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Briefings on How To Use the Federal Register—
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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.

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

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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1951

Special Debt Set-Aside of a Portion of the Indebtedness of Farmer Program Borrowers

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) clarifies a final rule published November 1, 1985 (50 FR 45740). The wording has resulted in confusion interpreting the regulation. The purpose of the revision is to eliminate confusion concerning rescheduling and reamortization. The non set-aside portion of loans partially set-aside may be rescheduled or reamortized during the set-aside period.

EFFECTIVE DATE: February 24, 1988.

FOR FURTHER INFORMATION CONTACT: Chester Bailey, Director, Loan Servicing and Property Management Division, FmHA, USDA, Room 5449, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 447–4572.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Department Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only Internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only an editorial clarification of an existing regulation. It does not change FmHA's policy under the prior version of this regulation.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action, consisting only of clarification, does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

This program/activity is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials.

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:
10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

List of Subjects in 7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Mortgages. Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citiation for Part 1951 continues to read as follows:

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

Subpart A—Account Servicing Policies

2. Section 1951.41 is amended by redesignating current paragