in two studies, an English study covering 8,293 pregnancies and a Scottish study covering 14,684 pregnancies. Of the 22,977 pregnancies, 620 women were prescribed an antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride during the first 13 weeks of pregnancy. The investigators defined malformation as "a malformation evident at birth or within 6 weeks in either a live or stillborn infant, which could be diagnosed unequivocally excluding skin malformation." Of the 620 women who were prescribed the drug, 589 (95 percent) delivered normal infants, 8 (1.3 percent) delivered malformed infants, and 23 (3.7 percent) had other pregnancy outcomes. Of the 22,357 women who were not prescribed the drug, 445 (2.0 percent) delivered malformed infants. For all abnormal birth outcomes, 5.0 percent involved maternal use of the antinauseant drug and 5.4 percent did not involve maternal use of the drug. The investigators stated that "in these studies there was neither a concentration of specific abnormalities nor any particular concentration of exposure period [for the antinauseant drug containing doxylamine succinate] among the women with abnormal outcomes" and concluded that the antinauseant drug was not specifically incriminated as a cause of malformations in infants exposed to the drug during pregnancy.

In a large, prospective, observational study, Milkovich and Van Den Berg (Ref. 8) evaluated the teratogenic potential of several antinauseant drugs, including a drug that contains doxylamine succinate, prescribed during the first 84 days of pregnancy. They found no association between maternal use of the drug containing doxylamine succinate and teratogenicity. Data concerning pregnancy, drug prescription, delivery, and child health and development were obtained for almost 100 percent of the pregnant women who reported for prenatal care at the Kaiser Health Plan's East San Francisco Bay Area medical facilities during the years of late 1959 to 1966. The study included 11,481 single pregnancies. Fifty-eight percent (6,693) of the women studied complained of nausea and vomiting during pregnancy. For 16.5 percent of the women (1,900), the physician stated in the records that the women did not suffer from nausea and vomiting. For 25 percent of the women (2,888), no indication of the presence or absence of nausea or vomiting could be found in the records. For women who were prescribed drugs for nausea and vomiting and those who were not prescribed drugs for these conditions, the distributions of maternal age, race, parity, and the proportion of primigravidas, among other variables, were almost identical. Only severe congenital anomalies (i.e., anomalies that are hazardous or, if not corrected, would impare the child's development or well being, or both) of the infants born were considered in the analysis. In addition, perinatal mortality rates, defined as fetal deaths at 20 or more weeks' gestation, and neonatal deaths were analyzed. The investigators found that for the children of women who had been prescribed the antinauseant drug containing doxylamine succinate, the severe congenital anomaly rates were (1) 0.8 percent at 1 month of age compared to a rate of 1.5 percent for children of mothers who were not prescribed any drugs, (2) 1.6 percent at 1 year of age compared to a rate of 2.2 percent for children of mothers who were not prescribed any drugs, and (3) 2.2 percent at 5 years of age compared to a rate of 3.2 percent for children of mothers who were not prescribed any drugs. The perinatal mortality rates for infants of mothers who had been prescribed antinauseant drugs, including the drug containing doxylamine succinate, and the perinatal mortality rates for infants of mothers who had not been prescribed antinauseant drugs were quite similar, i.e., 27.8 and 32.1 per 1,000 births respectively. None of the mortality rates for specific drugs studied differed significantly from the no-drug-prescribed group at the $p < 0.05$ level. A comparison of the combined rates for severe congenital anomalies and perinatal death found practically identical rates for the group of infants whose mothers had been prescribed antinauseant drugs and the group of infants whose mothers had not been prescribed such drugs, i.e., 60.1 and 60.2 per 1,000 births, respectively. The investigators stated that this study, supported by other independent studies, leads to the conclusion that, among other drugs, the antinauseant drug containing doxylamine succinate when taken in doses recommended for pregnant women is not teratogenic.

In a prospective study of 50,282 pregnant women and their offspring, Shapiro et al. (Ref. 36) compared the mean birth weight, perinatal mortality rates, and congenital malformation rates for infants of women who used antinauseant drugs containing doxylamine succinate and/or dicyclomine hydrochloride during the first 4 lunar months of pregnancy and the mean birth weight, perinatal mortality rates, and congenital malformation rates for infants of women who had not used antinauseant drugs containing the above ingredients. The investigators also obtained data concerning the intelligence quotient scores at 4 years of age for 28,353 of the children in the study group and compared the scores of children who were exposed to the antinauseant drugs in utero and those who were not exposed in utero to the drugs. Data were obtained from the Collaborative Perinatal Project. Extensive information on drugs taken during pregnancy, maternal illnesses, complications of pregnancy, and other factors were collected prior to the birth of the child. Drug use information was recorded at each mother's antenatal visit to her physician. Heavy exposure to the antinauseant drugs studied was defined as a drug taken by the mother for at least 8 days during one or more of the first 4 lunar months of pregnancy. The statistical analyses of the data collected were controlled for many possibly confounding factors such as maternal age, maternal illnesses such as diabetes, complications of pregnancy, genetic factors, race, socioeconomic status, marital status, birth order, and educational status of the mother. The analysis of congenital malformations showed no statistically significant differences in the relative risk for the occurrence of congenital malformations in general or for the occurrence of the specific congenital malformations

studied for 509 children "heavily exposed" in utero to the drugs studied, 660 children "intermediately exposed" in utero to the drugs studied, and for 49,113 children who were not exposed in utero to the drugs studied. The investigators found no statistically significant differences in the perinatal mortality rates for 1,403 infants who were exposed in utero to doxylamine succinate and for 39,934 infants who were not exposed in utero to doxylamine succinate. Likewise, no statistically significant differences in mean birth weight were found among drug-exposed and unexposed infants when the data were analyzed to take ethnic group and socioeconomic status into consideration. An analysis of the intelligence quotient scores of many of the children studied at 4 years of age found no statistically significant differences among one group of 80 children "heavily exposed" in utero to doxylamine succinate, another group of 837 children "intermediately exposed" to this drug, and another group of 27,441 children who were not exposed to the drug in utero. The investigators concluded that, although it is rarely possible in studies of this type to completely rule out some teratogenic effect, they found no evidence that the antinauseant drugs studied, including doxylamine succinate, are harmful to the fetus.

Using information from the same data base (Collaborative Perinatal Project) used in the Shapiro et al. study (Ref. 36) described above, Heinonen, Slone, and Shapiro (Ref. 29) presented data concerning the occurrence of birth defects in relation to exposure during the first 4 months of pregnancy to antinauseant, antihistamine, and phenothiazine drug products for 50,282 mother-child pairs that included 3,248 malformed children. Relative risks for the occurrence of malformations were presented as crude values, values standardized for hospital variability, and values standardized for the mother's ethnic group and for survival of the child. For mothers who ingested doxylamine succinate during the first 4 lunar months of pregnancy, the investigators found, for the occurrence of malformed infants, a crude relative risk of 1.05, a hospital-standardized relative risk of 0.96, and a relative risk standardized for survival of the child and race of the mother of 1.06. Standardized relative risks (SRR) with 95 percent confidence limits that took into account potential confounding variables were presented for classes of malformations showing uniform rates by hospital in relation to doxylamine succinate used in the first 4 lunar months by 1,169 pregnant women. For all malformations, the SRR was 1.07 with a 95 percent confidence interval of 0.83 to 1.37; for major malformations, the SRR was 1.06 with a 95 percent confidence interval of 0.78 to 1.45; and for minor malformations, the SRR was 1.37 with a 95 percent confidence interval of 0.98 to 1.93. The highest SRR was 1.68 (95 percent confidence interval of 0.73 to 3.28) for polydactyly in Blacks based on drugs used by 386 Blacks included in the study. No association was found between the ingestion of doxylamine succinate during the first 4 lunar months of pregnancy either with major malformations or with the overall group of malformations. The investigators concluded that, "on the basis of substantial numbers, there was no evidence to suggest that exposure to antihistamines, antinauseants, or to phenothiazines was related to malformations overall, or to large categories of major or minor malformations."

Gibson et al. (Ref. 37) conducted a prospective study of pregnant women attending the Queen Victoria Hospital (6,476 women) and the Obstetric Department of the Queen Victoria Hospital (1,180 women) in Adelaide, Australia. This study evaluated the outcome of pregnancy against exposure to an antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride. Each woman was interviewed after birth and at her first antenatal visit to her physician. A wide range of information was collected using a questionnaire that included maternal age; parity; residential area; personal and family medical history; occupation; diet; consumption of alochol, tobacco, cannabis; other nontherapeutic drugs and therapeutic drugs; exposure to chemicals; and other behavioral and environmental factors. The study population included 5,771 (76.1 percent) women who did not use the antinauseant drug during pregnancy, 1,685 (22.2 percent) women who used the drug during the first trimester of pregnancy, and 132 (1.7 percent) women who used the antinauseant drug after the first trimester of pregnancy. Data analyses compared pregnancy outcomes for the 5,771 women who did not use the antinauseant drug and the 1,685 women who used the drug during the first trimester of pregnancy. Other than anomalies of the male genital tract, analyses for differences in the risk for the occurrence of congenital anomalies that were uncontrolled for possible confounding factors and analyses that were controlled for possible confounding factors showed no significant differences between children whose mothers had used the antinauseant drug during the first trimester of pregnancy and children whose mothers had not used the drug during pregnancy. The investigators concluded that the study provided no evidence that the use of the antinauseant drug containing doxylamine succinate during the first trimester of pregnancy increases the risk of congenital anomalies either of the cardiovascular system or of the limbs. The multivareate analyses indicated a possible real effect of maternal use of the antinauseant drug in increasing the risks of the occurrence of genital tract anomalies. However, the investigators stressed that a data analysis of the kind performed for this study entails, many different comparisons, thereby increasing the probability that some apparently "significant" differences will emerge as a result of chance alone. The investigators stated that routine statistical significance testing should therefore not be used as a primary criterion in drawing conclusions.

In England, Greenberg et al. (Ref. 38) studied drug use during the first trimester of pregnancy in 836 mothers of congenitally malformed infants and in an equal number of control mothers of normal babies. The study considered possible associations between drug use and subsequent birth of a malformed infant. Cases of infants born with neural tube defects, oral clefts, limb deformities, or other malformations were identified from reports to the Office of Population Censuses and Surveys. The children's general practitioners were contacted. If willing, the physicians were interviewed by a medical field officer to obtain data concerning antenatal, personal, and family history as well as drugs prescribed during the first trimester of pregnancy. For each abnormal "case" baby, similar information was obtained from a mother of a normal "control" baby born within 3 months of the date of birth of the abnormal "case" baby. This study included 836 case-control pairs born in 1969, 1972, or 1973. An antiemetic drug had been prescribed for 178 mothers of control babies and for 157 mothers of case babies; this difference was not significant. Doxylamine succinate was prescribed for both case and control mothers for 13 case-control pairs, for the case mother only for 63 case-control pairs, for the control mother only for 75 case-control pairs, and for neither the case mother nor the control mother for 685 case-

control pairs. The investigators found no evidence that drugs dontaining doxylamine succinate are teratogenic for the congenital malformations studied.

In a retrospective analysis of drugs ingested in the first trimester of pregnancy in 7,933 consecutive deliveries between 1953 and 1975 in patients in a private practice, Newman, Correy, and Dudgeon (Ref. 30) found no associations between particular congenital abnormalities and particular drugs or groups of drugs studied. However, the investigators did find a twofold increase in congenital abnormalities in patients who had taken drugs of one kind or another during the first trimester of pregnancy. Data were obtained from the records of patients with pregnancies of at least 20 weeks' duration. Data collected included information concerning minor and major anomalies apparent at birth and drugs ingested during the first trimester. Data were analyzed to determine the number and type of congenital anomalies and their relation to drug usage as well as to determine the number of drugs used and their relation to the type and number of congenital anomalies present. Mothers who had a positive history of some type of drug use during the first trimester of pregnancy gave birth to 2,516 babies including 35 infants with malformations, 24 with major anomalies, and 11 with minor anomalies. Mothers who had a negative history for drug use of any kind gave birth to 5,417 babies including 41 infants with malformations, 32 with major anomalies, and 9 with minor anomalies. The observed incidence of anomalies in infants of mothers who used at least one drug was 1.39 percent and the observed incidence of anomalies in infants of mothers who did not use drugs was 0.76 percent. The difference in the observed incidences of anomalies for these two groups was significant at the $p < 0.01$ level. However, analysis of the data did not demonstrate a constant relationship between any particular abnormality and maternal ingestion of any particular drug (including the antinauseant drug containing doxylamine succinate) or between any drug or pharmacologic group of drugs (including antiemetics) and any particular abnormality. The investigators concluded that, while no particular drug was implicated as a teratogen in this study, it is significant that twice the incidence of congenital abnormalities occurred in infants of mothers with a positive history of the use of one or more drugs during the first trimester of pregnancy compared to the incidence of abnormalities in infants of mothers with a negative history of any drug use during the first trimester of pregnancy.

In Germany, Michaelis et al. (Ref. 31) evaluated the possible teratogenic effects of maternal use of an antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride during the first 12 weeks of pregnancy in a prospective study of 13,645 pregnancies. Data were obtained from a prospective study series on the course of pregnancy and child development. The study included 13,645 pregnancies. The mothers were seen by a physician every 4 weeks during pregnancy and these mothers filled out daily diary cards that covered a wide range of factors that could exert an effect on the course of pregnancy and child development, including information concerning maternal drug usage. Maternal drug use was also documented by the attending physician. Of the 13,645 pregnancies, the antinauseant drug containing doxylamine succinate was used by the mother in 1,001 cases during the first 12 weeks of pregnancy and 20 severe malformations (2 percent) occurred in infants born to these mothers. In comparison, 175 severe malformations (1.4 percent) occurred in infants of the 12,644 mothers who did not use the drug during the first 12 weeks of pregnancy. The difference, i.e., 2 percent compared to 1.4 percent, in the incidence of severe malformations in these two groups of infants was not statistically significant. Further analysis of the data yielded a risk ratio of 1.37 with a 90 percent confidence interval of 0.89 to 2.06 for the incidence of severe malformations in infants of mothers who had used the antinauseant drug compared to infants of mothers who had not used the drug. In addition, the malformations observed were very heterogeneous, so that specific types of abnormalities could not be defined for the two groups of infants evaluated. The investigators found no significant differences between the incidence of malformations for groups of infants whose mothers had ingested other antinauseant drugs during pregnancy and for groups of infants whose mothers had not ingested the drugs. A matched-pairs analysis was done of the data where mothers who had used the antinauseant drug containing doxylamine succinate were matched with mothers who had not used the drug with respect to maternal age, parity, number of previous abortions, and the clinic that provided maternal care. The investigators reevaluated the risk ratio for the incidence of severe malformations in infants whose mothers had used the antinauseant drug containing doxylamine succinate during the first 12 weeks of pregnancy. The study population was divided into two subgroups, one group of 7,870 pregnancies that had been evaluated in an earlier interim publication and another group of 5,775 additional pregnancies evaluated in this study.. Matching of pregnancies in the two subgroups resulted in 406 pairs in one group and 468 pairs in the other group. A combined analysis of these two sets of matched pairs yielded a risk ratio of 0.95 with a 90 percent confidence interval of 0.52 to 1.73. The investigators stated that evaluation of the 13,645 pregnancies studied prospectively yielded no grounds for concluding that ingestion of the antinauseant drug containing doxylamine succinate during pregnancy led to an elevated background risk of malformations in infants.

In a case-control study, Bunde and Bowles (Ref. 32) compared the incidence of congenital anomalies in infants who were exposed in utero to an antinauseant drug containing doxylamine succinate with the incidence of congenital anomalies in infants who were not exposed in utero to the drug. The investigators did not find a significant difference in the incidence of abnormalities between drug exposed and unexposed infants. Mothers who had used the antinauseant drug during pregnancy were matched with mothers who had not used the drug with respect to the time of pregnancy, the same physician, and the same hospital. The study involved 21 physicians known to prescribe the antinauseant drug for pregnant patients. Data were obtained from report forms filled out by the physicians that contained information concerning the time and amount of antinauseant drug use by the patient, other drug use during pregnancy, maternal age, length of gestation, maternal illnesses during pregnancy, and condition of the infant at birth. The report form also contained the same information concerning the matched control patient, i.e., "the next previous delivery not taking [the antinauseant drug]." Over approximately 6 years, data concerning 2,218 matched pairs of mothers were reported by the physicians. Of the 32 congenital abnormalities reported for infants of all mothers studied, 21 abnormalities occurred in infants of control mothers and 11 occurred in infants of mothers who had used the antinauseant drug. This difference in the occurrence of abnormalities for drug

exposed and unexposed infants was not significant ($p<0.10$).

Clark and Clayton (Ref. 39) found no significant differences in maternal use of an antinauseant drug containing doxylamine succinate, dicyclomine hydrochloride, and pyridoxine hydrochloride between 788 cases of perinatal death and 788 controls consisting of the first live births that immediately followed the occurrence of the perinatal death at the same obstetric unit. The study included perinatal deaths and live births in Leicestershire, England, during the period 1976 to 1979. Maternal drug use was ascertained through interviews of the mothers. Of the mothers of infants who died, 9.9 percent reported use of the antinauseant drug. Of the mothers of infants who lived, 9.4 percent reported use of the drug.

At the 1986 Teratology Society meeting, Rosa (Ref. 41) discussed a study that examined estimated relative risks for spontaneous abortions and live born defects in pregnancy cohorts for each of 510 generically identified drugs, which included doxylamine succinate. The data were obtained from a computerized data base (Michigan Medicaid) on approximately 35,000 annual pregnancies since 1980 and included 104,339 women. A total of 6,564 children ages 0 to 4 years with suspected birth defect diagnoses were linked to the women. Suspected birth defects occurred in 457 of the children born to 5,995 of the mothers who received an antinauseant drug containing doxylamine succinate 300 to 180 days before delivery (i.e., in the first trimester). A relative risk estimate of 1.2, with 95 percent confidence limits of 1.1 to 1.4, was found for all birth defects for children whose mothers had received the antinauseant drug. Elevated relative risks were found for congenital hip deformity (relative risk estimate of 1.4, with 95 percent confidence limits of 1.1 to 1.8), congenital hip dislocation (relative risk estimate of 1.7, with 95 percent confidence limits of 1.2 to 2.4), female genital anomalies (relative risk of 16.4, with 95 percent confidence limits of 3.5 to 78), intestinal fixation anomalies (relative risk of 3.6, with 95 percent confidence limits of 1.2 to 9.9), and iris/ciliary body defects (relative risk estimate of 7.5, with 95 percent confidence limits of 2.3 to 23). The investigator stated that associations should be considered screening signals that require further study and confirmation in other studies. The investigator concluded that this unadjusted profile of 457 suspected birth defect outcomes with 5,995 first trimester exposures to the antinauseant drug containing doxylamine generally supports lack of teratogenicity for the birth defects studied. He added that further study of female genital organ anomalies (relative risk estimate of 16.4) is desirable because nausea in pregnancy relates to maternal sex hormone levels.

The agency has reviewed extensive data concerning the possible teratogenicity of doxylamine succinate and concludes that it is unlikely that this ingredient is a teratogen. The agency recognizes that even the large number of pregnancies evaluated in the numerous studies discussed above cannot rule out the possibility that doxylamine succinate has a weak teratogenic potential. However, the agency believes that this ingredient can be safely marketed OTC as an antihistamine when labeled with the pregnancy/nursing warning required in 21 CFR 201.63. (See comment 2 below.) Therefore, doxylamine succinate is being included in the tentative final monograph.

References

(1) Eskenazi, B., and M.B. Bracken, "Bendectin (Debendox) As a Risk Factor for Pyloric Stenosis," *American Journal of Obstetrics and Gynecology*, 144:919–924, 1982.

(2) Aselton, P.J., et al., "Pyloric Stenosis and Maternal Bendectin Exposure," *American Journal of Epidemiology*, 120:251–256, 1984.

(3) Aselton, P.J., et al., "First-Trimester Drug Use and Congenital Disorders," *American Journal of Obstetrics and Gynecology*, 65:451–455, 1985.

(4) Mitchell, A.A., et al., "Birth Defects in Relation to Bendectin Use in Pregnancy, II. Pyloric Stenosis," *American Journal of Obstetrics and Gynecology*, 147(7):737–742, 1983.

(5) Rosa, F.W., draft of unpublished study, OTC Volume 04HTFM, Docket No. 76N–052H, Dockets Management Branch.

(6) Fleming, D.M., J.D.E. Knox, and D.L. Crombie, "Debendox in Early Pregnancy and Fetal Malformations," *British Medical Journal*, 283:99–101, 1981.

(7) Michaelis, J., et al., "Prospective Study of Suspected Associations Between Certain Drugs Administered During Early Pregnancy and Congenital Malformations," *Teratology*, 27:57–64, 1983.

(8) Milkovich, L., and B.J. Van Den Berg, "An Evaluation of the Teratogenicity of Certain Antinauseant Drugs," *American Journal of Obstetrics and Gynecology*, 125(2):244–248, 1976.

(9) Hendrickx, A.G., et al., "Evaluation of Bendectin Embryotoxicity in Nonhuman Primates: I. Ventricular Septal Defects in Prenatal Macaques and Baboons," *Teratology*, 32:179–189, 1985.

(10) Hendrickx, A.G., et al., "Evaluation of Bendectin Embryotoxicity in Nonhuman Primates, II. Double Blind Study in Term Cynomolgus Monkeys," *Teratology*, 32:191–194, 1985.

(11) Kalter, H., and J. Warkany, "Congenital Malformations: Etiologic Factors and Their Role in Prevention (First of Two Parts)," *New England Journal of Medicine*, 308:424–431, 1983.

(12) Holmes, L.B., "Teratogen Update: Bendectin," *Teratology*, 27:277–281, 1983.

(13) MacMahon, B., "Editoral. More on Bendectin," *Journal of the American Medical Association*, 246(4):371–372, 1981.

(14) Brent, R.R., "Editorial. The Bendectin Saga: Another American Tragedy (Brent, '80)," *Teratology*, 27:283–286, 1983.

(15) Leeder, J.S., S.P. Spielberg, and S.M. MacLeod, "Editorial. Bendectin: The Wrong Way to Regulate Drug Availability," *Canadian Medical Association Journal*, 129:1085–1087, 1983.

(16) Mitchell, A.A., et al., "Birth Defects Related to Bendectin Use in Pregnancy, I. Oral Clefts and Cardiac Defects," *Journal of the American Medical Association*, 245(22):2311–2314, 1981.

(17) Golding, J., S. Vivian, and J.A. Baldwin, "Maternal Anti-nauseants and Clefts of Lip and Palate," *Human Toxicology*, 2:63–73, 1983.

(18) Rothman, K.J., et al., "Exogenous Hormones and Other Drug Exposures of Children with Congenital Heart Disease," *American Journal of Epidemiology*, 109(4):433–439, 1979.

(19) Correy, J.F., and N.M. Newman, "Debendox and Limb Reduction Deformities," *Medical Journal of Australia*, 1:417–418, 1981.

(20) Aselton, P.J., et al., "Additional Follow-up of Congenital Limb Disorders in Relation to Bendectin Use," *Journal of the American Medical Association*, 250(1):33–34, 1983.

(21) Jiok, H., et al., "First-Trimester Drug Use and Congenital Disorders," *Journal of the American Medical Association*, 246:343–346, 1981.

(22) McCredie, J., et al., "The Innocent Bystander," *The Medical Journal of Australia*, 140:525–527, 1984.

(23) David, T.J., "Debendox Does Not Cause the Poland Anomaly," *Archives of Disease in Children*, 57:479–480, 1982.

(24) Hearey, C.D., et al., "Investigation of a Cluster of Anencephaly and Spina

Bifida," *America Journal of Epidemiology*, 120:559–564, 1984.

(25) Robinson, H.B., and K. Tross, "Agenesis of the cloacal membrane—A Probable Teratogenic Anomaly," *Perspectives in Pediatric Pathology*, 1(1):79–96,1984.

(26) Cordero, J.F., et al., "Is Bendectin a Teratogen?" *Journal of the American Medical Association*, 245(22):2307–2310, 1981.

(27) Cordero, J.F., and G.P. Oakley, "Drug Exposure During Pregnancy: Some Epidemiologic Considerations," *Clinical Obstetrics and Gynecology*, 26(2):418–428, 1983.

(28) Smithells, R.W., and S. Sheppard, "Teratogenicity Testing in Humans: A Method Demonstrating Safety of Bendectin," *Teratology*, 17:31–36, 1978.

(29) Heinonen, O.P., D. Slone, and S. Shapiro, "Antinauseants, Antihistamines, and Phenothiazines" *in Birth Defects and Drugs in Pregnancy*, PSG Publishing, Littleton, MA, pp. 322–334, 1977.

(30) Newman, N.M., J.F. Correy, and G.I. Dudgeon, "A Survey of Congenital Abnormalities and Drugs in a Private Practice," *Australian and New Zealand Journal of Obstetrics and Gynecology*, 17:156–159, 1977.

(31) Michaelis, J., et al., "Teratogene Effekte von Lenotan?", *Deutsches Arzteblatt*, 23:1527–1529, 1980.

(32) Bunde, C.A., and D.M. Bowles, "A Technique for Controlled Survey of Case Records," *Current Therapeutic Research*, 5:245–248, 1963.

(33) Aselton, P., et al., "First-Trimester Drug Use and Congenital Disorders," *Obstetrics and Gynecology*, 65(4):451–455, 1985.

(34) Morelock, et al., "Bendectin and Fetal Development—A Study at Boston City Hospital," *American Journal of Obstetrics and Gynecology*, 142(2):209–213, 1982.

(35) Harron, D.W.G., K. Griffiths, and R.G. Shanks, "Debendox and Congenital Malformations in Northern Ireland," *British Medical Journal*, 281:1379–1381, 1980.

(36) Shapiro, S., et al., "Antenatal Exposure to Doxylamine Succinate and Dicylomine Hydrochloride (Bendectin) in Relation to Congenital Malformations, Perinatal Mortality Rate, Birth Weight, and Intelligence Quotient Score," *American Journal of Obstetrics and Gynecology*, 128(5):480–485, 1977.

(37) Gibson, G.T., et al., "Congenital Anomalies in Relation to the Use of Doxylamine/Dicyolomine and Other Antenatal Factors," *The Medical Journal of Australia*, 1:410:414, 1981.

(38) Greenberg, G., et al., "Maternal Drug Histories and Congenital Abnormalities," *British Medical Journal*, 2:853–856, 1977.

(39) Clarke, M., and D.B. Clayton, "Safety of Debendox (Bendictin)," *Lancet*, 1:659–660, 1981.

(40) Memorandum of telephone conversation between A.J. Mustafa, FDA, and J.F. Cordero, Center for Disease Control, dated July 15, 1986, in OTC Volume 04ATFM, Docket No. 76N–052H, Dockets Management Branch.

(41) Rosa, F.W., "Computerized On-Line Medicaid Pharmaceutical Surveillance System (COMPASS) Human Teratology," presentation at the Teratology Society Meeting, July 8, 1986, Boston, MA, in OTC Volume 04ATFM, Docket No. 76N–052H, Dockets Management Branch.

2. Two comments urged that doxylamine succinate not be made available as an OTC antihistamine drug product. These comments stated that doxylamine succinate is used primarily in a prescription drug product that is marketed as an antinauseant to be taken during pregnancy. The comments expressed the concern that pregnant women might take OTC antihistamine drug products containing doxylamine succinate to self-medicate for nausea during the critical first trimester of pregnancy.

A reply comment advocated OTC status for doxylamine succinate because it has been sold OTC as an antihistamine at a dosage of 7.5 milligrams (mg) since the 1950's. The comment stated that doxylamine succinate in OTC drug products is labeled for use as an antihistamine, not as an antinauseant for use during pregnancy. The comment added that there did not seem to be any information suggesting that pregnant women had used antihistamine drug products containing doxylamine succinate as an antinauseant during the long period of time that they have been marketed OTC. The comment also stated that the prescription drug product containing doxylamine succinate that is used as an antinauseant during pregnancy has been shown to be safe by many studies. The comment cited six of these studies (Refs. 1 through 6). (Note: In June 1983, the marketing of the above mentioned prescription drug product was discontinued voluntarily by the manufacturer.)

The agency agrees with the reply comment. Doxylamine succinate can be generally recognized as safe and effective as an antihistamine in OTC drug products for the temporary relief of symptoms of allergic rhinitis and the common cold. (See comment 1 above.) Doxylamine succinate at the 7.5-mg dosage level has been sold as an OTC antihistamine in cough-cold products for many years. The comments that objected to the OTC marketing of this drug did not present any data and the agency is not aware of any data, indicating that pregnant women have used OTC cough-cold drug products containing doxylamine succinate to self-medicate for nausea during pregnancy. The OTC antihistamine drug products will be labeled only for use to relieve symptoms of allergic rhinitis and the common cold.

In addition, in the **Federal Register** of December 3, 1982 (47 FR 54750), the agency published a final rule requiring the following pregnancy warning in the labeling of all OTC drug products that are intended for systemic absorption into the body: "As with any drug, if you are pregnant or nursing a baby, seek the advice of a health professional before using this product." The agency believes that the proposed labeling for doxylamine succinate in this amendment to the tentative final monograph and the required warning concerning the use of OTC drug products during pregnancy are adequate to prevent misuse during pregnancy and to allow for general recognition of doxylamine succinate as safe and effective for OTC use as an antihistamine.

References

(1) Bunde, C. A., and D. M. Bowles, "A Technique for Controlled Survey of Case Records," *Current Therapeutic Research*, 5:245–248, 1963.

(2) Bunde, C. A., and H. M. Leyland, "A Controlled Retrospective Survey in Evaluation of Teratogenicity," *Journal of New Drugs*, 5:193–198, 1965.

(3) Gibson, J. P., et al., "Teratogenicity and Reproduction Studies with an Antinauseant," *Toxicology and Applied Pharmacology*, 13:439–447, 1968.

(4) Milkovich, L., and B. J. Van Den Berg, "An Evaluation of the Teratogenicity of Certain Antinauseant Drugs," *American Journal of Obstetrics and Gynecology*, 125:244–248, 1976.

(5) Warnecke, G., "Die Behandlung des Schwangerschaftserbrechens mit Lenotan," *Medizinische Monatsschrift*, 17:691–694, 1963.

(6) Yershalmy, J., and L. Milkovich, "Evaluation of the Teratogenicity Effect of Meclizine in Man," *American Journal of Obstetrics and Gynecology*, 93:553–562, 1965.

3. Several comments disagreed with the Panel's recommendation to allow the OTC marketing of doxylamine succinate at dosage levels greater than 7.5 mg. Such dosage strengths had previously been available by prescription only. In

general, the comments expressed opinions, without supporting data, that the benefits obtained from allowing higher dosage levels of this ingredient in OTC drug products would not outweigh the risks to which consumers would be exposed. Among the risks mentioned were a pronounced tendency to produce drowsiness and other adverse reactions. The comments also expressed concern that asthmatics with severe bronchitis would suffer from a thickening of secretions due to the anticholinergic effect of antihistamines.

In the preamble to the Panel's report at 41 FR 38313, the agency disagreed with the Panel's Category I classification of doxylamine succinate at dosage levels greater than 7.5 mg, i.e., adult dosages of 7.5 to 12.5 mg every 4 to 6 hours. The agency's objection to the OTC marketing of doxylamine succinate at dosages greater than 7.5 mg was based on the drowsiness that may result when this ingredient is used at higher doses. Subsequently, in a final decision concerning the marketing of diphenhydramine hydrochloride as an OTC antitussive drug product, published in the **Federal Register** of August 31, 1979 (44 FR 51512), the Commissioner found that the risk of drowsiness in itself does not justify restricting a drug to prescription use if "the manufacturer provides essential information in the labeling." Therefore, the dosages for doxylamine succinate recommended by the Panel are being adopted.

The following directions for use are being included in the tentative final monograph: Adults and children 12 years of age and over: oral dosage is 7.5 to 12.5 milligrams every 4 to 6 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 3.75 to 6.25 milligrams every 4 to 6 hours, not to exceed 37.5 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor. Also, the following directions for use are being included in proposed § 341.90 *Professional labeling:* Children 2 to under 6 years of age: oral dosage is 1.9 to 3.125 milligrams every 4 to 6 hours, not to exceed 18.75 milligrams in 24 hours.

The warnings proposed in §§ 341.72(c)(1) and (2), which are general warnings for all OTC antihistamine drug products and which include a warning to persons with asthma and chronic pulmonary disease not to take this drug unless directed by a doctor, are also proposed for doxylamine succinate. These warnings are in addition to the warning in proposed § 341.72(c)(4) that concerns drowsiness. The agency is proposing that this warning be revised to advise consumers that, in addition to alcohol, sedative and tranquilizer drug products intensify the drowsiness effect of antihistamines. The warning is revised to read, "May cause marked drowsiness; alcohol, sedatives, and tranquilizers may increase the drowsiness effect. Avoid alcohol while taking this product. Do not take this product if you are taking sedatives or tranquilizers, without first consulting your doctor. Use caution when driving a motor vehicle or operating machinery."

4. One comment questioned the dosage of doxylamine succinate when used as an antihistamine. The comment stated that, in comparing doxylamine succinate with promethazine, the Panel stated that "Doxylamine has also been described as being slightly 'less potent' than promethazine but having a longer duration of action" (41 FR 38386). However, the Panel recommended a dosage for doxylamine of "every 4 to 6 hours" and for promethazine of "every 8 to 12 hours." The comment concluded that the Panel, in effect, recommended that an ingredient having a longer duration of action be taken more frequently, and requested clarification of this apparent discrepancy.

The agency has reviewed the reference cited in the Panel's report that describes the duration of action for doxylamine and promethazine (Ref. 1). The agency has determined that the reference was misquoted. Promethazine is actually the active ingredient described as having a "longer duration of action" rather than doxylamine as stated in the Panel's report. Therefore, a more frequent dosage schedule for doxylamine is appropriate.

Reference

(1) Modell, W., "Drugs of Choice, 1974–1975," The C.V. Mosby Co., St. Louis, p. 426, 1974.

5. One comment noted an apparent oversight in the Panel's conclusion on the dosage for doxylamine succinate and suggested that the words "for adults" be added to clarify the Panel's conclusion (41 FR 38386). As changed, the statement would read: "The Panel concludes that doxylamine succinate 7.5 mg is the minimum effective OTC dosage for adults for the relief of the symptoms of allergic rhinitis."

The agency agrees with this change. The Panel stated in its dosage discussion of doxylamine succinate and in § 341.12(d) of its recommended monograph that the adult oral dosage of this drug is 7.5 to 12.5 mg every 4 to 6 hours, not to exceed 75 mg in 24 hours.

6. One comment stated that it was unaware of any clinical evidence that doxylamine succinate causes excitability in children. The comment added that the existing evidence demonstrates that doxylamine succinate does not cause excitability in children 6 years of age and over, citing attachments 17 (Ref. 1) and 18 (Ref. 2) in OTC Volume 040264 to support its contention. The comment recommended that the label warning recommended by the panel in § 341.72(b)(1), which states "May cause excitability especially in children," not be required for doxylamine succinate.

The agency does not agree with the comment's recommendation. The agency has reviewed the references cited above. These articles primarily report the results of studies in children conducted to determine the effectiveness of doxylamine succinate in various conditions. The evaluation of side effects, such as excitability, was not the primary purpose of the studies. The authors, in fact, did not mention whether excitability did or did not occur. The fact that excitability was not discussed or measured in the studies is not a sufficient basis to conclude that excitability does not occur, and that the warning recommended in § 341.72(b)(1) is not needed.

The Panel's report at 41 FR 38380 recognizes that "among the antihistamines, there are minor differences in the nature and frequency of side effects and toxicity which are related to chemical class." The incidence and severity of adverse effects, and the dose that causes these effects, vary with each drug and each individual. It should be noted that antihistamines as a class have both depressant and stimulant effects on the central nervous system (Ref. 3). Central nervous system depression manifested by drowsiness is the most common side effect. However, patients given conventional doses may occasionally become restless, nervous, and unable to sleep (Ref. 4).

In children, antihistamines can have a stimulating effect instead of the usual sedative effect which commonly occurs in adults (Ref. 5). Because antihistamines, as a pharmacologic group, can cause excitability, especially in children, and this effect cannot be predicted for an individual or for a specific antihistamine, the agency concludes that the warning is applicable to all antihistamines. Until data are presented that clearly show that doxylamine succinate or any other Category I antihistamine does not cause excitability in children, the agency believes that the consumer should be warned of this possible side effect.

Therefore, the agency proposes that the warning "May cause excitability especially in children," be required for all antihistamine active ingredients.

References

(1) Cany, J., and H. Huidobro, "Etude Clinique et Experimentale de l'activite Antihistaminique du Succinate de Doxylamine," *Therapie*, 15:159–167, 1960.

(2) Lajouanine, P., H. Roure, and A. Maurice, "Etude Clinique du Succinate de Doxylamine en Pediatrie," *Gazette Medicale de France*, 69:2429–2434, 1962.

(3) "AMA Drug Evaluations," 2d Ed., Publishing Sciences Group, Acton, MA, pp. 491–492, 1973.

(4) Douglas, W.W., "Histamine and Antihistamine; 5-Hydroxytryptamine and Antagonists," *in* "The Pharmacological Basis of Therapeutics," 4th Ed., edited by L. S. Goodman and A. Gilman, The Macmillan Co., New York, pp. 635–642, 1970.

(5) "Evaluation of Drug Interactions," 2d Ed., American Pharmaceutical Association, Washington, pp. 377–380, 1976.

B. Comments on Dosages for Triprolidine Hydrochloride.

7. Two comments requested that the agency's proposed dosage of 2.5 mg every 6 to 8 hours for triprolidine hydrochloride (50 FR 2217) be changed to a dosage of 2.5 mg every 4 to 6 hours, with the 24-hour maximum dose to remain 10 mg. Both comments stated that a dosing frequency of every 6 to 8 hours, as proposed in the tentative final monograph, is inconsistent with the dosing frequency of every 4 to 6 hours that had been approved by the agency, under the new drug approval procedures, for several currently marketed OTC antihistamine drug products at the same adult dosage levels of 2.5 mg triprolidine hydrochloride.

One comment, from a manufacturer that currently markets OTC triprolidine hydrochloride drug products under approved supplemental new drug applications (NDA's), stated that the safety and efficacy data in support of a dosing frequency of 2.5 mg every 4 to 6 hours are contained in its NDA's and, if necessary, could also be submitted to the agency's docket for the OTC antihistamine rulemaking. The other comment contended that the agency's proposed dosing frequency of 2.5 mg every 6 to 8 hours would preclude combining triprolidine hydrochloride as an antihistamine with any nasal decongestant active ingredient. The comment explained that the dosing frequencies proposed by the agency in the nasal decongestant tentative final monograph (50 FR 2239) of every 4 hours for phenylephrine hydrochloride and every 4 to 6 hours for pseudoephedrine hydrochloride and pseudoephedrine sulfate are inconsistent with the 6 to 8 hour dosing frequency for triprolidine hydrochloride. The comment argued that the preclusion of combination drug products containing triprolidine hydrochloride and a nasal decongestant would contradict the Panel's Category I recommendation for combinations of an antihistamine and a nasal decongestant.

The dosing frequency for triprolidine hydrochloride of 2.5 mg every 6 to 8 hours, initially proposed by the agency in the tentative final monograph, was based on the labeling in approved NDA's for prescription drug products containing this ingredient. This labeling stated that the adult dosage is 2.5 mg "3–4 times a day" (Ref. 1). Three to four times a day was construed to be one dose every 6 to 8 hours over a 24-hour period of time.

The agency has reviewed several published studies cited by one comment in its approved supplemental NDA's and agrees that the studies support a dosing frequency of 2.5 mg every 4 to 6 hours for triprolidine hydrochloride (Refs. 2, 3, and 4). One double-blind study involving 184 adults with a history of ragweed allergy compared the effectiveness of triprolidine hydrochloride alone, pseudoephedrine hydrochloride alone, triprolidine hydrochloride and pseudoephedrine hydrochloride in combination, and a placebo in reducing symptoms of allergic rhinitis (Ref. 2). A symptom complex score comprised of "nose blows, sneezing, rhinorrhea and nasal itch, lacrimation and itching of the eyes, ears and oral cavity" was used to measure the effectiveness of the different medications in treating symptoms of allergic rhinitis. On the first treatment day, 47 test subjects received 2.5 mg triprolidine hydrochloride at 11:30 a.m., 5:30 p.m., and 11:30 p.m. The mean of the square root of the allergic rhinitis symptom complex score for the 47 patients reached a minimum, i.e., the symptoms monitored were reduced to the greatest extent, when measured at 2:30 p.m. (3 hours after the initial dose at 11:30 a.m.). The mean began to increase after 2:30 p.m., indicating an increase in symptoms. Symptom complex scores were not measured after the 5:30 p.m. and 11:30 p.m. doses. On the second day the same 47 test subjects received 2.5 mg triprolidine hydrochloride at 8:30 a.m. and 2:30 p.m. The mean of the square root of the allergic rhinitis symptom complex score for the 47 patients taking triprolidine hydrochloride reached a minimum at 12:30 p.m. (4 hours after the 8:30 a.m. dose) and began to increase after 12:30 p.m. These data suggest that the effectiveness of triprolidine hydrochloride in treating symptoms of allergic rhinitis begins to decrease 3 to 4 hours after a dose has been taken. In addition, the mean of the square root of the allergic rhinitis symptom complex score for the triprolidine hydrochloride test group at 8:30 a.m. on the second day of the study, 9 hours after the 11:30 p.m. dose taken on the first day, was equivalent to the baseline mean of the square root of the symptom complex score for this group measured at the time the initial dose was given at 11:30 a.m. on the first day of the study. These data suggest that after 9 hours a dose of 2.5 mg triprolidine is no longer effective in reducing symptoms of allergic rhinitis.

A double-blind crossover study involving eight healthy male volunteers aged 21 to 50 years studied the effects of triprolidine hydrochloride and cyclizine hydrochloride in inhibiting the skin response to injected histamine. Subjects were studied on four occasions at weekly intervals. Each of the eight subjects received all of the following four treatments, one treatment each week: lactose placebo, 2.5 mg triprolidine hydrochloride, 50 mg cyclizine hydrochloride, and 100 mg cyclizine hydrochloride (Ref. 3). Inhibition of flare and weal responses to intradermal injections of histamine were assessed following these dosages of triprolidine hydrochloride, cyclizine hydrochloride, or lactose. At 1, 2, and 4 hours after the dose was given, three intradermal injections of histamine (0.1, 0.4, and 1.6 micrograms) were made into the back of the test subjects. Twenty minutes after injecting the histamine each flare and weal was measured. Significant displacement of dose-response curves, indicating the inhibition of a skin response to histamine, occurred at 1, 2, and 4 hours after 2.5 mg doses of triprolidine hydrochloride. However, the magnitude of the displacement of the dose-response curves decreased from 5.95 at 2 hours to 3.96 at 4 hours indicating that the effectiveness of 2.5 mg triprolidine hydrochloride to inhibit a skin response to histamine began to decrease between 2 and 4 hours after the drug had been given.

A double-blind crossover placebo-controlled bioavailability study in 18 healthy volunteers examined blood plasma levels of triprolidine hydrochloride in subjects taking a combination drug containing triprolidine hydrochloride and pseudoephedrine hydrochloride in an immediate release

dosage form. The study compared this group to subjects taking the same combination drug in a sustained release dosage form (Ref. 4). The test drugs included (1) sustained release capsules containing 5 mg triprolidine hydrochloride and 120 mg pseudoephedrine hydrochloride, (2) immediate release tablets containing 2.5 mg triprolidine hydrochloride and 60 mg pseudoephedrine hydrochloride, and (3) placebo tablets and capsules. The volunteers took the test drugs over a 5-day period. Sustained release capsules containing the combination of active drugs were given alternately with placebo capsules each day according to the following dosage in order to parallel the immediate release dosage schedule: an active drug combination capsule at 8 a.m., a placebo capsule at 2 p.m., an active drug combination capsule at 8 p.m., and a placebo capsule at 2 p.m. Immediate release capsules containing the combination of active drugs were given each day according to the following schedule: one tablet every 6 hours at 8 a.m., 2 p.m., 8 p.m., and 2 a.m. On the fifth day, blood samples were drawn at 8 a.m., 9 a.m., 10 a.m., 12 p.m., 2 p.m., 3 p.m., 4 p.m., 6 p.m., 8 p.m., and 10 p.m. These samples were measured to determine steady-state blood plasma levels for triprolidine hydrochloride and pseudoephedrine hydrochloride following the administration of the sustained release dosage form and following the administration of the immediate release dosage form. The mean triprolidine plasma levels measured for the immediate release dosage form on the fifth day reached an averaged maximum level at 1.6 hours with a range of 1 to 4 hours after the 8 a.m. and 2 p.m. doses. Six hours after each of these immediate release doses, the triprolidine hydrochloride plasma levels decreased to approximately 55 percent of the maximum levels measured. In addition, DeAngelis, et al. (Ref. 5) found a half-life of 5 hours for triprolidine hydrochloride.

Based on a review of the above published studies and on currently approved labeling of OTC drug products containing triprolidine hydrochloride (Ref. 6), the agency concludes that a dosing frequency of every 4 to 6 hours for both adults and children is appropriate for triprolidine hydrochloride and has revised the proposed directions for OTC use (§ 341.72(d)(10), redesignated as § 341.72(d)(12)) and the proposed directions for professional use of this drug (§ 341.90(k), redesignated § 341.90(m)), to read as follows:

* * * * *

(12) *For products containing triprolidine hydrochloride identified in 341.12(1).* Adults and children 12 years of age and over: oral dosage is 2.5 milligrams every 4 to 6 hours, not to exceed 10 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 1.25 milligrams every 4 to 6 hours, not to exceed 5 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

* * * * *

(m) *For products containing triprolidine hydrochloride identified in § 341.12(1).* Children 4 to under 6 years of age: oral dosage is 0.938 milligram every 4 to 6 hours, not to exceed 3.744 milligrams in 24 hours. Children 2 to under 4 years of age: oral dosage is 0.625 milligram every 4 to 6 hours, not to exceed 2.5 milligrams in 24 hours. Infants 4 months to under 2 years of age: oral dosage is 0.313 milligram every 4 to 6 hours, not to exceed 1.252 milligrams in 24 hours.

References

(1) Copies of FDA-approved labeling from NDA 11–110 and NDA 11–496, OTC Volume 04HTFM, Docket No. 76N–052H, Dockets Management Branch.

(2) Connell, J.T., et al., "A Double-Blind Controlled Evaluation of Actifed and its Individual Constituents in Allergic Rhinitis," *Journal of International Medical Research*, 10:341–347, 1982.

(3) Hamilton, M., et al., "A Comparison of Triprolidine and Cyclizine on Histamine (H_1) Antagonism, Subjective Effects and Performance Tests in Man," *British Journal of Clinical Pharmacology*, 13:441–444, 1982.

(4) Perkins, J.G., et al., "A Bioavailability and Safety Study Comparing Actifed Sustained-Action (SA) Capsules to Actifed Immediate-Release (IR) Tablets," *Current Therapeutic Research*, 28(5):650–668, 1980.

(5) DeAnglelis, R.L., M.F. Kearney, and R.M. Welch, "Determination of Triprolidine in Human Plasma by Quantitative TLC," *Journal of Pharmaceutical Science*, 66:841–843, 1977.

(6) Copies of FDA-approved labeling from NDA 11–110 and NDA 11–496, OTC Volume 04HFM, Docket No. 76N–052H, Dockets Management Branch.

II. The Agency's Proposals Concerning Chlorcyclizine Hydrochloride

Chlorcyclizine hydrochloride, as a single ingredient antihistamine at a 50-mg oral dose, was first marketed under an approved NDA in 1949 (Ref. 1). It was approved for OTC marketing at a 25-mg dose in 1959 and at this dose has been exempted from the prescription dispensing requirements of section 503(b)(1)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(1)(*c*)) since August 21, 1959 (24 FR 6805). (See 21 CFR 310.201(a)(25).) Chlorcyclizine hydrochloride (25 mg) in combination with pseudoephedrine hydrochloride (30 mg) at a dosage of one tablet three times a day has been marketed OTC under an approved NDA since 1959 (Ref. 2).

Drug products containing chlorcyclizine hydrochloride as a single ingredient and in combination with pseudoephedrine were reviewed under the agency's Drug Efficacy Study Implementation (DESI) Program. In DESI notices published in the Federal Register of July 27, 1972 (37 FR 15030) and July 29, 1976 (41 FR 31592), FDA stated its conclusion that chlorcyclizine hydrochloride (25 and 50 mg) is effective for relieving seasonal and perennial allergic rhinitis and vasomotor rhinitis. The latter notice noted that the manufacturer had discontinued marketing the 50-mg product in 1968. In a July 8, 1972 DESI notice (37 FR 13494), the Panel on Drugs Used in Allergy of the DESI Group stated that chlorcyclizine hydrochloride (25 mg) in combination with pseudoephedrine hydrochloride (30 mg) was effective in relieving hay fever, but was ineffective as a fixed combination in relieving nasal congestion because the dose of pseudoephedrine was less than optimal. The July 8, 1972 notice, which pertained to the review of OTC drugs by the DESI group, also deferred implementation of the Drug Efficacy Study pending the results of the OTC drug review. The OTC dose of pseudoephedrine was discussed in the advance notice of proposed rulemaking for OTC cold, cough, allergy, bronchodilator, and antiasthmatic drug products (September 9, 1976; 41 FR 38402) and in the tentative final monograph for OTC nasal decongestant drug products (January 15, 1985; 50 FR 2229).

No data on chlorcyclizine hydrochloride were submitted to the Cough-Cold Panel, and the ingredient was not reviewed as part of the OTC drug review. At this time, chlorcyclizine hydrochloride is being included in this amendment to resolve administrative questions that may have arisen concerning its status.

A review of FDA adverse reaction reports since 1969 indicates that only one adverse reaction, i.e., a report of "no drug effect," has been reported for a chlorcyclizine hydrochloride-containing drug product (Ref. 3). Based on the DESI reviews mentioned above that support the effectiveness of the drug as an antihistamine, and the long history of safe marketing as an OTC antihistamine, the agency concludes that

chlorcyclizine hydrochloride (25 mg) can be generally recognized as safe and effective for OTC use. The agency therefore is proposing Category I for this ingredient.

The labeling requirements for OTC antihistamine drug products in § 341.72 are also applicable to drug products containing chlorcyclizine hydrochloride. Based on the NDA labeling for chlorcyclizine hydrochloride products, the dosage recommended in § 310.201(a)(25), and other data (Ref. 4), the agency proposes the following dosage for chlorcyclizine hydrochloride: Adults and children 12 years of age and over: 25 milligrams every 6 to 8 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children under 12 years of age: Consult a doctor. Additionally, based on the pediatric dosage recommendations in § 310.201(a)(25)(vi), and the general guidelines used by the Cough-Cold Panel for determining pediatric dosages (41 FR 38333), the following dosages for chlorcyclizine hydrochloride for pediatric use are included in professional labeling in § 341.90: *For products containing chlorcyclizine hydrochloride identified in § 341.12(b).* Children 6 to under 12 years of age: Oral dosage is 12.5 milligrams every 6 to 8 hours, not to exceed 37.5 milligrams in 24 hours. Children 2 to under 6 years of age: Oral dosage is 6.25 milligrams every 6 to 8 hours, not to exceed 18.75 milligrams in 24 hours.

In 1966, acting on the recommendation of an Ad Hoc Advisory Committee on the Teratogenic Effect of Certain Drugs, FDA required relabeling, through NDA supplements, of drug products containing chlorcyclizine hydrochloride, cyclizine hydrochloride, and meclizine hydrochloride to include the following specific warning: "Warning—Not for use by women who are pregnant or who may possibly become pregnant, unless directed by a physician, since this drug may have the potentiality of injuring the unborn child." This labeling warning was prompted by concern that the drugs may have teratogenic or embryolethal potential. This required labeling statement (and others which are covered by this rulemaking) is included in 21 CFR 201.307, 310.201(a)(25), 369.20, and 369.21. [Chlorcyclizine hydrochloride, cyclizine hydrochloride, and meclizine hydrochloride are members of the piperazine class of antihistamines. Cyclizine hydrochloride and meclizine hydrochloride are primarily used as antiemetics, i.e., for the prevention and treatment of nausea and vomiting associated with motion sickness.]

Subsequently, in the **Federal Register** of March 13, 1975 (40 FR 12935), the Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Drug Products concluded that the available data do not warrant a restriction in the use of meclizine hydrochloride or cyclizine hydrochloride or the need for a pregnancy warning (40 FR 12935). The Panel based its conclusion on a review of the report of the FDA Ad Hoc Advisory Committee in light of more recent epidemiological data, taking into consideration the position of the American Teratology Society regarding the limitations of extrapolating animal data to man (Ref. 5). Epidemiological data on 50,282 pregnant women, 1,014 of whom had used meclizine hydrochloride during the early stages of pregnancy, indicate that the incidence of malformation of the offspring of the 1,014 women was not statistically greater than that of the control group (who had taken other drugs during pregnancy). Further, there is indirect evidence that meclizine hydrochloride is not toxic to the embryo and that the incidence of specific teratogenicity, e.g., cleft palate, was lower in the human pregnancy data than might have been expected from the results of the animal teratogenicity studies that led to the pregnancy warning (Ref. 6). The Panel concluded that the data do not support a restriction in the use of meclizine hydrochloride or cyclizine hydrochloride or a pregnancy warning. FDA agreed with the Panel on this issue in the tentative final monograph for OTC antiemetic drug products (44 FR 41068). The agency also believes that the data concerning teratology associated with meclizine hydrochloride and cyclizine hydrochloride are equally applicable to chlorcyclizine hydrochloride.

The agency also has reexamined its policy with respect to pregnancy warnings on OTC drugs. On December 5, 1983, the following general pregnancy-nursing warning for all OTC drug products intended for systemic absorption became effective (21 CFR 201.63): "As with any drug, if you are pregnant or nursing a baby, seek the advice of a health professional before using this product." The agency has also evaluated additional human epidemiological data (Ref. 7) and has determined that chlorcyclizine hydrochloride, as well as cyclizine hydrochloride and meclizine hydrochloride, has not been established to be a human teratogen. The agency concludes that the general pregnancy warning required by § 201.63 is sufficient for OTC drug products containing these ingredients. The prescription drug labeling pregnancy precautions required by § 201.57(f)(6) are sufficient for prescription drug products containing these ingredients. Therefore, the specific pregnancy warning that has been required for chlorcyclizine, cyclizine, and meclizine or their salts in § 201.307 should be removed. In the final rule for OTC antiemetic drug products (April 30, 1987; 52 FR 15886), the agency stated that because the requirements of § 201.307 with respect to cyclizine hydrochloride and meclizine hydrochloride are superseded by the requirements of the antiemetic final rule, the agency would address removal of § 201.307 in a future **Federal Register** publication. In this document, the agency is proposing to remove §§ 201.307 and 310.201(a)(25)(vii)(*c*) as well as the warnings in § 369.20 and § 369.21 that pertain to the specific pregnancy warning for chlorcyclizine. This action will result in the complete removal of § 201.307 from the CFR.

In addition, the agency is proposing to remove all other portions of § 310.201(a)(25), because the provisions of that regulation will be superseded by the requirements of the final monograph for OTC antihistamine drug products (Part 341). For this same reason, those portions of § 369.20 and § 369.21 applicable to chlorcyclizine are also proposed to be removed.

Chlorcyclizine hydrochloride was not considered by an OTC advisory review panel and, therefore, does not meet the terms of the enforcement policy in § 330.13. However, NDA's that allow the OTC marketing of products containing chlorcyclizine hydrochloride have been approved by the FDA, and the drug has been marketed OTC for many years. Thus, FDA does not believe it is necessary to prohibit OTC marketing of chlorcyclizine hydrochloride under this proposal while public comments to its proposed monograph status are being evaluated. OTC marketing may be initiated subject to the terms and conditions specified in this amendment and in § 341.72 of the tentative final monograph for OTC antihistamine drug products (50 FR 2216) and subject to the risk that FDA may adopt a different position in the final monograph that may require relabeling, recall, or other regulatory action.

References

(1) Letter from E.E. Nelson, FDA, to Burroughs Wellcome and Co., Inc., OTC Volume 04HATFM, Docket No. 76N–052H, Dockets Management Branch.

(2) Letter from F.J. Talbot, FDA, to Burroughs Wellcome and Co., OTC Volume 04HATFM, Docket No. 76N–052H, Dockets Management Branch.

(3) Department of Health and Human Services, Food and Drug Administration, Adverse Reaction Summary Listings, pertinent pages for the years 1969–1986, OTC Volume 04HATFM, Docket No. 76N–052H, Dockets Management Branch.

(4) Brown, E.A., et al., "A Clinical Evaluation of Chlorcyclizine (Perazil)," *Annals of Allergy*, 8:32–43, 1950.

(5) Staples, R. E., "Teratogens and the Delaney Clause," Science? 185:813–814, 1974.

(6) Shapiro, S., Boston Children's Medical Center, Testimony Before OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Panel, October 11, 1974, in OTC Volume 090PA2, Dockets Management Branch.

(7) Rosa, F., "Benzhydrylpiperazine (Cyclizines) Terato-Epidemiology," unpublished draft, June 25, 1985, in OTC Volume 04HATFM, Docket No. 76N–052H, Dockets Management Branch.

III. The Agency's Tentative Adoption of the Panel's Recommendations and the Agency's Amendments to the Tentative Final Monograph

A. Summary of Ingredient Categories

The agency has reviewed the active ingredient doxylamine succinate that was submitted to the Panel, as well as other data and information available at this time, and agrees with the Panel's recommendation that this ingredient be Category I. In addition, the agency is proposing that the active ingredient chlorcyclizine hydrochloride, which was not reviewed by the Panel, be Category I. Also, the agency is proposing a revised dosage schedule for the active ingredient triprolidine hydrochloride, which was previously proposed as Category I.

B. Summary of the Agency's Changes in the Tentative Final Monograph

1. Although not reviewed by the Cough-Cold Panel, the agency is proposing that chlorcyclizine hydrochloride be included in this tentative final monograph based on its exemption from the prescription dispensing requirements of the act since 1959 and on previous DESI findings that the drug is effective as an antihistamine. (See Part II. above—the agency's proposals concerning chlorcyclizine hydrochloride.)

2. The agency is proposing that doxylamine succinate be generally recognized as safe and effective at OTC oral dosages for adults and children 12 years of age and over of 7.5 to 12.5 mg every 4 to 6 hours, for children 6 to under 12 years of age of 3.75 to 6.25 mg every 4 to 6 hours, and professional labeling dosages for children 2 to under 6 years of age of 1.9 to 3.125 mg every 4 to 6 hours. (See comments 1 and 3 above.)

3. The agency has revised the letter designations in § 341.12 *Antihistamine active ingredients* to include the addition of the ingredients chlorcyclizine hydrochloride and doxylamine succinate in this section. The agency has revised the letter designations of active ingredients identified in §§ 341.72 (c) and (d) and 341.90 to reflect the revisions in § 341.12. The agency has also revised the number designations of the paragraphs in § 341.72(d) and the letter designations of the paragraphs in § 341.90 to reflect the addition of directions in § 341.72(d) and of professional labeling in § 341.90 for the ingredients chlorcyolizine hydrochloride and doxylamine succinate.

4. The agency is proposing to revise the warnings concerning the drowsiness effect of antihistamine drug products to also include sedatives and tranquilizers as other drugs that may intensify the drowsiness effect of antihistamines. In addition to alcohol, sedative and tranquilizer drugs are known to have additive effects to the drowsiness effect of antihistamine drug products (Refs. 1 and 2). The proposed warning for adults concerning drowsiness is revised to read as follows: "May cause (marked) drowsiness; alcohol, sedatives, and tranquilizers may increase the drowsiness effect. Avoid alcoholic beverages while taking this product. Do not take this product if you are taking sedatives or tranquilizers, without first consulting your doctor. Use caution when driving a motor vehicle or operating machinery." Because children may take prescription drug products that contain sedatives or tranquilizers, the agency is also proposing to revise the warning concerning drowsiness that is required for products labeled for pediatric use only to read as follows: "May cause (marked) drowsiness. Sedatives and tranquilizers may increase the drowsiness effect. Do not give this product to children who are taking sedatives or tranquilizers, without first consulting the child's doctor."

References

(1) Douglas, W. W., "Histamine and 5-Hydroxytryptamine (Serotonin) and Their Agonists," *in* "The Pharmacological Basis of Therapeutics," 7th Ed., edited by A. G. Gilman et al., MaeMillan Publishing Co., New York, p. 621, 1985.

(2) "Histamine and Antihistamines," *in* "Remington's Pharmaceutical Sciences," 17th Ed., edited by A. R. Gennero, Mack Publishing Co., Easton, PA, pp. 1125–1126, 1985.

5. The agency has revised the proposed directions in § 341.72(d) for all antihistamine active ingredients to read "Adults and children 12 years of age and over: . . ." rather than "Adults: . . ." to provide more informative labeling for the consumer.

6. The agency has revised the proposed directions for OTC use (§ 341.72(d)(10), redesignated as § 341.72(d)(12)) and professional use (§ 341.90(k), redesignated as § 341.9O(m)) of triprolidine hydrochloride to include a dosage sehedule of every 4 to 6 hours, based on a review of published literature and on current FDA-approved labeling of OTC drug products containing triprolidine hydrochloride under supplemental NDA's. (See comment 7 above.)

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC antihistamine drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC antihistamine drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this amendment would have on OTC antihistamine drug

products. Types of impact may include, but are not limited to, costs associated with relabeling, repackaging, or reformulating. Comments regarding the impact of this amendment on OTC antihistamine drug products should be accompanied by appropriate documentation. Because the agency has not previously invited specific comment on the economic impact of the OTC drug review on matters discussed in this amendment regarding OTC antihistamine drug products, a period of 120 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this amendment in the preamble to the final rule.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact, and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch, Food and Drug Administration (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

The agency is proposing to remove § 201.307 *Chlorcyclizine, cyclizine, meclizine; warnings; labeling requirements* in its entirety, § 310.201(a)(25), and portions of § 369.20 (under the heading "ANTIHISTAMINICS, ORAL") and § 369.21 (under the heading "ANTIHISTAMINICS, ORAL (PHENYLTOLOXAMINE DIHYDROGEN CITRATE, MECLIZINE HYDROCHLORIDE, DOXYLAMINE SUCCINATE, CHLOROTHEN CITRATE, CYCLIZINE HYDROCHLORIDE, AND CHLORCYCLIZINE HYDROCHLORIDE PREPARATIONS")) because the requirements of § 201.307 with respect to cyclizine hydrochloride and meclizine hydrochloride are superseded by the antiemetic final rule (21 CFR Part 336), published in the **Federal Register** of April 30, 1987 (52 FR 15886), and the requirements of § 201.307, § 310.201(a)(25), and the portions of § 369.20 and § 369.21 specified above with respect to chlorcyclizine hydrochloride and/or doxylamine succinate will be superseded by the antihistamine final monograph (21 CFR Part 341). The portions of §§ 201.307 and 310.20(a)(25) as well as the portions of §§ 369.20 and 369.21 specified above that will be removed and that pertain to the specific pregnancy warning for meclizine, cyclizine, and/or chlorcyclizine preparations are no longer needed because the OTC drug general pregnancy warning required by 21 CFR 201.63 and the prescription drug labeling pregnancy precautions required by 21 CFR 201.57(f)(6) are applicable to these ingredients.

Interested persons may, on or before October 23, 1987, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before December 22, 1987. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before August 24, 1988, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before October 25, 1988. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA-305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on October 25, 1988. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects

21 CFR Part 201

Labeling, Drugs.

21 CFR Part 310

Administrative practice and procedure, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 341

Labeling, Over-the-counter drugs, Antihistamine drug products.

21 CFR Part 369

Labeling, Medical devices, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR Part 201 is revised to read as follows:

Authority: Secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1056 as amended, 21 U.S.C. 321, 352, 355, 371; 21 CFR 5.10 and 5.11.

§ 201.307 [Removed]

2. In Subpart G, Part 201 is amended by removing § 201.307 *Chlorcyclizine, cyclizine, meclizine; warnings; labeling requirements.*

PART 310—NEW DRUGS

3. The authority citation for 21 CFR Part 310 is revised to read as follows:

Authority: Secs. 502, 503, 505, 701, 52 Stat. 1051, 1052, 1053, 1055 as amended (21 U.S.C. 352, 353, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

§ 310.201 [Amended]

4. In Subpart C, § 310.201 *Exemption for certain drugs limited by new-drug applications to prescription sale* is amended by removing paragraph (a)(25) and reserving it.

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

5. The authority citation for 21 CFR Part 341 (established in the **Federal Register** of October 2, 1986; 51 FR 35326) is revised to read as follows:

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); 5 U.S.C. 553; 21 CFR 5.10 and 5.11.

6. In Subpart B, § 341.12 (proposed in the **Federal Register** of January 15, 1985; 50 FR 2200) is revised to read as follows:

§ 341.12 Antihistamine active ingredients.

The active ingredients of the product consist of any of the following when used within the dosage limits established for each ingredient:

(a) Brompheniramine maleate.
(b) Chlorcyclizine hydrochloride.
(c) Chlorpheniramine maleate.
(d) Dexbrompheniramine maleate.
(e) Dexchlorpheniramine maleate.
(f) Diphenhydramine hydrochloride.
(g) Doxylamine succinate.
(h) Phenindamine tartrate.
(i) Pheniramine maleate.
(j) Pyrilamine maleate.
(k) Thonzylamine hydrochloride.
(l) Triprolidine hydrochloride.

7. In Subpart C, § 341.72 (proposed in the **Federal Register** of January 15, 1985; 50 FR 2200) is amended by revising paragraphs (c) (3), (4), (5), (6), and (d)(1); by redesignating paragraphs (d) (2), (3), (4), (5), (6), (7), (8), (9), and (10) as paragraphs (d) (3), (4), (5), (6), (8), (9), (10), (11), and (12), respectively, and revising them; and by adding new paragraphs (d) (2) and (7), and (e) to read as follows:

§ 341.72 Labeling of antihistamine drug products.

* * * * *

(c) * * *

* * * * *

(3) *For products containing brompheniramine maleate, chlorcyclizine hydrochloride, chlorpheniramine maleate, dexbrompheniramine maleate, dexchlor-pheniramine maleate, phenindamine tartrate, pheniramine maleate, pyrilamine maleate, thonzylamine hydrochloride, or triprolidine hydrochloride identified in § 341.12 (a), (b), (c), (d), (e), (h), (i), (j), (k), and (l).* "May cause drowsiness; alcohol, sedatives, and tranquilizers may increase the drowsiness effect. Avoid alcoholic beverages while taking this product. Do not take this product if you are taking sedatives or tranquilizers, without first consulting your doctor. Use caution when driving a motor vehicle or operating machinery."

(4) *For products containing diphenhydramine hydrochloride or doxylamine succinate identified in § 341.12 (f) and (g).* "May cause marked drowsiness; alcohol, sedatives, and tranquilizers may increase the drowsiness effect. Avoid alcoholic beverages while taking this product. Do not take this product if you are taking sedatives or tranquilizers, without first consulting your doctor. Use caution when driving a motor vehicle or operating machinery."

(5) *For products containing phenindamine tartrate identified in § 341.12(h).* "May cause nervousness and insomnia in some individuals."

(6) *For products that are labeled only for use by children under 12 years of age.* The labeling of the product contains only the warnings identified in paragraphs (c) (1) and (5) of this section as well as the following:

(i) "Do not give this product to children who have asthma or glaucoma unless directed by a doctor."

(ii) *For products containing brompheniramine maleate, chlorpheniramine maleate, dexbrompheniramine maleate, dexchlorpheniramine maleate, phenindamine tartrate, pheniramine maleate, pyrilamine maleate, thonzylamine hydrochloride, or triprolidine hydrochloride identified in § 341.12 (a), (c), (d), (e), (h), (i), (j), (k), and (l).* "May cause drowsiness. Sedatives and tranquilizers may increase the drowsiness effect. Do not give this product to children who are taking sedatives or tranquilizers, without first consulting the child's doctor."

(iii) *For products containing diphenhydramine hydrochloride or doxylamine succinate identified in § 341.12 (f) and (g).* "May cause marked drowsiness. Sedatives and tranquilizers may increase the drowsiness effect. Do not give this product to children who are taking sedatives or tranquilizers, without first consulting the child's doctor."

(d) * * *

(1) *For products containing brompheniramine maleate identified in § 341.12(a).* Adults and children 12 years of age and over: oral dosage is 4 milligrams every 4 to 6 hours, not to exceed 24 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 2 milligrams every 4 to 6 hours, not to exceed 12 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(2) *For products containing chlorcyclizine hydrochloride identified in § 341.12(b).* Adults and children 12 years of age and over: oral dosage is 25 milligrams every 6 to 8 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children under 12 years of age: consult a doctor.

(3) *For products containing chlorpheniramine maleate identified in § 341.12(c).* Adults and children 12 years of age and over: oral dosage is 4 milligrams every 4 to 6 hours, not to exceed 24 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 2 milligrams every 4 to 6 hours, not to exceed 12 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(4) *For products containing dexbrompheniramine maleate identified in § 341.12(d).* Adults and children 12 years of age and over: oral dosage is 2 milligrams every 4 to 6 hours, not to exceed 12 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 1 milligram every 4 to 6 hours, not to exceed 6 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(5) *For products containing dexchlorpheniramine maleate identified in § 341.12(e).* Adults and children 12 years of age and over: oral dosage is 2 milligrams every 4 to 6 hours, not to exceed 12 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 1 milligram every 4 to 6 hours, not to exceed 6 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(6) *For products containing diphenhydramine hydrochloride identified in § 341.12(f).* Adults and children 12 years of age and over: oral dosage is 25 to 50 milligrams every 4 to 6 hours, not to exceed 300 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 12.5 to 25 milligrams every 4 to 6 hours, not to exceed 150 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(7) *For products containing doxylamine succinate identified in § 341.12(g).* Adults and children 12 years of age and over: oral dosage is 7.5 to 12.5 milligrams every 4 to 6 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 3.75 to 6.25 milligrams every 4 to 6 hours, not to

exceed 37.5 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(8) *For products containing phenindamine tartrate identified in § 341.12(h).* Adults and children 12 years of age and over: oral dosage is 25 milligrams every 4 to 6 hours, not to exceed 150 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 12.5 milligrams every 4 to 6 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(9) *For products containing pheniramine maleate identified in § 341.12(i).* Adults and children 12 years of age and over: oral dosage is 12.5 to 25 milligrams every 4 to 6 hours, not to exceed 150 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 6.25 to 12.5 milligrams every 4 to 6 hours, not to exceed 75 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(10) *For products containing pyrilamine maleate identified in § 341.12(j).* Adults and children 12 years of age and over: oral dosage is 25 to 50 milligrams every 6 to 8 hours, not to exceed 200 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 12.5 to 25 milligrams every 6 to 8 hours, not to exceed 100 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(11) *For products containing thonzylamine hydrochloride identified in § 341.12(k).* Adults and children 12 years of age and over: oral dosage is 50 to 100 milligrams every 4 to 6 hours, not to exceed 600 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 25 to 50 milligrams every 4 to 6 hours, not to exceed 300 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(12) *For products containing triprolidine hydrochloride identified in § 341.12(l).* Adults and children 12 years of age and over: oral dosage is 2.5 milligrams every 4 to 6 hours, not to exceed 10 milligrams in 24 hours, or as directed by a doctor. Children 6 to under 12 years of age: oral dosage is 1.25 milligrams every 4 to 6 hours, not to exceed 5 milligrams in 24 hours, or as directed by a doctor. Children under 6 years of age: consult a doctor.

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

8. In Subpart C, § 341.90 (proposed in the **Federal Register** of January 15, 1985; 50 FR 2200) is amended by redesignating paragraphs (c), (d), (e), (f), (g), (h), (i), (j), and (k) as paragraphs (d), (e), (f), (g), (i), (j), (k), (l), and (m), and revising them; and by adding new paragraphs (c) and (h) to read as follows:

§ 341.90 Professional labeling.

* * * * *

(c) *For products containing chlorcyclizine hydrochloride identified in § 341.12(b).* Children 6 to under 12 years of age: oral dosage is 12.5 milligrams every 6 to 8 hours, not to exceed 37.5 milligrams in 24 hours. Children 2 to under 6 years of age: oral dosage is 6.25 milligrams every 6 to 8 hours, not to exceed 18.75 milligrams in 24 hours.

(d) *For products containing chlorpheniramine maleate identified in § 341.12(c).* Children 2 to under 6 years of age: oral dosage is 1 milligram every 4 to 6 hours, not to exceed 6 milligrams in 24 hours.

(e) *For products containing dexbrompheniramine maleate identified in § 341.12(d).* Children 2 to under 6 years of age: oral dosage is 0.5 milligram every 4 to 6 hours, not to exceed 3 milligrams in 24 hours.

(f) *For products containing dexchlorpheniramine maleate identified in § 341.12(e).* Children 2 to under 6 years: oral dosage is 0.5 milligram every 4 to 6 hours, not to exceed 3 milligrams in 24 hours.

(g) *For products containing diphenhydramine hydrochloride identified in § 341.12(f).* Children 2 to under 6 years of age: oral dosage is 6.25 milligrams every 4 to 6 hours, not to exceed 37.5 mg in 24 hours.

(h) *For products containing doxylamine succinate identified in § 341.12(g).* Children 2 to under 6 years of age: oral dosage is 1.9 to 3.125 milligrams every 4 to 6 hours, not to exceed 18.75 milligrams in 24 hours.

(i) *For products containing phenindamine tartrate identified in § 341.12(i).* Children 2 to under 6 years of age: oral dosage is 6.25 milligrams every 4 to 6 hours, not to exceed 37.5 milligrams in 24 hours.

(j) *For products containing pheniramine maleate identified in § 341.12(i).* Children 2 to under 6 years of age: oral dose is 3.125 to 6.25 milligrams every 4 to 6 hours, not to exceed 37.5 milligrams in 24 hours.

(k) *For products containing pyrilamine maleate identified in § 341.12(j).* Children 2 to under 6 years of age: oral dosage is 6.25 to 12.5 milligrams every 6 to 8 hours, not to exceed 50 milligrams in 24 hours.

(l) *For products containing thonzylamine hydrochloride identified in § 341.12(k).* Children 2 to under 6 years of age: oral dosage is 12.5 to 25 milligrams every 4 to 6 hours, not to exceed 150 milligrams in 24 hours.

(m) *For products containing triprolidine hydrochloride identified in § 341.12(l).* Children 4 to under 6 years of age: oral dosage is 0.938 milligram every 4 to 6 hours, not to exceed 3.744 milligrams in 24 hours. Children 2 to under 4 years of age: oral dosage is 0.625 milligram every 4 to 6 hours, not to exceed 2.5 milligrams in 24 hours. Infants 4 months to under 2 years of age: oral dosage is 0.313 milligram every 4 to 6 hours, not to exceed 1.252 milligrams in 24 hours.

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

9. The authority citation for 21 CFR Part 369 is revised to read as follows:

Authority: Secs. 502, 503, 506, 507, 701, 52 Stat. 1050–1052 as amended, 1055–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 352, 353, 356, 357, 371); 21 CFR 5.10 and 5.11.

§ 369.20 [Amended]

10. In Subpart B, § 369.20 *Drugs; recommended warning and caution statements* is amended by removing the reference to paragraph (a)(25) of § 310.201 from the entry "ANTIHISTAMINICS, ORAL," and by removing the paragraph "Cyclizine-containing preparations should include the following:" and the "Warning" statement following that paragraph.

§ 369.21 [Amended]

11. In Subpart B, § 369.21 *Drugs; warning and caution statements required by regulations* is amended by removing the reference to paragraph (a)(25) of § 310.201 and by removing "DOXYLAMINE SUCCINATE" and "CHLORCYCLIZINE HYDROCHLORIDE" from the entry "ANTIHISTAMINICS, ORAL (PHENYLTOLOXAMINE DIHYDROGEN CITRATE, MECLIZINE HYDROCHLORIDE, DOXYLAMINE SUCCINATE, CHLOROTHEN CITRATE, CYCLIZINE HYDROCHLORIDE, AND CHLORCYCLIZINE HYDROCHLORIDE," and by removing the paragraph "For chlorcyclizine-, cyclizine-, or meclizine-containing preparations, the statement:" and the "Warning" statement following that paragraph.

Dated: May 31, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87-19062 Filed 8-21-87; 8:45 am]

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Federal Register

Monday
August 24, 1987

Part VI

Department of the Interior

Bureau of Indian Affairs

25 CFR Parts 211, 212, and 225

Contracts for Prospecting and Mining on Indian Lands; Oil and Gas and Geothermal Contracts; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 211, 212, and 225

Contracts for Prospecting and Mining on Indian Lands; Oil and Gas and Geothermal Contracts

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This final rulemaking adopts rules and regulations implementing the Indian Mineral Development Act of 1982. In addition, the rulemaking revises existing rules and regulations in 25 CFR Part 211 governing mining on tribal lands, and removes 25 CFR Part 212 which governs mining on allotted Indian lands. A new Part 225 is added to govern oil and gas development contracts and leases from other mineral development. The regulations in existing Part 212 governing mineral development on allotted Indian lands are subsumed in the regulations in Parts 211 and 225.

EFFECTIVE DATE: This document is effective September 23, 1987.

ADDRESS: Joseph Johnston, Chief, Division of Energy and Mineral Resources, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Room 4529, Washington, DC 20245.

FOR FURTHER INFORMATION CONTACT: Don Aubertin or Dick Cramer Bornemann (303) 236–2660, Lakewood, Colorado, or Joseph Johnston (202) 343–3722, or Thornton Field, Office of the Solicitor (202) 343–9331, Washington, DC.

SUPPLEMENTARY INFORMATION: The principal authors of this final rulemaking are Don Jones and Dick Cramer-Bornemann of the Division of Energy and Minerals Resources, Bureau of Indian Affairs.

Pursuant to the mandate in section 8 of the Indian Mineral Development Act (Act) (96 Stat. 1940; 25 U.S.C. 2107), the Bureau of Indian Affairs (BIA) published a Notice of proposed rulemaking in the Federal Register on July 12, 1983 (48 FR 31978) intended to implement the 1982 Act. In addition to implementing the Act, the proposed rulemaking included a revision and reorganization of regulations governing mining and oil and gas leases adopted pursuant to the Act of May 11, 1938 (52 Stat 347, 25 U.S.C. 396a-g), which governs the leasing of tribally-owned minerals, and the Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396), which governs the leasing of individually-owned minerals on allotted lands. The proposed rules, governing leasing under the 1938 and 1909 Acts, incorporated many changes suggested by interested parties in response to proposed rules published in 45 FR 53164 on August 11, 1980, which were not adopted as final rules. In the July 12th document, the comment period was set for 60 days, ending September 12, 1983. However, on September 11, 1983, the comment period was extended for 30 additional days. A total of 67 separate comments was received from a variety of sources, including Indian tribes and organizations, mining and oil and gas companies, trade organizations and Federal agencies.

General Comments

The majority of the commentators were of the opinion that the proposal provided a workable regulatory scheme for implementing the purposes of the 1982 Act. Most commentators offered recommendations for technical corrections or editorial changes, and in some cases, proposed substantive changes. However, some commentators offered strong objections to two aspects of the proposal which are discussed herein.

Several industry commentators expressed concern that, as proposed, the regulations would subject mining leases, entered into pursuant to the 1938 Act, to requirements which rightfully should only be applicable to minerals agreements under the 1982 Act, thereby diminishing rights which lessees currently possess. They contended that the 1982 Act is intended to give Indian mineral owners greater flexibility in negotiating mineral contracts, while at the same time allowing the procedures for negotiating leases pursuant to the 1938 Act to remain intact. They cited in support of this, section 6 of the 1982 Act, which provides that "(n)othing in this Act shall affect the Act of May 11, 1938". They argued that the proposed regulations failed to distinguish between negotiated leases under the 1938 Act and those used as a part of a business arrangement sanctioned under the 1982 Act. The contention was made, for example, that some provisions of the regulations would subject existing 1938 Act leases to review of the entire lease, using the criteria established for the approval of mineral agreements under the 1982 Act, and urged that such provisions be deleted. Other examples were given which will be discussed below. The commentators ask that the BIA clearly explain its understanding of the relationship between leasing of minerals under the 1938 Act and negotiated leases under the 1982 Act.

The 1938 Act authorizes development of tribal mineral resources through a formalized lease conditioned upon competitive bidding for oil and gas development, royalty and rental provisions, limitations on acreage and a term of not more than ten (10) years and so long thereafter as minerals are produced in paying quantities.

Enactment of the 1982 Act removed the restriction which required competitive bidding for oil and gas agreements, thereby giving tribes full discretion on how their mineral resources will be marketed. In addition, and very importantly, the restriction as to form of agreement (lease) was removed. As a result, tribes may enter into any joint venture, operating, production sharing, service, managerial, lease or other agreement. Finally, the acreage limitation was removed and the term is not limited. Therefore, the 1982 Act gives full discretion for mineral development on tribal lands to the governing body of that tribe, subject to any limitation or provision contained in its constitution or charter, and a determination by the Secretary that the agreement is in the best interest of the tribe.

Common to both Acts is the requirement of Secretarial approval of a lease, in the instance of the 1938 Act; or other form of contractual agreement, in the instance of the 1982 Act. Tribes have the option to elect either act in conjunction with contemplated development.

It should be noted that, while tribes have the option to proceed under either Act, there are distinct differences between the two Acts. For example, oil and gas leases issued pursuant to the requirements of the 1938 Act are generally standardized leases executed on standard BIA forms. Such leases are subject to all of the requirements contained in regulations issued by the BIA, the Bureau of Land Management (BLM) and the Minerals Management Service (MMS). Similarly, any lease negotiated pursuant to the 1938 Act will be standardized to the extent that the lease must conform to the lease offer made in the sale notice, *i.e.*, it must be for a term of not more than 10 years, absent production in paying quantities; it must provide for a fixed royalty and a specified rental; and the acreage leased must not exceed limitations imposed by regulations.

However, mineral agreements, including leases, approved under the 1982 Act, need not be subject to the same constraints as leases negotiated under the 1938 Act. For example, 1982 Act agreements are not limited to a maximum 10-year term, absent production in paying quantities. Also, there are no regulatory acreage

limitations applicable to agreements under the 1982 Act.

In summary, it is clear that the provisions of the 1982 Act give tribes much more latitude and flexibility in the types of development agreements into which they may enter.

The authority under existing law for allottees or owners of undivided interests in Indian allotted lands to lease their lands for mining purposes is somewhat different than that granted Indian tribes. The 1909 Act authorizes the Secretary to require competitive bidding in instances where the original allottee is deceased and the heirs either have not been determined or, if determined, cannot be located. As a matter of policy, since 1957, the Secretary has, by regulation, required that the competitive lease sale procedure be followed for all oil and gas leasing on allotted lands. However, on some limited occasions, the requirement has been waived upon request and allottees have been authorized to negotiate mining leases without competitive sales when the BIA has determined that, under the circumstances, a waiver of this requirement was in the best interest of the Indian owners.

Congress could have authorized allottees to negotiate mineral agreements when it passed the 1982 Act, but it did not. Instead, the 1982 Act only authorizes allottees to include their interest in a tribal mineral agreement, with the consent of the parties to the agreement, and with approval of the Secretary of the Interior.

In summary, the BIA understands the differences between leasing under the 1938 Act and the 1982 Act to be as follows:

(a) Tribes may lease minerals other than oil and gas, under either Act, except that leases issued under the 1982 Act are to be subject to the procedures for review and approval by the Secretary set forth in section 4 of the Act as implemented by the rules in Subpart A of 25 CFR Part 211.

(b) Tribes may enter into oil and gas leases or agreements under either Act. Leases or agreements executed pursuant to the 1938 Act must first be offered for sale by competitive bidding. After the receipt of bids and their rejection, tribes may enter into negotiated leases or agreements with the approval of the Secretary.

If the agreement is negotiated under the 1938 Act, all provisions of that Act shall apply.

(c) Individually-owned Indian trust lands may be included in the 1982 Act tribal agreements with the consent of the parties and the approval of the Secretary, but allotted lands may not be included in such agreements which do not provide for participation of tribal lands.

(d) Allotted lands may continue to be leased pursuant to the 1909 Act.

(e) Oil and gas leases of allotted lands under the 1909 Act will continue to be made by competitive bidding, unless this requirement is waived by the Secretary of the Interior on a case-by-case basis to allow leasing by negotiations.

In response to the concern expressed by some industry commentators (i.e., that the BIA appears to be proposing that the requirements of the regulations intended to implement the 1982 Act, as set forth in Supbart A of Parts 211 and 225, apply to existing leases executed prior to the effective date of the new regulations), the BIA wishes to make clear its position that the procedures and requirements in the regulations pertaining to mineral agreements apply prospectively and only in those instances where the parties have elected to proceed under the 1982 Act. The basis of this conclusion is the absence in the statute or in the legislative history of the 1982 Act of any indication that Congress intended to retroactively impose the procedures for the Secretarial review and approval of mineral agreements on existing leases executed under the 1938 Act, or that such procedures should apply to new leases executed under the 1938 Act or the 1909 Act. Consequently, the proposed rules are revised to eliminate or modify any provisions which may be ambiguous in this respect. These changes are discussed below in the analyses of comments received on each section of the proposed rules.

A number of industry commentators questioned the propriety of combining in one set of regulations rules governing mineral operations under the 1982 Act and revisions to existing rules governing operations under the 1938 Act and the 1909 Act. These commenters complain that the BIA failed to explain the reason for the changes affecting the leasing regulations under the 1938 Act. They recommended that the proposed rules be withdrawn and new proposed rules implementing the 1938 Act be promulgated separately.

The BIA acknowledges that the preamble to the proposed rules did not explain in detail the reasons for changes to the existing rules, and such explanations are provided herein in the section-by-section analysis of the rules. The BIA should have pointed out that these changes are based upon extensive comments received on proposed rules published in the Federal Register on August 11, 1980 (45 FR 53165). That proposal, in turn, constituted a republication of an April 5, 1977 proposal, (published in 42 FR 18083), with substantive revisions. As noted in the preamble to the April 1977 proposal, the initial impetus for revision of the regulatory scheme then in existence was provided by the Secretary of the Interior in a June 1974 decision on a petition by an Indian tribe to rescind certain leases on tribal lands. The Secretary concluded the decision with a directive to the Solicitor to rewrite the regulations then in effect "to correct their present ambiguities" in order "to better fulfill my responsiblity to assure the protection of Indian culture and environmental interests as well as to allow the maximum development of Indian natural resources." Thus, the effort to revise the BIA's mining regulations is of long duration and further delay is unwarranted. The BIA has determined not to republish the revisions for a fourth time. It is believed the revisions made in the final rules will eliminate the commentators' objections to the proposed rules.

Another general comment was that the proposed rules did not set forth rules governing mineral agreements for the development of geothermal resources on Indian lands. They noted also that it was unclear from reading the proposal which of the two parts governed geothermal operations, since both Parts 211 and 225 contained reference to geothermal. The BIA agrees with this criticism and in response has corrected Part 211 to make it clear that Part 211 governs minerals other than oil and gas and geothermal. In addition, Part 225 is revised to make it clear that geothermal operations are governed by its provisions. A description of a regulatory scheme for geothermal operations is set forth in the discussion of Part 225.

As a result of changes made in response to comments received, a number of sections have been moved to other locations in the parts and the subsequent sections have been redesignated. In addition, some new sections have been added. Finally, minor editorial changes have been made to correct grammatical errors and/or omissions. For the purposes of discussion, reference will be made to section designations in the proposed rules.

DISCUSSION

A. Part 211—Contracts for Prospecting and Mining on Indian Lands (Except Oil and Gas and Geothermal)

Sec. 211.1 Purpose and scope.

Two industry commentators objected to the statement in paragraph (a) of this section that the regulations are intended

to ensure that Indian owners desiring to have their minerals developed receive "at least fair market value" for their resources. They content that the concept of fair market value is highly subjective and its inclusion in the regulations could serve as a basis for later attempting to unjustifiably reform the terms of a contract, especially if the economic benefits from the contract are not as expected due to events or conditions which none of the parties to the agreement were aware of at the time of contracting. They contend that the function that might have been intended by this clause is covered by § 211.6(b) which provided that a proposed agreement must be reviewed to determine if it is in the best interest of the tribe, and that this review includes an analysis of the potential economic return to the tribe. They ask that this entire clause be deleted. While the commentors may be correct that the uniqueness of these agreements and the difficulties with finding comparables for comparison purposes may make a fair market valuation difficult to perform, such a review is still desirable and essential for the approving official to make to assure the agreement is a prudent one. The difficulty in performing such an analysis is not sufficient justification for not trying. The Act itself envisions the reviewing official will perform an economic analysis when it is appropriate and feasible. Fair market value is a well established, and appropriate yardstick for determining whether the Indians involved in a minerals agreement are receiving adequate compensation for the disposal of their non-renewable resource.

A number of industry commentators strongly objected to paragraph (c) which they contend unilaterally gives the BIA the right to require revisions to the provisions of any agreement (except the terms, royalties, rentals, and acreage) executed prior to the effective date of the new regulations. One commentor stated that once a contract has been approved, *no* terms can be amended except by agreement of all parties, and that the provision lacks any statutory authority and may be unconstitutional.

It is important to note that the economic bargain struck by the parties is not subject to unilateral change by rulemaking. The intent this section is to permit the Department the needed flexibility to change the operational aspects of administering and supervising these contracts, over time, to conform with changing circumstances. For example, as experience gained with the bonding requirement, it may be appropriate to set minimums. Likewise, information collection requirements may change as experience dictates. This type of operational flexibility is essential.

The commentators also appear to have overlooked the fact that language in paragraph (c) has been included in the BIA's regulations since December 1957, if not earlier, and also has been a provision in the BIA's standard lease forms for a number of years. (See 25 CFR 211.18). Yet no instance is cited by the commentators wherein the BIA has revised the terms of a mineral contract to the detriment of a party to the contract through the process of promulgation of new or revised regulations. As to statutory authority for such a provision, Section 8 of the 1982 Act directs the Secretary of the Interior to promulgate rules and regulations to implement the Act and to consult with national and regional organizations and tribes "* * * both in the intitial formulation of rules and regulations and any future revision or amendment of such rules and regulations." Had the Congress desired to exempt existing agreement from the application of revisions or amendments to the regulations, it could have done so in this section. The BIA interprets the absence of any such limitation as meaning that the Congress acquiesces in the long-standing practice of including such a provision in its rules and in standard lease forms. Therefore, the recommendation that this provision be deleted or modified to state that no regulations shall affect the terms of a contract without the agreement of all the parties is not accepted.

At the suggestion of the Office of Surface Mining Reclamation and Enforcement (OSMRE), a new paragraph (d) is added to indicate that mining operations for coal are governed by applicable regulations of that office.

A new paragraph (e) has been added at the request of some tribes who criticized the regulations for failing to include a provision recognizing that Congress has granted tribes the authority to regulate mining operations on Indian lands under the Indian Reorganization Act and other acts.

Sec. 211.3 Definitions.

The BIA has accepted the suggestion by several commentators that all applicable definitions should be set forth in one location. All of the definitions located in Section 211.33 in the proposed rules are now found in § 211.3. In addition, the definitions of "oil" and "gas" and "geothermal" which were included in § 211.3 have been moved. A number of comments were received pertaining to the definition of "minerals agreement." Industry commentators urged that the definition be amended to make it clear that it does not apply to amendments of leases entered into pursuant to the 1938 and 1909 Acts. The proposed definition is patterned after the language in section 3(a) of the 1982 Act. That language, of course, does not contain the phrase "(other than a lease entered pursuant to the Act of May 11, 1938, and the Act of March 3, 1909)" after the word "leases." This phrase is added to make it clear that leases entered into pursuant to the 1982 Act are included in the definition of mineral agreements, and leases entered pursuant to the 1938 Act and the 1909 Act are excluded from the definition.

The industry commentators urge that the definition be amended to read "* * * lease (other than a lease, *or* amendment thereto, entered into pursuant to the Act of May 11, 1938, and the Act of March 3, 1909) * * *." As discussed *ante* under General Comments, the BIA believes that Congress intended the 1938 Act to remain as an alternative means whereby Indian mineral owners could dispose of their mineral resources, but there is nothing in the legislative history of the 1982 Act to indicate that Congress intended retroactively to apply the procedures for Secretarial review and approval in the 1982 Act to leases issued pursuant to the 1938 Act. The BIA believes the same reasoning applies to an amendment of a lease issued under the 1938 Act. In other words, the BIA agrees with one comment that "the 1982 Act does not transform 1938 Act leases into minerals agreements and there is no statutory basis to do so in the proposed regulations." Consequently, this recommended change has been accepted. Several commentators pointed out that although the term "contract" was used throughout the proposed regulations, the term was not defined. They suggested that "contract" should either not be used or a definition of the term should be included in the regulations.

It should be noted that "contract" is used in the text exclusively in Subpart C of the two parts which contain provisions applicable to mineral agreements under the 1982 Act, and competitive leases under the 1938 and the 1909 Acts. The term "contract" was chosen because of the need to find a commonly understood term which encompasses a mineral agreement (which includes "leases"), and competitive leases under the other Acts. The BIA believes that defining "contracts" is unnecessary if the public understands that it is simply a general term covering any type of document

pertaining to the development of Indian mineral resources under any one of the three acts.

Subpart A—Minerals Agreements

Sec. 211.4 Authority to contract. (renumbered as § 211.5)

Two comments were received indicating that it will be detrimental to individual Indians owning allotted lands not to be able to enter into a lease or agreement pursuant to the 1982 Act without joining in tribal agreements. They suggest that many times these lands are not adjacent to tribal lands and the allottee does not have a right to negotiate under the proposed rules. The commentators ask that additional provisions be added to this section to cover this situation. While the BIA sympathizes with this comment, it is nevertheless precluded from doing so in section 3(b) of the 1982 Act, which states that individual Indian owners of mineral interests "* * * may include such resources in a tribal Minerals Agreement * * *." The legislative history of the Act supports this position. Earlier versions of the bill which became the 1982 Act provide that tribes *and* individual Indians could enter into such agreements. However, the final bill was amended to delete this authorization as to allottees. Consequently, the requested amendment cannot be made.

An editorial change was made to paragraph (a).

Sec. 211.5 Negotiation procedures. (renumbered as § 211.6)

Comments on paragraph (b) were received from both Indian representatives and industry. The Indian commentators made suggestions for additional provisions. On the other hand, industry commentators recommended that the section be amended to provide only that no particular form of agreement is prescribed. They contend that a list of factors to be considered is unnecessary and that the likely effect will be a requirement that such factors be included in all agreements. The industry commentators misconstrue the purpose of this paragraph. This provision is included at the request of Indian representatives who reviewed a preliminary draft of the regulations and felt that some guidance should be provided tribes who were not familiar with these types of agreements and may wish to know the factors which need to be taken into consideration in the negotiating process. The provisions listed are those in a typical mining contract. It is not intended that these provisions should be construed as constituting a "model agreement," nor should they be regarded in any way as criteria which must be included in the agreement in order to obtain Secretarial approval. The criteria for approval of agreements is set forth in Section 211.6. Consequently, the BIA rejects this argument and this paragraph is not deleted. Two new subsections, (15) and (16), pertaining to a schedule of activities and descriptions of proposed abandonment and reclamation activities, which were suggested by commentators, have been added.

Paragraph (c) has been revised to change "should" to "may" in order to make it clear that consultation with representatives of the Secretary prior to formal execution of an agreement is recommended, but such consultation is not a requirement for obtaining Secretarial review. Also, in response to a comment that § 211.5 contains no "requirements," this sentence is revised to read "requirements of the regulations in this part." Paragraph (d) is revised to change "should" to "shall" inasmuch as the agreement must be forwarded to a representative of the Secretary for review.

Sec. 211.6 Approval of agreements. (renumbered as § 211.7)

Some commentators raised questions concerning the time limit of 180 days after submission, or 60 days after meeting National Environmental Protection Act (NEPA) requirements in paragraph (a), within which a proposed agreement must be approved or disapproved. They expressed concern that 180 days was too short a period within which to conduct the necessary technical review. They also asked whether these time frames include review by the tribe or does "after submission" refer only to receipt of the proposed review by the Secretary.

These time limits are prescribed by section 4(a) of the 1982 Act. The BIA interprets the phrase "after submission" in section 4(a) of the Act to mean after formal submission of an executed agreement to the Secretary for approval or disapproval. There is nothing in the legislative history to support a contrary intention on the part of Congress. Consequently, no change in paragraph (a) is being made.

Several commentators pointed out that paragraph (c) was inconsistent with § 211.37, in that it required that the written findings "shall" include an economic assessment, whereas § 211.37(a) states that an economic assessment, "where required," shall include the findings set forth. It is the BIA's intention that an economic assessment shall always be made of a proposed new minerals agreement. However, in many instances, amendments, supplements, and modifications of existing agreements may be proposed with very little, if any, effect on the economic aspects of the agreement and shall not require preparation of an economic assessment. Otherwise, the qualifying phrase, "where required," in § 211.37(a) would have no meaning. Accordingly, in order to correct any misunderstanding, the qualifier, "if needed," is used in § 211.7(c).

Numerous unfavorable comments were received from both tribal and industry commentators on the concept of "fair and reasonable remuneration" as set forth in paragraphs (d) and (f). The principal objection to the concept is that it is unworkable and unrealistic. The commentators argue that the definition of "fair and reasonable remuneration" is too inflexible in that it requires the Secretary to find that the return to the Indians is not less than that received by non-Indians or the Federal Government in similar situations. Objectors felt there may not be similar contemporary mining ventures or federal projects which are truly comparable to the types of agreements likely to be developed for Indian lands, and in the absence of such agreements, the Secretary would be placed in an impossible situation.

Some commentators recommended that paragraphs (d) and (f) be deleted in their entirety and that paragraph (e) be amended to provide that the Secretary's determination of whether to approve or disapprove an agreement would be based soley on the written findings required by paragraph (c). Another commentator suggested that paragraphs (d), (e), and (f) were inconsistent with the objectives of the Act and should be revised to provide that the Secretary should take into consideration the factors set forth in paragraph (d), rather than make a determination that such conditions exist. The rationale is that the "determinations" required by section 4(b) of the Act should be based upon the environmental assessment and the economic assessment, if made, and that the Secretary's written findings shall be based upon such determinations.

The BIA has determined that the concept of "fair and reasonable remuneration" should be retained because it is an essential element in determining whether an agreement is in the best interest of the Indian owners, but the regulations setting forth the

concept have been revised so that "fair and reasonable remuneration" is not another required written finding in addition to the environmental assessment and the economic assessment. Accordingly, appropriate revisions to paragraphs (d) and (f) have been made.

Paragraph (g) has been revised to require that a copy of the required written statement of the reasons why an agreement should be approved, or not approved, be sent to the Indian mineral owners, as required by the Act.

Subpart B—Mining Lease

The title of this subpart is changed to "Procedures for Competitive Leases," for clarity.

Sec. 211.20 Scope.

A number of commentators expressed some confusion as to what is meant to be covered by this subpart. They note that the phrase "through a competitive bidding procedure" under the 1938 Act implies that the competitive bidding procedures must be followed and that direct negotiation is not allowed. They asked whether or not the BIA intends that 1938 Act leases will continue to be issued via competitive bidding and also through negotiations. They also asked whether the BIA believes that any new lease that is negotiated falls automatically under the 1982 Act, inasmuch as the second sentence of this section states that leases may be negotiated "under the procedures in Subpart A," which are the procedures governing leasing under the 1982 Act.

The existing regulations of the BIA have provided, since 1957, in § 211.2, that leases for minerals other than oil and gas shall be advertised for sale by competitive bidding procedures unless written permission is granted to the Indian owners to directly negotiate for a lease. The BIA believes that this is a sound policy and should be continued. However, a provision setting forth this requirement was omitted from the proposed rules. Section 211.21(a) has been revised to make it clear that tribes may make leases under the 1938 Act, by direct negotiations with the written permission of the Secretary. In addition, the phrase "through competitive bidding procedure" has been deleted.

As explained, *ante*, it is the BIA's position that in enacting Section 6, Congress intended that the requirements of the 1982 Act should apply only to mineral agreements entered into under that Act, and that leasing authorities under the 1938 Act and the 1909 Act are not affected by the 1982 Act. Consequently, to avoid any misunderstanding, the second sentence in § 211.20 has been deleted.

Sec. 211.21 Procedures for awarding leases.

A number of commentators pointed out that the phrase "prospecting and mining leases," which appears twice in paragraph (b), is confusing, as "prospecting leases" is not a term used elsewhere in the rules. This term has been eliminated in the final rules.

The advertising procedure in paragraph (c)(2) would have required that the text of the advertisement include a complete description of the specific tracts to be offered. Upon further consideration, the BIA has concluded that because in many instances a large number of tracts are included in a lease sale, this requirement would result in an unnecessary monetary burden on the public in the light of the high cost of publishing multiple descriptions of individual tracts in local newspapers. Printing costs in one known lease sale were in excess of $6,000. Consequently, the BIA has elected the alternative, whereby specific descriptions of the tracts to be offered for sale will be available at the office of the Superintendent and will be sent to any person listed on the agency's list of persons who have asked to be informed of future lease sales.

Paragraph (c)(5), as proposed, requires a successful bidder to submit the balance of the bonus, the first year's rental, a $25 filing fee, her/his share of the advertising costs, all bonds, and the executed leases, within 30 days after notification of the bid award. The rule authorizes the Superintendent to grant an extension of up to 30 days within which to file the executed lease. Some commentators recommended that the 30-day time limit be deleted and "a reasonable time specified by the Superintendent" be substituted for the 30-day limit. One industry commentator justified this proposed change on the grounds that, while the time limit is reasonable, if there are no terms to be negotiated under the bidding procedure, it is inappropriate for the bidder to face potential loss of her/his deposit if the inability to come to terms could be based on the action of the Government or the Indian mineral owner. This argument seems to be reasonable. However, it overlooks the fact that the time for submission only begins to run after it has been determined that the bid is satisfactory and the bidder is apprised of this fact. Thus, it is assumed that a notice to the bidder will not be given unless the proposed terms of the bid have been thoroughly examined and that no further adjustments will be required. However, even in the event that further negotiations may be required, the BIA believes a 30-day extension is sufficient. Consequently, the proposed deletion of any time limit has not been made.

Objections were voiced to the provision in paragraph (c)(5) which would give an Indian mineral owner the option to readvertise a forfeited lease, with a defaulting bidder required to pay the difference between her/his high bid and the high bid received at the sale, plus the cost of advertising for the subsequent sale. The objections were that this provision would be unfair, since it could result in an enormous and unpredictable expense for a bidder where the failure to submit the executed lease and other items was not her/his fault. The suggestion was made that this penalty provision was not practical, inasmuch as subsequent bids in the second sale would likely be lower, not higher.

The BIA has concluded that the objections to this provision, particularly the comment that its effect might be lower bids, are legitimate, and accordingly the provision has been deleted. Defaulting bidders will be required to pay 25 percent of their bonus bid for the use and benefit of the Indian mineral owner.

Some industry commentators suggested that the provision in paragraph (d) that the Secretary shall not award a lease to any bidder until the consent of the Indian owner has been obtained should be deleted. They contend that this requirement is inconsistent with 25 CFR 211.21(c)(5) which requires that the successful bidder must file the completed lease within 30 days, which means the consent of the owner has been obtained. The commentators misconstrue the purpose of this requirement. As the courts have held on many occasions, although the Secretary's approval is required in order to lease Indian land, the Secretary is not the lessor and cannot grant a lease on her/his own authority. See: *Poafpybitty* v. *Shelly Oil Co.*, 390 U.S. 365 (1968). This provision is intended to enforce that holding. Consequently, even though an Indian mineral owner has consented to put her/his interest up for sale, the owner retains the right to decline to accept the highest bid. Similarly, even in the situation where an Indian owner has signed a lease of her/his interest, the owner has the right to withdraw consent to the lease at any time prior to the moment it is approved by the Secretary.

For this reason, the suggested deletion is not accepted.

Sec. 211.22 Duration of leases.

One commentator questioned the implication in this section that the term of a lease entered into by means of the exercise of an option is to be measured from the date of the exercise of the option, and contended that the term should not begin to run until a lease has been fully approved. The argument is that, based upon the commentator's experience, it could take years after exercising an option before a lease is approved, and it is unfair to have the lease's term begin before all approvals have been obtained. This argument is persuasive and the section has been revised accordingly.

Numerous comments were received objecting to the proposed definition of the term "paying quantities" in paragraph (b). Sixteen commentators opposed use of the definition, for a variety of reasons, and urged that it be deleted. First, they pointed out that the definition is predicated on the proposition that "paying quantities" means that in order for a mining venture to have production in paying quantities, there must be a showing that every year of operations results in a profit to the lessee. They argue that this is unrealistic and impractical when applied to the mining of minerals other than oil and gas. Because of the nature of such operations, they contend, it is not uncommon for mines to operate for several years without a profit during the early development period, yet, during those years, the mine continues to be a worthwhile project. In addition, it is not uncommon to suspend production to permit a reduction in stockpiles of materials to an acceptable level. Strikes, delays, and disputes can operate to cause suspension of operations, resulting in a loss of profits in a given year. The objectors contend that given these factors, use of the proposed definition would force most mining companies to abandon any further development on Indian lands, since they would be unwilling to risk their investment in developing a mine, if they knew that one year of depressed prices or unprofitable operations might result in forfeiture of the mine.

One comment was that profitability to the operator is of no concern to the Indian lessor as long as royalties are paid. As long as any minimum royalties specified in the lease are paid the lessor, this commentator felt an operator should be deemed to be producing in "paying quantities." The suggestion was that if the lease failed to specify a minimum rental, it could be negotiated pursuant to § 211.22(d).

Finally, one commentator felt that strict adherence to the proposed definition would work to the detriment of Indian lessors, since it would prevent them from having the flexibility to agree that the lease should remain in effect during unprofitable years, with the expectation that it would be profitable within the foreseeable future.

After considering all the comments opposing the proposed definition, the BIA has concluded that the arguments presented against defining "paying quantities" are persuasive. Consequently, the proposed paragraph (b) has been deleted.

It was also decided that the requirement in paragraph (e) that written evidence showing that minerals are being produced in paying quantities must be filed at the end of each fiscal year is an excessive burden on the public, especially since it is usually evident that production in paying quantities is occurring from other required reports and written proof of that fact is deemed unnecessary. Consequently, proposed paragraph (e) has been deleted.

Paragraphs (c) and (d) of this section which dealt with suspension of operations have been incorporated into a new section numbered 211.47 entitled, Suspension of Operations; Remedial Operations, and are further discussed there.

Sec. 211.23 Forms. (New)

The proposed rules failed to include the existing rules in 25 CFR 211.30 and 212.32 which require that leases, assignments, and other instruments shall be executed on forms prescribed by the Secretary. The BIA has concluded that, inasmuch as competitive leases will continue to be issued under the 1938 and the 1909 Acts, there is a need to include this requirement in the regulations. Consequently, until further notice, competitive leases, assignments, bonds, and permits should be executed on the appropriate form listed below:

Subject matter	Form No.
Assignments	BIA-5429.
Bonds:	
(1) Nationwide	BIA-5438.
(2) Statewide	BIA-5430.
(3) Lease Bond	BIA-5427.
(4) Assignees Bond	BIA-5435.
(5) Lessee Bond Supported by Government Securities.	BIA-5426.
Evidence of Authority of Officers to Execute Papers.	BIA-5428.
Modification of Lease	BIA-5443.
Mineral Prospecting Permits:	
(1) Oil and Gas (Non-exclusive and without option to lease).	BIA-5424.
(2) Mineral (Non-exclusive and non-optional).	BIA-5436.
(3) Mineral (Exclusive and option to lease).	BIA-5437.
Leases	Lease forms may vary between Area and Agency offices.
Sand, gravel, pumice and building stone permits:	
(1) Short-term (6-months)	BIA-5434.
(2) Long-term	BIA-5433.

Subpart C—General

Sec. 211.30 Scope.

There were no comments on this section.

Sec. 211.31 Authority and responsibility of the Authorized Officer.

This section has been rewritten for clarity, and the title changed to—Authority and responsibility of the Bureau of Land Management.

Sec. 211.32 Authority and responsibility of the Minerals Management

Service (MMS). (Refer to 48 FR 134, Page 31982.)

The BIA has accepted the suggestion of several commentators that the word "inspection" be substituted for "obtaining" in the second sentence of this section. The comments were that this change would more adequately preserve the confidentiality of the documents, while permitting their use by MMS to ensure accurate royalty payments. The BIA agrees that this is a reasonable modification and the section has been rewritten.

Sec. 211.33 Definitions.

The definitions in this section have been consolidated in § 211.3. A new section defining the responsibilities of the Director, Office of Surface Mining Reclamation and Enforcement (OSMRE) has been added.

Sec. 211.34 Approval of amendments.

A number of commentators expressed concern that in drafting paragraph (a), the BIA intends that the criteria for approval of an amendment, modification or supplement to an agreement entered into pursuant to the 1982 Act, are also applicable to leases under the 1938 Act. The BIA recognizes that, as proposed, paragraph (a) seemed to imply that amendments, modifications, or supplements must meet the 1982 Act criteria, inasmuch as it stated that the contract, as modified, must meet "* * *

the criteria for approval set forth in § 211.6 or § 211.21." The purpose of this provision is to assure that amendments to contracts, whether leases entered into pursuant to the 1938 Act, or contracts (including leases) entered into under the 1982 Act, do not alter an approved contract to such a degree that it would no longer be in the Indian owner's best interests. This is what is meant by the references to "the criteria for approval." The provision has been amended to make it clear that 1982 Act contracts shall be reviewed under the criteria in § 211.6 and competitive leases are to be reviewed under the criteria in § 211.21.

The same objection was voiced with respect to paragraph (b), which the commentators felt could require substantial re-formation of a contract previously entered into, since it would subject such contracts to the requirements of § 211.6. The commentators overlooked the fact that section 8 of the 1982 Act provides that approval of mineral agreements pending before the Secretary, which were submitted prior to the effective date of the Act, shall not be delayed on the grounds that rules and regulations have not been promulgated. There were a number of mineral agreements pending on the date of enactment, which subsequently have been approved. Consequently, the reference to "criteria set forth in § 211.6" was intended to apply to these agreements. However, a reference was erroneously made to the entire "lease" meeting the criteria of § 211.6. This reference has been corrected to insert "contract" in place of "lease." The requirement that the amendment of the contract meet the criteria for approval in § 211.21 applies to amendments to 1938 Act leases.

Several commentators objected to the requirement that the exercise of options to lease Indian lands be approved by the Secretary pursuant to § 211.21, which governs the competitive bidding process. Upon further consideration, the BIA has determined that enforcement of this rule might infringe upon vested legal rights, and has deleted this requirement. However, it should be noted that the regulations require that in order to perfect a preference right to a lease in a prospecting permit, the permit must comply with all the laws and regulations applicable to mineral leases.

Sec. 211.35 Removal of restrictions.

No changes were made to this section.

Sec. 211.36 Geological and geophysical permits.

A number of commentators objected to paragraph (a)(2) which would prohibit provisions granting an option or preference right to a lease or other development contract in exploration permits. They point out that the current rules in § 211.27(a) allow such preference rights if they are specifically granted in the permit. They also felt a strict prohibition against preference rights in such permits would not be in the Indian mineral owners' best interests since it might deter companies from conducting exploration operations on Indian lands. The BIA agrees and has revised this paragraph to authorize Indian mineral agreements to specify preference rights in a prospecting permit when explicitly provided for in writing and with the approval of the Secretary and Indian mineral owner.

After considering the many objections to the proposed procedures for settlement of damages with surface owners, set forth in paragraphs (a)(3) (i) through (iv), the BIA has concluded that these provisions, which were taken from oil and gas regulations governing operations on the Osage Reservation in Oklahoma, should not be included in the regulations because the circumstances which prevail on lands within the Osage Reservation are unique to that reservation and may not apply nationally. Consequently, three proposed procedures have been deleted.

The requirement in paragraph (a)(4), that a copy of all data collected by a permittee shall be forwarded to the Secretary and the Indian mineral owner, drew a negative reaction from industry commentators. The comments ranged from the suggestion that such data should not be forwarded to the Secretary or the Indian mineral owner until after the bidding process is completed, to a suggestion that data should never be forwarded to the Indian owner unless provided for in the permit. On the other hand, one Indian tribe suggested that the provision was inadequate because it did not specify that the permittee's interpretations of the raw data, as well as the data itself, should be forwarded to the Indian mineral owner.

The BIA appreciates industry concerns that the confidentiality of data which a permittee has collected should be protected to ensure her/his investment in the collection of such data. However, the BIA believes that the Indian owners of the mineral to be developed are entitled to have access to data which is essential in order for them to know the nature, extent and value of the mineral resource. Consequently, the suggestion that the regulations provide that only the Secretary is to receive copies of data resulting from permit operations is not acceptable. On the other hand, the BIA agrees with one commentator that requiring that a copy of the data must be forwarded to the Indian owner could have undesirable effects in that it could discourage companies from conducting exploration on Indian lands if the confidentiality of the data is compromised. Also, numerous people would receive copies of data for which they have no practical use. Accordingly, the BIA has concluded that this provision should be modified to require that copies of data be made available to the Indian mineral owner if the permit so requires. The intention is that the Indian owners and permittees negotiate as to what data shall be made available, and what procedures will be followed with respect to protecting its confidentiality.

Paragraph (a)(5), as proposed, required the permittee to obtain rights of ingress and egress from the surface owner. This provision would apply in situations where the Indian mineral owner may or may not be the surface owner. One industry commentator noted that her/his company had experienced difficulties in securing rights of ingress and egress because of the great number and diversity of surface ownerships—especially where there is a mixture of reservation and allotted lands. The commentator proposed alternative language which differentiates between instances where the Indian mineral owner is or is not the surface owner. Under this alternative, which the BIA has adopted, where the Indian mineral owner is the surface owner, such owner shall obtain any additional necessary permits or rights of ingress or egress from any other surface user, permittee, lessees, etc., on her/his land, to allow the geological permittee to enter the land and conduct operations. Where the Indian mineral owner is not the surface owner, such owner shall assist the geological permittee to obtain any additional permits to the best of her/his ability.

Paragraph (b) provides that no permit is required to conduct geophysical or geological operations "on Indian lands" included in a contract entered into pursuant to Part 211, unless the contract *per se* requires a permit. The public should be aware that this provision does not apply in situations where the United States is the owner of the surface of the lands involved. In all such situations, a permit to conduct exploratory operations must be obtained from the Authorized Officer.

Sec. 211.37 Economic assessments.

This section contains the elements to be included in an economic assessment of a proposed minerals agreement. As

proposed, these elements were to be mandatory "findings." One commentator stated that it was unclear whether or not each of the elements or criteria must be determined affirmatively in order for an agreement to be approved, or whether the Secretary must simply state whether or not each exists and then make a balanced overall assessment. The commentator urged the latter because, while an agreement might fail to meet one or more of the criteria, taken in its entirety, the agreement could be very advantageous to the Indian mineral owner.

One industry commentator urged that this section be deleted entirely because the 1982 Act does not anticipate anything as specific or detailed as the requirements of this section. He pointed out that the Act merely requires the Secretary to "consider the potential economic return to the tribe." The BIA's reaction to this criticism is the same as the reaction to similar criticism of § 211.6, i.e., the proper approach to a proposed agreement should be to determine whether each element is present, and then make an overall determination whether the agreement is in the Indian owner's best interest. Accordingly, § 211.37(a) has been revised to provide that an economic assessment shall take into consideration the elements as set forth, and the requirement of written findings on each element has been deleted.

Several commentators objected to the requirements in § 211.37(d), that, in reviewing a negotiated contract, a finding must be made as to whether or not the negotiated contract "clearly" provides the Indian mineral owner with a "greater" share of the return on the production of her/his mineral than would be obtained through competitive bidding. They contend that this provision is unreasonable and impractical, and that such a determination cannot be made. The BIA agrees with this assessment. Accordingly, in line with the changes in paragraph (a) discussed above, "is likely to" is substituted for "clearly," and "equal to" is added to "greater than" in paragraph (d).

Section 211.37(a)(6) has been deleted inasmuch as this provision is not appropriate to mining operations involving hard rock minerals.

Paragraph (b), which defined the term "geological and geophysical permit" has been deleted. This definition is now defined in § 211.3(o).

Sec. 211.38 Environmental assessments.

Minor editorial corrections and additions have been made to paragraph (a).

Industry commentators recommended that paragraph (b) be deleted on the grounds that it is superfluous, since the type of cultural/historical study required under the 1982 Act is directly tied to NEPA, which is referenced in paragraph (a). The BIA does not agree. Paragraph (b) implements the requirement in section 4(b) of the 1982 Act which provides that in approving or disapproving mineral agreements, the Secretary shall consider, among other things, the potential social and cultural effects of the agreement, as well as the potential effects on the environment. Acts of Congress such as the National Historic Preservation Act, the Archeological and Historic Preservation Act, and the Archeological Resources Protection Act of 1979, require all federal agencies to take affirmative steps to preserve and protect districts, sites, buildings, structures, and objects significant in American history, architecture, archeology and culture. The requirements of the 1982 Act are thus in addition to those in earlier Acts, and are not a substitute for them. Consequently, paragraph (b) has been retained. Some editorial changes have been made.

Sec. 211.39 Persons signing in a representative capacity.

One commentator asked whether paragraph (b) is intended to require that each time a corporation proposes to acquire an interest in Indian minerals, it must file a statement containing all of the information required by the regulations; and commented that if this was the intent, the regulation would impose an unnecessary burden on industry. The BIA agrees that unless there is a significant change in the corporate structure, a corporation should not be required to file the same information repeatedly. Accordingly, paragraph (a) has been revised to require that corporations have on file a statement which complies with the regulation at the agency in which the Indian lands are located.

Industry commentators recommended that paragraph (c) be deleted on the grounds that it is arbitrary and capricious, since it would authorize the Secretary to require meaningless information to be submitted and subject a lessee to disapproval or cancellation for failure to furnish it. Furthermore, they add, the Secretary has other enforcement mechanisms short of something as harsh as cancellation.

The BIA has concluded that the information requirements of this section are repetitious in that both paragraphs (b)(3) and (c) would have authorized the Secretary to require additional information as necessary. Accordingly, paragraph (b)(3) has been deleted. In addition, it is concluded that the last sentence of paragraph (c), which states that failure to furnish requested information will be grounds for cancellation or disapproval of a document, is unnecessary since the Secretary has the discretionary authority to decline to approve an instrument for failure of an applicant to comply with the Department's rules.

Sec. 211.40 Bonds.

Commentators felt that this section should identify the purpose of the bonds. Additional language has been added to paragraph (b) in response to this concern.

Commentators asked who would be the "approving official" referred to paragraph (b). The answer is either the Agency Superintendent or an Area Director.

Two industry commentators recommended that this section be deleted in its entirety. They contended that the requirement and manner of bonding should be left as a matter of negotiation between the parties with a review by the Secretary of the mechanism employed to insure that the interests of the Indian mineral owner are protected. They also suggested that a provision for self-bonding should be added.

The BIA recognizes that a contract or prospecting permit entered into through negotiations under the 1982 Act could contain bonding provisions agreed to by the parties. Similarly, the parties to the contract could agree to self-bonding in lieu of the bonding requirements of this section, provided the Secretary determines that the proposed bonding is in the Indian owner's best interest. However, this section also applies to leases entered into pursuant to the 1909 and the 1938 Acts, and the BIA believes that the rules must provide for bonding covering such leases. With respect to self-bonding, the BIA does not have sufficient information on which to base a determination that such bonding will adequately protect Indian mineral interests or to develop criteria for determining when such bonding is appropriate. Thus, self-bonding is not included in the regulations at the present time.

Sec. 211.41 Manner of payments.

No changes were made to this section. One commentator suggested that the phrase "or as provided by tribal constitution or by-laws" be added at the end. This suggested change was not accepted because, as set forth in § 211.1(e), discussed *ante*, a tribe organized pursuant to the Indian Reorganization Act of 1934 (and other acts) may adopt rules which supersede any of the regulations in this part, provided such rules are not in violation of Federal laws.

Sec. 211.42 Permission to start operations. (New)

This is a new section and the section designations following it have been redesignated accordingly.

This section is a revision of existing 25 CFR 211.20. Paragraph (a) has been revised to provide that no operations on contracted areas may begin before the effective date of the mineral contract, and to make it clear that the effective date of the contract is the date it is officially approved by the Secretary, or a designated representative. This provision should be construed as prohibiting any surface disturbance on the land prior to official approval of a contract.

Paragraph (b) of the existing rule has been amended to provide that approval of applications for permission to start operations is to be secured from the Authorized Officer in the Bureau of Land Management since that agency now performs this function.

Sec. 211.43 Recordkeeping. (Old § 211.42)

No changes were made to paragraph (a).

Industry commentators strenuously objected to the requirement in paragraph (b) that all records, including records regarding the financial structure of the prospector or operator, be made available for examination and reproduction by the Secretary, the Authorized Officer and tribal mineral owner. They contend that as long as the regulations provide that the Secretary may require an audit, there is no need to reproduce the records, and that such a requirement would greatly increase the risk that proprietary, competitive and financial information would be leaked to third parties. They argue that disclosure of such information would adversely affect an operator's contracts and competitive edge.

The BIA has concluded that the arguments against making all records available for reproduction are persuasive. Accordingly, paragraph (b) has been modified to provide that all records shall be made available to the Secretary upon request and has dropped the requirement that they be reproduced. Under this rule, an Indian mineral owner may request the Secretary to conduct an audit or cause an independent audit to be made. The audit will then be made available to the Indian mineral owner.

Sec. 211.44 Mining contracts—individually-owned Indian lands. (Old § 211.43)

Industry commentators recommended deletion of paragraph (b) requiring allotted lands of a deceased allottee to be offered for sale by competitive bidding. One commentator argued that although the 1909 Act, which requires competitive sales whenever heirs and devisees cannot be located or have not been determined, was not repealed, nevertheless an agreement approved pursuant to the 1982 Act should not be subject to the earlier statute's requirement for competitive bidding. We agree, and have changed the regulations accordingly.

Paragraph (c) has been changed to improve technical accuracy.

As proposed, paragraph (d) of this section provided that the Secretary may approve a contract, where less than 100 percent of the undivided mineral interest is to be committed to the contract, if 51 percent or more of the mineral interest is committed. Upon further consideration, the BIA has concluded that a 51 percent margin is too small. Accordingly, the margin has been raised to 66⅔ percent.

Sec. 211.45 Assignments; overriding royalties and operating agreements. (Old § 211.44)

Industry comments on paragraph (a) of this section strongly urged that it be modified to delete language to the effect that an assignment or sublease of an interest in a contract is not effective without the approval of the Indian owner. They contend that the existence of multiple owners of undivided interests in allotted lands should preclude this requirement on practical basis. One commentator expressed a concern that such open-ended approval authority on the part of Indian mineral owners could be abused and could be utilized to seek additional consideration as a condition to approving an assignment. Another commentator objected to the requirement that assignments be subject to the criteria of § 211.6 on the grounds that there is no justification for requiring a complex review process for an assignment, because the assignment will not affect the rights and obligations of the operator/lessee or the Indian mineral owner, or alter the economic or environmental aspects of the project.

The BIA has concluded that the requirement of Secretarial approval of all assignments or subleases will provide an adequate safeguard against interests in contracts being assigned or sublet to unqualified persons or companies without the necessity of requiring approval of the Indian mineral owners in every instance. At the same time, the BIA does not desire to preclude Indian mineral owners and lessees from including a requirement for lessor consent in the contract, should the parties agree to do so. Accordingly, this section has been revised to delete the mandatory requirement for approval by Indian owners. The BIA also agrees, as some commentators argued, that the review process set forth in § 211.6 is unnecessarily burdensome with respect to assignments. In addition, the requirement would be inconsistent with the position the BIA has taken that the requirements of the 1982 Act will not apply to contracts entered into pursuant to the 1909 and 1938 Acts. Consequently, paragraph (a) has been revised to delete this requirement.

The BIA generally does not require lessees to attain approval of farmout or overriding royalty agreements. However, such agreements should be filed with the appropriate BIA agency office. Should such an agreement in reality be an assignment of interests changing the terms of the lease or minerals agreement, the burden is on the lessee to acquire the requisite consent of the mineral owners and the subsequent approval of the Secretary.

The BIA has concluded that paragraph (b) should be amended to require that a copy of any agreement creating overriding royalties or payments out of production be filed with the Secretary except in instances where the agreement is incorporated in an assignment which is required to be approved under paragraph (a), as provided in existing regulations in 25 CFR 211.26(d).

The BIA also has concluded that assignments of operating rights need not and will not be approved by the Secretary. However, in order to keep the Secretary apprised of the identity of the operator, the rule requires that such designations be filed with the Secretary.

Sec. 211.46 Legal review. (Old)

One commentator suggested that this section should be clarified to assure that submission of a proposed contract to a Field or Regional Solicitor's office for legal review will not result in any extension of the time currently

established in the regulations for final Secretarial approval or disapproval. Inasmuch as the statutory time limits for review and approval or disapproval of a proposed minerals agreement are established by the 1982 Act, it is clear that the Department lacks any authority to extend the time frame through regulations, and no such extension should be implied by this section. The policy of the Department is that reviews of proposed mineral agreements for legal sufficiency will be bound by the statutory time limits in the 1982 Act. Upon reconsideration, the BIA has concluded that this section is unnecessary inasmuch as existing internal BIA guidelines will require legal review of mineral contracts. Therefore, this section is removed.

Sec. 211.46 Termination and Cancellation; Enforcement of orders. (New)

Industry commentators recommend that this section be deleted in its entirety. They contend, first, that the handling of contract defaults should be matters for negotiation by the parties to the minerals agreement; that the parties should be free to utilize specified arbitration or judicial procedures as a means of resolving disputes, and that the mechanisms to accomplish this can be provided for in the agreement. One industry commentator suggested that the regulations must be rewritten (a) to limit the Secretary's enforcement powers to violations of Federal laws, regulations, and approved mining plans, and (b) to limit the Secretary's trustee duty to assisting Indian mineral owners, when necessary, to enforce their contract rights and remedies in the manner provided for in a mineral agreement. Finally, industry commentators assert that there is no statutory authority for the regulations in § 211.45 and § 211.47.

The answer to the first contention is that section 4(b) of the 1982 Act specifically directs the Secretary, in approving and disapproving a proposed agreement, to consider, among other things,"* * * provisions for resolving disputes that may arise between the parties to the agreement."

Presumably, such provisions could include a proposed scheme for the inspection of operations and the resolution of disputes, and if the Secretary determines that the contract proposal would adequately protect the Indian mineral owners and did not violate applicable laws, such a scheme could be approved. Under those circumstances, provisions for enforcement and arbitration of disputes in the minerals agreement would supersede the BIA's regulations.

However, the BIA cannot agree that §§ 221.45 and 221.47 should be deleted from the regulations for a number of reasons. These sections apply to operations on leases under the 1938 Act and the 1909 Act, as well as to mineral agreement under the 1982 Act. Deletion of these sections would leave the Secretary without any regulatory procedure for enforcement of the terms of such leases. In addition, deletion of these provisions would mean that each time a proposed agreement is presented to the Secretary which either contained no provisions of enforcement or contained unacceptable provisions, approval of the agreement would have to be withheld until acceptable provisions were agreed to by the parties.

In regard to the statutory authority for the regulations, the BIA believes that there are several sources of such authority. For example, section 4(e) of the 1982 Act states that whereas the United States shall not be liable for losses sustained by a tribe or individual Indian under an approved minerals agreement, "* * * the Secretary shall continue to have a trust obligation to ensure that the rights of a tribe or individual Indian are protected in the event of a violation of the terms of any Minerals Agreement by any other party to such agreement." Section 8 of 1982 Act requires the Secretary to promulgate rules and regulations "to facilitate implementation of the Act." Similar provisions authorizing the Secretary to promulgate rules and regulations are found in the 1938 Act (25 U.S.C. 396d) and the 1909 Act (25 U.S.C. 396).

The existing rules of the BIA contain procedures for the enforcement of rules and regulations, orders of supervisory personnel, or the terms and conditions of contracts to conduct mining operations on Indian lands. The regulatory scheme set forth in this section is intended to strengthen these procedures.

In response to public comment, this section has been revised extensively to correct numerous objections and to include suggestions for improvement. The major change from the proposed regulations is the deletion of the opportunity for a hearing before the Superintendent. The BIA believes the 25 CFR Part 2 appeal procedures, now being revised, are adequate to safeguard the interests of affected parties without the delay that could occur by adding an additional 30-day hearing process. All parties will still have the opportunity to appeal and argue their position in writing under the Part 2 procedures. The Bureau also believes that immediately effective cessation orders are appropriate where there is an immediate and serious threat of damage to the environment or resources, and has thus retained this provision.

Sec. 211.47 Suspension of Operations; Remedial Operations.

(This is a new section which has been added for the purpose of separating the provisions for suspension of operations from other provisions contained in § 211.22 Duration of Leases.)

A number of commentators suggested that the provision of § 211.22 Duration of Leases, paragraph (c), limiting the period of suspension of operations to 60 days, was unsatisfactory. They suggested that this provision is unrealistic, since other situations, such as labor strikes, inability of a customer to receive the mineral, delays in obtaining permits, as well as economic considerations, could justify a suspension of operations for more than 60 days. Their suggestion was that this paragraph should be deleted altogether, although one industry commentator suggested the maximum be increased to 180 days. On the other hand, a tribal attorney suggested that, based upon his experience, the 60-day limit is workable and commendable. He suggested that while an operator should not be penalized when diligently resuming work to correct damage from natural or accidental disasters, the operator should not be entitled to hold the leasehold indefinitely simply because it is seriously inconvenient to obtain production in paying quantities.

Industry commentators also asked that § 211.22 paragraph (d), providing for a minimum rental, be deleted for the reason that it imposes an economic burden on a lessee. The BIA does not accept this argument. A suspension of mining operations during the extended term of the lease means that the Indian mineral owners receive no royalty during the period of the suspension. The loss of the income provided by royalties clearly constitutes an economic burden on the Indian owner for which she/he should be compensated.

After considering these comments, it is obvious that suspensions of operations fall into two distinct categories—remedial and economic. It has been determined that in cases of short-term shut-down of operations for remedial workover or repair of mechanical failure purposes, after expiration of the primary term of the contract, the consent of the Indian mineral owner shall not be required unless so stated in the contract, and the request for suspension, if approved by the Secretary, will be pursuant to the procedures of the Bureau of Land

Management in 43 CFR 3473.4, 3483.3, and 3503.3–2 as applicable. In cases where a suspension of operating and producing requirements is requested after expiration of the primary term of the contract for economic or marketing reasons, it has been determined that the request or application for suspension shall be accompanied by the written consent of the Indian mineral owner along with an agreement executed by the parties to the contract which sets forth the terms pertaining to the suspension of operations.

It has also been decided that the requirement for permission to suspend operating and producing requirements in the primary term of a contract, as proposed in § 211.22 paragraph (b), should be eliminated in light of the many objections raised in the comments. Consequently this entire section has been rewritten to indicate the procedures to be followed in each of the types of suspensions cited above.

Sec. 211.47 Penalties. (Redesignated § 211.48)

A number of commentators suggested that this section be revised to provide that, to the extent the Indian mineral owner and the operator have created private rights and liabilities, the $1,000 per day penalty and the other enforcement provisions of this section are not applicable. The BIA has accepted this proposal and has modified the section accordingly. The basis for this change is that, as proposed, this section would have established a regulatory maximum fine of $1,000 per day. The BIA agrees that the parties should not be constrained by such a limitation if they wish to agree to a penalty in excess of $1,000 per day or to some other penalty provision.

Sec. 211.48 Appeals. (Redesignated § 211.49)

The commentators on this section suggested that the appeal provisions should be modified to provide for an expedited system of appeals, and suggest a procedure whereby an appeal would be made directly from a decision of an Area Director to the Interior Board of Indian Appeals or to the Interior Board of Land Appeals. The comments did not include any arguments in support of this suggestion. However, the BIA has received numerous complaints from a variety of sources that the existing system of appeals is cumbersome. Also, others have complained that the existing rules and regulations in 25 CFR Part 2 neither adequately explain an appellant's rights to appeal nor do they set forth the procedural steps which must be followed to perfect the appeal in an easily understood manner. BIA is in the process of revising the Part 2 regulations to address these and other concerns.

Sec. 211.49 Fees. (Redesignated § 211.50)

No comments were received on this section and no changes have been made.

Sec. 211.50 No mineral agreements made with government employees. (Redesignated § 211.51)

This section prohibits employees or agents of the BIA or Indian Health Service (IHS) from entering into, or being a party to, any mineral agreement involving an Indian-owned mineral interest. Such holding is barred by Federal law. See 18 U.S.C. 437.

B. Part 225—Oil and Gas and Geothermal Contracts—General Discussion

As mentioned *ante* Part 225 has been revised to include specific references to geothermal operations. The BIA has decided that contracts for geothermal development shall be processed as mineral agreements under the requirements of Subpart A, for the reason that this type of contract does not lend itself to processing under standard forms used by the BIA for competitive oil and gas leasing. Accordingly, Subparts A and C have been revised to add appropriate references to geothermal.

Sec. 225.1 Purpose and Scope.

Minor changes were made to paragraph (b) of this section and a new paragraph (e) was added to make the section conform to a similar addition in § 211.1.

A new § 225.3, *Definitions,* has been added to incorporate all of the definitions in this part in one section, and §§ 225.21 and 225.43 have been eliminated. A new definition of the term "geothermal resources" has been added and definitions of the terms "minerals agreement," "operator," and "geological and geophysical permit" have been revised to include the term "geothermal" or "geothermal resources." In addition, the term "Indian mineral owner" has been deleted and a definition of "Indian owner" substitued in lieu thereof. This term is defined to include Indian tribes and individuals who own land or interests in oil and gas or geothermal resources.

Subpart A—Fluid Minerals Agreements

Sec. 225.20 Scope.

The second sentence in this section has been deleted.

Sec. 225.21 Authority to contract.

This section has been revised to conform to § 211.5. Refer to the discussion of comments on § 211.5.

Sec. 225.22 Negotiation procedures.

This section is identical to § 211.6. For a discussion of the comments and the changes made, refer to that section.

Sec. 225.23 Approval of agreements.

This section is identical to § 211.7. Refer to that section for a discussion of the comments.

Subpart B—Procedures for Competitive Oil and Gas Leases.

Sec. 225.30 Scope.

A minor editorial change was made to this section.

Sec. 225.31 Procedures for awarding leases.

For a discussion of the changes made to this section refer to § 211.21.

Sec. 225.32 Duration of leases.

A large number of commentators objected to the proposed definition in paragraph (b) of "paying quantities" which was fundamentally the same as the definition of this term in § 211.22. The basis for the objections was essentially the same, namely, that the definition is unnecessarily complex and includes expenses which should not be considered. The commentators urged that the BIA either revise this provision to eliminate a definition of "paying quantities," or adopt the definition used in federal oil and gas leases on public lands. The BIA has decided to include the definition found in the regulations for federal lands which has been in effect for several years.

The provisions for suspension of operations are addressed at § 225.54.

Sec. 225.33 Rentals; minimum royalty; production royalty on leases.

Some commentators recommended changes in the procedure for determining "value" set forth in paragraph (d). However, because the Secretary has decided that rules and regulations governing how the value of the production of oil and gas on Indian land is to be determined, shall be prepared by the MMS and located in 30 CFR Chapter II, proposed paragraph (d) relating to the methods of determining value of production has been amended. Accordingly, a discussion of the comments on the proposed rule has been omitted.

Most of the comments received on this section were objections to paragraph (e).

Industry commentators were concerned that the lessor's right to take excess gas could impair long-term gas sales contracts entered into by the lessee, and requested that the regulation be amended to prevent such an occurrence. The BIA agrees that this right should be available in the event that the gas taken is in excess of the lessee's requirements for lease operation and contracts. Accordingly, the *proviso* has been modified to require that the Superintendent must determine that the gas is available in sufficient quantities and is not subject to any pre-existing sales contract, or that its disposition is not otherwise provided for in the lease.

Two Indian commentators complained that paragraph (d) relating to excess gas is a change to the existing regulation in 25 CFR 211.13(b), in that it would require payment for the excess gas, while the existing rule requires no payment. The commentators overlook the fact that the old rule limited use of such gas to schools or other tribally-owned buildings, whereas the new rule extends the right to any Indian mineral owner and puts no limitation on how the gas is to be used. The BIA believes these extensions justify the changes imposed by the regulation.

Sec. 225.34 Contracts for subsurface storage of oil and gas.

There were no comments on this section and no changes made.

Sec. 225.36 Forms.

Refer to § 211.23.

Subpart C—General

Sec. 225.40 Scope.

No changes were made to this section.

Sec. 225.41 Authority and responsibility of the authorized officer.

Some editorial changes have been made to more clearly state the responsibilities assigned to the Authorized Officer resulting from Departmental reorganization, and the title changed to Authority and Responsibility of the Bureau of Land Management (BLM).

Sec. 225.42 Authority and responsibility of the Minerals Management Service (MMS)

The BIA has accepted the suggestion of several commentators that the word "inspection" be substituted for "obtaining" in the second sentence of this section. The comments were that this change would more adequately preserve the confidentiality of the documents while permitting their use by MMS to ensure accurate royalty payments. The BIA agrees that this is a reasonable modification and the section has been rewritten.

Sec. 225.43 Definitions. (Old)

As previously noted, the definitions in this section have been designated as a new § 225.3 and the subsequent sections are redesignated.

Sec. 225.43 Approval of amendments to contracts. (New)

Some reference errors were corrected. Refer to § 211.34 for a discussion of the comments on this section.

Sec. 225.44 Geological and geophysical permits.

The changes made to this section follow changes made to § 211.36.

Sec. 225.45 Removal of restrictions.

No substantive changes were made to this section. Refer to § 211.35.

Sec. 225.46 Oil and gas and geothermal contracts on individually-owned Indian lands.

This section parallels § 211.44. Refer to that section for a discussion of substantive comments.

Sec. 225.47 Persons signing in a representative capacity.

Refer to § 211.39.

Sec. 225.48 Economic assessments.

Refer to § 211.37.

Sec. 225.49 Environmental assessments.

Refer to § 211.38.

Sec. 225.50 Bonds.

Refer to § 211.40. The "approving official" referred to in paragraph (b) is the Deputy to the Assistant Secretary—Indian Affairs (Trust and Economic Development), and those persons designated to act for him during his absence (10 BIAM 5.5).

Sec. 225.51 Manner of payments.

Refer to § 211.41.

Sec. 225.53 Assignments and overriding royalties.

Refer also to § 211.45. A number of industry commentators noted that it is unclear from the language of paragraph (a) whether the BIA intends to prohibit the assignment of operating rights, or merely that approval of such assignments by the Secretary is not required. They contend that assignments of operating rights serve an essential purpose in getting wells drilled, and that industry would strongly object to any prohibition of such assignments.

Indian commentators contend that the regulations should provide that the assignment of any interest in Indian oil and gas resources, including an assignment of operating rights, should be deemed invalid unless it has been approved by the Secretary with the consent of the Indian mineral owner.

After considering the issue, the BIA has concluded that designation of operators should be filed with the Secretary, but approval by the Secretary will not be required because there is no transfer of any leasehold interest.

Sec. 225.54 Suspension of Production; Remedial Workover/Shut-In.

This section, which authorized suspension of producing requirements under certain circumstances, has been extensively revised in response to critical comments and added as § 211.47 to the non-oil and gas and geothermal regulations, using principally the same language.

Several Indian commentators objected that paragraph (b) would require the consent of the Indian mineral owners to suspension of producing requirements for economic and marketing reasons only if such consent is specifically required in the contract. They contend that suspensions should never be granted without the consent of the Indian mineral owner, regardless of whether or not a consent provision is included in the contract. They also complained that paragraph (b) appears to provide that any lease, even a lease for a one year primary term, could be extended to ten years on the basis of a shut-in application based upon a lack of adequate marketing facilities or unsatisfactory marketing conditions. This assumption appears to be based upon the commentators' interpretation of the language in paragraph (b) to the effect that "such suspensions shall not exceed beyond the ten-year primary term of tribal leases approved pursuant to the Act of May 11, 1938 * * * or leases on allotted lands approved pursuant to the Act of March 3, 1909 * * *."

Also, a number of Indian commentators objected to a $2.50 per acre shut-in royalty, which they characterized as "inadequate and insignificant." One commentator suggested that the royalty should be no less than $10.00 per acre. Industry commentators either objected to any payment of a shut-in royalty or contend that such royalty should be paid as an alternative to rentals, not in addition to rent. Several commentators noted that a regulatory requirement to pay any specified shut-in royalty could be at

variance with provisions that an Indian mineral owner and an operator might agree upon in a mineral agreement. They point out that such a situation would be contrary to the intent of the 1982 Act, which was to grant Indian mineral owners and operators greater flexibility in reaching agreements.

After considering these comments, it is obvious that suspensions of production fall into two distinct categories—remedial and economic. It has been determined that in cases of short-term shut-down of production for remedial workover or repair of mechanical failure purposes, after expiration of the primary term of the contract, the consent of the Indian mineral owner shall not be required unless so stated in the contract, and the request for suspension, if approved by the Secretary, will be pursuant to the procedures of the Bureau of Land Management in 43 CFR 3162.3–2. In cases where a suspension of producing requirements is requested after expiration of the primary term of the contract for economic or marketing reasons, it has been determined that the request or application for suspension shall be accompanied by the written consent of the Indian mineral owner, along with an agreement executed by the parties to the contract which sets forth the terms pertaining to the suspension of production.

It has also been decided that the requirement for permission to suspend producing requirements in the primary term of a contract as proposed in paragraph (b), should be eliminated in light of the many objections raised in the comments. Consequently, this entire section has been rewritten to indicate the procedures to be followed in each of the types of suspensions cited above.

Sec. 225.55 Unitization, communitization and well spacing agreements.

Paragraph (a) has been amended to include the term "cooperative unit plan."

The BIA has concluded that requiring preparation of a written economic report as a part of the review process would impose an unnecessary administrative burden, inasmuch as the interests of the Indian oil and gas owner are considered in detail at the time a proposed contract is presented. Consequently, this requirement has been removed.

The purpose for pooling mineral interests is to promote conservation and efficient development of the resources. However, during the early 1980's, when speculation for oil and gas properties caused bidders to offer extremely high bonuses, many Indian mineral owners put pressure on BIA officials to either not act on, or disapprove, cooperative agreements for the sole purpose of causing the primary terms of leases to expire so the lands could be released and new bonuses received. The Department believes that the review process should be limited to the technical aspects of whether or not the proposed agreement provides for proper operational concerns. Paragraph (7) has been added to reduce the likelihood that officials will consider provisions other than the engineering and technical aspects of the agreement. It provides that approval of the agreement shall be retroactive to the date of submittal to the Department, or the date of first production within the proposed unit, whichever is earlier, should the approval review process of a favorable technical finding extend beyond the primary term of the lease. However, paragraph (5) continues the policy that such agreements be submitted ninety (90) days prior to the earliest expiration date of any Indian contract in the unit.

In response to comments, a new paragraph (8) has been added segregating leases at the time of communitization into participating and non-participating areas, depending on the terms in the agreement. From experience, the BIA does not believe that this will happen often, when surface area is the only item being considered. However, the BIA has, in more recent practice, required that communitization agreements be restricted to the specific strata or formations to be diligently developed, thus not holding the remaining nonproductive formations beyond the primary term of the lease by production from only one or two producing formations. This new provision incorporates that practice into the regulations.

A number of commentators pointed out the requirement in proposed paragraph (d) that an affidavit certifying that all Indian mineral owners "have been given notice" that approval of an agreement is being sought might be impossible to fulfill insofar as allotted Indian lands are concerned. The BIA has concluded this comment is valid and has modified the provision to require that the affidavit certify that reasonable efforts were made to secure the consent of the Indian oil and gas owners who have not given prior consent, by mailing them an invitation to join the unit. The invitation shall be sent to their last known mailing address.

The BIA has concluded that the existing practice of filing proposed unit agreements with the Superintendent should be formalized. Accordingly, this section has been amended. In addition, a new paragraph has been added providing that the Superintendent shall obtain the recommendations of the Authorized Officer for approval or disapproval of a proposed agreement, based upon the engineering and technical aspects of the agreement before taking action on the agreement. This addition also formalizes an existing procedure.

In response to comments, a new paragraph has been added requiring that each well within a cooperative unit must be drilled in conformity with an acceptable well spacing program at a surveyed well location approved by the Authorized Officer. The provision also defines an acceptable program.

Sec. 225.56 Inspection of premises; books and accounts.

See also comments on § 211.43.

One Indian commentator recommended this section be amended to provide that individual Indian mineral owners, tribes, or their representatives shall have the right to request any and all data, and/or make an inspection of the records of the Minerals Management Service or the operator's records, in order to make an evaluation of the correctness of royalty accounting. One industry commentator contends that inspection of the contracted premises, books and accounts is controlled by the Federal Oil and Gas Royalty Management Act of January 12, 1982 (FOGRMA) (96 Stat. 2447; 30 U.S.C. 1701 *et seq.*).

It is the intention of the BIA that Indian mineral owners shall have the right to examine an operator's books and records pertaining to operations involving their mineral interest at any time during regular business hours, and agreement by a proposed operator to honor this right shall be a condition of approval of a contract by the Secretary. In this regard, section 103 of the Federal Oil and Gas Royalty Management Act specifically provides that any reports, records or information required by the Secretary for the purpose of implementing that Act or determining compliance with rules or orders issued pursuant to that Act, shall be made available for inspection and duplication upon request by an Indian tribe conducting and audit investigation.

Sec. 225.57 Termination and cancellation; enforcement of orders.

Refer to § 211.46.

Sec. 225.58 Penalties.

Refer also to § 211.47.

Several commentators contended that this section, as proposed, is inconsistent

with civil penalty provisions in section 109 of FOGRMA and urged that the section be revised to conform to that Act. The thrust of their contention appears to be that section 109 sets the standards and procedures for the imposition of penalties involving oil and gas operations on Indian and Federal lands. The BIA believes this is an incorrect interpretation of FOGRMA, inasmuch as section 304 of that Act states unequivocally that the penalties and authorities in the Act are "supplemental to, and not in derogation of any penalties or authorities contained in any other provision of law." The BIA construes this provision to mean that any authority previously granted by Congress under other mineral development Acts is unaffected by the enactment of FOGRMA and that the penalty provisions of that Act supplement, but do not replace, rules and regulations governing penalties promulgated under prior Acts. A new paragraph (d) has been added to make this point clear. Some commentators pointed out that the provision in this section to the effect that violators may be subject to a penalty of "not less than $1,000 per violation per day" is inconsistent with the penalty in § 211.47 of "not more than $1,000 per violation per day" and asked for clarification. It is the BIA's intention to set a maximum penalty of $1,000 per violation per day, and this correction has been made. The BIA agrees with commentators who contend that a minimum penalty of $1,000 per violation per day could be excessive in instances where minor violations were involved, whereas a maximum $1,000 penalty will permit the Secretary to tailor the amount of the penalty to fit the seriousness of the violation.

Another comment was that the section should make it clear that, to the extent the parties create private specific liabilities in the contract itself, the terms of the contract should control the penalties to be imposed. The BIA agrees with this contention and has revised the section to provide that penalty provisions in an oil and gas contract approved by the Secretary, where inconsistent with the penalties provided for in this section, supersede the provisions on this section. It should be noted, however, that this should not be construed to mean that the Secretary will approve a contract which purports to exempt the parties from compliance with any specific penalties provided by Congress, such as FOGRMA.

Sec. 225.59 Appeals.

This section is identical to § 211.48. For a discussion of the comments and the changes made, refer to that section.

Sec. 225.60 Fees.

No changes have been made to this section.

Sec. 225.61 Legal review.

(Old) Refer to § 211.46 (Old).

Sec. 225.61 No oil and gas agreements made with Government employees (New).

This section prohibits employees or agents of the BIA or Indian Health Service (IHS) from entering into, or being a party to, any mineral agreement involving an Indian-owned mineral interest. Such holding is prohibited by federal law. See 18 U.S.C. 437.

Sec. 225.62 Sales contracts, division orders and other division of interest documents.

No changes have been made to this section.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets; and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.).*

This final rulemaking will have equal impact on anyone desiring to engage in prospecting for or developing Indian-owned minerals, including oil and gas and geothermal resources. The changes made by the final rulemaking reduce the regulatory burden imposed on such persons in several instances. The final rulemaking does increase the filing fee which must accompany each permit, lease, sublease or other contract, or an assignment or surrender thereof from $10 to $25. This increase is necessary to partially compensate the United States for its costs of processing those documents, but is not an amount that should discourage or prevent any small business from contracting to engage in mineral development on Indian lands.

The changes made by the final rulemaking are for the purpose of streamlining and updating existing leasing procedures, and clarifying the meaning and intent of those procedures. These changes constitute an administrative action and do not impact on the physical environment. The approval of contracts will require compliance with the provisions of the National Environmental Policy Act of 1969, including public participation in compliance with the regulations of the Council on Environmental Quality. In analyzing the alternatives to the changes in the proposed rulemaking which were made in the final rulemaking, the BIA considered the changes to be of such minor variation and degree that the impacts were deemed equal to or less than the changes made by the proposed rulemaking. The Department of the Interior has determined therefore that there will be no significant impact to the human environment.

The Office of Management and Budget (OMB) has informed the Department of the Interior that the information collections contained in 25 CFR Parts 211 and 225 need not be reviewed by them under the Paperwork Reduction Act, Pub. L. 95–511 (44 U.S.C. 3501 *et seq.)*

This final rule is published in exercise of the authority delegated by the Secretary of the Department of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

List of Subjects

25 CFR Part 211

Indians—lands, Mineral resources, Mines, Exploration.

25 CFR Part 212

Indians—lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

25 CFR Part 225

Indians—lands, Oil and gas exploration.

1. Part 211 is revised to read as follows:

PART 211—CONTRACTS FOR PROSPECTING AND MINING ON INDIAN LANDS (EXCEPT OIL AND GAS AND GEOTHERMAL)

Sec.

211.1 Purpose and scope.
211.2 Information collection.
211.3 Definitions.

Subpart A—Minerals Agreements

211.4 Scope.

211.5 Authority to contract.
211.6 Negotiation procedures.
211.7 Approval of agreements.

Subpart B—Procedures for Competitive Leases

211.20 Scope.
211.21 Procedures for awarding leases.
211.22 Duration of leases.
211.23 Forms.

Subpart C—General

211.30 Scope.
211.31 Authority and responsibility of the Bureau of Land Management.
211.32 Authority and responsibility of the Minerals Management Service (MMS).
211.33 Authority and responsibility of the Director, Office of Surface Mining Reclamation and Enforcement (OSMRE).
211.34 Approval of amendments.
211.35 Removal of restrictions.
211.36 Geological and geophysical permits.
211.37 Economic assessments.
211.38 Environmental assessments.
211.39 Persons signing in a representative capacity.
211.40 Bonds.
211.41 Manner of payments.
211.42 Permission to start operations.
211.43 Recordkeeping.
211.44 Mining contracts—individually-owned Indian lands.
211.45 Assignments; overriding royalties and operating agreements.
211.46 Termination and cancellation; enforcement of orders.
211.47 Suspension of operations; remedial operations.
211.48 Penalties.
211.49 Appeals.
211.50 Fees.
211.51 No mineral agreements made with Government employees.

Authority: Sec. 4, Act of May 11, 1938 (52 Stat. 348, 25 U.S.C. 396a–g, 476, 477, 509); Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396); Sec. 1, Act of August 9, 1955, as amended (69 Stat. 539, 25 U.S.C. 415), Act of July 8, 1940 (54 Stat. 745, 25 U.S.C. 880); Secs. 16 and 17, Act of June 18, 1934 (48 Stat. 987, 988, 25 U.S.C. 476 and 477); Act of August 11, 1978 (92 Stat. 469, 42 U.S.C. 1996); Sec. 102, Act of January 1, 1970 (83 Stat. 852, 42 Stat. 4332); Act of December 22, 1982 (96 Stat. 1938; 25 U.S.C. 2101 thru 2108).

§ 211.1 Purpose and scope.

(a) The regulations in this part govern contracts for prospecting and mining of Indian-owned minerals, other than oil and gas and geothermal. Subpart A—Minerals Agreements establishes the procedures for the approval of minerals agreements entered into pursuant to the Indian Mineral Development Act of 1982 (96 Stat. 1938; 25 U.S.C. 2101 through 2108). Subpart B—Procedures for Competitive Leases contains regulations governing procedures for the issuance of competitive mining leases on tribal and allotted lands pursuant to the Act of May 11, 1938 (52 Stat. 348; 25 U.S.C. 396a–g) and the Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396). Subpart C—General contains miscellaneous provisions which apply to the issuance of contracts for prospecting and mining under both Subparts A and B. These regulations are intended to ensure that Indian owners desiring to have their minerals developed receive at least fair and reasonable remuneration for the disposition of their mineral resources; to ensure that any adverse environmental and cultural impacts resulting from such development are minimized, and to permit Indian mineral owners to enter into contracts which allow them more responsibility in overseeing and greater flexibility in the development of their mineral resources.

(b) The regulations in this part do not affect leasing and mining governed by the regulations in 25 CFR Parts 213, 214, 215, and 30 CFR Chapter VII for coal operations.

(c) No regulations which become effective after the approval of any contract shall operate to affect the term of the contract, the royalty rate, rental, or acreage unless agreed to be all parties to the contract.

(d) Exploration and mining operations for minerals (except coal) on Indian lands are subject to the regulations in 43 CFR Group 3500 and 25 CFR 216 Subpart A. Exploration and mining operations for coal on Indian lands are subject to the regulations in 25 CFR Part 216 Subparts A and B, and applicable regulations in 43 CFR Group 3400 and 30 CFR Part 750.

(e) The regulations in this part may be superseded by the provisions of any tribal constitution, bylaw or charter issued pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 461 through 479), the Alaska Act of May 1, 1936 (49 Stat. 1250; 48 U.S.C. 362, 258a), or the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C., and Sup., 501 through 509), or by ordinance, resolution or other action authorized under such constitution, bylaw or charter where not inconsistent with Federal law. The regulations in this part, insofar as they are not so superseded, shall apply to leases made by organized tribes if the validity of the lease depends upon the approval of the Secretary of the Interior.

§ 211.2 Information collection.

The Office of Management and Budget has informed the Department of the Interior that the Information Collection Requirements contained in section 211 need not be reviewed by them under the Paperwork Reduction Act, (44 U.S.C. 3501 *et seq.*).

§ 211.3 Definitions.

As used in this part, the following terms have the specified meaning except where otherwise indicated—

(a) "Act" means the Indian Mineral Development Act of 1982 (Pub. L. 97–382).

(b) "Minerals agreement" means any joint venture, operating, production sharing, service, managerial lease (other than a lease, or amendment thereto, entered into pursuant to the Act of May 11, 1938 and the Act of March 3, 1909), or other agreement, or amendment, supplement, or other modification of such agreement, providing for the exploration, or extraction, processing, or other development of minerals, or providing for the sale or disposition of the production or products of such mineral resources.

(c) "Secretary" means the Secretary of the Interior or an authorized representative.

(d) "Area Director" means the Bureau of Indian Affairs official in charge of an Area Office.

(e) "Superintendent" means a Bureau of Indian Affairs Superintendent or the authorized Bureau representative having immediate jurisdiction over the minerals covered by a contract under this part, except at the Navajo Area Office where it shall mean the Bureau Area Director or an authorized representative.

(f) "Bureau" means the Bureau of Indian Affairs.

(g) "Indian mineral owner" means:

(1) Any individual Indian or Alaska Native who owns land or interests in land, the title to which is held in trust by the United States, or is subject to restriction against alienation imposed by the United States;

(2) Any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns land or interests in land, the title to which is held in trust by the United States or is subject to restriction against alienation imposed by the United States.

(h) "Minerals" includes both metalliferous and nonmetalliferous minerals, except oil and gas and geothermal, and includes but is not limited to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any energy or other non-energy mineral.

(i) "Mining" means the science, technique, and business of mineral development, including opencast, underground work, and in situ leaching, directed to severance and treatment of minerals; however, when sand, gravel, pumice, cinders, granite, building stone, limestone, clay or silt is the subject mineral, an enterprise is considered

"mining" only if the sale and removal of such mineral exceeds 5,000 cubic yards in any given year.

(j) "Authorized Officer" means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described.

(k) "Minerals Management Service (MMS) Official" means any employee of the Minerals Management Service authorized by law or by lawful delegation of authority to perform the duties described.

(l) "Director" means the Director, Office of Surface Mining Reclamation and Enforcement; or the Director's representative.

(m) "Operator" means a person, proprietorship, partnership, corporation, or other business entity which has made application for, is negotiating with an Indian mineral owner with respect to, or has entered into a minerals agreement to mine for Indian-owned minerals.

(n) "Prospector" means a person, proprietorship, partnership, corporation, or other business association which has made application for, is negotiating with an Indian mineral owner with respect to, or has entered into, a mineral agreement to prospect or explore for Indian-owned minerals.

(o) "Surface owner" means any individual who owns land or an Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group, which owns land.

(p) "Geological and geophysical permit" means a written authorization to conduct onsite surveys to locate potential deposits of minerals on the lands.

Subpart A—Minerals Agreements

§ 211.4 Scope.

The regulations in this subpart govern the procedures for obtaining approval of minerals agreement for the exploration, development and sale of minerals (other than oil and gas or geothermal) on Indian lands under the Indian Mineral Development Act of 1982 (Pub. L. 97–382).

§ 211.5 Authority to contract.

(a) Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into a minerals agreement or any amendment, supplement or other modification or such agreement.

(b) Any individual Indian mineral owner owning a beneficial or restricted interest in mineral resources may include such resources in a tribal minerals agreement subject to the concurrence of the parties and a finding by the Secretary that such participation is in the best interest of the Indian.

§ 211.6 Negotiation procedures.

(a) A tribe or individual Indian mineral owner that wishes to enter into a minerals agreement may ask the Secretary for advice, assistance, and information during the negotiation process and such advice, assistance and information shall be provided to the extent of available resources.

(b) No particular form of agreement is prescribed. In preparing the agreement, consideration should be given to the inclusion of the following:

(1) A general statement identifying the parties to the agreement, a specific legal description of the lands involved, and the purposes of the agreement;

(2) A statement setting forth the duration of the agreement;

(3) Provisions setting forth the obligations of the contracting parties;

(4) Provisions describing the methods of disposition of production;

(5) Provisions outlining the amount and method of compensation to be paid;

(6) Provisions establishing the accounting procedures to be followed by the operator;

(7) Provisions establishing the operating and management procedures to be followed;

(8) Provisions establishing the operator's rights of assignment;

(9) Bond requirements;

(10) Insurance requirements;

(11) Provisions establishing audit procedures;

(12) Provisions setting forth arbitration procedures;

(13) A force majeure provision;

(14) Provisions describing the rights of the parties to terminate or suspend the agreement, and the procedures to be followed in the event of termination of the agreement;

(15) Provisions explicitly describing to the best of the operator's knowledge, the nature and schedule of the activities to be conducted; and

(16) Provisions clearly describing future abandonment, post mining land use, reclamation and restoration activities.

(c) In order to avoid delays in obtaining approval, the tribe may confer with the Secretary prior to formally executing the agreement and seek advice as to whether the agreement appears to meet the requirements of § 211.7, or whether modifications, additions, or corrections shall be required in order to obtain Secretarial approval.

(d) The executed agreement, together with a copy of a tribal resolution authorizing tribal officers to enter into an agreement, shall be forwarded to the Secretary for approval.

§ 211.7 Approval of agreements.

(a) A minerals agreement submitted for approval shall be approved or disapproved within one hundred and eighty (180) days after submission, or sixty (60) days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332 (2)(C)] or any other requirement of Federal law, whichever is later.

(b) In approving or disapproving a minerals agreement, a determination shall be made whether the agreement is in the best interest of the Indian tribe or of any individual Indian who may be party to such agreement and shall consider, among other things, the potential economic return to the tribe; the potential environmental, social and cultural effects on the tribe; and provisions for resolving disputes that may arise between the parties to the agreement. The Secretary is not required to prepare any study regarding environmental, socioeconomic, or cultural effects of the implementation of a minerals agreement apart from that which may be required under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(c) At least thirty (30) days prior to formal approval or disapproval of any minerals agreement, the affected tribe shall be provided with written findings forming the basis of the Secretary's intent to approve or disapprove such agreement. The written findings shall include an environmental assessment which meets the requirements of § 211.38 and an economic assessment as described in § 211.37, if needed. The Secretary may include in the written findings, recommendations for changes to the agreement needed to qualify it for approval. The 30-day period shall commence to run as of the date the notice is received by the tribe. Notwithstanding any other law, such findings and all projections, studies, data or other information (other than the environmental assessment required by § 211.38) possessed by the Department of the Interior regarding the terms and conditions of the minerals agreement, the financial return to the Indian parties thereto, or the extent, nature, value, or disposition of the Indian mineral resources, or the production, products or proceeds thereof, shall be held by the Department of the Interior as privileged proprietary information of the affected Indian or Indian tribe. The letter

containing the written findings should be headed with:

Privileged Proprietary Information of the [Name of tribe or Indian].

(d) A minerals agreement shall be approved by the Secretary if it is determined in the written findings that the following conditions are met:

(1) The minerals agreement provides a fair and reasonable remuneration to the Indian mineral owner:

(2) The minerals agreement does not have adverse cultural, social, or environmental impact on the Indian lands and community affected, sufficient to outweight its expected benefits to the Indian mineral owner;

(3) The minerals agreement complies with the requirements of this part, all other applicable regulations, the provisions of applicable Federal law, and applicable tribal law where not inconsistent with Federal law.

(e) The determinations required by paragraphs (b) and (d) of this section shall be based on the written findings required by paragraph (c) of this section.

(f) The question of "fair and reasonable remuneration" within the meaning of a paragraph (d)(1) of this section shall be determined by the Secretary based on information submitted by the parties, and any other information considered relevant by the Secretary, including a review of comparable contemporary contractual arrangements or offers for the development of similar mineral resources received by Indian mineral owners, by non-Indian mineral owners, or by the Federal Government, insofar as that information is readily available

(g) If any representative of the Secretary to whom authority to review proposed minerals agreements has been delegated believes that an agreement should not be approved, that person shall prepare a written statement of the reasons why the agreement should not be approved an forward this statement—together with the agreement, the written findings required by paragraph (c) of this section, and all other pertinent documents—to the Assistant Secretary—Indian Affairs for decision, with a copy to the affected Indian owner

(h) The Assistant Secretary—Indian Affairs shall review any agreement received containing a recommendation that it be disapproved, and make the final decision for the Department.

Subpart B—Procedures for Competitive Leases

The regulations in this Subpart set forth the procedures to be followed where a tribe or individual Indian mineral owner elects to enter into a mining lease under the Act of May 11, 1938 (25 U.S.C. 396a–g), which governs the leasing of tribal lands, or the Act of March 3, 1909 (25 U.S.C. 396), which governs the leasing of allotted lands. A lease may be entered into through competitive bidding under the procedures in this Subpart, or by negotiation under the procedures in Subpart A, or through a combination of both competitive bidding and negotiation. This section is not meant to preclude the use of competitive bidding when a tribe is using the 1982 Act as the contracting authority.

§ 211.21 Procedures for awarding leases.

(a) Competitive mining leases by tribal mineral owners shall be entered into in accordance with the procedures of paragraph (c) of this section. However, if no satisfactory bid is received, or if the accepted bidder fails to complete the lease, or if the Secretary determines that it is not in the best interest of the tribal mineral owner to accept the highest bid, the secretary may readvertise the lease for sale, subject to the consent of the tribal mineral owner, or the lease may be let through private negotiations in accordance with Subpart A of this part.

(b) Indian mineral owners may request the Secretary to prepare, advertise, negotiate, and/or award mining leases on their behalf. If so requested, the Secretary shall undertake such responsibility in accordance with the procedures of paragraph (c) of this section and, where applicable, the provisions of paragraph (a) of this section. (If requested by a potential operator interested in acquiring rights to Indian-owned minerals, the Secretary shall promptly notify the Indian mineral owner thereof, and advise the owner in writing of the alternatives open to her/him, and that the owner may decline to permit any prospecting, mining, exploration or production.

(c) When the Secretary exercises authority to enter into contracts on behalf of individual Indian mineral owners, or when by the Indian mineral owners under paragraph (b) of this section to assume the responsibility of awarding the contract, the Secretary shall offer leases to the highest responsible qualified bidder subject to the following procedures, unless it is determined, in accordance with paragraph (a) of this section that the highest return can be obtained by other methods of contracting (such as negotiation):

(1) Leases shall be advertised for a bonus consideration under sealed bid, oral auction, or a combination of both, and a notice of such advertisement shall be published in at least one local newspaper at least 30 days in advance of sale or such longer time as is necessary to achieve optimum competition. If applicable, such notice must identify the reservation within which the tracts to be leased are found. No specific description of the tracts to be leased need be published. Specific descriptions of such tracts shall be available at the office of the Superintendent upon request. The complete text of the advertisement including a specific description will be mailed to each person listed on the appropriate agency mailing list.

(2) The advertisement shall specify any terms requested by the Indian mineral owner and may, where sufficient information exists and after consultation with the Authorized Officer, permit bidders to compete on such terms as rental and royalty rates as well as upon bonus payment; and it shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the lease bid by or on behalf of the Indian mineral owner is required.

(3) Each bid must be accompanied by a cashier's check, certified check or postal money order, or any combination thereof, payable to the payee designated in the advertisement, in an amount not less than 25 percent of the bonus bid, which shall be returned if that bid is unsuccessful;

(4) A successful bidder must, within 30 days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, a $25 filing fee, her/his share of the advertising costs, and file with the Secretary all required bonds. The successful bidder shall also file the lease in completed form at that time. However, for good and explicit reasons, the Secretary may grant an extension of up to 30 days for filing of the lease. Failure on the part of the bidder to comply with the foregoing shall result in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian mineral owner.

(d) When the Indian mineral owner has requested the Secretary to offer a lease to the highest responsible qualified bidder in accordance with paragraph (c) of this section, the Secretary shall advise the Indian mineral owner of the results of the bidding, and shall not award the lease to any bidder until the consent of the Indian mineral owner has been obtained.

§ 211.22 Duration of leases.

(a) No competitive mining lease with an Indian mineral owner shall exceed a primary term of ten (10) years and shall continue as long thereafter as minerals are produced in paying quantities. For the purpose of this provision, the term of a mining lease entered into by means of the exercise of an option shall be measured from the effective date of Secretarial approval of the lease. All provisions in leases governing their duration shall be measured from the date of the approval, unless otherwise provided in the lease.

§ 211.23 Forms.

Leases, bonds, permits, assignments, and other instruments relating to competitive mineral leasing shall be on forms prescribed by the Secretary which may be obtained from the Superintendent or other officer having jurisdiction over the lands.

Subpart C—General

§ 211.30 Scope.

This subpart sets forth general requirements which are applicable to any contract for the development of Indian minerals entered into pursuant to this part.

§ 211.31 Authority and responsibility of the Bureau of Land Management.

The functions of the Bureau of Land Management are defined by 43 CFR Part 3160—Onshore Oil and Gas Operations, and 43 CFR Part 3260—Geothermal Resources Operations, and currently include resource evaluation, approval of drilling permits and mining or production plans, and inspection. More detailed responsibilities are contained in prevailing Memorandums of Understanding between Bureaus assigned responsibility for lease administration and in the Code of Federal Regulations.

§ 211.32 Authority and responsibility of the Minerals Management Service (MMS).

Functions of the Minerals Management Service are defined under regulations contained in 30 CFR Part 200—Royalty Management. The Minerals Management Service is assigned the responsibility for all accounting work necessary for the proper computation and recording of royalties accruing to the benefit of Indians. Specific duties and responsibilities of the Minerals Management Service are further delineated in an existing Memorandum of Understanding between the Bureau of Indian Affairs and the Minerals Management Service and in the Code of Federal Regulations.

§ 211.33 Authority and responsibility of the Director, Office of Surface Mining Reclamation and Enforcement (OSMRE).

The OSMRE is the regulatory authority for surface coal mining and reclamation operations on Indian lands pursuant to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 7201 *et seq.*). These responsibilities are found in 30 CFR, Chapter VII.

§ 211.34 Approval of amendments.

(a) An amendment, modification or supplement to a contract entered into pursuant to the regulations in this part must be approved by the Secretary. The Secretary may approve an amendment, modification, or supplement if it is determined that the contract, as modified, meets the criteria for approval set forth in § 211.6 or the competitive lease meets the criteria for approval in § 211.21.

(b) An amendment to or modifications of a contract for the prospecting for or mining of Indian-owned minerals, which was approved prior to the effective date of these regulations, shall be approved by the Secretary if the entire contract meets the criteria set forth in § 211.6 or § 211.21 of this part. When appropriate, the Secretary shall prepare a written economic assessment of the amendment or modification and an environmetal and cultural assessment pursuant to § 211.38 of this part.

§ 211.35 Removal of restrictions.

(a) Notwithstanding the provisions of any mining contract to the contrary, the removal of all restrictions against alienation shall operate to divest the Secretary of all supervisory authority and responsibility with respect to the contract. Thereafter all payments required to be made under the contract shall be made directly to the Indian mineral owner(s).

(b) In the event restrictions are removed from a part of the land included in any contract to which this part applies, the entire contract shall continue to be subject to the supervision of the Secretary until such time as the holder of the contract and the unrestricted minerals owner shall furnish to the Secretary satisfactory evidence that adequate arrangements have been made to account for the mineral resources of the restricted land separately from those of the unrestricted. Thereafter, the unrestricted portion shall be relieved from supervision of the Secretary, and the restricted portion shall continue to be subject to such supervision as is provided by the Secretary, the contract, the regulations of this part, and all other applicable laws and regulations.

(c) Should restrictions be removed from only part of the acreage covered by a contract agreement which provides that payments to the mineral owners shall thereafter be paid to each owner in the proportion which her/his acreage bears to the entire acreage covered by the contract, the operator on any unrestricted portion shall continue to be required to make the reports required by the regulations in this part with respect to the beginning of operations, completion of operations, and production, as if no restrictions had been removed. In the event the unrestricted portion of the contracted premises is producing, the operator will also be required to pay the portion of the royalties or other revenue due the Indian mineral owner at the time and in the manner specified by the regulations in this part.

§ 211.36 Geological and geophysical permits.

(a) Permits to conduct geological and geophysical operations on Indian land which are not included in a contract entered into pursuant to this part may be approved by the Secretary with the consent of the Indian owner under the following conditions:

(1) The permit must describe the area to be explored, the duration of the permit, and the consideration to be paid the Indian owner;

(2)l The permit will not grant the permittee any option or preference rights to a lease or other development contract, or authorize the production or removal of minerals unless specifically so stated in the permit;

(3) The permittee or an authorized representative shall pay for all damages to growing crops, or improvements on the lands, and all other surface damage resulting from operations conducted on the permitted lands;

(4) A copy of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and made available to the Indian mineral owner when so provided for in the permit. Data collected under a permit shall be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed, the Secretary may release the information upon requests.

(5) In instances where the Indian mineral owner is also the surface land owner, the Indian mineral owner will obtain any additional necessary permits or rights of ingress or egress from any other surface user, permittee, lessee, or allotee on her/his land needed for the geological permittee to enter onto the

land to conduct exploratory operations. In instances where the Indian mineral owner is not the surface owner, the Indian mineral owner shall lend all possible assistance to the geological permittee in obtaining any such additional necessary permits or right of ingress or egress; and

(6) A permit may be granted by the Secretary without the consent of the individual Indian owners if:

(i) The land is owned by more than one person, and the owners of a majority of the interests therein consent to the permit; or

(ii) The whereabouts of the owner of the land or an interest therein is unknown, and the owners of any interests therein whose whereabouts is known, or a majority thereof, consent to the permit; or

(iii) The heirs or devisees of a deceased owner of the land or an interest therein have not been determined and the Secretary finds that the permit activity will cause no substantial injury to the land or any owner thereof; or

(iv) The owners of interests in the land are so numerous that the Secretary finds it would be impracticable to obtain their consent and also finds that the permit activity will cause no substantial injury to the land or any owner thereof.

(b) A permit to conduct geological and geophysical operations on Indian lands included in a contract entered into pursuant to this part will not be required of the operator in the absence of provisions in the contract requiring that a permit be obtained. If a permit is to be required, the contract shall state the procedures for obtaining approval of a permit.

§ 211.37 Economic assessments.

An economic assessment, where required, shall be prepared by the Secretary and shall take into consideration the following where applicable:

(a) Whether there are assurances in the contract that prospecting and mining operations will be conducted with appropriate diligence;

(b) Whether water in the amount needed for purposes of operations under the contract is available;

(c) Whether production royalties or other form of return on the minerals or other valuable resources removed from the leased premises is adequate; and

(d) When a method of contracting other than by the competitive bidding procedures is used, whether that method is likely to provide the Indian mineral owner with a share of the return on the production of her/his mineral equal to what she/he might otherwise obtain through competitive bidding where such a comparison can readily be made.

§ 211.38 Environmental assessments.

(a) An environmental assessment shall be prepared by the Secretary in accordance with regulations promulgated by the Council on Environmental Quality, 40 CFR 1508.9, 30 BIAM Supplement 1, and 516 DM 1–7. When it is determined prior to the preparation of the assessment that a complete environmental impact statement needs to be prepared prior to approval of the contract, preparation of that environmental impact statement may be regarded as satisfying the requirements of this section. Prior to contract approval, the environmental assessment shall be made available to the Indian mineral owner and to the governing body of the affected Indian tribe, and shall also be made available for public review at the Bureau office having jurisdiction over the proposed mineral agreement.

(b) In order to make a determination of the effect of a contract on prehistoric, historic, architectural, archeological, cultural, and scientific resources, in compliance with the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, Executive Order 11593 (May 1971), and regulations promulgated thereunder, 36 CFR Parts 60, 63, and 800, and the Archeological and Historic Preservation Act, 16 U.S.C. 469a–1 *et seq.*, and the American Indian Religious Freedom Act of August 8, 1978 (Pub. L. 95–341), the Secretary shall, prior to approval of a contract, perform surveys or cause surveys to be made to determine the effect of the exploration and mining activities on properties which are listed in the National Register of Historic Places, 16 U.S.C. 470a, or are eligible for listing in the National Register. If the surveys indicate that properties listed in or eligible for listing in the National Register will be affected, the Secretary shall seek the comments of the Advisory Council on Historic Preservation pursuant to 36 CFR Part 800. If the mineral development will have an adverse effect on such properties, the Secretary shall ensure that the properties will either be avoided, the effects mitigated, or the data describing the historic property is preserved.

§ 211.39 Persons signing in a representative capacity.

(a) The signing in a representative capacity and delivery of bids, geological and geophysical permits, minerals agreements, leases, or assignments, bonds, or other instruments required by these regulations constitutes certification that the individual signing (except a surety agent) is authorized to act in such capacity. An agent for a surety shall furnish a satisfactory power of attorney.

(b) A corporation proposing to acquire an interest in a permit or a contracted real property interest in Indian-owned minerals shall have on file with the Superintendent a statement showing:

(1) The State(s) is which the corporation is incorporated, and that the corporation is authorized to hold such interests in the State where the land described in the instrument is situated;

(2) That it has power to conduct all business and operations as described in the instrument.

(c) The Secretary may, either before or after the approval of a permit, minerals agreement, assignment, or bond, call for any reasonable additional information necessary to carry out the regulations in this part, other applicable laws and regulations, and her/his trust responsibility to the Indian mineral owner.

§ 211.40 Bonds.

(a) The Secretary shall require a prospector or operator to furnish a surety bond in such amount as is deemed appropriate.

(b) Before beginning mining operations, the operator shall furnish a bond in an amount to be determined by the Secretary and the approving officer to assure compliance with the terms of the contract.

(c) Bonding shall be by corporate surety bonds.

(d) The Secretary reserves the discretionary right to require a change in the amount of bonds. The bonds shall be in an amount at least sufficient to satisfy the reclamation requirements established pursuant to an approved exploration or mining plan, or an approved partial or supplemental plan.

(e) In lieu of the bonds required by this section, an irrevocable letter of credit may be submitted for the same amount as a bond.

§ 211.41 Manner of payments.

Unless otherwise provided for in an approved contract, all payments shall be made to the Secretary or such other party as may be designated and shall be made at such time as provided for in the contract or by regulation.

§ 211.42 Permission to start operations.

(a) No exploration or mining operations are permitted on any contract premises before the effective date of the contract. The effective date of the contract shall be the date the contract is officially approved by the

Secretary pursuant to the regulations in this part.

(b) Written permission must be secured from the Secretary before any operations are started on the contract premises in accordance with applicable rules and regulations. After such permission is secured, operations must be conducted in accordnce with all applicable operating regulations promulgated by the Secretary of the Interior. Copies of applicable operating regulations may be secured from either the Authorized Officer or the Superintendent, and no operations should be undertaken without a study of such regulations.

§ 211.43 Recordkeeping.

(a) The prospector or operator shall maintain records of all prospecting and mining operations conducted pursuant to a contract, including information on the type, grade or quality, and weight of all minerals mined, sold, used on the premises, or otherwise disposed of, and all minerals in storage (remaining in inventory), and all information on the sale or disposition of the minerals. Such records shall be kept so that they may be readily inspected.

(b) All maps and records maintained under paragraph (a) of this section, all records regarding the financial structure of the prospector or operator, and any other records which are pertinent or related to operations done under a contract shall be available for examination by the Secretary, upon request. Such records shall at all times be available for the purpose of an independent audit upon the request of the Secretary.

(c) All maps and records maintained under paragraphs (a) and (b) of this section will be furnished MMS in accordance with MMS regulations and guidelines. Such records will be safeguarded by MMS in accordance with appropriate laws, regulations, and guidelines.

(d) Records will be provided to the Authorized Officer in accordance with BLM regulations and guidelines. Such records will be safeguarded by BLM in accordance with appropriate laws, regulations and guidelines.

§ 211.44 Mining contracts—individually-owned Indian lands.

(a) The Secretary may execute mining contracts on behalf of unknown owners of future contingent interests, and on behalf of minors without a legal guardian, and on behalf of persons who are legally incompetent.

(b) If the allottee is deceased and the heirs to or devisees of any interest in the allotment have not been determined, or some or all of them cannot be located, mining contracts involving such interests may be executed by the Secretary, provided that the mineral interest shall have been offered for sale under provisions of § 211.21 of Subpart B.

(c) If an owner is a life tenant, and the division of rents and royalties is not clearly expressed in the document creating the life estate, the contract shall be accompanied by an agreement between the life tenant and the remainderman providing for the division of rents and royalties. The agreement is subject to the approval of the Secretary.

(d) The Secretary may approve a minerals contract where less than 100 percent of the undivided mineral interest is committed to the contract, and the Secretary has determined it to be in the best interest of the Indian mineral owners, provided that:

(1) A contract approved by the Secretary pursuant to this paragraph shall include only the mineral interests of the consenting Indian owners.

(2) Sixty-six and two thirds percent or more of the undivided mineral interest is committed to the contract;

(3) The operator is required to submit a certified statement containing evidence that the non-consenting Indian mineral owners have been contacted and have refused to consent to the contract; and

(4) The operator is required to submit to, and obtain the approval of the Secretary for a plan describing how the operator will account to the non-consenting mineral interest owners for all income attributable to their undivided interest.

(e) The Secretary shall provide all known non-consenting mineral owners with a certified notice that a contract affecting their undivided interest has been approved without their consent, along with a copy of the operator's plan for accounting for their interests.

§ 211.45 Assignments; overriding royalties and operating agreements.

(a) *Assignments.* An assignment or sublease of any interest in a contract entered into pursuant to this part shall not be valid without the approval of the Secretary and the Indian mineral owner, if approval by the Indian owner is required in the contract. The assignee must be qualified to hold such contract and shall furnish a satisfactory bond conditioned on the faithful performance of the terms and conditions thereof. Approval shall not relieve the assignor of obligations under the original contract, unless the Secretary, with the consent of the Indian mineral owner when required, releases the assignor of obligations under said contract. The Secretary may permit the release of any bonds executed by the assignor upon execution of satisfactory bonds by the assignee.

(b) *Overriding royalties and operating agreements.* Agreements creating overriding royalties or payments out of production and agreements designating operators shall not be considered assignments, and the approval of the Department of the Interior or any agency thereof is not required. Such agreements shall be construed as not modifying any of the obligations of the operator with the Indian mineral owner under the contract, the regulations in this part, and Part 216 of this title, including requirements for Departmental approval before abandonment. All such obligations are to remain in full force and effect, the same as if free of any such overriding royalties or payments. Such agreements shall be filed with the Secretary unless incorporated in assignments or instruments required to be filed pursuant to paragraph (a) of this section.

§ 211.46 Termination and cancellation; enforcement of orders.

(a) If the Secretary determines that a prospector or operator has failed to comply with the regulations in this part, other applicable laws or regulations, the terms of the permit or contract, the requirements of an approved exploration or mining plan, Secretarial orders or the order of the Authorized Officer, and such noncompliance does not threaten immediate and serious damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the Secretary shall serve a notice of noncompliance upon the prospector or operator by delivery in person or by certified mail to her/him at her/his last known address. Failure of the prospector or operator to take action in accordance with the notice of noncompliance within the time limits specified by the Secretary, shall be grounds for suspension of operations subject to such notice by the Superintendent, or grounds for the Secretary's recommendations for the initiation of action for cancellation of the lease, permit, license, or contract and forfeiture of any compliance bonds.

(b) The notice of noncompliance shall specify in what respect the prospector or operator has failed to comply with the provisions of applicable laws, regulations, terms of the permit or contract, or the orders of the Secretary or the Authorized Officer, and shall specify the action which must be taken

to correct such noncompliance and the time limits within which such action shall be taken. A written report shall be submitted by the prospector or operator to the Secretary within 10 days of the time such noncompliance has been corrected.

(c) If, in the judgment of the Secretary, a prospector or operator is conducting activities on lands subject to the provisions of this part:

(1) Which fail to comply with the provisions of this part, other applicable laws or regulations, the terms of the minerals agreement, the requirements of an approved exploration or drilling plan, her/his orders or the orders of the Authorized Officer, and

(2) Which threaten immediate and serious damage to the environment, the resource or the deposit being developed, or other valuable mineral deposits or other resources; the Secretary shall order the immediate cessation of such activities without prior notice of noncompliance. The Secretary shall, however, as soon after issuance of the cessation order as possible, serve on the prospector or operator a statement of the reasons for the cessation order and the actions needed to be taken before the order will be lifted.

(3) Such orders shall be immediately effective.

(d) If a prospector or operator fails to take action in accordance with the notice of noncompliance served upon her/him pursuant to paragraph (a) of this section, or if a prospector or operator fails to take action in accordance with the cessation order statement served upon her/him pursuant to paragraph (c) of this section, the Secretary may issue a notice of intent to cancel the minerals agreement specifying the basis for notice. The prospector or operator shall have 30 days from receipt of the notice to present evidence as to why the minerals agreement should not be cancelled.

(e) No provision in this section shall be interpreted as replacing or superseding any other remedies of the Indian mineral owner as set forth in the minerals agreement or otherwise available at law.

(f) Nothing in this section is intended to supersede the independent authority of the Authorized Officer and/or the MMS official. However, the Authorized Officer, the MMS official, and the Secretary should consult with one another, when feasible, before taking any enforcement actions.

(g) All notices of non-compliance or orders of cessation or contract cancellation may be appealed pursuant to 25 CFR Part 2, *Provided*, appeals of cessation orders under this part shall not relieve the prospector or operator from the obligation to immediately comply therewith.

§ 211.47 Suspension of operations; remedial operations.

(a) The Secretary may, under such terms and conditions be prescribed, authorize suspension of operating and producing requirements in the extended contract term whenever it is determined that remedial operations are in the best interest of the Indian mineral owner. *Provided*, that such remedial operations are conducted with reasonable diligence during the period of nonproduction according to the provisions in 43 CFR 3473.4, 3483.3, or 3503.3–2 as applicable. Any suspension under this paragraph shall not relieve the operator from liability for the payment of rental and minimum royalty or other payments due under the terms of the contract.

(b) An application for permission to suspend operating or producing requirements for economic or marketing reasons on a mining operation capable of commercial production which is submitted to the Secretary after the expiration of the primary term of the contract must be accompanied by the written consent of the Indian mineral owner and a written agreement executed by the parties setting forth the terms pertaining to the suspension of operations.

(c) No approval shall be required for a suspension of operations which occurs within the primary term of the contract.

§ 211.48 Penalties.

(a) Violations of the terms and conditions of any contract, or the regulations in this part, or failure to comply with a notice of noncompliance or a cessation order issued pursuant to § 211.46, may subject a prospector or operator to a penalty of not more than $1,000 per day for each day that such violation or noncompliance continues beyond the time limits prescribed for corrective action.

(B) A notice of a proposed penalty shall be served on the prospector or operator either personally or by certified mail. The notice shall specify the nature of the violation and the proposed penalty, and shall advise the prospector or operator of her/his right to either request a hearing within 30 days from receipt of the notice or pay the proposed penalty. Hearings shall be held before the Superintendent whose findings shall be conclusive, unless an appeal is taken pursuant to § 211.49 of this part. A request for a hearing does not stop the running of penalties for continuing non-compliance

(c) Payment in full of penalties more than 10 days afer final notice that a penalty has been imposed, shall subject the prospector or operator to late payment charges. Late payment charges shall be calculated on the basis of a percentage assessment rate of the amount unpaid per month for each month or fraction thereof until payment is received by the BIA. In the absence of a specific contract provision prescribing a different rate, the interest rate on late payments and underpayments shall be a rate applicable under section 6621 of the Internal Revenue Code of 1954. Interest shall be charged only on the amount of payment not received and only for the number of days the payment is late.

(d) Prospectors or operators also may be subject to penalties under other applicable rules and regulations, or under the terms of an approved contract. None of the provisions of this section shall be interpreted as:

(1) Replacing or superseding the independent authority of the Authorized Officer, the Director, or the MMS official to impose penalties for violations of applicable regulations pursuant to authority granted under 43 CFR Groups 3400 and 3500.

(2) Replacing or superseding any penalty provision in the terms and conditions of a contract approved by the Secretary pursuant to this part.

§ 211.49 Appeals.

(a) Appeals from decisions of the Departmental officers under this part may be taken pursuant to Part 2 of this title.

(b) Cessation orders issued pursuant to § 211.46 of this part shall not be suspended as a result of the taking of an appeal, unless such suspension is ordered in writing by the official before whom such an appeal is pending, and then only upon a written determination by such official that such suspenion will not be detrimental to the Indian mineral owner, or upon submission of a bond deemed adequate by both the Indian mineral owner and the Secretary to indemnify the Indian mineral owner from any resulting loss or damage.

§ 211.50 Fees.

Unless otherwise authorized by the Secretary, each permit, lease, sublease, or other contract, or assignment or surrender thereof, shall be accompanied by a filing fee of $25. All fees collected pursuant to this section shall be deposited in the General Treasury Fund pursuant to the requirements of 25 U.S.C. 413.

§ 211.51 No mineral agreements made with Government employees.

No employee of the BIA or Indian Health Service (IHS) shall enter into or be a party to any mineral agreement, assignment thereof, or interest therein involving trust or restricted Indian-owned mineral interests. See 18 U.S.C. 437.

PART 212—REMOVED

2. Part 212—Leasing of Allotted Lands for Mining, is hereby removed.

3. Chapter I of Title 25, Code of Federal Regulations is amended by adding a new part numbered Part 225 to read as follows:

PART 225—OIL AND GAS AND GEOTHERMAL CONTRACTS

Sec.

225.1 Purpose and scope.
225.2 Information collection.
225.3 Definitions.

Subpart A—Fluid Minerals Agreements

225.20 Scope.
225.21 Authority to contract.
225.22 Negotiation procedures.
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Subpart B—Procedures for Competitive Oil and Gas and Geothermal Leases

225.30 Scope.
225.31 Procedures for awarding leases.
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225.55 Unitization and communitization agreements and well spacing requirements.
225.56 Inspection of premises; books and accounts.
225.57 Termination and cancellation; enforcement of orders.
225.58 Penalties.
225.59 Appeals.
225.60 Fees.
225.61 No oil and gas or geothermal agreements made with Government employees.
225.62 Sales contracts, division orders and other division of interest documents.

Authority: Sec. 4, Act of May 11, 1938 (52 Stat. 348, 25 U.S.C. 396a–g), Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396); sec. 1, Act of August 9, 1955, as amended (69 Stat. 539, 25 U.S.C. 415), secs. 16 and 17, Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. 476 and 477); sec. 102, Act of January 1, 1970 (83 Stat. 42 U.S.C. 4332); Act of December 22, 1982 (96 Stat. 1938, 25 U.S.C. 2101–2108); Act of August 11, 1978 (92 Stat. 469; 42 U.S.C. 1966); Act of January 12, 1953 (96 Stat. 2447, 30 U.S.C. 1701).

§ 225.1 Purpose and scope.

(a) The regulations in this part govern contracts for the development of Indian-owned oil and gas and geothermal resources. Subpart A—Mineral Agreements, establishes the procedures for the approval of oil and gas or geothermal mineral agreements entered into pursuant to the Indian Mineral Development Act of 1982 (Pub. L. 97–382). Subpart B—Procedures for Competitive Oil and Gas and Geothermal Leases contains regulations governing the procedures for the issuance of oil and gas and geothermal leases on tribal or allotted lands pursuant to the Act of May 11, 1938 (52 Stat. 348; 25 U.S.C. 396a–g) and the Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396). Subpart C—General contains miscellaneous provisions which apply to contracts for oil and gas or geothermal agreements. These regulations are intended to ensure that Indian owners desiring to have their oil and gas or geothermal resources developed receive at least fair and reasonable remuneration for the disposition of their resources; to ensure at the same time that any adverse environmental or cultural impact on Indians, resulting from such development, is minimized; and to permit Indian oil and gas or geothermal owners to enter into contracts which allow them more responsibility in overseeing and greater flexibility in disposing of their resources.

(b) No regulations which become effective after the approval of any contract shall operate to affect the term of the contract, rate of royalty, rental, or acreage unless agreed to by all parties to the contract.

(c) The regulations in this part do not apply to leasing and development governed by regulations in 25 CFR Parts 213, 226, and 227.

(d) The regulations in this part may be superseded by the provisions of any tribal constitution, bylaw or charter issued pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461 through 479), the Alaska Act of May 1, 1936 (49 Stat. 1250; 48 U.S.C. 362, 258a), or the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C., and Sup., 501 through 509), or by ordinance, resolution or other action authorized under such constitution, bylaw or charter where not inconsistent with Federal law. The regulations in this part, insofar as they are not so superseded, shall apply to leases made by organized tribes if the validity of the lease depends upon the approval of the Secretary of the Interior.

§ 225.2 Information collection

The Office of Management and Budget has informed the Department of the Interior that the Information Collection Requirements contained in section 225 need not be reviewed by them under the Paperwork Reduction Act, (44 U.S.C. 3501 *et seq*).

§ 225.3 Definitions.

As used in this part, the following terms have the specified meaning except where otherwise indicated—

(a) "Secretary" means the Secretary of the Interior or an authorized representative.

(b) "Area Director" means the Bureau of Indian Affairs official in charge of an Area Office.

(c) "Superintendent" means the Bureau Agency Superintendent or an authorized representative having immediate jurisdiction over the oil and gas or geothermal resources covered by a contract under this part, except at the Navajo Area Office where it shall mean the Bureau Area Director or an authorized representative.

(d) "Bureau" means the Bureau of Indian Affairs.

(e) "Authorized Officer" means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described herein and in 43 CFR Parts 3160 and 3260.

(f) "Minerals Management Service (MMS) Official" means any employee of the Minerals Management Service authorized by law or by lawful delegation of authority to perform the duties described.

(g) "Indian owner" means:

(1) Any individual Indian or Alaska Native who owns land or interests in oil and gas or geothermal resources, the title to which is held in trust by the United States, or is subject to restriction against alienation imposed by the United States;

(2) Any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns land or interests in oil and gas or geothermal resources, the title to which is held in trust by the United States, or is subject to a restriction against alienation imposed by the United States.

(h) "Oil" means any nongaseous hydrocarbon substance other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process. For royalty rate consideration in special tar sand areas, any hydrocarbon substance with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise is termed tar sand.

(i) "Gas" means any fluid, either combustible or noncombustible, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely; a substance that exists in a gaseous or rarefield state under standard temperature and pressure conditions.

(j) "Geothermal resources" means:

(1) All products of geothermal processes, embracing indigenous steam, hot water, and hot brines;

(2) Steam and other gases, hot water, and hot brines, resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(3) Heat or other associated energy found in geothermal formations; and

(4) Any byproduct derived therefrom.

(k) "Minerals agreement" means any joint venture, operating, production sharing, service, managerial lease (other than a lease, or amendment thereto, entered pursuant to the Act of May 11, 1938 and the Act of March 3, 1909), contract, or other agreement, or any amendment, supplement or other modification of such agreement, providing for the exploration for, or extraction, processing or other development of oil and gas or geothermal resources, or providing for the sale or disposition of production or products of oil and gas or geothermal resources.

(l) "Operator" means a person, proprietorship, partnership, corporation, or other business entity which has made application for, or is negotiating with an Indian owner with respect to, or has entered into an oil and gas or geothermal contract.

(m) "Surface owner" means any individual who owns land or an Indian tribe, band, nation, pueblo community, rancheria, or colony that owns land.

(n) "Geological and geophysical permit" means a written authorization to conduct onsite surveys to locate potential deposits of oil and gas or geothermal resources on the lands.

Subpart A—Fluid Minerals Agreements

§ 225.20 Scope.

The regulations in this subpart govern the procedures for obtaining approval of mineral agreement for the exploration, development and sale of oil and gas reserves or geothermal resources on Indian lands under the Indian Mineral Development Act of 1982 (Pub. L. 97–382).

§ 225.21 Authority to contract.

(a) Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into a minerals agreement with respect to oil and gas or geothermal resources in which such Indian tribe owns a beneficial or restricted interest.

(b) Any individual Indian owning a beneficial or restricted interest in oil and gas or geothermal resources, may include such resources in a tribal mineral agreement subject to the concurrence of the parties and a finding by the Secretary that such participation is in the best interest of the Indian.

§ 225.22 Negotiation procedures.

(a) A tribe or individual Indian mineral owner that wishes to enter into a minerals agreement may ask the Secretary for advice, assistance and information during the negotiation process, and such advice, assistance and information shall be provided to the extent of available resources.

(b) No particular form of agreement is prescribed. In preparing the agreement, consideration should be given to the inclusion of the following provisions:

(1) A general statement identifying the parties to the agreement, a specific legal description of the lands involved, and the purposes of the agreement;

(2) A statement setting forth the duration of the agreement;

(3) Provisions setting forth the obligations of the contracting parties;

(4) Provisions describing the methods of disposition of production;

(5) Provisions outlining the amount and method of compensation to be paid;

(6) Provisions establishing the accounting procedures to be followed by the operator;

(7) Provisions establishing the operating and management procedures to be followed;

(8) Provisions establishing the operator's rights of assignment;

(9) Bond requirements;

(10) Insurance requirements;

(11) Provisions establishing audit procedures;

(12) Provisions setting forth arbitration procedures;

(13) A *force majeure* provision;

(14) Provisions describing the rights of the parties to terminate or suspend the agreement, and the procedures to be followed in the event of termination of suspension;

(15) Provisions explicitly describing to the best of the operator's knowledge, the nature and schedule of the activities to be conducted;

(16) Provisions clearly describing to the best of the operator's knowledge, future abandonment, reclamation and restoration activities;

(c) In order to avoid delays in obtaining approval, the tribe may confer with the secretary prior to formally executing the agreement, and seek advice as to whether the agreement appears to meet the requirement of § 225.23, or whether modifications, additions or corrections will be required in order to obtain Secretarial approval.

(d) The executed agreement, together with a copy of a tribal resolution authorizing tribal officers to enter into the agreement, shall be forwarded to the Secretary for approval.

§ 225.23 Approval of agreements.

(a) A minerals agreement submitted for approval shall be approved or disapproved within: one hundred and eighty (180) days after submission, or sixty (60) days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)] or any other requirement of Federal law, whichever is later.

(b) In approving or disapproving a minerals agreement, a determination shall be made as to whether the agreement is in the best interest of the Indian tribe or of any individual Indian who may be party to such agreement, and shall consider, among other things: The potential economic return to the Indian owner; the potential environmental, social, and cultural effects; and provisions for resolving disputes that may arise between the parties to the agreement. The Secretary is not required to prepare any study regarding environmental, socioeconomic, or cultural effects of the implementation of a minerals agreement apart from that which may be required under section 102(2)(C), of the National

Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(c) At least thirty (30) days prior to formal approval or disapproval of any minerals agreement, the affected tribe shall be provided with written findings forming the basis of the Secretary's intent to approve or disapprove such agreement. The written findings shall include an environmental assessment which meets the requirements of § 225.49 and an economic assessment as described in § 225.48, if needed. The Secretary may include in the written findings recommendations for changes to the agreement needed to qualify it for approval. The 30-day period shall commence to run as of the date the notice is received by the tribe. Notwithstanding any other law, such findings and all projections, studies, data or other information (other than the environmental assessment required by § 225.49) possessed by the Department of the Interior regarding the terms and conditions of the minerals agreement, the financial return to the Indian parties thereto, or the extent, nature, value or disposition of the Indian mineral resources, or the production, products or proceeds thereof, shall be held by the Department of the Interior as privileged and proprietary information of the affected Indian or Indian tribe. The letter containing the written findings should be headed with:

Privileged Proprietary Information of the (name of tribe or Indian).

(d) A mineral agreement shall be approved by the Secretary if it is determined that the following conditions are met:

(1) The minerals agreement provides a fair and reasonable remuneration, to the Indian mineral owner;

(2) The mineral agreement does not have adverse cultural, social, or environmental impact on the Indian lands and community affected, sufficient to outweigh its expected benefits to the Indian mineral owner;

(3) The minerals agreement complies with the requirements of this part, all other applicable regulations, the provisions of applicable Federal law, and applicable tribal law where not inconsistent with Federal law.

(e) The determinations required by paragraphs (b) and (d) of this section shall be based on the written findings required by paragraph (c) of this section.

(f) The question of "fair and reasonable remuneration" within the meaning of paragraph (d)(1) of this section shall be determined by the Secretary based on information obtained from the parties, and any other information considered relevant by the Secretary, including a review of comparable contemporary contractual arrangements or offers for the development of similar mineral resources received by Indian mineral owners, by non-Indian mineral owners, or by the Federal Government, insofar as that information is readily available.

(g) If a representative of the Secretary to whom authority to review proposed minerals agreements has been delegated believes that an agreement should not be approved, a written statement of the reasons why the agreement should not be approved shall be prepared and forwarded, together with the agreement, the written findings required by paragraph (c) of this section, and all other pertinent documents, to the Assistant Secretary—Indian Affairs for decision with a copy to the affected Indian mineral owner.

(h) The Assistant Secretary—Indian Affairs shall review any agreement referred contained a recommendation that it be disapproved, and shall make the final decision for the Department.

Subpart B—Procedures for Competitive Oil and Gas and Geothermal Leases

§ 225.30 Scope.

The regulations in this subpart set forth the procedures to be followed where a tribe or individual Indian mineral owner elects to enter into an oil and gas or geothermal lease through competitive bidding pursuant to the Act of May 11, 1938 (25 U.S.C. 396a-g), which governs the leasing of tribal lands, or the Act of March 3, 1909 (25 U.S.C. 396), which governs leasing of allotted lands. A lease may be entered into through competitive bidding under the procedures in this Subpart, or by negotiation under the procedures in Subpart A, or through a combination of both competitive bidding and negotiation. This section is not meant to preclude the use of competitive bidding when a tribe is using the 1982 Act as the contracting authority.

§ 225.31 Procedures for awarding leases.

(a) Competitive oil and gas and geothermal leases by tribal mineral owners shall be entered into in accordance with the procedures of paragraph (c) of this section. However, if no satisfactory bid is received, or if the accepted bidder fails to complete the lease, or if the Secretary determines that it is not in the best interest of the Indian mineral owner to accept the highest bid, the Secretary may readvertise the lease for sale, subject to the consent of the Indian mineral owner, or the lease may be let through private negotiations.

(b) Indian mineral owners may also request the Secretary to prepare, advertise, negotiate, and/or award an oil and gas or geothermal lease on their behalf. If so requested, the Secretary shall undertake such responsibility in accordance with the procedures of paragraph (c) of this section and, where applicable, the provisions of paragraph (a) of this section. If requested by a potential prospector or operator interested in acquiring lease rights to Indian-owned oil and gas or geothermal resources, the Secretary shall promptly notify the Indian mineral owner thereof, and advise the owner in writing of the alternatives available, and that the owner may decline to permit leasing, exploration or production.

(c) When the Secretary exercises the authority to enter into leases on behalf of individual Indian mineral owners, or when requested by the Indian mineral owner under paragraph (b) of this section to assume the responsibility of awarding the contract, the Secretary shall offer a lease to the highest responsible qualified bidder subject to the following procedures, unless it is determined in accordance with paragraph (a) of this section that the highest return can be obtained by other methods of contracting (such as negotiation):

(1) Leases shall be advertised for a bonus consideration under sealed bid, oral auction, or a combination of both, and a notice of such advertisement shall be published in at least one local newspaper at least 30 days in advance of sale or such longer time as is necessary to achieve optimum competition. If applicable, such notice must identify the reservation within which the tracts to be leased are found. No specific description of the tracts to be leased need be published. Specific descriptions of such tracts shall be available at the office of the Superintendent upon request. The complete text of the advertisement including a specific description of the tracts, will be mailed to each person listed on the agency mailing list.

(2) The advertisement shall specify any terms requested by the Indian mineral owner and may, where sufficient information exists, and after consultation with the Authorized Officer, permit bidders to compete on such terms as rental and royalty rates as well as upon bonus payment; and it shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the lease bid by or on

behalf of the Indian mineral owner is required.

(3) Each bid must be accompanied by a cashier's check, certified check, or postal money order or any combination thereof, payable to the payee designated in the advertisement, in an amount not less than 25 percent of the bonus bid, which will be returned if that bid is unsuccessful.

(4) A successful bidder must, within 30 days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, a $25 filing fee, her/his share of the advertising costs, and file with the Secretary all required bonds. The successful bidder shall also file the lease in completed form at that time. However, for good and explicit reasons, the Secretary may grant an extension of up to 30 days for filing of the lease. Failure on the part of the bidder to comply with the foregoing will result in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian oil and gas owner.

(d) When the Indian mineral owner has requested the Secretary to offer a lease to the highest responsible qualified bidder in accordance with paragraph (c) of this section, the Secretary shall advise the Indian mineral owner of the results of the bidding, and shall not award the lease contract to any bidder until the consent of the Indian mineral owner has been obtained.

§ 225.32 Duration of leases.

(a) No competitive oil and gas or geothermal lease with an Indian mineral owner shall exceed a term of ten (10) years and as long thereafter as oil and gas or geothermal resources are produced in paying quantities.

(b) Where an oil and gas or geothermal lease specifies a term of years and "as long thereafter as oil and gas or geothermal resources are produced in paying quantities" or similar phrase, the term "paying quantities" shall generally mean: Lease production of oil and/or gas or geothermal resources of sufficient value to exceed direct operation costs plus the cost of lease rentals or minimum royalty.

(c) A lease which provides that it shall continue in force and effect beyond the expiration of the primary term if drilling operations have been commenced during the primary term, shall continue in force and effect beyond the expiration date of the primary term if the lessee has commenced actual drilling with a rig designed to reach the total proposed depth by midnight of the last day of the primary term and such drilling is continued with reasonable diligence until the well is completed to production or abandoned.

§ 225.33 Rentals; minimum royalty; production royalty on oil and gas leases.

(a) An oil and gas lessee shall pay, in advance, beginning with the effective date of the lease, an annual rental of such rate authorized by the Secretary. This rental shall not be credited on production royalty or prorated or refunded because of surrender or cancellation or for any other reason.

(b) If the royalty on oil and gas production paid during any year aggregates less than $2.50 per acre, the lessee must pay the difference at the end of the lease year. On communitized and unitized leases, the minimum royalty shall be payable only on participating acreage.

(c) Unless otherwise authorized by the Secretary, a royalty of not less than 16⅔ percent shall be paid on the value of all oil and gas, and products extracted therefrom from the land leased.

(d) During the period of supervision, "value" for the purpose of the lease shall be calculated in accordance with applicable rules and regulations in 30 CFR.

(e) If the leased premises produce gas in excess of the lessee's requirements for the development, and operation of said premises, gas shall, if requested by the lessor, be furnished by the lessee to the Indian oil and gas owner. Such gas furnished shall be received by the Indian oil and gas owner and title shall pass at the wellhead or at the alternate point of transfer designated by the lessee, and the Indian mineral owner shall pay a price therefor equal to the current wellhead price, less royalty, or if gas is not being sold, the price to be paid by the Indian oil and gas owner shall equal the highest price that could be obtained from another gas purchaser, less royalty. In addition to the above payments, the Indian oil and gas owner shall pay for the gas transfer installation and a reasonable fee to the lessee for meter maintenance, gas volume determination, accounting and other operational costs incurred as a result of any such purchase by the Indian oil and gas owner. The acquisition and use of any such gas purchased by the Indian oil and gas owner shall be at the Indian oil and gas owner's sole risk at all times. *Provided,* that this requirement shall be subject to the determination by the Superintendent, that gas in sufficient quantities is available above that needed for lease operation, and that waste would not result, and the gas is not subject to any pre-existing sales contracts, or disposition of such gas is not otherwise provided for in the lease. Where an arrangement is made to furnish gas to the Indian oil and gas owner pursuant to this section, it may be terminated only with the approval of the Secretary.

§ 225.34 Contracts for subsurface storage of oil and gas.

(a) The Secretary may approve, subject to obtaining the prior consent of the Indian oil and gas owners, storage contracts or modifications, amendments or extensions of oil and gas leases or other contracts, on tribal lands subject to lease or contract under the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. 396a), and on allotted lands subject to lease or contract under the Act of March 3, 1909 (35 Stat. 783; 25 U.S.C. 396), to provide for subsurface storage of oil or gas, irrespective of the lands from which production is initially obtained. The storage contract or modification, amendment, or extension, shall provide for the payment of such fee or rental, or in lieu thereof, for a royalty or percentage payment. All such fees, rentals, royalty or percentage payments shall be in addition to any royalties or rentals required by any lease committed to such a storage agreement.

(b) The Secretary may approve, subject to obtaining the prior consent of the Indian oil and gas owners, a provision in an oil and gas contract under which storage of oil or gas is authorized for continuance of the contract at least for the period of such storage use and so long thereafter as oil or gas not previously produced, is produced in paying quantities.

(c) Applications for subsurface storage of oil or gas shall be filed in triplicate with the Secretary and shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage, and all essential information showing the necessity for such project.

§ 225.35 Surrender of leases.

A lessee may, with the approval of the Secretary, surrender a lease or any part of it, on the following conditions:

(1) The lessee shall requested the Secretary to terminate the lease and pay a $25 filing fee.

(2) All royalties and rentals due on the date the request for termination is made must be paid.

(3) The Superintendent, after consultation with the Authorized Officer, must be satisfied that proper provisions have been made for the conservation and protection of the property, and that all wells drilled on the portion of the lease surrendered

have been properly abandoned or conditioned, whichever is required.

(4) If a lease has been recorded, the lessee must submit a recorded release of the acreage covered by the request.

(5) If a lessee requests termination of an entire lease or an entire undivided portion of a lease, she/he must surrender the lease; provided that where the request is made by an assignee to whom no copy of the lease was delivered, the assignee must surrender only her/his copy of the assignment.

(6) If the lease, or a portion thereof, being terminated is owned in undivided interests by more than one party, all parties owning undivided interests in the lease must join in the request for termination.

(7) No part of any advance rental shall be refunded to the lessee, nor shall the lessee be relieved of the obligation to pay advance rental when it becomes due, by reason of any other subsequent surrender or termination of a lease or a portion thereof.

(8) If oil and gas is being drained from the leased premises by a well or wells located on lands not included in an Indian oil and gas lease, the Secretary reserves the right to impose reasonable and equitable terms and conditions on the termination of the lease to protect the interests of the Indian oil and gas owners of the lands surrendered, such as payment of compensatory royalty for any drainage.

§ 225.36 Forms.

Leases, bonds, permits, assignments, and other instruments relating to competitive oil and gas or geothermal leasing shall be on forms prescribed by the Secretary which may be obtained from the Superintendent or other officer having jurisdiction over the land.

Subpart C—General

§ 225.40 Scope.

This subpart sets forth general requirements which are applicable to any contract for the development of Indian oil and gas or geothermal resources entered into pursuant to this part.

§ 225.41 Authority and responsibility of the Bureau of Land Management.

The functions of the Bureau of Land Management are defined by 43 CFR Part 3160—Onshore Oil and Gas Operations, and 43 CFR Part 3260—Geothermal Resources Operations and currently include resource evaluation, approval of drilling permits and mining or production plans, and inspection. More detailed responsibilities are provided for in prevailing Memorandums of Understanding between Bureaus assigned responsibility for lease administration.

§ 225.42 Authority and responsibility of the Minerals Management Service (MMS).

Functions of the Minerals Management Service are defined under regulations contained in 30 CFR Part 200—Royalty Management. The Minerals Management Service is assigned the responsibility for all accounting work necessary for the proper computation and recording of royalties accruing to the benefit of Indians. Specific duties and responsibilities of the Minerals Management Service are further delineated in an existing Memorandum of Understanding between the Bureau of Indian Affairs and the Minerals Management Service.

§ 225.43 Approval of amendments to contracts.

(a) An amendment, modification or supplement to a contract entered into pursuant to the regulations in this part, must be approved by the Secretary. The Secretary may approved and amendment, modification, or supplement if it is determined that the contract, as modified, meets the criteria for approval set forth in § 225.23, or of the competitive lease meets the criteria for approval in § 225.31.

(b) An amendment to or modification of a contract for the exploration, development and production of Indian-owned oil and gas or geothermal resources, which was approved prior to the effective date of these regulations, shall be approved by the Secretary if the entire lease meets the criteria set forth in § 225.23 or § 225.31 of this part. When appropriate, the Secretary shall prepare a written economic assessment of the amendment or modification pursuant to paragraph (a) of § 225.48 of this part, and an environmental and cultural assessment pursuant to § 225.49 of this part.

§ 225.44 Geological and geophysical permits.

(a) Permits to conduct geological and geophysical operations on Indian lands which are not included in an oil and gas or geothermal contract entered into pursuant to this part, may be approved by the Secretary with the consent of the Indian owner under the following conditions:

(1) The permit must describe the area to be explored, the duration and consideration to be paid the Indian owner;

(2) The permit will not grant the permittee any option or preference rights to a lease or other development contract, or authorize the production of or removal of oil and gas or geothermal unless specifically so stated in the permit;

(3) The permittee shall pay for all damages to growing crops, any improvements on the lands, and all other surface damages resulting from operations conducted on the permitted lands;

(4) A copy of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and made available to the Indian owner, when so provided in the permit. Data collected under a permit shall be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed in the permit, the Secretary may release such information upon request.

(5) In instances where the Indian owner is also the surface land owner, the Indian owner shall obtain any additional necessary permits or rights of ingress or egress from any other surface user, permittee, lessee, or allottee on her/his land needed for the geological permittee to enter onto the land to conduct exploratory operations. In instances where the Indian owner is not the surface owner, the Indian owner shall lend all possible assistance to the geological permittee in obtaining any such additional necessary permits or rights of ingress or egress; and

(6) A permit may be granted by the Secretary without the consent of the individual Indian owners if:

(i) The land is owned by more than one person, and the owners of a majority of the interests therein consent to the permit;

(ii) The whereabouts of the owner of the land or an interest therein is unknown, and the owner or owners of any interests therein whose whereabouts is known, or a majority thereof, consent to the permit; or

(iii) The heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Secretary finds that the permit activity will cause no substantial injury to the land or any owner thereof; or

(iv) The owners of interests in the land are so numerous that the Secretary finds it would be impractical to obtain their consent, and also finds that the permit activity will cause no substantial injury to the land or any owner thereof.

(b) A permit to conduct geological and geophysical operations on Indian lands

included in an oil and gas or geothermal contract entered into pursuant to this part, will not be required of the operator in the absence of provisions in the contract requiring that a permit be obtained. If a permit is to be required, the contract shall state the procedures for obtaining approval of the permit.

§ 225.45 Removal of restrictions.

(a) Notwithstanding the provisions of any oil and gas or geothermal contract to the contrary, the removal of all restrictions against alienation shall operate to divest the Secretary of all supervisory authority and responsibility with respect to the contract. Thereafter, all payments required to be made under the contract shall be made directly to the oil and gas or geothermal owner(s).

(b) In the event restrictions are removed from a part of the land included in any contract to which this part applies, the entire contract shall continue to be subject to the supervision of the Secretary until such times as the holder of the contract and the unrestricted Indian owner, shall furnish to the Secretary satisfactory evidence that adequate arrangements have been made to account for the oil and gas or geothermal resources of the restricted land separately from those of the unrestricted. Thereafter, the unrestricted portion shall be relieved from supervision of the Secretary, and the restricted portion shall continue subject to such supervision as is provided by the Secretary, the contract, the regulations of this part, and all other applicable laws and regulations.

(c) Should restrictions be removed from only part of the acreage covered by a contract agreement, which provides that payments to the oil and gas or geothermal owners shall thereafter be paid to each owner in the proportion which her/his acreage bears to the entire acreage covered by the contract, the operator on any unrestricted portion shall continue to be required to make the reports required by the regulations in this part with respect to the beginning of drilling operations, completion of wells, and production, the same as if no restrictions had been removed. In the event the unrestricted portion of the contracted premises is producing, the operator will also be required to pay the portion of the royalties or other revenue due the Indian owner at the time and in the manner specified by the regulations in this part.

§ 225.46 Oil and gas and geothermal contracts of undivided inherited lands.

(a) The Secretary may execute oil and gas or geothermal contracts on behalf of unknown owners of future contingent interests, and on behalf of minors without a legal guardian, and on behalf of persons who are legally incompetent.

(b) If the allottee is deceased and the heirs to or devisees of any interest in the allotment have not been determined, or some or all of them cannot be located, contracts for the development of such interests may be executed by the Secretary, provided that such interests have been offered for sale under provision of § 225.31.

(c) If an owner is a life tenant, and the division of rents and royalties is not clearly expressed in the document creating the life estate, the contract shall be accompanied by an agreement between the life tenant and the remainderman providing for the division of rents and royalties. The agreement is subject to the approval of the Secretary.

(d) The Secretary may approve a contract where less than 100 percent of the undivided mineral interest is committed to the contract and the Secretary has determined it to be in the best interest of the Indian owners, provided that:

(1) A contract approved by the Secretary pursuant to this paragraph shall include only the oil and gas or geothermal interests of the consenting Indian owners.

(2) Sixty-six and two thirds percent or more of the undivided oil and gas or geothermal interest is committed to the lease;

(3) The operator is required to submit a certified statement containing evidence that the non-consenting Indian owners have been contacted and have refused to consent to the lease; and

(4) The operator is required to submit, and obtain the approval of the Secretary to, a plan describing how the operator will account to the non-consenting Indian owners for all income attributable to their undivided interest.

(e) The Secretary shall provide all known non-consenting Indian owners with a certified written notice that a contract has been approved without their consent, that affects their undivided interest along with a copy of the operator's plan for accounting for their interest.

§ 225.47 Persons signing in a representative capacity.

(a) The signing in a representative capacity and delivery of bids, geological and geophysical permits, oil and gas or geothermal agreements or assignments, bonds, or other instruments required by these regulations, constitutes certification that the individual signing (except a surety agent) is authorized to act in such capacity. An agent for a surety shall furnish a satisfactory power of attorney.

(b) A corporation proposing to acquire an interest in a permit or a contracted real property interest in Indian-owned oil and gas or geothermal resources, shall have on file with the Superintendent a statement showing:

(1) The State(s) in which the corporation is incorporated, and that the corporation is authorized to hold such interests in the State where the land described in the instrument is situated;

(2) That it has power to conduct all business and operations as described in the instrument.

(c) The Secretary may, either before or after the approval of a permit, contract, assignment, or bond, call for any reasonable additional information necessary to carry out the regulations in this part, other applicable laws and regulations, and the trust responsibility to the Indian owner.

§ 225.48 Economic assessments.

An economic assessment, where required, shall be prepared by the Secretary and shall take into consideration the following where applicable:

(a) Whether there are assurances in the oil and gas or geothermal contract that operations shall be conducted with appropriate diligence;

(b) Whether the production royalties or other form of return on oil and gas or geothermal resources is adequate; and

(c) When a method of contracting for development of oil and gas other than by the competitive bidding procedures is used, whether that method is likely to provide the Indian oil and gas owner with a share of the return on the production of her/his oil and gas equal to what the owner might otherwise obtain through competitive bidding, when such a comparison can readily be made.

§ 225.49 Environmental assessments.

(a) An environmental assessment shall be prepared or caused to be prepared by the Secretary in accordance with regulations promulgated by the Council for Environmental Quality, 40 CFR 1508.9, and 30 BIAM Supplement 1 and 516 DM 1–7. When it is determined prior to the preparation of the assessment that an environmental impact statement needs to be prepared prior to approval of the contract, preparation of that environmental impact statement may be regarded as satisfying the requirements of this section. Prior to contract approval, the environmental assessment shall be made available to the Indian owner and

to the governing body of the affected Indian tribe, and shall also be made available for public review at the Bureau office having jurisdiction over the proposed contract.

(b) In order to make a determination of the effect of the contract on prehistoric, historic, architectural, archeological, cultural, and scientific resources, in compliance with the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, Executive Order 11593 (May 1971), and regulations promulgated thereunder, 36 CFR Parts 60, 63, and 800, and the Archeological and Historic Preservation Act, 16 U.S.C. 469a–1 *et seq.*, the Secretary shall, prior to approval of a contract, perform surveys or cause surveys to be made to determine the effect of the exploration and production activities on properties which are listed in the National Register of Historic Places, 16 U.S.C. 470a, or are eligible for listing in the National Register. If the surveys indicate that properties listed in or eligible for listing in the National Register will be affected, the Secretary shall seek the comments of the Advisory Council on Historic Preservation pursuant to 36 CFR Part 800. If the oil and gas or geothermal development will have an adverse effect on such properties, the Secretary shall ensure that the properties will either be avoided, the effects mitigated, or the data describing the historic property preserved.

§ 225.50 Bonds.

(a) The Secretary may require a geological or geophysical permittee or operator to furnish surety bonds in such amount deemed appropriate.

(b) Before beginning drilling operations, the operator shall furnish a bond in an amount to be determined by the Secretary and the approving official, but in no event less than $10,000.

(c) In lieu of the drilling bond required under paragraph (b) of this section, the operator may file one bond of $50,000 for all oil and gas or geothermal contracts in any one State, or such lesser jurisdiction as determined by the Secretary, including contracts on that part of an Indian reservation extending into States contiguous thereto, to which the operator may become a party. The total acreage covered by such bond shall not exceed 10,240 acres.

(d) In lieu of the bonds required under paragraphs (a), (b), and (c) of this section, an operator or permittee may file with the Secretary a bond in the sum of $150,000 for full nationwide coverage for all contracts and permits without geographic or acreage limitations.

(e) Bonding shall be by corporate surety bonds.

(f) In lieu of a bond required by this section, an irrevocable letter of credit may be submitted for the same amount as a bond.

(g) The right is specifically reserved to the Secretary to increase or decrease the amount of bonds or letters of credit at her/his discretion.

§ 225.51 Manner of payments.

Unless otherwise provided in an approved contract, all payments shall be paid to the Secretary or such other party as she/he may designate, and shall be made at such time as provided in the advertisement, permit, or mineral agreement.

§ 225.52 Permission to start operations.

(a) No exploration or drilling operations are permitted on any contract area before the effective date of the oil and gas or geothermal contract. The effective date of the contract shall be the date the contract is officially approved by the Secretary pursuant to the regulations in this part.

(b) Written permission must be secured from the Secretary before any operations are started on the contract premises, in accordance with applicable rules and regulations in Title 43 CFR, Parts 3160 and 3260, and Orders or Notice to Lessees (NTL) issued thereunder. After such permission is secured, operations must be in accordance with all applicable operating rules and regulations promulgated by the Secretary of the Interior. Copies of applicable regulations may be secured from either the Authorized Officer or the Superintendent and no operations should be undertaken without a study of such regulations.

§ 225.53 Assignments and overriding royalties and operating agreements.

(a) Assignments. An assignment of oil and gas or geothermal contracts or any interest therein, shall not be valid without the approval of the Secretary and the Indian owner, if approval of the Indian owner is required in the contract. The assignee must be qualified to hold such contract under existing rules and regulations and shall furnish a satisfactory bond conditioned on the faithful performance of the convenants and conditions thereof. An operator must assign either her/his entire interest in a contracted area or a legal subdivision (which may be a separate horizon) thereof, or an undivided interest in the whole lease or contracted area:

Provided, that when an assignment covers only a legal subdivision of a contract area or covers interests in separate horizons, such assignment shall be subject to both the consent of the Secretary and the Indian owner. If a contract area is divided by the assignment of an entire interest in any part, each part shall be considered a separate contract, and the assignee shall be bound to comply with all terms and conditions of the original contract. A fully executed copy of the assignment shall be filed with the Secretary within 30 days after the date of the execution by all parties. The Secretary may permit the release of any bonds executed by the assignor upon execution of satisfactory bonds by the assignee.

(b) Overriding royalties and operating agreements. Agreements creating overriding royalties or payments out of production and agreements designating operators shall not be considered assignments, and the approval of the Department of the Interior or any agency thereof shall not be required with respect thereto. Such agreements shall be construed as not modifying any of the obligations of the operator with the Indian owner under her/his contract and the regulations in this part, including requirements for Departmental approval before abandonment. All such obligations are to remain in full force and effect, the same as if free of any such royalties or payments. Such agreements shall be filed with the Secretary unless incorporated in assignments or instruments required to be filed pursuant to paragraph (a) of this section.

§ 225.54 Suspension of production; remedial workover/shut-in.

(a) The Secretary may under such terms and conditions as she/he may prescribe, authorize suspension of producing requirements in the extended contract term whenever it is determined that remedial operations are in the best interest of the Indian mineral owner. *Provided*, that such remedial operations are conducted with reasonable diligence during the period of nonproduction according to the provisions in 43 CFR 3162.3–2. Any suspension under this paragraph shall not relieve the operator from liability for the payment of rental and minimum royalty or other payments due under the terms of the contract.

(b) An application for permission to suspend producing requirements for economic or marketing reasons on an oil and/or gas or geothermal well capable of commercial production which is submitted to the Secretary after the expiration of the primary term of the contract must be accompanied by the written consent of the Indian mineral owner and a written agreement executed by the parties setting forth the

terms pertaining to the suspension of production.

(c) No approval shall be required for a suspension of production which occurs within the primary term of the contract.

§ 225.55 Unitization and communitization agreements; and well spacing requirements.

(a) *Unitization and communitization agreements.* (1) For the purpose of promoting conservation and efficient utilization of natural resources, the Secretary, with the consent of the Indian mineral owner, may approve a cooperative unit, drilling or other development plan on any contracted area upon a determination that approval is advisable and in the best interest of the Indian owner. For the purposes of this section, a cooperative or other plan means an agreement for the development or operation of a specifically designated area as a single unit without regard to separate ownership of the land included in the agreement. Such agreements include unit agreements and other types of agreements which allocate costs and benefits.

(2) Where individual or tribal Indian owners have consented in an oil and gas or geothermal contract to include their lands in a cooperative or other development plan, further consent of such owners shall not be required to obtain the approval of a proposed agreement by the Secretary.

(3) A request for approval of a cooperative plan shall be filed with the Superintendent which must comply with the requirements of all applicable rules and regulations.

(4) All Indian owners of any right, title or interest in the oil and gas or geothermal resources to be unitized are proper parties to the proposed agreement, and must be invited to join the agreement unless prior consent to unitization has been given. If any Indian oil and gas or geothermal owner refuses to join in an agreement, the request for approval shall include: an affidavit certifying that reasonable efforts were made to obtain her/his consent, and a copy of a return receipt showing that an invitation to join the unit was mailed to the Indian owner by certified mail at her/his last known mailing address.

(5) A request for approval of a proposed agreement, and documents incident to such agreements, should be filed with the Superintendent ninety (90) days prior to the expiration date of the first Indian oil and gas or geothermal contract to expire in the unit.

(6) Prior to approving or disapproving a proposed agreement, the Superintendent shall obtain the recommendation of the Authorized Officer for approval or disapproval, based upon the engineering and technical aspects of the agreement.

(7) Approval shall be retroactive to the date the proposed agreement was submitted to the Department or the date that first production occurred within the unit, whichever is earlier. Review of the agreement shall be primarily concerned with engineering and technical aspects of the agreement and shall generally not consider the other terms and conditions of affected leases (e.g., royalty rate and bonuses).

(8) Any oil and gas or geothermal contract committed in part to any such agreement shall be segregated into separate minerals contracts or leases as to the lands committed and lands not committed to the agreement. Such segregation shall be effective the date the agreement is approved by the Secretary.

(b) Well spacing requirements: Each well within a cooperative unit shall be drilled in conformity with an acceptable well spacing program at a surveyed well location approved or prescribed by the Authorized Officer after appropriate environmental and technical reviews. An acceptable well spacing program may be,

(1) A program which conforms to a spacing order or field rule which is acceptable to the Authorized Officer;

(2) A program which proposes drilling a well on lands committed to an agreement at a location approved by the Authorized Officer, or

(3) Any other well spacing approved by the Authorized Officer.

§ 225.56 Inspection of premises; books and accounts.

(a) Operators shall allow Indian owners, their representatives or any authorized representative of the Secretary to enter all parts of the contracted premises for the purpose of inspection only at their own risk. Books and records shall be available only during business hours. Operators shall keep a full and correct account of all operations and make reports thereof, as required by the contract and applicable regulations.

(b) Records will be provided to the Minerals Management Service (MMS) in accordance with MMS regulations and guidelines. Such records will be safeguarded by MMS in accordance with appropriate laws, regulations, and guidelines.

(c) Records will be provided to the Authorized Officer in accordance with BLM regulations and guidelines. Such records will be safeguarded by BLM in accordance with appropriate laws, regulations and guidelines.

§ 225.57 Termination and cancellation; enforcement of orders.

(a) If the Secretary determines that a permittee or operator has failed to comply with the regulations in this part, other applicable laws or regulations, the terms of the permit or contract, her/his orders, or the orders of the Authorized Officer and such noncompliance does not threaten immediate and serious damage to the environment, the well or the oil and gas or geothermal resources being developed, or other valuable mineral deposits or other resources, the Secretary shall serve a notice of noncompliance upon the permittee or operator by delivery in person or by certified mail to the permittee or operator at her or his last known address. Failure of the permittee or operator to take action in accordance with the notice of noncompliance, within the time limits specified by the Secretary, shall be grounds for suspension of operations subject to such notice by the Superintendent, or grounds for the Superintendent's recommendations for the initiation of action for cancellation of the lease, permit, license, or contract and forfeiture of any compliance bonds.

(b) The notice of noncompliance shall specify in what respect the permittee or operator has failed to comply with the provisions of applicable laws, regulations, terms of the permit or contract, or the orders of the Secretary or the Authorized Officer, and shall specify the action which must be taken to correct such noncompliance and the time limits within which such action shall be taken. A written report shall be submitted by the permittee or operator to the Secretary within 10 days of the time such noncompliance has been corrected.

(c) If, in the judgment of the Secretary, a permittee or operator is conducting activities on lands subject to the provisions of this part:

(1) Which fail to comply with the provisions of this part, other applicable laws or regulations, the terms of the minerals agreement, the requirements of an approved exploration or drilling plan, her/his orders or the orders of the Authorized Officer, and

(2) Which threaten immediate and serious damage to the environment, the well or the oil and gas or geothermal resources being developed, or other valuable mineral deposits or other resources; the Secretary shall order the immediate cessation of such activities without prior notice of noncompliance.

The Secretary shall, however, as soon after issuance of the cessation order as possible, serve on the permittee or operator a statement of the reasons for the cessation order and the actions needed to be taken before the order will be lifted.

(3) Such orders shall be immediately effective.

(d) If a permittee or operator fails to take action in accordance with the notice of noncompliance served upon her/him pursuant to paragraph (a) of this section, or if a permittee or operator fails to take action in accordance with the cessation order statement served upon her/him pursuant to paragraph (c) of this section, the Secretary may issue a notice of intent to cancel the minerals agreement specifying the basis for notice. The permittee or operator shall have 30 days from receipt of the notice to present evidence as to why the minerals agreement should not be cancelled.

(e) No provision in this section shall be interpreted as replacing or superseding any other remedies of the Indian mineral owner as set forth in the minerals agreement or otherwise available at law.

(f) Nothing in this section is intended to supersede the independent authority of the Authorized Officer and/or the MMS official. However, the Authorized Officer, the MMS official, and the Secretary should consult with one another, when feasible, before taking any enforcement actions.

(g) All notices of non-compliance or orders of cessation or contract cancellation may be appealed pursuant to 25 CFR Part 2. *Provided,* appeals of cessation orders under this part shall not relieve the permittee or operator from the obligation to immediately comply therewith.

§ 225.58 Penalties.

(a) Violations of the terms and conditions of any permit, or the regulations in this part, or failure to comply with a notice of noncompliance or a cessation order issued pursuant to § 225.57, may subject a permittee to a penalty of not more than $1,000 per violation per day for each day that such violation or noncompliance continues beyond the time limits prescribed for corrective action. Similarly, violations of the terms and conditions of any contract, other than those relating to operational or royalty management matters, the regulations in this part, or failure to comply with a notice of noncompliance or cessation order issued in that regard pursuant to § 225.57, may subject the operator to a penalty of not more than $1,000 per day for each day that such violation or noncompliance continues beyond the time limits prescribed for corrective action.

(b) A notice of proposed penalty shall be served on the permittee or operator either personally or by certified mail. The notice shall specify the nature of the violation and the proposed penalty, and shall advise the permittee or operator of the right to either request a hearing within 30 days from receipt of the notice, or pay the proposed penalty. Hearings shall be held before the Superintendent, whose findings shall be conclusive, unless an appeal is taken pursuant to § 225.59 of this part. A request for a hearing does not stop the running of penalties for continuing non-compliance.

(c) Payment in full of penalties more than 10 days after final notice that a penalty has been imposed, shall subject the permittee or operator to late payment charges. Late payment charges shall be calculated on the basis of a percentage assessment rate of the amount unpaid per month for each month or fraction thereof until payment is received by the Secretary. In the absence of a specific permit or contract provision prescribing a different rate, the interest rate on late payments and under payments shall be a rate applicable under section 6621 of the Internal Revenue Code of 1954. Interest will be charged only on the amount of payment not received and only for the number of days the payment is late.

(d) Permittees and operators also may be subject to penalties under other applicable rules and regulations, or under the terms of an approved contract. None of the provisions of this section shall be interpreted as:

(1) Replacing or superseding the independent authority of the Authorized Officer and/or the MMS Official to issue notices of violations or to impose assessments and/or penalties for violations of applicable regulations pursuant to the authority granted under 43 CFR Parts 3160 and 3260 or 30 CFR Chapter II; or

(2) Replacing or superseding any penalty provision in the terms and conditions of a permit or contract approved by the Secretary pursuant to this part.

§ 225.59 Appeals.

(a) Appeals from decisions of Bureau of Indian Affairs officers under this part may be taken pursuant to Part 2 of this title.

(b) Notices of violations, cessation orders, assessments, or proposed penalties issued pursuant to this part, 43 CFR Parts 3160 and 3260 or 30 CFR Chapter II shall not be suspended as a result of an administrative review, hearing on the record, or the taking of an appeal, unless such suspension is ordered in writing by the official before whom such an administrative review, hearing on the record, or appeal is pending, and then only upon a written determination by such official that such suspension will not be detrimental to the Indian owner, or upon submission of a bond deemed adequate by both the Indian owner and the Secretary to indemnify the Indian owner from any resulting loss or damage.

§ 225.60 Fees.

Unless otherwise authorized by the Secretary, each permit, lease, sublease, or other contract, or assignment or surrender thereof, shall be accompanied by a filing fee of not less than $25. All fees collected pursuant to this section, shall be deposited in the General Treasury Fund pursuant to the requirements of 25 U.S.C. 413.

§ 225.61 No oil and gas or geothermal agreements made with Government employees.

No employee of the BIA or Indian Health Service (IHS) shall enter into or be a party to any oil and gas or geothermal contract, assignment thereof, or interest therein involving trust or restricted Indian-owned mineral interests. See 18 U.S.C. 437.

§ 225.62 Sales contracts, division orders and other division of interest documents.

Sales contracts, division orders and other division of interest documents necessary under this part shall be regulated by 30 CFR Parts 207 and 210.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

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Part VII

Environmental Protection Agency

40 CFR Part 264

Statistical Methods for Evaluating Ground-Water Monitoring Data From Hazardous Waste Facilities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 264

[FRL-3213-1]

Statistical Methods for Evaluating Ground-Water Monitoring Data From Hazardous Waste Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA promulgated regulations for detecting contamination of ground water at hazardous waste land disposal facilities under the Resource Conservation and Recovery Act of 1976 (RCRA). The statistical procedures used to evaluate the presence of contamination have been subject to criticism and require improvement. Therefore, EPA today proposes to revise these statistical procedures and requests comments from the public to assist in the regulatory development process.

DATE: Written comments should be submitted on or before October 23, 1987.

ADDRESSES: The original and two copies of comments on this proposal should be mailed to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is open from 9:00 to 4:00 Monday through Friday, except for Federal holidays. The docket number for this rule is F-87-SGWP-FFFFF. The public must make an appointment to review docket materials. Call (202) 475-9327 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20/page.

The official docket for this regulation, including comments received by the Agency, is located in Room MLG 100, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information contact: RCRA/Superfund Hotline, Office of Solid Waste (WH-563C), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (800) 424-9346, or (202) 382-3000. For technical information contact James Brown, (202) 382-4658.

SUPPLEMENTARY INFORMATION:

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I. Authority

These regulations are issued under the authority of sections 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act (SWDA), as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

II. Background

Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA) creates a comprehensive program for the safe management of hazardous waste. Section 3004 of RCRA requires owners and operators of facilities that treat, store, or dispose of hazardous waste to comply with standards established by EPA that are "necessary to protect human health and the environment." Section 3005 provides for implementation of these standards under permits issued to owners and operators by EPA or authorized States. Section 3005 also provides that owners and operators of existing facilities that apply for a permit and comply with applicable notice requirements may operate until a permit determination is made. These facilities are commonly known as "interim status" facilities. Owners and operators of interim status facilities also must comply with standards set under section 3004.

EPA promulgated ground-water monitoring and response standards for permitted facilities in 1982 (47 FR 32274, July 26, 1982), codified in 40 CFR Part 264, Subpart F. These standards establish programs for protecting ground water from releases of hazardous wastes from treatment, storage, and disposal units. Facility owners and operators are required to sample ground water at specified intervals and to use a statistical procedure to determine whether or not hazardous wastes or constituents from the facility are contaminating ground water. As explained in more detail below, the Subpart F regulations EPA promulgated in 1982 have generated criticism. EPA is today proposing to amend these regulations to respond to these concerns.

A. Concerns About Existing Standards

The current Part 264 regulations provide that the Cochran's Approximation to the Behrens Fisher Student's t-test (CABF) or an alternative statistical procedure approved by EPA be used to determine whether there is a statistically significant exceedance of background levels, or other allowable levels, of specified hazardous waste constituents. Although the existing 40 CFR Part 264 regulations have always provided latitude for the use of an alternate statistical procedure, concerns have been raised that the CABF statistical procedure in the current regulations may not be appropriate. It has been pointed out that: (1) The replicate sampling method is not appropriate for the CABF procedure, (2) the CABF procedure does not adequately consider the number of comparisons that must be made, and (3) the CABF does not control for seasonal variation. Specifically, the concerns are that the CABF procedure could result in "false positives" (Type I error), thus requiring an owner or operator unnecessarily to collect additional ground-water samples, to further characterize ground-water quality, and to apply for a permit modification, which is then subject to EPA review. In addition, there is concern that the CABF may result in "false negatives" (Type II error), i.e. instances where actual contamination goes undetected. This may occur when the background data, which are used as the basis of the statistical comparisons, are highly variable due to temporal, spatial, analytical, and sampling effects.

B. Suggested Changes Published in ANPRM

As a result of these concerns, EPA is proposing to change both the statistical procedure and the sampling requirements of the regulations, by requiring that owners or operators more completely characterize the hydrogeology at the facility, and including in the regulations performance standards which the statistical procedures and the sampling methods must meet. Statistical procedures and sampling methods meeting these performance standards would have a low probability of indicating contamination when it is not present and of failing to detect contamination that actually is present. The facility owner or operator would have to demonstrate that a procedure is appropriate for the conditions at that facility and ensure that it meets the performance standard outlined below.

In addition EPA has outlined several sampling methods and types of statistical procedures that the Agency believes will meet the performance standards.

EPA recognizes that the selection of appropriate monitoring parameters is also an essential part of a reliable statistical evaluation. The Agency addressed this issue in a previous Federal Register notice (51 FR 26632; July 24, 1986).

In an advance notice of proposed rulemaking (ANPRM) issued August 20, 1986 (51 FR 29182), EPA solicited information that would help evaluate approaches to determining if a facility is contaminating the ground water. The Agency requested comments on the following performance standards that it was considering:

1. The procedure(s) and sampling requirements must be protective of human health and the environment.

2. The owner or operator must determine the statistical distribution of each parameter or constituent listed in the facility permit. The statistical procedure(s) must be appropriate for the distribution. The owner or operator could demonstrate that the distributions of constituents differ and, thus, more than one procedure is needed at a facility.

3. The procedure(s) should have a low probability of indicating contamination when it is not present and of failing to detect contamination that is actually there. The owner or operator should consider different numbers of sample points for different constituents or procedures.

4. The procedure(s) should be appropriate for the hydrogeologic setting and the physical layout of the ground-water monitoring system.

5. The owner or operator should describe how observations below the detection limit will be handled in the procedure(s).

6. The owner or operator should consider, or control for, seasonal and spatial variability and temporal correlation in developing the procedure(s).

In addition, EPA identified certain statistical procedures that were expected to meet these performance standards and asked for available data on the following:

1. How will the statistical procedures meeting the performance standards perform in actual practice?

2. How sensitive will the procedures be to different distributions?

3. Are data available for EPA to use to determine Type II error levels for the procedures in light of the fact that Type I error (indicating contamination when it is not present) is closely related to Type II error (missing existing contamination).

4. Are there other statistical procedures or sampling requirements that minimize both Type I and Type II errors? Are there data showing the number of Type II errors expected under any alternate statistical procedure or sampling scheme?

5. Are there modeling or measurement techniques that make it possible to determine the flow path of the ground water from an upgradient well to a particular downgradient well, or to several adjacent downgradient wells?

6. Does transforming data to its logarithm or square root improve conformance to assumptions of a statistical procedure or are there appropriate procedures for untransformed data?

7. If EPA uses a simple comparison of mean concentrations rather than a statistical procedure, would this have acceptable Type I and Type II error levels?

8. What Type I and Type II error levels result for the identified procedures when concentrations of constituents are below the detection limit? What error levels would result for other procedures?

9. Ground-water monitoring data may be autocorrelated (i.e., variation in monitoring parameters may be correlated). Is there information on the degree of autocorrelation at facilities and appropriate corrections such as adjusting the degrees of freedom of statistical tests or procedures that might be more appropriate for autocorrelated data?

10. Are intra-well comparisons appropriate for new facilities?

11. Is there available information that could be used to evaluate the frequency control comparison and to determine an acceptable range for them?

C. Public Comments on ANPRM

No new data or information were supplied by commenters in response to these 11 specific questions. However, commenters expressed several concerns with the six proposed performance standards. One concern was that some of the items in the ANPRM may not really be performance standards for statistical procedures. For example, numbers 1 and 4 are goals appropriate to the entire ground-water monitoring effort, not just to determine the appropriateness of the statistical procedures. Numbers 2 and 5 were thought to be specific requirements that the owner/operator must meet to develop an acceptable procedure, rather than broad performance standards. Finally, the two items that would usually be construed as specifying performance of a statistical procedure, numbers 3 and 6, were thought to be too general for a procedure to meet. One commenter suggested that the section on performance standards be changed to evaluation criteria for determining the acceptability of a statistical test or procedure.

A consensus of respondents said that performance standards should be specific, yet flexible. Further, they should be site-specific to allow for the unique character of a site to be considered in defining the standard.

Another area of consensus was that performance standards should provide a "systems" approach to ground-water monitoring. That is, the performance standards should address the adequacy of the site characterization, the number and siting of monitoring wells, the sampling frequency and technique, the laboratory analytical methods, and the statistical analysis of the data. All of these components interact to determine the adequacy of a ground-water monitoring methodology to protect human health and the environment. Several commenters felt that the last performance standard, pertaining to seasonal and spatial variability, should be considered in developing the statistical procedures and not just during the data analysis. Consequently, EPA feels that a performance standard must incorporate aspects of ground-water monitoring in addition to the statistical techniques.

While some respondents called for the performance standards to specify requirements, few suggested what those specific requirements should be. The only specific suggestion made was that the Type I error should be set at 0.01. However, the context of that comment made it clear that 0.01 was merely in preference to 0.05, and that selection was based on the desire to keep the false positive rate as low as possible.

One suggestion was that risk be considered in setting performance standards and that the cost of meeting the performance requirements should be taken into account. It was also suggested that the level of performance to be required was a matter for policy decision by EPA. The required level of performance should be based on what is perceived as technically achievable, and which would result in an acceptable risk level. The achievement of zero risk was thought to be an unattainable, idealized goal.

In general, the respondents endorsed the concept of a performance standard, but they provided little in the way of concrete suggestions as to what the

performance standards should be. They raised many concerns, but suggested few answers. Some of the requests contradict others, making it evident that no single standard can satisfy all of the comments.

III. Today's Proposal

In today's proposal, EPA has elected to retain the idea of general performance requirements that the regulated community must meet. This proposal allows for flexibility in designing statistical procedures to site-specific considerations.

EPA has tried to bring a measure of certainty to today's regulations while accommodating the unique nature of many of the regulated units in question. Consistent with this general strategy, the Agency is establishing several options for the sampling schemes and statistical tests to be used in detection monitoring and, where appropriate, in compliance monitoring.

The Regional Administrator will specify for each of the hazardous constituents one or more of the statistical tests and sampling schemes described in today's regulations. In deciding which statistical test is appropriate, he will consider the theoretical properties of the test, the data available, and the hydrogeology of the site.

The Agency recognizes that there may be situations where the statistical tests and sampling schemes specified may not be appropriate. In such cases, it is necessary to develop procedures that are tailored to the specific performance standards that every procedure must meet. Thus, today's regulations establish performance standards for use by the Regional Administrator in determining whether an alternative procedure or scheme will be sufficiently protective of human health and the environment.

A. General Performance Standards

EPA's basic concern in establishing today's performance standards for statistical procedures is to achieve a proper balance between the risk that the procedures will falsely indicate that a regulated unit is causing background values or concentration limits to be exceeded (false positives) and the risk that the procedures will fail to indicate that background values or concentration limits are being exceeded (false negatives). Today's proposal is designed to address that concern directly. Thus, any statistical test or sampling scheme, whether specified in today's regulations or an alternative to those specified, should meet the following performance standards:

1. If the distributions differ among constituents, more than one procedure may be needed. The owner or operator must show that the normal distribution is not appropriate if using a statistical procedure which assumes the data are not normally distributed. A "goodness of fit" test should be used to demonstrate that the distribution assumptions are not violated.

2. The statistical test is to be conducted separately for each hazardous constituent. At each time that a test is done, the test for individual constituents shall be done at a Type I error level no less than 0.01. A multiple comparisons procedure may be used to control the experimentwise error rate at a level no less than 0.05. However, the individual well comparisons must have a Type I error no less than 0.01, which may make the experimentwise error rate greater than 0.05. The owner or operator must evaluate the power and may be required to increase the sample size to achieve an acceptable power level. The sample size and sampling procedure shall be appropriate to the level of the Type I and Type II errors and the decision criteria.

3. The monitoring well system should be in accordance with the natural features of the site. The owner or operator must ensure that the number, locations, and depths of wells will detect hazardous waste constituents that migrate from the waste management area to the uppermost aquifer at the first sampling period after such migration occurs.

4. The statistical procedure should be appropriate for the behavior of the parameters involved. It should include methods for handling data below the limit of detection. In cases where there is a high proportion of values below limits of detection, the owner or operator may demonstrate that an alternative procedure is more appropriate.

5. The statistical procedure should consider, and if necessary control or correct for, seasonal and spatial variability and temporal correlation in the data.

In referring to "statistical procedures", EPA means to emphasize that the concept of "statistical significance" must be reflected in several aspects of the monitoring program. This involves not only the choice of a level of significance, but also the choice of a statistical test, the sampling requirements, the number of samples, and the frequency of sampling. Since all of these interact to determine the ability of the procedure to detect contamination, the statistical procedures must be evaluated in their entirety, not by individual components.

A set of specific numerical performance standards that would achieve the proper balance between false positives and false negatives is not possible due to site specific differences. The probability of correctly deciding that a regulated unit is contaminating ground water (often expressed as the power of a statistical test) cannot easily be summarized by a single number because the power of a test is related to the magnitude of the difference between two populations. Today's regulations do not attempt to express the idea of "exceeding background values or concentration limits" in terms of any minimum magnitude. This is because any statistically significant increase is a cause for concern. A performance standard related to the power of a statistical test would have to be specified for every possible minimum magnitude that might be of concern. This is not feasible given the current state of knowledge about ground-water contamination.

An alternative would be for EPA to decide what magnitude of increase it is concerned about and to specify how powerful the test would be for that magnitude of difference. However, the Agency does not believe it is appropriate to determine an amount of contamination that is acceptable for each contaminant at each site. Also, there would remain the problem of having to specify how powerful the test should be for values above the minimum difference of concern. EPA invites comment on this issue.

B. Basic Statistical Procedures and Sampling Schemes

Today's proposed regulations specify four types of statistical procedures to detect contamination in ground water. EPA believes that at least one of these types of procedures will be appropriate for a wide variety of situations. To address situations where these procedures may not be appropriate, EPA has placed a provision in today's proposed regulations for the Regional Administrator to select an alternate procedure. The suggested procedures are based in part on suggestions received in public comments.

1. A parametric analysis of variance (ANOVA) followed by multiple comparison procedures to identify specific sources of difference. The procedures will include estimation and testing of the contrasts between the mean of each downgradient well and the upgradient mean for each constituent.

2. An analysis of variance (ANOVA) based on ranks followed by multiple comparison procedures to identify specific sources of difference. The procedure will include estimation and testing of the contrasts between the median of each downgradient well and the median upgradient levels for each constituent.

3. A procedure in which a tolerance or prediction interval is established from the background (upgradient well) data, and the level of each constituent in each downgradient well is compared to its upper tolerance or prediction limit.

4. A control chart approach which would give control limits for each constituent. If any downgradient well has a value outside the control limits for that constituent, that would constitute statistically significant evidence of contamination.

5. Another statistical test procedure specified by the Regional Administrator, provided that it is protective of human health and the environment and meets the performance standards specified.

EPA has specified multiple statistical and sampling procedures and has allowed for alternatives because no one procedure is appropriate for all circumstances. EPA believes that the suggested procedures are appropriate for the site-specific design and analysis of data from ground-water monitoring systems, and they can account for more of the site-specific factors than Cochran's Approximation to the Behrens Fisher Student's t-test (CABF) and the accompanying sampling procedures in the current regulation. The statistical procedures specified in today's regulations address the multiple comparison problems and provide for documenting and accounting for sources of natural variation.

EPA believes that the specified tests consider and control for natural temporal and spatial variation. Technical details and examples for each specified procedure will be included in a draft guidance document which is anticipated to be available by September, 1987. The decision on the number of wells needed in a monitoring system will be made on a site-specific basis by the Regional Administrator and will consider the statistical method being used, the natural hydrogeology, and the sampling scheme. The number of wells must be sufficient to ensure a high probability of detecting contamination when it is present. To determine which sampling scheme should be used, the Regional Administrator should consider existing data and site characteristics including the possibility of trends and seasonality. The regulations establish three sampling schemes and a provision for an alternative for use in detection and compliance monitoring systems. These sampling schemes are:

1. Obtain a sequence of daily (or nearly daily) observations at least twice a year unless it is found that this frequency of sampling results in autocorrelation of the observations.

2. Obtain a sequence of weekly observations at least twice a year, provided that weekly observations are not autocorrelated and that no seasonal effects are present in the data.

3. Obtain monthly observations provided the data exhibit no seasonal effects.

4. Use another sampling schedule appropriate to an alternative statistical procedure specified by the Regional Administrator. The alternative procedure must be protective of human health and the environment.

EPA believes that the above sampling schemes will allow the use of statistical procedures that will accurately detect contamination. These different sampling scenarios were chosen to allow for the unique nature of the ground-water systems beneath hazardous waste sites. These sampling schemes will give proper consideration to the temporal variation of and correlation among the ground-water constituents. The specified procedures require sampling data from upgradient wells, at the compliance point, and according to a specific test protocol. The owner or operator should use a background value determined from data collected under one of these scenarios if a test specified by the Regional Administrator requires it, or if a concentration limit in compliance monitoring is to be based upon background data. A guidance document under development includes scenarios for which each sampling scheme would be appropriate

If the owner or operator uses a statistical method based on a distribution other than the normal, he must show the normal distribution is not appropriate. The same applies to transformations of the data. If the owner or operator desires to use a transformation, it must first be shown that the untransformed data are inappropriate for a normal theory test. There are several procedures for doing this, some of which will be detailed in the draft guidance document. If contamination is detected by one of these tests and the owner or operator suspects that the detection is an artifact caused by some feature of the data other than contamination, the Regional Administrator may specify that statistical tests of trend, seasonal variation, autocorrelation, or other interfering aspects of the data be performed in order to establish whether the result indicates genuine contamination or whether the result arose from natural variation.

EPA recognizes that even where the distribution of a constituent is expected to be normally distributed, there may be situations where the owner or operator can devise sampling procedures that are more appropriate to the facility and which will provide reliable results. Therefore, today's regulations allow the Regional Administrator to approve such procedures if he finds that the procedures balance the risk of false positives and false negatives in a manner comparable to that provided by the above specified tests and that they meet the specified performance standards. In examining the comparability of the suggested procedure, the Regional Administrator will examine the ability of the procedure to provide a reasonable balance between the risk of false positives and false negatives. The Regional Administrator will specify in the permit such things as the sampling frequency and the sample size for the alternative statistical procedure.

The regulations indicate that the procedure must provide reasonable confidence that the migration of hazardous constituents from a regulated unit into and through the aquifer will be detected. (The reference to hazardous constituents does not mean that this option applies only to compliance monitoring; the test also applies to monitoring parameters and constituents in the detection monitoring program since they are surrogates indicating the presence of hazardous constituents.) The protocols for the specific tests, however, will be used as a general benchmark to define "reasonable confidence" in the proposed procedure. If the owner or operator shows that his suggested test is comparable in its results to one of the specified tests, then it is likely to be acceptable under the "reasonable confidence" test. There may be situations, however, where it will be difficult to directly compare the performance of an alternative test to the protocols for the specified tests. In such cases the alternative test will have to be evaluated on its own merits.

A situation that will probably require the crafting of a specialized procedure is the one in which the background level of a constituent either is below the detection limit of the analytical methods used or is recorded as a trace level of the constituent. EPA believes that appropriate statistical procedures can be developed in such cases. EPA seeks

comments from the public on what methods are available that rely on facility-specific data and properly applied statistical methodologies.

C. Effects of Proposed Changes on Existing Monitoring Programs

1. Detection Monitoring

The detection monitoring program relies on the finding of increases over background levels to define when a regulated unit is leaking. In addition, in many situations, the concentration limit for a particular hazardous constituent may be set at the background concentration. Today's proposed regulations are designed to ensure that reasonable methods are available for the analysis of background ground water quality and for determining if a specific ground water standard is exceeded.

The concentration of chemical constituents in ground water may fluctuate substantially over time. During different times of the year the recharge rates to ground water will vary, reflecting the differences in climate, rainfall, and other factors. Differing recharge rates or other factors may cause seasonal variation in the concentrations of chemical constituents in ground water.

EPA believes that such variation in background concentrations should be documented and considered in the statistical test if it occurs. If such natural variation in background concentrations can be documented, a statistical technique that accounts for such variation should be used, provided that this can be done without compromising other regulatory objectives.

For detection monitoring, and, where appropriate, for compliance monitoring, today's regulations provide three different sampling schemes for gathering ground water data. The Regional Administrator will specify which sampling scheme is to be used after considering the data, the statistical test to be used, the presence of trends, and natural temporal variation. The sampling scheme should be designed so that the major components of temporal variability can be characterized.

The different sampling procedures included in today's regulations enable the Regional Administrator to specify a sampling scheme that will allow for documentation of and adjustment for natural temporal variabilities. In the past, the tendency has been to abandon the sampling scheme and to use an alternate statistical approach when data exhibited temporal variability. EPA believes that in most cases one of the listed sampling schemes will still be appropriate in this situation if a correction factor or data transformation is applied.

It is possible that hazardous constituents could already be migrating downgradient before a facility has received a permit. EPA does not believe it is generally appropriate to allow such contamination to continue to migrate while the owner or operator collects background data for one year. Therefore, EPA will, whenever possible, rely on whatever reliable background data is available to establish background values for the compliance monitoring program. Our concern is that data collection should not cause a delay in characterizing background. Possible methods which would avoid delays in characterizing the site would be sampling schemes 1 or 2.

Occasionally, additional background sampling and analysis over time may be appropriate even where compliance point concentrations exceed upgradient concentrations, at a given point in time, if the Regional Administrator believes it reasonably possible that this difference is due to seasonal or spatial variation in ground water quality. In this case, the Regional Administrator would consider whether the rate of ground water flow (and any contamination) was sufficiently slow that additional time for collection of ground water quality data would not jeopardize the potential for successful corrective action if it is determined to be necessary. The Regional Administrator would not, however, allow time for additional data gathering in cases where the initial difference in compliance point and upgradient constituent concentration is above potential seasonal variation.

The owner or operator who wants to account for seasonal variations in the background values has at least three additional options. One, he can anticipate the need for such data by collecting upgradient data on Appendix IX constituents likely to be in leachate before the detection monitoring program indicates that leakage has occurred. Two, he may continue to collect background data after the compliance monitoring program permit is issued. Three, he may use that data in making a demonstration that an apparent increase over concentration limits in the ground water protection standard was caused by contamination from other sources. He may also use the data in seeking a permit modification to change the background values contained in the compliance monitoring program.

Another issue in the establishment of background for a constituent is the question of which wells should be used in the data base. In evaluating temporal variability, the frequency of sampling and the statistical method used to analyze the sampling data should be designed and considered simultaneously.

One option, which EPA is considering for detection monitoring programs at new facilities and possibly also at facilities where it is known that ground water is not contaminated, is to collect background data by monitoring downgradient wells. In each downgradient well, ground-water concentration levels would be monitored and the resulting data would be used to establish a background limit that would be unique to each downgradient well. The advantages of this approach are that first, the influence of spatial variability would be removed; second, a control chart class of statistical thresholds could be developed for each downgradient well; and third, upgradient wells may not be required. The disadvantages are that first, there must be assurance that contamination from the unit is not being factored into establishment of the background data base, and; second, if this method is used and contamination unrelated to the regulated unit flows under the downgradient side of the unit after establishment of the background limits, a false positive may result.

EPA believes that this method best applies to newer units that have had no opportunity to contaminate the ground water and that are located in areas with little potential to be influenced from external sources unrelated to the unit. It is also clear that this method can only be applied the first time a facility is in detection monitoring. A facility which begins compliance monitoring and subsequently returns to detection monitoring will not be allowed to establish or reestablish background limits based on data collected in the downgradient wells. EPA seeks comment on the utility of allowing downgradient wells to serve as background in these situations.

A second option, which EPA believes is preferable in most situations, and which corresponds to the current regulatory approach, is to base background data on upgradient wells. Assuming these wells are properly placed and unaffected by the unit, they should produce data that are not biased by contamination from the unit.

2. Compliance Monitoring

The statistical procedure(s) that will be used in compliance monitoring will be contingent upon the type of concentration limit used. If the concentration limit is based upon the

background values, then one of the statistical procedures specified in the regulations may be used. If the concentration limit is based upon a maximum concentration limit or an alternate concentration limit, then the Regional Administrator will require an appropriate test. In many cases this is the tolerance interval procedure specified in the proposed regulations.

IV. Regulatory Analysis

A. State Authority

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce their State hazardous waste management programs in lieu of EPA operating the Federal program in those States. Authorization, either interim or final, may be granted to State programs that regulate the identification, generation, transportation, or operation of facilities that treat, store, or dispose of hazardous waste. Upon authorization of the State program, EPA suspends operation within the States of those parts to the ground-water monitoring requirements for land-based hazardous waste management facilities applying for and operating under permits. Since the ground-water monitoring requirements are not imposed under any of the amendments made by the Hazardous and Solid Waste Amendments of 1984, final rules modifying the statistical procedures would not take effect directly in all States under section 3006(g). Rather, if EPA promulgates this proposal, States that have been granted final authorization will have to revise their programs to cover the additional requirements in today's announcement. Generally, these authorized State programs must be revised within one year of the date of promulgation of such standards, or within two years if the State must amend or enact a statute in order to make the required revision. See 40 CFR 271.21. However, States may always impose requirements which are more stringent or have greater coverage than EPA's programs.

Regulations which are broader in scope, however, may not be enforced as part of the federally-authorized RCRA program.

B. Regulatory Impact Analysis

Executive Order 12291 (46 FR 13191, February 9, 1981) requires that a regulatory agency determine whether a new regulation will be "major" and if so, that a Regulatory Impact Analysis be conducted. A major rule is defined as a regulation that is likely to result in:

1. An annual effect on the economy of $100 million or more;

2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, the Agency has determined that today's proposal is not a major rule. Today's action should produce a net decrease in the cost of ground-water monitoring at each facility. This proposal has been submitted to the Office of Management and Budget (OMB) for review in accordance with Executive Order 12291.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., 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. As stated above, this proposal will have no adverse impacts on businesses of any size. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities. This regulation therefore does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 264

Hazardous material, Reporting and recordkeeping requirements, Waste treatment and disposal, Ground water, Environmental monitoring.

Date: August 14, 1987.

Lee M. Thomas,

Administrator.

Therefore, it is proposed that 40 CFR Chapter I be amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 264 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as Amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

2. In § 264.91 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 264.91 Required programs.

(a) * * *

(1) Whenever hazardous constituents under § 264.93 from a regulated unit are detected at the compliance point under § 264.95, the owner or operator must institute a compliance monitoring program under § 264.99. Detected is defined as statistically significant evidence of contamination as described in § 264.98(e);

(2) Whenever the ground-water protection standard under § 264.92 is exceeded, the owner or operator must institute a corrective action program under § 264.100. Exceeded is defined as statistically significant evidence of increased contamination as described in § 264.99(d);

* * * * *

3. Section 264.92 is revised to read as follows:

§ 264.92 Ground-water protection standard.

The owner or operator must comply with conditions specified in the facility permit that are designed to ensure that hazardous constituents under § 264.93 detected in the ground water from a regulated unit do not exceed the concentration limits under § 264.94 in the uppermost aquifer underlying the waste management area beyond the point of compliance under § 264.95 during the compliance period under § 264.96. The Regional Administrator will establish this ground-water protection standard in the facility permit when hazardous constituents have been detected in the ground water.

4. In § 264.97 by removing the word "and" from the end of (a)(1), adding (a)(1)(i) and (a)(3), revising paragraphs (g) and (h), and adding (i), (j), and (k) to read as follows:

§ 264.97 General ground-water monitoring requirements.

(a) * *

(1) * * *

(i) A determination of background quality may include sampling of wells that are not upgradient from the waste management area where:

(A) Hydrologic conditions do not allow the owner or operator to determine what wells are upgradient; and

(B) Sampling at other wells will provide an indication of background ground-water quality that is representative or more representative

than that provided by the upgradient wells; and

* * * * *

(3) Provide statistically significant evidence that hazardous waste or hazardous constituents that migrate from the waste management area to the uppermost aquifer will be detected.

* * * * *

(g) In detection monitoring or where appropriate in compliance monitoring, data on each hazardous constituent specified in the permit will be collected from background wells and wells at the compliance point(s). The sampling procedures and frequency must be protective of human health and the environment. The sampling requirements must ensure that the statistical procedure has an acceptably low probability of failing to detect contamination. The Regional Administrator will specify one or more of the following requirements in the permit for each hazardous constituent to be monitored for:

(1) Obtain a sequence of daily (or near daily) samples at least twice a year, unless it is found that this frequency of sampling results in autocorrelation of the observations that cannot be corrected by the statistical procedure used.

(2) Obtain a sequence of weekly samples at least twice a year, provided that weekly observations are not autocorrelated and that no seasonal effects are present in the data used in each periodic comparison.

(3) Obtain monthly samples provided the data exhibit no seasonal effects.

(4) Use an alternate sampling procedure specified by the Regional Administrator under paragraph (i) of this section.

(h) Based on the factors in § 264.97(i), the Regional Administrator will specify one of the following statistical procedures to be used in combination with the sampling requirements for each hazardous constituent:

(1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The procedure must include estimation and testing of the contrasts between each downgradient well's mean and the upgradient mean levels for each constituent.

(2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The procedure must include estimation and testing of the contrasts between each downgradient well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure in which a tolerance interval for each constituent is established from the distribution of the background data, and the level of each constituent in each downgradient well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test procedure that is protective of human health and the environment and meets the performance standards specified in § 264.97(i).

(i) The Regional Administrator can establish an alternative sampling procedure and statistical test for hazardous constituents that he finds will be protective of human health and the environment. In establishing that procedure, the Regional Administrator will consider the following factors:

(1) If the distributions for different constituents differ, more than one procedure may be needed. The owner or operator must show that the normal distribution is not appropriate if using a nonparametric or other methodology not requiring an assumption of normality. For any statistic not based on a normal distribution, a goodness of fit test shall be conducted to demonstrate that the normal distribution is not appropriate. Other tests shall be conducted to demonstrate that the assumptions of the statistic or distribution are not grossly violated.

(2) Each hazardous constituent is to be tested for separately. At each time that a test is done, the test for individual constituents shall be done at a Type I error level no less than 0.01. A multiple comparisons procedure may be used at a Type I experimentwise error rate no less than 0.05. The owner or operator must evaluate the ability of the method to detect contamination that is actually present and may be required to increase the sample size to achieve an acceptable power level.

(3) The monitoring well system should be consistent with § 264.97(a). The owner or operator must ensure that the number, locations, and depths of monitoring wells will detect hazardous constituents that migrate from the waste management area to the uppermost aquifer.

(4) The statistical procedure should be appropriate for the behavior of the parameters involved. It should include methods for handling data below the limit of detection. The owner or operator should evaluate different ways of dealing with values below the limit of detection and choose the one that is most protective of human health and the environment. In cases where there is a high proportion of values below limits of detection, the owner or operator may demonstrate that an alternative procedure is more appropriate.

(5) The statistical procedure used should control for seasonal and spatial variability and temporal correlation.

(j) Ground-water monitoring data collected in accordance with paragraph (g) of this section including actual levels of constituents must be maintained in the facility operating record. The Regional Administrator will specify in the permit when the data must be submitted for review.

(k) If contamination is detected by any of the statistical tests, and the Regional Administrator or the owner or operator suspects that the detection is an artifact caused by some feature of the data other than contamination, the Regional Administrator may specify that statistical tests of trend, seasonal variation, autocorrelation, or other interfering aspects of the data be done to establish whether the significant result is indicative of detection of contamination or resulted from natural variation.

(5). In § 264.98 by removing paragraphs (i), (j) and (k), and by revising paragraphs (c), (d), (f), (g), and (h) to read as follows:

§ 264.98 Detection monitoring program.

* * * * *

(c) The owner or operator must conduct a ground-water monitoring program for each parameter or constituent in accordance with § 264.97(g). The owner or operator must maintain a record of ground-water analytical data as measured and in a form necessary for the determination of statistical significance under § 264.97(h) for the active life and post-closure care period of the facility.

(d) The Regional Administrator will specify how often the owner or operator must collect samples and conduct statistical tests to detect contamination. The frequencies for both will be at least semi-annually and will be consistent with § 264.97(g) considering the size of the Type I or Type II errors. Where appropriate, the comparison will be made between background wells and wells at the point(s) of compliance.

* * * * *

(f) The owner or operator must determine whether there is statistically significant evidence of contamination for any parameter or constituent specified in the permit pursuant to paragraph (a) of this section at a

frequency specified under paragraph (d) of this section.

(1) In determining whether statistically significant evidence of contamination exists, the owner or operator must use the procedure(s) specified in the permit under § 264.97(h). This procedure(s) must compare data collected at the compliance point(s) to the background water quality data.

(2) The owner or operator must determine whether there is statistically significant evidence of contamination at each monitoring well at the compliance point within a reasonable period of time after completion of sampling. The Regional Administrator will specify in the facility permit what period of time is reasonable, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of ground-water samples.

(g) If the owner or operator determines pursuant to paragraph (f) of this section that there is statistically significant evidence of contamination for parameters or constituents specified pursuant to paragraph (a) of this section at any monitoring well at the compliance point, he must:

(1) Notify the Regional Administrator of this finding in writing within seven days. The notification must indicate what parameters or constituents have shown statistically significant evidence of contamination.

(2) Immediately sample the ground-water in all monitoring wells at the waste management area of concern and determine if there is a statistically significant difference between the compliance and background levels for concentration of all constituents identified in Appendix IX of Part 264.

(3) For any Appendix IX compounds for which there is a significant difference, the owner or operator may resample within one month and repeat the Appendix IX analysis for those compounds detected. If the results of the second analysis confirm the initial results then these constituents will form the basis for compliance monitoring. If they do not resample, the hazardous constituents found during the initial Appendix IX analysis will form the basis for compliance monitoring.

(4) Within 90 days, submit to the Regional Administrator an application for a permit modification to establish a compliance monitoring program meeting the requirements of § 264.99. The application must include the following information:

(i) An identification of the concentration of any Appendix IX constituent detected in the ground water at each monitoring well at the compliance point;

(ii) Any proposed changes to the ground-water monitoring system at the facility necessary to meet the requirements of § 264.99;

(iii) Any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical procedures used at the facility necessary to meet the requirements of § 264.99;

(iv) For each hazardous constituent detected at the compliance point, a proposed concentration limit under § 264.94(a) (1) or (2), or a notice of intent to seek a variance under § 264.94(b); and

(5) Within 180 days, submit to the Regional Administrator:

(i) All data necessary to justify any variance sought under § 264.94(b); and

(ii) An engineering feasibility plan for a corrective action program necessary to meet the requirements of § 264.100, unless:

(A) All hazardous constituents identified under paragraph (g)(2) of this section are listed in Table 1 of § 264.94 and their concentrations do not exceed the respective values given in that Table; or

(B) The owner or operator has sought a variance under § 264.94(b) for every hazardous constituent identified under paragraph (g)(2) of this section.

(6) If the owner or operator determines, pursuant to paragraph (f) of this section, that there is a statistically significant difference for parameters or constituents specified pursuant to paragraph (a) of this section at any monitoring well at the compliance point, he may demonstrate that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit modification application under paragraph (g)(3) of this section, he is not relieved of the requirement to submit a permit modification application within the time specified in paragraph (g)(3) of this section unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(i) Notify the Regional Administrator in writing within seven days of determining statistically significant evidence of contamination at the compliance point that he intends to make a demonstration under this paragraph;

(ii) Within 90 days, submit a report to the Regional Administrator which demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis or evaluation;

(iii) Within 90 days, submit to the Regional Administrator an application for a permit modification to make any appropriate changes to the detection monitoring program at the facility; and

(iv) Continue to monitor in accordance with the detection monitoring program established under this section.

(h) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

6. In § 264.99 by revising paragraph (c), revising paragraphs (d), (f), and (g), removing paragraph (h), redesignating paragraph (i) as (h), (j) as (i), and (k) as (j), revising the redesignated paragraphs (h) introductory text and (i) introductory text, and removing paragraph (l) to read as follows:

§ 264.99 Compliance monitoring program.

* * * * *

(c) The Regional Administrator will specify the sampling requirements and statistical procedures appropriate for the constituents and site, consistent with § 264.97 (g) and (h).

(1) The owner or operator must conduct a sampling program for each parameter or constituent in accordance with § 264.97(h).

(2) The owner or operator must record ground-water analytical data as measured and in a form necessary for the determination of statistical significance under § 264.97(h) for the active life and post-closure care period of the facility.

(d) The owner or operator must determine whether there is statistically significant evidence of increased contamination for any parameter or constituent specified in the permit, pursuant to paragraph (a) of this section, at a frequency specified under paragraph (f) of this section.

(1) In determining whether statistically significant evidence of increased contamination exists, the owner or operator must use the procedure(s) specified in the permit under § 264.97(h). This procedure must compare data collected at the compliance point(s) to a concentration

limit developed in accordance with § 264.94.

(2) The owner or operator must determine whether there is statistically significant evidence of increased contamination at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The Regional Administrator will specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of ground-water samples.

* * * * *

(f) The Regional Administrator will specify the frequencies for conducting statistical tests to determine statistically significant evidence of increased contamination. The frequencies will be at least semi-annually and will be consistent with § 264.97(g) considering the size of the Type I and Type II errors.

(g) The owner or operator must analyze samples from all wells at the compliance point of a regulated unit for all constituents contained in Appendix IX of Part 264 at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer, pursuant to procedures in § 264.98(f). If the owner or operator finds Appendix IX constituents in the ground-water that are not identified in the permit, the owner or operator may resample within one month and repeat the Appendix IX analysis.

If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Regional Administrator within seven days after completion of the second analysis and add them to the monitoring list.

(h) If the owner or operator determines pursuant to paragraph (d) of this section that any concentration limits under § 264.94 are being exceeded at any monitoring well at the point of compliance, he must:

* * * * *

(i) If the owner or operator determines, pursuant to paragraph (d) of this section that the ground-water concentration limits under this section are being exceeded at any monitoring well at the point of compliance, he may demonstrate that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

* * * * *

[FR Doc. 87-19185 Filed 8-21-87; 8:45 am]

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Federal Register

Monday
August 24, 1987

Part VIII

Department of Education

34 CFR Part 315

Program for Severely Handicapped Children; Notice of Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 315

Program for Severely Handicapped Children

AGENCY: Department of Education.

ACTION: Notice of final regulations.

SUMMARY: The Secretary amends the regulations under the former Auxiliary Activities program to conform to the changes made in section 624 of the Education of the Handicapped Act (EHA) by Pub. L. 99–457. As a result of these changes, the program now only applies to severely handicapped children and youth and no longer applies to all handicapped children covered under Part C of the Act. In addition, new weighted criteria have been added for use in evaluation of applications.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: R. Paul Thompson, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3511–M/S 2312), Washington, DC 20202. Telephone: (202) 732–1161.

SUPPLEMENTARY INFORMATION: Previously, section 624 contained the general research, development or demonstration, training, and dissemination authority for all programs covered by Part C of the EHA. Programs covered under Part C include Regional Resource Centers, Services for Deaf-Blind Children and Youth, Early Education for Handicapped Children, Postsecondary Education Programs, and Secondary Education and Transitional Services for Handicapped Youth. Pub. L. 99–457 limits the authority under section 624 solely to programs for severely handicapped children. The regulations have been amended to reflect this change.

On May 11, 1987 the Secretary published a notice of proposed rulemaking for the Program for Severely Handicapped Children (52 FR 17744). The comments received in response to that notice and the Secretary's responses are summarized below:

Comment: One commenter recommended that the distinctions, if any, between trainees and participants trained in projects funded under § 315.13 be clarified, and that these terms be defined.

Response: No change has been made. For the purposes of § 315.13, the Secretary considers the terms "trainees" and "participants" to be synonymous. The current regulations at § 315.13(b) define those considered to be participants of projects funded under § 315.13.

Comment: The same commenter expressed concern that the proposed regulations which authorize the Secretary, on a case-by-case basis, to provide stipends for personnel trained under the provisions of § 315.13, would place an unnecessary burden on the Secretary. The commenter further suggested that specific guidance to applicants and recipients would be appropriate.

Response: No change has been made. Since it is contemplated that no more than ten awards would be made annually under this authority and because conditions of need for payment vary considerably across the nation, the Secretary believes that determination on a case-by-case basis would not be an undue burden but rather would provide the Secretary with the flexibility needed to administer this program activity effectively.

Comment: The same commenter also expressed concern that by adding a new paragraph (c) to § 315.13, the current paragraph (c) which requires a needs assessment and impact analysis from applicants, would be eliminated.

Response: No change has been made. As stated in Amendment No. 8 of the proposed regulations, the current paragraph (c) in § 315.13 will not be removed, but will be redesignated as paragraph (d).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 315

Education, Education of handicapped, Education—research, Grants program—education, Teachers.

(Catalog of Federal Domestic Assistance Number 84.086, Program for Severely Handicapped Children)

Dated: July 28, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 315 of Title 34 of the Code of Federal Regulations as follows:

The authority citation for Part 315 is revised to read as follows:

Authority: 20 U.S.C. 1424.

1. The title of Part 315 is revised to read as follows:

PART 315—PROGRAM FOR SEVERELY HANDICAPPED CHILDREN

2. The heading for § 315.1 is revised to read as follows:

§ 315.1 What is the Program for Severely Handicapped Children?

* * * * *

3. Section 315.1 is further amended by removing "including those who are severely handicapped".

§§ 315.1, 315.10, 315.11, 315.12 and 315.13 [Amended]

4. In §§ 315.1, 315.10, 315.11, 315.12, and 315.13, the word "severely" is added preceding the words "handicapped children and youth".

5. Section 315.12(a) is amended by adding "to meet the needs of severely handicapped children and youth" following the word "activities".

6. In § 315.12(a)(4), "particiate" is corrected to read "participate".

7. In § 315.12(b)(2), "excepted" is corrected to read "expected".

8. Section 315.13 is amended by revising paragraph (a), redesignating paragraph (c) as paragraph (d), and by adding a new paragraph (c), to read as follows:

§ 315.13 What types of training activities are considered for support by the Secretary under this part?

* * * * *

(a) *Training.* Training of professional and allied personnel may include staff meetings, seminars, workshops, demonstrations, and related activities.

* * * * *

(c) *Stipends.* The Secretary, on a case-by-case basis, may authorize the payment of stipends for inservice training in an amount the Secretary

determines appropriate for a particular training activity.

* * * * *

§ 315.14 [Amended]

9. In § 315.14, the word "severely" is added preceding the word "handicapped".

§ 315.30 [Amended]

10. Section § 315.30(a) is amended by removing "in conjunction with one of the authorities in Part C".

11. Section 315.31 is redesignated as § 315.32 and revised, and a new § 315.31 is added to read as follows:

§ 315.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 315.32 or 315.33.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1424)

§ 315.32 What are the selection criteria used to award a research grant?

The Secretary uses the following criteria to evaluate an application for a research project described in § 315.11:

(a) *Importance and expected impact of the research.* (20 points) The Secretary reviews each application to determine the extent to which the project will develop new knowledge in understanding and effectively meeting the needs of severely handicapped children and youth, including the extent to which—

(1) The programmatic research areas proposed by the applicant represent critical areas of investigation, or problems whose solution would have greatest impact on improving services to severely handicapped children and youth; and

(2) The specific questions to be addressed in the project are likely to generate knowledge needed for bringing about a major change in understanding of the topical area.'

(b) *Technical soundness of the project.* (15 points)

(1) The Secretary reviews each application to determine the technical soundness of the research plan, including—

(i) The design;

(ii) The proposed sample;

(iii) Instrumentation; and

(iv) Data analysis procedures.

(2) The Secretary also reviews each application for the relevance of its proposed training efforts, including—

(i) Strategies for provision of training; and

(ii) Relationships between the applicant, other organizations or agencies providing training in coordination with the applicant, and trainees receiving training from the applicant.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(2) How the objectives of the project relate to the purpose of the program;

(3) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(4) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director or principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in conducting, documenting, and applying research pertaining to severely handicapped children and youth;

(ii) Awareness of relevant research findings and demonstration project results pertaining to other handicapped children and youth and the potential for use of the findings and results with severely handicapped children and youth; and

(iii) Experience in communicating research findings to service providers of severely handicapped children and youth and in assisting these providers with effective application of the findings.

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(g) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(2) Provides a clear description of the content, intended audiences, and timelines for production of all project documents and other products that the applicant will disseminate.

(Authority: 20 U.S.C. 1424)

12. A new § 315.33 is added to read as follows:

§ 315.33 What are the selection criteria used to award a grant for a demonstration, training, or dissemination project?

The Secretary uses the following criteria to evaluate an application for a demonstration project under § 315.12 and a training project under § 315.13. The Secretary also uses these criteria to evaluate a dissemination project under § 315.14, except that a maximum of 30 points may be given for criterion (b) (plan of operation) and no points are provided for criterion (g) (dissemination plan).

(a) *Extent of need and expected impact of the project.* (25 points) The Secretary reviews each application to determine the extent to which the project is consistent with national needs in the provision of innovative services to severely handicapped children and youth, including consideration of—

(1) The needs addressed by the project;

(2) The impact and benefits to be gained by meeting the educational and related service needs of severely handicapped children and youth served by the project, their parents and service providers; and

(3) The national significance of the project in terms of potential benefits to severely handicapped children and youth who are not directly involved in the project.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) *Quality of key personnel.* (15 points).

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its non-discriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraph (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(2) Adequately includes the content, intended audiences, and timeliness for production of all project documents and other products which the applicant will disseminate.

(Authority: 20 U.S.C. 1424)

13. A new § 315.34 is added to read as follows:

§ 315.34 What other factors are considered by the Secretary in making a grant?

To the extent feasible, the Secretary supports activities that are geographically dispersed throughout the Nation in urban and rural areas.

(Authority: 20 U.S.C. 1424)

[FR Doc. 87-19289 Filed 8-21-87; 8:45 am]
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Federal Register

Monday
August 24, 1987

Part IX

Environmental Protection Agency

40 CFR Part 799

Oleylamine; Testing Requirements and Proposed Test Standards; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42061A; FRL-3130-8(a)]

Oleylamine; Testing Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: EPA is issuing a final rule under section 4(a) of the Toxic Substances Control Act (TSCA) requiring manufacturers and processors of oleylamine (9-octadecenylamine or ODA, CAS Number 112–90–3) to test this chemical for developmental toxicity, and for mutagenicity using a two-tiered scheme. The need for third-tier mutagenicity and for oncogenicity testing will be determined by EPA following a public program review of data. EPA is terminating rulemaking for the proposed 90-day dermal subchronic testing which was to include neurobehavioral observations, emphasis on reproductive system histopathology, and a dermal absorption determination. The substance, 9-octadecenylamine, will be referred to in this document as "ODA", and the term "oleylamine" will refer to commercial fatty amine mixtures containing 65 to 76 percent ODA. Proposed standards for testing ODA appear elsewhere in this issue of the **Federal Register**.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ["daylight" or "standard" as appropriate] time on September 8, 1987. This rule shall become effective on October 7, 1987.

FOR FURTHER INFORMATION CONTACT: Edward Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. E–543, 401 M St., SW., Washington, DC 20460. (202–554–1404).

SUPPLEMENTARY INFORMATION: The EPA is promulgating a final rule to require the testing of ODA for developmental toxicity, mutagenicity, and oncogenicity if certain mutagenicity test results are positive. EPA will conduct a public program review before requiring initiation of the top-tier mutagenicity tests or oncogenicity test.

I. Introduction

This document is part of the overall implementation of section 4 of the Toxic Substances Control Act (TSCA, Pub. L. 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*), which contains authority for EPA to require development of data relevant to assessing the risks to health and the environment posed by exposure to particular chemical substances or mixtures.

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop health or environmental data if the Agency finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment.

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture.

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

For a more complete understanding of the statutory section 4 findings, the reader is directed to the Agency's first proposed testing rule package (chloromethane and chlorinated benzenes, published in the **Federal Register** of July 18, 1980 (45 FR 48510)) and to the second package (dichloromethane, nitrobenzene, and 1,1,1-trichloroethane, published in the **Federal Register** of June 5, 1981 (46 FR 30300)) for in-depth discussions of the general issues applicable to this section.

II. Background

A. Profile

ODA (CAS Number 112–90–3) is a yellow liquid with an ammoniacal odor. Typical fatty amine mixtures (67 percent ODA) have a boiling range of 275–334 °C at 760 mm Hg and a specific gravity of 0.819 at 38 °C. ODA's solubility in water is estimated to be 0.5×10^{-3} mg/l or less at 20 °C, its estimated vapor pressure is $0.5 \times^{-4}$ mm Hg at 10 °C and its esimated log P (octanol-water partition coefficient) ranges from 7.5 to 8.1 (Ref. 1). The formula of 9-octa-decenylamine is as follows:

$CH_3(CH_2)_7CH=CH(CH_2)_7CH_2NH_2$

The U.S. International Trade Commission (USITC) reported 1982 ODA production to be 4.952 million pounds (Ref. 2). This production figure is for fatty amine mixtures called oleylamine by the producers. EPA estimated that the ODA contained in all the fatty amine mixtures produced in 1982 amounted to between 18 and 29 million pounds (Ref. 21). In 1984, the USITC reported ODA production to be 6.643 million pounds (Ref. 3). ODA is produced at nine sites by six firms: Akzo Chemie America; Witco Chemical Corp.; Jetco Chemicals, Inc.; Sherex Chemical Company, Inc.; Borg-Warner Corp.; and Tomah Products, Inc. Akzo uses a continuous reaction process and the others use closed-batch reactors. Akzo produces over 50 percent of the total U.S. production. ODA's major use in which human exposure is probable is as an additive to petroleum lubricants or as an intermediate for such additives. It is also used in a collector agent in ore flotation, in asphalt preparation, in a concrete mold release agent, and in the manufacture of paper, paperboard, and glues. For a more detailed discussion of properties, production, uses, and exposure of oleylamine and other ODA-containing mixtures, see the oleylamine support document available from the TSCA Assistance Office (Ref. 1).

B. ITC Recommendations

In the Thirteenth Report of the Interagency Testing Committee (ITC), published in the **Federal Register** of December 14, 1983, the ITC designated ODA for priority consideration for a staged testing program, beginning with toxicokinetics and then testing for mutagenicity and teratogenicity if percutaneous absorption is demonstrated.

C. Proposed Rule

EPA issued a proposed rule published in the **Federal Register** of November 19, 1984 (49 FR 45610), requiring, for ODA, oral developmental toxicity testing, a tiered mutagenicity testing scheme with capacity to trigger oncogenicity testing, and a 90-day dermal subchronic test which would include neurobehavioral observations, emphasis on reproductive system histopathology, and a dermal absorption determination.

The test requirements based on the authority of section 4(a)(1)(A) and (B) of TSCA were proposed in 40 CFR 799.3300 and are being recodified as 40 CFR 799.3175.

Under the authority of section 4(a)(1)(A), EPA made a proposed finding that the use of ODA may present an unreasonable risk to human health from developmental toxicity. This was based on available animal studies (Refs. 4 through 9) suggesting that oleylamine may cause such effects and on the potential exposure of approximately 2.8 million mechanics and others in related trades (Ref. 10).

Under the authority of section 4(a)(1)(B), EPA made the proposed findings that oleylamine is produced in substantial quantitites (EPA estimate of 18 to 29 million pounds per year), and that there is substantial exposure to this substance (approximately 2.8 million workers) (Ref. 10).

EPA found that there were insufficient data available to resonably determine or predict the effects of this exposure in the above-mentioned areas and that testing of ODA was necessary to develop such data.

The analysis and findings on which the above determinations were based are presented in the Oleylamine Support Document (Ref. 1), which is available from the Office of Toxic Substances' TSCA Assistance Office and in the public record for this rulemaking.

EPA did not propose an oncogenicity bioassay based on the section 4(a)(1)(B) finding because EPA considered the required mutagenicity tests an appropriate first tier for oncogenicity for this substance. However, EPA found that if certain of the required mutagenicity tests produced positive results, this would be sufficient to indicate that ODA may present an unreasonable risk of oncogenic effects. In such circumstances, EPA found that without data from a 2-year bioassay there would be insufficient data to predict oncogenicity, and testing would be necessary to develop oncogenicity data.

III. Public Comments

The Agency received comments from one source, the Oleylamine Program Panel of the Chemical Manufacturers Association (CMA). The comments addressed the proposed health effects testing requirements, data interpretation, human exposure, test substance concentration, and economics.

A. Health Effects Testing

The Panel commented that a 28-day dermal toxicity test is adequate to screen for potential subchronic effects. The Panel also believes that associated neurobehavioral and reproductive system testing is not needed. EPA is no longer requiring these tests (see Unit IV.).

The Panel commented that there is no need for a developmental toxicity study because exposure is not as high as EPA initially indicated, only 2,000 mechanics are women (Ref. 10), and because animal studies by Eifinger and Koehler and Bio/dynamics (Refs. 4 through 9) do not support it. Although EPA has adjusted the ODA human exposure figure downward (some potential exposure groups were double counted) to approximately 2 milion (Ref. 10), mechanics and people in related trades, of whom approximately 27,000 are women, are still potentially exposed. EPA still believes that there is sufficient information to indicate that oleylamine may produce developmentally toxic effects (see Unit V.A). However, the data are insufficient to adequately characterize this potential, and appropriate testing is needed to do so.

The Panel commented that should EPA require a development toxicity study of ODA, the dermal rather than oral route should be used because human contact is expected to be dermal, however, if the oral route is required, ODA should be incorporated in the feed rather than given by gavage. The Panel maintained that a feeding study would decrease the effect of bolus administration by gavage and would also eliminate the additional stress factor which gavage introduces. EPA believes the oral route is the most appropriate because there is a sufficient data base by which to evaluate the results of oral developmental toxicity study and insufficient dermal data. Also, the corrosive effect of the dermal application of ODA may cause developmental toxicity because of stress thereby produced. The oral route via diet such as in the feed will be an acceptable means of exposure provided the test sponsor can accurately document the amount of ODA consumed daily.

The Panel commented that the National Institute for Occupational Safety and Health conducted a Health Hazard Evaluation in 1979 (Ref. 11) of one of Akzo's plants which showed no excessive number of deaths due to cance or heart disease. EPA does not agree with the Panel that the study alleviates concern for ODA's effects, but instead agrees with the author of the survey that serious limitations in the data, including few deaths and incompleness of personnel records, preclude any definitive conclusions.

The Panel commented that any question of oncogenicity testing should be deferred until after the results of the mutagenicity tests have been reviewed and discussed. EPA agrees that the decision to initiate the oncogenicity study (if triggered by positive results in one or more of the specified mutagenicity tests) should await the outcome of all of the second tier mutagenicity testing and a program review; EPA has included this step in the final rule.

The Panel commented that the developmental toxicity study should be conducted on only one species because some developmental effects data are available. EPA has reviewed the data referred to by the Panel and concludes they indicate the possibility of developmental effects as a result of exposure to oleylamine but are not adequate to characterize ODA's developmental toxicity in the species tested. The TSCA test guidelines require that the developmental toxicity study be performed on at least two mammalian species.

The Panel commented that a negative *in vitro* cytogenetics assay need not be followed by an *in vivo* mammalian bone marrow cytogenetics test to determine chromosomal aberration. This judgment is based on a review of the literature which the Panel contends shows that no chemical testing negatively in an *in vitro* mammalian cytogenetics assay has been found positive in *in vivo* cytogenetics tests. EPA has in past section 4 test rules included both *in vitro* and *in vivo* cytogenetics testing in its first tier of testing to maximize detection of potentially clastogenic agents, e.g., for cresols (51 FR 15771; April 28, 1986) and C_9 aromatic hydrocarbons (50 FR 20662; May 7, 1985). The Agency believes that the *in vitro* assay is subject to sufficient limitations, particularly in the use of *in vitro* metabolic activation systems, that a negative response, especially in cases of technical difficulties with the metabolic activation system or of erratic or narrowly-defined toxicity curves, should be confirmed in an *in vivo* test. The information presented by the Panel or otherwise available to the Agency is not sufficient to warrant a change in this view at this time.

The Panel commented that mouth rinse and toothpaste studies (Refs. 12 through 14) support their belief that ODA causes no long-term health effects. EPA believes that these human clinical trials, conducted to determine if mixtures of hydrofluorides of oleylamine and other amines could prevent the formation of caries and plaque, can not be used to determine ODA's toxic

potential. In general, toothpaste and/or mouthwash is in the mouth for relatively short periods of time whereupon the mouth is rinsed. The level of human exposure to oleylamine hydrofluoride in these clinical trials was possibly very low and in any case is unknown. Thus, even if these clinical trials were otherwise adequate, because of a lack of exposure data they can not be used to determine the toxicity that oleylamine may present.

The Panel commented that EPA did not use all available data in arriving at its testing decisions for ODA, was inconsistent in drawing conclusions, and used data in a biased way which leads to more testing. EPA did review all available data and found that, in all but the Eifinger and Koehler study (Ref. 4), the test substances were other than oleylamine, although some of these tests substances were closely related to ODA. Indeed, the Panel was especially critical of EPA's use of data on ODA analogs (Refs. 5 through 9, 27, and 28). However, EPA has been careful to distinguish between the use of analog data to suggest a potential concern and their use to determine that data are adequate. For example, dodecyldimethylamine oxide (DDAO), which can be considered analogous to ODA only for the purpose of qualitatively estimating its skin penetrating potential, has undergone rather extensive pharmacokinetic studies (Ref. 17). As part of the absorption profile, topical, radiolabeled doses of DDAO were applied to humans, rats, mice, and rabbits. The results indicate a fair degree of absorbtion in the lower mammal skins and an extremely poor degree of absorption in the human skin. The study is flawed, however, since the human exposure periods were only 11 percent of the total exposure periods for the rats, mice and rabbits. Nevertheless, the study did demonstrate the ability of DDAO to penetrate the human skin albeit very poorly. This is particularly significant since, by virtue of its polar nature, DDAO is less likely than oleylamine to penetrate human skin. Data on DDAO are not adequate to make quantitative inferences about ODA. For a quantitative analysis, specific skin penetration testing of ODA would be necessary.

The Panel commented that EPA incorrectly used the dermal absorption method of Scheuplein and Blank (Ref. 15) to estimate ODA's potential skin absorption by mechanics because: (1) Decanol rather than octanol should have been used as the model compound; (2) an alcohol rather than a water vehicle should have been assumed; and (3) hydrated abdominal skin as used in this method overstates absorption conditions for mechanics. EPA believes that the dermal absorption rate of ODA cannot be conclusively determined by the use of octanol or decanol as a model. For example, their use ignores the contribution of ODA's amine group to the skin penetration properties. A reliable absorption rate for ODA can be determined only by the use of ODA as the test substance. In any case, EPA is withdrawing the requirement of a dermal absorption test. The Agency plans to propose that a comparative oral-dermal absorption, distribution, metabolism, excretion assay be carried out for ODA. This proposal will be finalized if the developmental toxicity test required in this notice is positive.

The Panel commented that a skin-irritation test on rats conducted with ODA produced perceptible well-defined erythema with 0.3 percent ODA concentrations and severe sloughing with 1.5 percent ODA (Ref. 16). Because ODA concentrations in petroleum lubricants are approximately 0.3 to 1.0 percent (49 FR 45610; November 19, 1984), the Panel believes that the expected irritation would constitute an "early warning system" which would cause a mechanic to wash his hands at intervals or take other precautions precluding long-term exposure. EPA disagrees. In the 14-day test, the application sites were covered by gauze dressings which could have accentuated the erythema of the rats. Also, rat skin has been considered to be more permeable than human skin and, therefore, more readily irritated (Refs. 20 and 22). The Panel has not demonstrated that automotive mechanics and others exposed to petroleum lubricants experience erythema or sloughing and find it necessary to take precautionary measures. Even though humans may absorb less ODA and experience no erythema at the doses tested in the 14-day study, it is impossible to determine the potential toxic effects of does to which humans are exposed without further testing. However, EPA does believe that the 14-day study results do indicate the need to change the route of ODA administration in the oncogenicity test from dermal, as proposed in the Federal Register of November 19, 1984 (49 FR 45610), to oral to eliminate skin irritation as a complicating factor.

B. Test Substance Concentration

The Panel commented that EPA's belief that 97 percent ODA was available was in error, and that the test substance should be 90 percent ODA because the attainment of a higher ODA concentration is extremely difficult given the similarity of boiling points of the C_{18} alkylamines of which ODA is a member. EPA accepts the comment and agrees that not only would further concentration of ODA be extremely difficult, but 90 percent ODA is of sufficient purity to adequately test its properties. The Agency has thus modified this requirement in this final rule.

C. Economics

The Panel commented that total and annualized testing costs were incorrect. EPA based these costs on quotes by various testing laboratories. Cost ranges were given rather than specific costs because of uncertainty of the specific details of the testing protocols at the time of publication of the notice of proposed rulemaking (Ref. 18).

The Panel commented that EPA's belief that demand for ODA was sufficiently inelastic so that manufacturers could pass test costs to purchasers was incorrect. EPA based its belief on the following:

1. ODA is used as a component in many alkylamine products, thereby dispersing its demand over numerous end markets.

2. The alkylamine products which contain ODA tend to have relatively secure and specialized applications that are dictated by performance advantages/considerations in their markets.

3. Cationic surfactants, such as the alkylamines, normally are used in small amounts (e.g., between less than 1 and 10 percent) in relation to the weight of final products, thereby suggesting that they compose a minor share of actual end-product cost (Ref. 18).

The Agency believes this analysis is still correct, and therefore disagrees with the comment.

The Panel commented that EPA's estimated test costs are given in terms of 1983 dollars and are out of date. EPA considers this point to be well taken and has developed more recent figures which are found in Unit VI.

IV. Decision to Terminate Rulemaking Process for Subchronic Toxicity, Dermal Absorption, Neurobehavioral and Reproductive System Testing for ODA

In the proposed test rule for ODA (47 FR 45610; November 19, 1984), EPA included a 90-day dermal subchronic toxicity test. This test, in addition to the usual subchronic measurements, was to include dermal absorption, neurobehavioral observations, and emphasis on reproductive histopathology. Since this test was proposed, a 14-day dermal range-finding

rat study has been done with ODA by the Panel. The test showed erythema and sloughing at dosages of 12.5 to 61.5 mg/kg/day (Ref. 16). To produce systemic effects at levels below this, the material would have to be very potent. However, existing chronic data on mixtures containing ODA do not suggest such potency. Two-year studies on dogs and rats with oral administration of salts of ODA and an analog produced only minimal toxic effects and no specific organ effects (Refs. 27 and 28). Also, review of structural analog data by EPA does not suggest that oleylamine would be toxic at very low doses in repeated exposures for 90 days (Refs. 29 and 30). EPA believes that these data can be used to reasonably predict the systemic toxicity of ODA at levels to which humans are exposed. For these reasons, the Agency will no longer require the 90-day subchronic, dermal absorption, neurobehavioral, and reproductive tests and is hereby notifying the public of this decision. However, EPA remains concerned about the developmental, mutagenic, and oncogenic hazard potentials ODA may pose to human health and is requiring this testing as described below (see Unit V.).

V. Final Test Rule for ODA

A. Findings

EPA is basing the final testing requirements for ODA on the authority of section 4(a)(1) (A) and (B) of TSCA.

The section 4(a)(1)(A) findings for developmental toxicity are as follows:

EPA finds that the use of ODA may present an unreasonable risk of injury to human health from developmental toxicity because: (1) The available animal studies suggest that ODA has a developmental toxicity potential; and (2) approximately 2 million individuals in 1985 were potentially exposed to ODA as a result of its manufacture, processing, and use (Ref. 19).

EPA also finds that there are insufficient animal and human data to reasonably determine or predict the developmental toxicity of ODA and that testing is necessary to develop such data (49 FR 45610). The 4(a)(1)(A) finding of "may present an unreasonable risk" of developmental toxicity is based on available animal studies (Refs. 4 through 9) which suggest that oleylamine may cause such effects.

The section 4(a)(1)(B) findings, for developmental toxicity and a tiered mutagenicity testing scheme which may indicate the need for oncogenicity testing, are as follows:

ODA is produced in substantial quantities. The most recent production figure for oleylamine was reported by the USITC to be 6.643 million pounds in 1984 (Ref. 3). Production estimates by EPA for ODA, however, range from 18 to 29 million pounds for 1982 when the ODA portion of captive production as well as production of all commercial ODA-containing substances are taken into account. The estimated exposure of 2 million people in 1985 as a result of manufacture, processing, and use is clearly substantial (Ref. 19). EPA finds that there are insufficient animal and human data to reasonably determine or predict the developmental, mutagenic, or oncogenic effects of ODA and that testing is necessary to develop such data.

B. Required Testing

The Agency believes that an oral developmental toxicity study, a tiered oral (where applicable) mutagenicity testing scheme, and possibly oncogenicity testing should be conducted for ODA. The Oleylamine Program Panel of the Chemical Manufacturers Associations has voluntarily conducted mutagenicity tests consisting of the following: Ames assay, chromosomal aberration assay in Chinese hamster ovary cells, and CHO/HGRPT mutation assay in the presence of exogenous metabolic activation (Refs. 24 through 26). The Ames and chromosomal aberration assays are negative and satisfy these portions of the Agency's current first-tier mutagenicity test battery. The CHO/HGPRT mutation assay results are equivocal and a retest will be required in a different cell line (see Oleylamine: Proposed Test Standards elsewhere in today's **Federal Register**.) The assay provides some indication of genotoxicity, both without and with metabolic activation. Apparently because of the high toxicity of the chemical in this test system, the activity demonstrated was variable over different doses and over repeat tests, and even within repeats for replicate (parallel) cultures of the same dose point. No dose response was observed. This may be due to difficulties in precise dose application in nanoliter per milliliter concentrations. The mammalian cell gene mutation retest in a different cell line and the *in vivo* mammalian bone marrow cytogenetics test will complete the first tier of the mutagenicity battery. If indicated by first-tier results, second-tier mutagenicity, consisting of a rodent dominant lethal assay for chromosomal aberrations, and/or a sex-linked recessive lethal assay in *Drosophila melanogaster* for gene mutations, must be conducted. The third tier of mutagenicity testing is conditional upon positive second-tier mutagenicity test results. The oncogenicity bioassay is conditional upon positive results in one or more of the following mutagenicity tests: *in vivo* mammalian bone marrow cytogenetics, detection of gene mutation in somatic cells in culture, and sex linked recessive test in *Drosophila melanogaster*. However, EPA will not require initiation of the third-tier mutagenicity test(s) or oncogenicity test until all second-tier mutagenicity tests have been completed and a public review of the data is held by EPA. Test sponsors will be notified by **Federal Register** notice or certified letter of third-tier mutagenicity and oncogenicity testing decisions. The route of administration of ODA in the oncogenicity test, if required, shall be oral as explained in Unit III.A. EPA is proposing test standards for these tests elsewhere in today's **Federal Register**. The tests are to be conducted in accordance with EPA's TSCA Good Laboratory Practices standards under 40 CFR Part 792.

Although the anticipated route of human exposure to ODA is dermal, the route required for testing is oral, for the reasons stated in Unit III.A. In such cases, EPA uses pharmacokinetic data to extrapolate between routes of exposure for risk assessment purposes. As these data are not available for ODA, the Agency intends to propose a comparative oral/dermal pharmacokinetics study for ODA after publication of this final rule.

C. Test Substance

EPA is requiring that ODA of at least 90.0 percent purity be used as the test substance. The vehicle should be one such as mineral oil for which there are historical toxicological data and which will not interfere with test results.

D. Persons Required To Test

Section 4(b)(3)(B) specifies that the activities for which the Agency makes section 4(a) findings (manufacturing, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. (Section 3(10) of TSCA, defines "process" as the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce.) Both manufacturers and processors are required to test if the exposures giving rise to the potential

risk occur during use, distribution, or disposal.

Because EPA has found that existing data are inadequate to assess health risks from the manufacture, processing and use of ODA, EPA is requiring that persons who manufacture or process, or who intend to manufacture or process ODA at any time from the effective date of this test rule to the end of the reimbursement period are subject to the testing requirements of this rule. The end of the reimbursement period will be 5 years after the submission of the final report required under the test rule. As discussed in the Agency's Test Rule Development and Exemption Procedures (40 CFR Part 790), EPA expects that manufacturers will conduct testing and that processors will ordinarily be exempted from testing.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any persons required to test may apply to EPA for an exemption from that requirement. The Agency expects that the current manufacturers of ODA will form the reimbursement pool and sponsor the testing required. Manufacturers and processors who are subject to the testing requirements of this rule must comply with the test rules and exemption procedures in 40 CFR Part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter or intent to perform testing or an exemption application within 30 days after the effective date of the final test rule. The required procedures for submitting such letters and applications are described in 40 CFR Part 790.

Processors subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent or exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. The Agency expects that the manufacturers will pass an appropriate portion of the costs of testing on to processors through the pricing of their products or reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, the Agency will publish a separate notice in the **Federal Register** to notify processors to respond; this procedure is described in 40 CFR Part 790.

E. Test Rule Development and Exemptions

Elsewhere in this issue of the **Federal Register**, the Agency is proposing in a related document [OPTS–42061B] that TSCA test guidelines be utilized as the test standards for the development of data under this rule for ODA. As discussed in that document and in the **Federal Register** of May 17, 1985 (50 FR 20652), EPA has reviewed the method for the development of test rules and has decided that for most section 4 rulemakings, the Agency will utilize single-phase rulemaking. In light of this decision, EPA has reevaluated the process for developing test standards for section 4 rulemakings initiated under a two-phase process and has determined that for certain of these two-phase rules, TSCA test guidelines are available for promulgation as relevant test standards. EPA has decided that where TSCA or other appropriate test guidelines are available, the Agency in most cases will propose the relevant guidelines as the test standards for those rules.

EPA believes that, in line with its commitment to expedite the section 4 rulemaking process, it is appropriate to propose the applicable TSCA test guidelines as test standards at the same time as a Phase I final test rule is issued. With regard to the rulemaking for ODA, TSCA test guidelines are available for the testing requirements included in this Phase I final rule. Thus, in the accompanying document the Agency is proposing these TSCA test guidelines as test standards.

The public, including the manufacturers and processors subject to the Phase I rule, will have an opportunity to comment on the use of the TSCA test guidelines. The Agency will review the submitted comments and will modify the TSCA guidelines, where appropriate, when the test standards are promulgated.

During the development of the test rule under the two-phase process, persons subject to the Phase I final rule are normally required to submit proposed study plans (see 40 CFR 790.50(a)(2)). However, because EPA is proposing applicable TSCA test guidelines as the test standards for the studies required by this Phase I final rule, persons subject to the rule, i.e., manufacturers and processors of ODA, are not required to submit proposed study plans for the required testing. Persons subject to this rule, however, are still required to submit notices of intent to test or exemption applications in accordance with 40 CFR 790.45. Moreover, once the test standards are promulgated, persons who have notified EPA of their intent to test must submit study plans (which adhere to the promulgated test standards) no later than 45 days before the initiation of each required test. (See 40 CFR 790.50 (a)(1)).

Processors of ODA subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent, exemption applications, or study plans (before testing is initiated) unless manufacturers fail to sponsor the required tests. The basis for this decision is that manufacturers are expected to pass an appropriate portion of the test costs on to processors through the pricing of products containing ODA.

EPA's final regulations for the issuance of exemptions from testing requirements are in 40 CFR Part 790. In accordance with those regulations, any manufacturer or processor subject to this Phase I test rule may submit an application to EPA for an exemption from conducting any or all of the tests required under this rule. If manufacturers perform all the required testing, processors will be granted exemptions automatically without having to file applications.

In the related **Federal Register** document, cited in the first paragraph of Unit V.E. and appearing elsewhere in this issue of the **Federal Register**, EPA is proposing deadlines for the submission of test data.

F. Reporting Requirements

EPA is requiring that all data developed under this rule be reported in accordance with the EPA Good Laboratory Practice (GLP) standards pursuant to 40 CFR Part 792.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The Agency is proposing these deadlines in the related document appearing elsewhere in this issue of the **Federal Register**.

TSCA section 12(b) requires that persons who export or intend to export to a foreign country any substance subject to testing requirements under TSCA section 4 notify EPA of such exportation or intent to export. While the results of required testing may not be available for some time, a notice to the foreign government about the export of such substances subject to test rules serves to alert them to the Agency's concern about the substances. It gives these governments the opportunity to

request such data that the Agency may currently possess plus whatever data may become available as a result of testing activities. Thus, upon the effective date of this rule, persons who export or intend to export ODA must submit notices to the Agency pursuant to TSCA section 12(b)(1) and 40 CFR Part 707 (see 45 FR 82844; December 16, 1980).

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will announce the receipt within 15 days in the **Federal Register** as required by section 4(d). Test data received pursuant to this rule will be made available for public inspection by any person except in those cases where the Agency determines that confidential treatment must be accorded pursuant to section 14(b) of TSCA.

G. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records; or (2) submit reports, notices, or other records required by the Act or any regulations issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce . . ." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory audits and/or inspections will be conducted periodically in accordance wiht the procedures outlined in TSCA section 11 by designated representatives of the EPA for the purpose of determining compliance with the final rule for ODA. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations thereof, and that the studies are being conducted according to EPA GLP standards and the test standards established in the second phase of this rulemaking.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(2)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties calculated as if they had never submitted their data. Under the penalty provisions of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 per day for each violation. This provision would be applicable primarily to manufacturers or processors who will fail to submit a letter of intent or an exemption request and who continue manufacturing or processing after the deadlines for such submissions. This provision would also apply to processors that fail to submit a letter of intent or an exemption application and continue processing after the Agency has notified them of their obligation to submit such documents (see 40 CFR 790.48(b)). Intentional violations could lead to the imposition of criminal penalties up to $25,000 for each day of violation and imprisonment for up to 1 year. Other remedies are available to EPA under sections 7 to 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

VI. Economic Analysis of Final Test Rule

To assess the economic impact of this rule, EPA has prepared an economic analysis that evaluates the potential for significant economic impacts on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of ODA: (1) Price sensitivity of demand, (2) industry cost characteristics, (3) industry structure, and (4) market expectations.

Total testing costs for the final rule for ODA are estimated to range from $775,290 to $1,020,200. This estimate includes the costs for both the required minimum series of tests and the conditional ones. The annualized test costs (using a cost of capital of 25 percent over a period of 15 years) range from $200,908 to $264,375.

Because of the extensive occurrence of ODA in numerous mixed alkylamine products, total production of this chemical is not represented by the data published for oleylamine by the USITC (Ref. 3). EPA estimated total ODA production in 1984, contained in alkylamine products, to be 17 to 28 million pounds. Using the lower-bound production figure of 17 million pounds, the average unit test costs for all products would then range from 1.2 to 1.6 cents per pound of the ODA contained in the amine products. EPA estimates that under worst-case assumptions this cost is one percent of total 1984 product value of the major alkylamines which contain ODA.

Based on these costs and the market characteristics of ODA, the economic analysis indicates that the potential for significant adverse economic impact as a result of this test rule is low. This conclusion is based on the following observations: (1) The estimated unit test costs are small, and (2) the demand for ODA manufacture is inelastic (Ref. 23).

VII. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably forseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing", October 1981, can be obtained through the NTIS Under publication number PB 82-140773.

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing required in this test rule.

VIII. Rulemaking Record

EPA has established a public record for this rulemaking (docket number OPTS-42061A). This record includes the basic information the Agency

considered in developing this rule, and appropriate **Federal Register** notices.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this action consisting of:

(a) Notice containing the Thirteenth ITC Report designating oleylamine to the Priority List (48 FR 55674, Dec. 14, 1983), and comments received in response thereto.

(b) Notice of the proposed test rule on oleylamine and comments received in response (49 FR 45610, Nov. 19, 1984).

(c) Notice announcing the final decision to require testing of oleylamine.

(d) Notice adding oleylamine to the list of chemicals subject to the preliminary assessment information rule (48 FR 55685, Dec. 14, 1983).

(e) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922, Nov. 29, 1983).

(f) Notice of final rule on test rule development and exemption procedures (49 FR 39774, Oct. 10, 1984).

(g) Notice of final rule concerning data reimbursement (48 FR 41786, Sept. 19, 1983).

(h) Notice of interim final rule on test rule development and exemption procedures (50 FR 20652, May 17, 1985).

(i) Notice of extension of comment period of proposed test rule for oleylamine (50 FR 3808, Jan. 28, 1985).

(j) Toxic Substance Control Act Guidelines; Final Rule (50 FR 39252, Sept. 27, 1985).

(2) Support documents consisting of:

(a) Oleylamine technical support document for proposed rule.

(b) Economic impact analysis of notice of proposed rulemaking for oleylamine.

(c) Economic impact analysis of final test rule for oleylamine.

(3) Communications consisting of:

(a) Written public and intraagency or interagency memoranda and comments.

(b) Summaries of telephone conversations.

(c) Summaries of meetings.

(4) Reports—published and unpublished factual materials, including contractors' reports.

B. References

(1) USEPA. U.S. Environmental Protection Agency. Assessment of Testing Needs: Oleylamine (9-octadecenylamine) support document. Washington, DC Office of Toxic Substances. (1984)

(2) USITC. U.S. International Trade Commission. Synthetic Organic Chemicals. U.S. Production and Sales, 1982. Washington, DC: U.S. Government Printing Office, USITC pub. 1422. (1983)

(3) USITC. U.S. International Trade Commission. Synthetic Organic Chemicals. U.S. Production and Sales, 1984. Washington, DC: U.S. Government Printing Office, USITC pub. 1745. (1985)

(4) Eifinger, F.F. and Koehler, F. "Comparative teratological studies with organic fluoride compounds, their bases and amines". *German Dental Journal* 32:861–866. (In German; English translation.) (1977)

(5) Bio/dynamics Inc. A Segment III Perinatal and Postnatal Study of Amine Fluoride 335/242 in Rats. Project No. 72R–819. Philadelphia, PA: Menley & James Laboratories. (1973)

(6) Bio/dynamics Inc. A Segment I Rat Fertility Study of Amine Fluoride 335/242. Project No. 72R–817. Philadelphia, PA: Menley & James Laboratories. (1973)

(7) Bio/dynamics Inc. Amine Fluoride 335/242 Segment II Rabbit Teratology Study. Project No. 72R–818. Philadelphia, PA: Menley & James Laboratories. (1973)

(8) Bio/dynamics Inc. A Segment II Rat Teratology Study of Amine Fluoride 335/242. Project No. 72R–820. Philadelphia, PA: Menley & James Laboratories. (1973)

(9) Bio/dynamics Inc. Segment II Rat Teratology Study of Amine Fluoride 335/242 (repeat of previous study). Project No. 73R–880. Philadelphia, PA: Menley & James Laboratories. (1973)

(10) BLS. Bureau of Labor Statistics. U.S. Department of Labor. U.S. DOL 1983 Annual Survey. Washington, DC (1984)

(11) Akzo Chemie America. McCook, Illinois. Health Hazard Evaluation Report 79–140–1038. (1982)

(12) Dolen, M.M. Harding, E.T. and Yankell, S.L. "Salivary glycolysis after mouthrinses". *Helvetica Odontologica Acta/Supplementum VIII* 18:54–62. (1974)

(13) Shneider, P.H. and Muhlumann, H.R. "The antiglycolytic action of amine flourides on dental plaque". *Helvetica Odontologica Acta/Supplementum VIII* 18:63–70. (1974)

(14) Silvera, R.A., Gebathuler, H. and Muhlumann, H.R. "Salivary flouride levels after mouthrinsing with inorganic flouride and amine flouride". *Helvetica Odontologica Acta/Supplementum VIII* 18:79–81. (1974)

(15) Scheuplein, R.J. and Blank, I.H. "Mechanism of percutaneous absorption. IV. Penetration of nonelectrolytes (alcohols) from aqueous solutions and from pure liquids". *The Journal of Investigative Dermatology* 60:286–296. (1973)

(16) CMA. Chemical Manufacturers Association, 2501 M Street, NW., Washington, DC 20037. 14-Day Dermal Toxicity Range-Finding Study of Oleylamine in Rats, Protocol No. CMA–SC. (1985)

(17) Rice, D.P. "The absorption, tissue distribution, and excretion of dodecyldimenthylamine oxide (DDAO) in selected animal species and the absorption and excretion of DDAO in man". *Toxicology and Applied Pharmacology* 39:377–389. (1977)

(18) USEPA. U.S. Environmental Protection Agency. Memorandum from Hollis Call to Bob Sanford. Response to Industry Comments Regarding the Economic Analysis of ODA. Washington, DC. (1985)

(19) BLS. Bureau of Labor Statistics. U.S. Department of Labor. U.S. DOL 1985 Annual Survey. Washington, DC. (1986)

(20) Tregear, R.T. "Molecular movement, the permeability of skin". In *Physical Functions of Skin* pp. 1–52. New York: Academic. (1966)

(21) USEPA. U.S. Environmental Protection Agency. Economic Impact Analysis of Proposed Test Rule for 9-Octadecenylamine. Washington, DC, Office of Toxic Substances. (1984)

(22) Bartek, M.J., Labudde, J.A., and Maibach, H.I. "Skin permeability *in vivo*: Comparison in rat, rabbit, pig and man". *Journal of Investigative Dermatology* 58:114–123. (1972)

(23) USEPA. U.S. Environmental Protection Agency. Economic Impact Analyses of Final Test Rule for 9-Octadecenylamine (Oleylamine). Washington, DC, Office of Toxic Substances. (1986)

(24) CMA. Chemical Manufacturers Association, 2510 M Street, NW., Washington, DC 20037. *Salmonella*/Mammalian-Microsome Plate Incorporation Mutagenicity Assay (Ames Test). (1985).

(25) CMA. Chemical Manufacturers Association, 2510 M Street, NW., Washington, DC 20037. Chromosome Aberration Assay in Chinese Hamster Ovary (CHO) Cells. (1985)

(26) CMA. Chemical Manufacturers Association, 2510 M Street, NW., Washington, DC 20037. CHO/HGPRT Mutation Assay in the Presence and Absence of Exogenous Metabolic Activation. (1985)

(27) Bio/dynamics Inc. A Two Year Oral Toxicity Study of Amine Fluorides 335/242 in Rats. Project No. 72R–816. Philadelphia, PA: Menley & James Laboratories. (1975)

(28) Bio/dynamics Inc. A Chronic Oral Toxicity Study of Amine Fluorides 335/242 in Dogs. Project No. 72R–815. Philadelphia, PA: Menley & James Laboratory. (1975)

(29) Deichmann W. et al. "The chronic toxicity of octadecylamine". *AMA Archives of Industrial Health* 18:483–487. (1958)

(30) McDonald W., *et al.* "The chronic toxicity of octadecylamine in the rat—a supplemental report". *Toxicology and Applied Pharmacology* 4:610–612. (1961)

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. NE–G004, 401 M St., SW., Washington, DC.

IX. Other Regulatory Requirements

A. Classification of Rule

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not

have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA certifies that this test rule will not have a significant impact on a substantial number of small businesses for the following reasons:

1. There are no small manufacturers of oleylamine known to EPA.

2. Small processors are not likely to perform testing themselves, or to participate in the organization of the testing effort.

3. Small processors will experience only minor costs in securing exemption from testing requirements.

4. Small processors are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070-0033.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: August 7, 1987.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, Part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. New § 799.3175 is added to read as follows:

§ 799.3175 Oleylamine.

(a) *Identification of test substance.* (1) 9-Octadecenylamine (hereafter ODA) (CAS Number 112-90-3) shall be tested in accordance with this section.

(2) The ODA test substance shall be at least 90 percent ODA. The vehicle shall be one such as mineral oil for which there are adequate historical toxicological data and which will not interfere in the test results.

(b) *Persons required to submit study plans, conduct tests, and submit data.* (1) All persons who manufacture or process ODA (other than as an impurity) from October 7, 1987 to the end of the reimbursement period shall submit letters of intent to conduct testing or exemption applications, study plans, and/or shall conduct tests in accordance with Part 792 of this chapter, and submit data as specified in this section, Subpart A and Part 790 of this chapter.

(2) Persons subject to this section are not subject to the requirements § 790.50(a)(2), (5), and (6) and (b) and § 790.87(a)(1)(ii) of this chapter.

(3) Persons who notify EPA of their intent to conduct tests in compliance with the requirements of this section must submit plans for those tests no later than 45 days before the initiation of each of those tests.

(4) In addition to the requirements of § 790.87 (a)(2) and (3) of this chapter, EPA will conditionally approve exemption applications for this rule if EPA has received a letter of intent to conduct the testing from which exemption is sought and EPA has adopted test standards and schedules in a final Phase II test rule.

(c) *Health effects testing*—(1) *Developmental toxicity—(i) Required testing.* An oral developmental toxicity study shall be conducted with ODA in two mammalian species, rat and rabbit.

(ii) [Reserved]

(2) *Mutagenic effects—chromosomal aberrations*—(i) *Required testing.* (A) An oral *in vivo* mammalian bone marrow cytogenetics test: Chromosomal analysis shall be conducted for ODA.

(B) An oral rodent dominant lethal assay shall be conducted for ODA if it produces a positive result in the *in vivo* mammalian bone marrow cytogenetics test conducted pursuant to paragraph (c)(2)(i)(A) of this section.

(C) An oral rodent heritable translocation assay shall be conducted for ODA if it produces a positive result in the rodent dominant lethal assay conducted pursuant to paragraph (c)(2)(i)(B) of this section and if so required in a **Federal Register** notice or certified letter sent to test sponsors.

(ii) [Reserved]

(3) *Mutagenic effects—gene mutations*—(i) *Required testing.* (A) A detection of gene mutation in somatic cells in culture assay shall be conducted with ODA.

(B) An oral sex linked recessive lethal test in *Drosophila melanogaster* shall be conducted for ODA if it produces a positive result in the detection of gene mutation assay in somatic cells in culture conducted pursuant to paragraph (c)(3)(i)(A) of this section.

(C) An oral mouse visible specific locus test shall be conducted for ODA if it produces a positive result in the sex linked recessive lethal test in *Drosophila melanogaster* conducted pursuant to paragraph (c)(3)(i)(B) of this section and if so required in a **Federal Register** notice or certified letter sent to test sponsors.

(ii) [Reserved]

(4) *Oncogenicity*—(i) *Required testing.* An oncogenicity bioassay shall be conducted orally for ODA if positive results occur in any of the following tests and if so required in a **Federal Register** notice or certified letter sent to test sponsors.

(A) *In vivo* mammalian bone marrow cytogenetics tests conducted pursuant to paragraph (c)(2)(i)(A) of this section.

(B) Detection of gene mutation in somatic cells in culture assay conducted pursuant to paragraph (c)(3)(i)(A) of this section.

(C) Sex linked recessive lethal test in *Drosophila melanogaster*, conducted pursuant to paragraph (c)(3)(i)(B) of this section.

(ii) [Reserved]

(Information collection requirements approved by the Office of Management and Budget under control number 2070-0033.)

[FR Doc. 87-19309 Filed 8-21-87; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42061B; FRL 3130-8(b)]

Oleylamine; Proposed Test Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This document proposes that the Toxic Substances Control Act (TSCA) test guidelines be used as the test standards by manufacturers and processors to test oleylamine (9-octadecenylamine or ODA, CAS Number 112-90-3) for developmental toxicity, and to conduct two-tiered mutagenicity testing of ODA which may indicate the need for third-tier mutagenicity and oncogenicity testing following public program review. This notice also proposes deadlines for the submission of such test data. Elsewhere in this issue of the **Federal Register**, a final rule to require ODA testing in accordance with section 4(a) of TSCA is also published.

DATES: Submit written comments on or before October 8, 1987. If persons request time for oral comment by September 23, 1987, EPA will hold a public meeting on this proposed rule in Washington, DC. For further information on arranging to speak at the meeting, see Unit VI. of this preamble.

ADDRESS: Submit written comments, identified by the document control number (OPTS-42061B) in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M St., SW. Washington, DC 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, EPA is issuing a final test rule under section 4(a) of TSCA to require certain toxicity testing of ODA. The Agency is now proposing test standards to be used and deadlines for submission of the required test data.

I. Background

Elsewhere in this issue of the **Federal Register**, EPA is issuing a Phase I final rule pursuant to TSCA section 4 that establishes testing requirements for manufacturers and processors of ODA. This Phase I rule specifies the following testing requirements for ODA: Oral developmental toxicity, and a two-tiered mutagenicity scheme which may indicate the need for third-tier mutagenicity and oncogenicity testing following public program review.

Once this Phase I test rule becomes effective, manufacturers and processors of ODA would normally be required (under the two-phase process) to submit proposed study plans for each of the studies required, and proposed schedules for both the initiation of testing and the submission of study data (see 40 CFR 790.50). EPA would review the submitted study plans and schedules and would subsequently issue them (with any necessary modifications) in a Phase II test rule proposal. This proposal would request public comment on the suitability of the proposed study plans for purposes of ensuring that the resulting data would be reliable and adequate. After evaluating and responding to public comment, EPA would adopt the study plans, including the reporting schedules, in a Phase II final rule as the required test standards and data submission deadlines (see 40 CFR 790.52).

However, in the case of the ODA test rule, which was initiated under the two-phase process, EPA has decided to propose relevant TSCA test guidelines as the test standards (see Unit III. below). In addition, EPA is proposing that the data from the required studies be submitted within certain time periods. These time periods will serve as the data submission deadlines required by TSCA section 4(b)(1) (see Unit IV. below). The reasons for this deviation from the standard test rule process are discussed below.

II. Change in the Test Rule Development Process

A. Test Standards and Data Submission Deadlines

TSCA section 4(b)(1) specifies that test rules shall include standards for the development of test data ("test standards") and deadlines for submission of test data. Under a two-phase process utilized by EPA since 1982 (47 FR 13012; March 26, 1982) and formally adopted in the fall of 1984 (49 FR 39744; Oct. 10, 1984), test standards and data submission deadlines were to be adopted during the second phase of the rulemaking process. Upon issuance of the Phase I final rule, which established the effects and characteristics for which a given chemical substance must be tested, persons subject to the rule would be required by a specified date to submit study plans detailing the methodologies and protocols they intended to use to perform the required tests. Such study plans were to include proposed schedules for the initiation and completion of testing and submission of test data (see 40 CFR 790.50(a) and (c)). In the second phase, after consideration of public comment, the Agency would promulgate the Phase II final rule adopting the study plans (with any necessary modifications) as the test standards for the development of test data and deadlines for submission of test data.

In December 1983, the Natural Resources Defense Council and the Industrial Union Department of the American Federation of Labor-Congress of Industrial Organizations filed an action under TSCA section 20 which challenged, among other things, the use of the two-phase process. In an August 23, 1984 Opinion and Order, the Court found that utilization of the two-phase rulemaking process was permissible. However, the Court also held that the Agency was subject to a standard of promulgating test rules within a reasonable time. *NRCD* v. *EPA*, 595 F. Supp. 1255 (S.D.N.Y. 1984)

After that Opinion, the Agency decided to expedite test rules by using a single-phase rulemaking process for most test rules. In the document announcing this decision (50 FR 20652, 20653; May 17, 1985), EPA stated that the single-phase approach offers a number of advantages over the two-phase process. In the single-phase approach, the Agency proposes (in one document) not only the effects for which testing will be required but also proposes pertinent TSCA or other appropriate guidelines as the test standards and deadlines for the submission of test data. After receiving and evaluating public comment on the proposed testing requirements, test guidelines, and data submission deadlines, EPA promulgates a final test rule.

This single-phase approach shortens the rulemaking period and expedites the initiation of required testing that would usually result from use of the two-phase rulemaking process. The single-phase process also eliminates the requirements under the two-phase approach for industry to submit test protocols for approval. Moreover, by allowing the submission of alternative testing methodologies, the single-phase

approach preserves the flexibility of the two-phase process.

These same advantages, i.e., expediting testing and eliminating study plan submission requirements for persons subject to a Phase I rule, are factors considered by EPA in deciding to modify the rulemaking process for ODA. By proposing both pertinent TSCA test guidelines as the test standards and data submission deadlines at the time of issuance of the Phase I final rule, EPA expects that the Phase II final rule will be issued 6 months sooner than would occur if the usual two-phase process were followed. Thus, required testing will be initiated sooner. In addition, for the required tests for ODA, appropriate TSCA test guidelines are available (see Unit III. below).

B. Modifications to Requirements Under a Phase I Final Rule for ODA

Persons subject to the ODA Phase I final rule who have notified EPA of their intent to test would normally be required to submit study plans and proposed data submission deadlines within a specified time from the final rule's effective date (see 40 CFR 790.50(a) and (c)). Because EPA is proposing certain TSCA guidelines as the test standards and data submission deadlines, persons subject to the Phase I final rule are not required to submit study plans for the required testing or to propose dates for the initiation and completion of that testing. Manufacturers and processors of ODA are invited to comment on the proposed data submission deadlines. The Agency will consider these comments in issuing the Phase II final rule.

Persons subject to the Phase I final rule for ODA are still required to submit notices of intent to test or exemption applications in accordance with 40 CFR 790.55. Moreover, once the test standard is promulgated in the Phase II final rule, those persons who have notified EPA of their intent to test must submit study plans (which adhere to the promulgated test standards) no later than 45 days before the initiation of each required test (see 40 CFR 790.50(a)(1)).

III. Proposed Test Standards

The Phase I rule specifies the following testing requirements for ODA: Developmental toxicity, and a two-tiered mutagenicity scheme which may indicate the need for third-tier mutagenicity and oncogenicity testing following public program review.

The mutagenicity testing includes tests for both chromosomal aberration and gene mutation. The *in vitro* cytogenetics and Ames assays of the first tier will not be required because they have been completed by the Oleylamine Program Panel of the Chemical Manufacturers Association and have been found negative.

The testing required in the phase one rule for ODA is in stages. First-stage tests consist of developmental toxicity and the remaining first-tier mutagenicity tests: *in vivo* mammalian bone marrow cytogenetics test and a detection of gene mutation in somatic cells in culture. If the results of either of the first-tier mutagenicity tests are positive, the second tier of mutagenicity tests, consisting of a rodent dominant lethal assay and/or a sex linked recessive lethal test in *Drosophila melanogaster*, must be conducted. The Agency will review these data as received together with other relevant data and hold a public meeting before requiring initiation of the second-stage testing, which includes third-tier mutagenicity, consisting of the rodent heritable translocation assays and/or the mouse visible specific locus test, plus oncogenicity. Test sponsors will be notified by **Federal Register** notice or certified letter of second-stage testing decisions.

The Agency is now proposing that testing of ODA for developmental toxicity, mutagenicity, and oncogenicity be conducted using as test standards the TSCA test guidelines specified under 40 CFR Parts 796, 797, 798 and modified as specified in the **Federal Register** of May 20, 1987 (52 FR 19056). The specific test standards being proposed are as follows:

1. *Specific Organ/Tissue Toxicity:* Developmental Toxicity Study which appears at 40 CFR 798.4900.

2. *Genetic Toxicity:* Chromosomal Effects.

i. First Tier: *In Vivo* Mammalian Bone Marrow Cytogenetics Test: Chromosomal Analysis which appears at 40 CFR 798.5385.

ii. Second Tier: Rodent Dominant Lethal Assay which appears at 40 CFR 798.5450.

iii. Third Tier: Rodent Heritable Translocation Assay which appears at 40 CFR 798.5460.

3. *Genetic Toxicity:* Gene Mutations.

i. First Tier: Detection of Gene Mutation in Somatic Cells in Culture which appears at 50 CFR 798.5300.

ii. Second Tier: Sex-Linked Recessive Lethal Test in *Drosophila melanogaster* which appears at 40 CFR 798.5275.

iii. Third Tier: Mouse Visible Specific Locus Test which appears at 40 CFR 798.5200.

4. *Chronic Exposure:* Oncogenicity which appears at 40 CFR 798.3300.

EPA believes that the TSCA Health Effects Test Guidelines cited above, if properly followed, should produce adequate and reliable data.

Certain modifications to the test guidelines which the Agency feels are necessary for testing of ODA are summarized below:

1. *Developmental toxicity study.* Two test species are required by EPA, since it is well documented that multiple-species testing is more effective in detecting developmental toxicants than is single-species testing. Although the expected route of human contact is dermal, EPA is requiring the oral route of administration for developmental toxicity testing of ODA. The data base of background information on developmental toxicity studies conducted via the dermal route is very limited, while the data base for the oral route is much more extensive. Moreover, dermal application of the corrosive ODA could stress the test animals, which may itself produce developmental toxicity. Most importantly, a developmental toxicity study is designed to ensure that the agent being tested is administered at a sufficient dose to penetrate to the target system. One thus determines if the agent, under the conditions of exposure with consideration of maternal effects, has the potential to produce an adverse effect. A dermal study may not allow this determination, especially when skin corrosion occurs.

2. i. *In vivo mammalian bone marrow cytogenetics test.* Mice are selected as the species of choice to allow species consistency among the tests in this sequence. The oral route shall be used to maintain consistency among the tests for ODA, and to avoid corrosiveness associated with dermal application.

ii. *Rodent dominant lethal assay.* Mice are selected as the species of choice to maintain species consistency among the tests in this sequence. The oral route shall be used to maintain consistency among the tests for ODA and to avoid corrosiveness associated with dermal application.

iii. *Rodent heritable translocation assays.* Mice are selected as the species of choice to maintain consistency among the tests in this sequence. The oral route shall be used to maintain consistency among the tests for ODA and to avoid corrosiveness associated with dermal application.

3.i. *Detection of gene mutation in somatic cells in culture.* The gene mutation in somatic cells in culture assay (CHO/HGPRT) has already been done and the results are equivocal. Under the assumption that a repeat of the gene mutation assay in the same cell line would result in similar toxicity problems, it is now proposed that the

assay be conducted in a different cell line, mouse lymphoma L5178Y. Aroclor 1254-induced rat liver S-9 is the chosen source of metabolic activation because of its historical data base and generally accepted use in this assay. Alternative dosing procedures shall be used which consist of the use of suspension cultures or roller-bottle incubation.

ii. *Sex-linked recessive lethal test in Drosophila melanogaster.* The oral route of administration shall be used to maintain consistency among the tests for ODA.

iii. *The mouse visible specific locus test.* Mice are selected as the species of choice to allow species consistency between the tests in this sequence; strains $(C_3H \times 101)F_1$ or $(101 \times C_3H)F_1$ hybrids are chosen because of the historical data base available for these strains. Two dose levels shall be used because dose-responses are essential for risk determination. The oral route of administration shall be used to maintain consistency among the tests for ODA and to avoid corrosiveness associated with dermal application.

4. *Oncogenicity bioassay.* Rats and mice are the species of choice because of their relatively short life spans, the limited cost of their maintenance, their widespread use in pharmacological and toxicological studies, their susceptibility to tumor induction, and the availability of inbred or sufficiently characterized strains. Although the expected route of human contact is dermal, the oral route of administration is required, because the long-term administration of ODA via the dermal route is too stressful for the test species because of the chemical's corrosiveness.

IV. Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with its TSCA Good Laboratory Practice (GLP) standards which appear at 40 CFR Part 792.

Test sponsors are required to submit individual study plans at least 45 days prior to the initiation of each study.

EPA is required by section 4(b)(1)(c) of TSCA to specify the time period during which persons subject to a test rule must submit test data. Studies shall be conducted and interim progress reports shall be provided at 6-month intervals beginning 6 months after the effective date of the final test rule or notification that testing should be initiated. The Agency is proposing specific reporting requirements for each of the proposed test standards as follows:

The developmental toxicity study shall be conducted and the final results submitted to the Agency within 12 months of the effective date of the final test rule.

The mutagenicity studies shall be conducted, and the final results submitted to the Agency as follows:

1. *In vivo* mammalian bone marrow cytogenetics test and detection of gene mutations in somatic cells in culture within 8 months of the effective date of the final rule.

2. Rodent dominant lethal assay and sex linked recessive lethal test in *Drosophilia melanogaster* within 17 months of the effective date of the final rule.

3. Rodent heritable translocation assays within 24 months and mouse visible specific locus test within 48 months of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing should be initiated.

Oncogenicity testing shall be conducted and the final results submitted within 53 months of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing should be initiated.

As required by TSCA section 4(d), the Agency plans to publish in the **Federal Register** a notice of the receipt of any test data submitted under this test rule within 15 days of receipt of that data. Except as otherwise provided in TSCA section 14, such data will be made available for examination by any person.

V. Issues for Comment

EPA invites comment on the use of the proposed TSCA test guidelines as the test standards for the required testing of ODA. EPA also invites comment on the proposed schedules for the required testing.

VI. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPAofficials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting subsequent to the close of the public comment period in Washington, DC. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): (202-554-1404), by September 23, 1987. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VII. Public Record

EPA has established a record for this rulemaking [docket number (OPTS-42061B)]. This record includes basic information considered by the Agency in developing this proposal, and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received.

This record includes the following information:

(1) **Federal Register** notices pertaining to this proposed test standard consisting of: Final Phase I rule on ODA.

(2) TSCA Health Effects Test Guidelines for Developmental Toxicity, Genetic Toxicity, and Oncogenicity.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. NE-G004 401 M St., SW., Washington, DC 20460.

VIII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The economic analysis of the testing of ODA is discussed in the Phase I test rule which appears elsewhere in this issue of the **Federal Register.**

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses for the following reasons:

1. There are no small businesses known to EPA that are manufacturing ODA.

2. Small processors will not perform testing themselves, or participate in the organization of the testing effort.

3. Small processors will experience only very minor costs, if any, in securing exemption from testing requirements.

4. Small processors are unlikely to be affected by reimbursement requirements, and any testing costs passed on to small processors through price increases will be small.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0033. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs: OMB; 726 Jackson Place NW.; Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: August 7, 1987.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that Part 799 be amended as follows:

PART 799—[AMENDED]

a. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. By amending § 799.3175 by adding new paragraphs (c)(1) (ii) and (iii); (2) (ii) and (iii); (3) (ii) and (iii); and (4) (ii) and (iii) to read as follows:

§ 799.3175 Oleylamine.

* * * * *

(c) * * *

(1) * * *

(ii) *Test standard.* (A) The developmental toxicity study shall be conducted with ODA in accordance with § 798.4900 of this chapter except the provisions of paragraphs (e)(1)(i) and (5).

(B) For purposes of this section, the following provisions also apply.

(*1*) *Animal selection.* The rat and rabbit are the required test species.

(*2*) *Exposure route.* The route of exposure shall be oral.

(iii) *Reporting requirements.* (A) The developmental toxicity testing shall be completed and the final results submitted to the Agency within 12 months of the effective date of the final test rule.

(B) Interim progress reports shall be provided at 6-month intervals beginning 6 months after the effective date of the final test rule.

(2) * * *

(ii) *Test standard.* (A)(*1*) The *in vivo* mammalian bone marrow cytogenetics tests: Chromosomal analysis shall be conducted with ODA in accordance with § 798.5385 of this chapter except the provisions of paragraphs (d)(3)(i) and (5)(iii).

(*2*) For purposes of this section, the following provisions also apply.

(*i*) *Animal selection.* The mouse is the required test species.

(*ii*) *Exposure route.* The route of exposure shall be oral.

(B)(*1*) The rodent dominant lethal assay shall be conducted with ODA in accordance with § 798.5450 of this chapter except the provisions of paragraphs (d)(3)(i) and (5)(iii) if a positive result occurs in the *in vivo* mammalian bone marrow cytogenetics tests: Chromosomal analysis conducted pursuant to paragraph (c)(2)(ii)(A) (*1*) and (*2*) of this section.

(*2*) For purposes of this section, the following provisions also apply.

(*i*) *Animal selection.* The mouse is the required test species.

(*ii*) *Exposure route.* The route of exposure shall be oral.

(C)(*1*) The rodent heritable translocation assays shall be conducted with ODA in accordance with § 798.5460 of this chapter except the provisions of paragraphs (d)(3)(i) and 5(iii) if a positive result occurs in the rodent dominant lethal assay conducted pursuant to paragraph (c)(2)(ii)(B) of this section if required following a public program review.

(*2*) For purposes of this section, the following provisions also apply.

(*i*) *Animal selection.* The mouse is the required test species.

(*ii*) *Exposure route.* The route of exposure shall be oral.

(iii) *Reporting requirements.* (A) The chromosomal aberration tests shall be completed and the final results submitted to the Agency as follows:

(*1*) The *in vivo* mammalian bone marrow cytogenetics test within 8 months of the effective date of the final test rule.

(*2*) The rodent dominant lethal assay (if required) within 17 months of the effective date of the final test rule.

(*3*) The rodent heritable translocation assays (if required) within 24 months of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing should be initiated.

(B) Interim progress reports shall be provided at 6-month intervals beginning 6 months after the effective date of the final test rule or notification that testing should be initiated.

(3) * * *

(ii) *Test Standard.* (A)(*1*). The detection of gene mutations in somatic cells in culture shall be conducted with ODA in accordance with § 798.5300 of this chapter except the provisions of paragraphs (d)(3)(i) and (4).

(*2*) For purposes of this section, the following provisions also apply.

(*i*) *Cells.* ODA shall be tested in L5178Y mouse lymphoma cells.

(*ii*) *Metabolic activation.* The metabolic activation system shall be derived from the postmitochondrial fraction (S–9) of livers from rats pretreated with Aroclor 1254.

(*iii*) *Dosing procedures.* Alternative dosing procedures consisting of suspension cultures or roller-bottle incubation shall be used.

(B)(*1*) The sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted with ODA in accordance with § 798.5275 of this chapter except the provisions of paragraph (d)(5)(iii), should a positive result occur in the detection of gene mutations in somatic cells in culture conducted pursuant to paragraph (c)(3)(ii)(A) of this section.

(*2*) *Exposure route.* The route of exposure shall be oral.

(C)(*1*) The mouse visible specific locus test shall be conducted with ODA in accordance with § 798.5200 of this chapter except the provisions for paragraphs (d)(3)(i), (5)(ii), and (iii), should a positive result occur in the sex-linked recessive lethal test in *Drosophila melanogaster* conducted pursuant to paragraph (c)(3)(ii)(B) of this section, if required following a public program review.

(*2*) For purposes of this section, the following provisions also apply.

(*i*) *Animal selection.* The mouse shall be used as the test species.

(*ii*) *Dosing.* A minimum of two dose levels shall be tested.

(*iii*) *Exposure route.* The route of exposure shall be oral.

(iii) *Reporting requirements.* (A) Gene mutation tests shall be completed and final results submitted to the Agency as follows:

(*1*) The detection of gene mutations in somatic cells in culture within 8 months of the effective date of the final test rule.

(*2*) The sex-linked recessive lethal test in *Drosophila melanogaster* (if required) within 17 months of the effective date of the final test rule.

(*3*) The mouse visible specific locus test (if required) within 48 months of

EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing should be initiated.

(B) Interim progress reports shall be provided at 6-month intervals beginning 6 months after the effective date of the final test rule or notification that testing should be initiated.

(4) * * *

(ii) *Test standard.* (A)(*1*) An oncogenicity bioassay, if required following a public program review, shall be conducted with ODA in accordance with § 798.3300 of this chapter except the provisions of paragraphs (b)(1)(i) and (6)(i).

(*2*) For purposes of this section, the following provisions also apply.

(*i*) *Animal selection.* ODA shall be tested in both rats and mice.

(*ii*) *Exposure route.* The route of exposure shall be oral.

(iii) *Reporting requirements.* (A) The oncogenicity tests shall be completed and final results submitted to the Agency within 53 months of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing should be initiated.

(B) Interim progress reports shall be provided at 6-months intervals beginning 6 months after the submission of the study for this test.

[FR Doc. 87-19310 Filed 8-21-87; 8:45 am]

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[7] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.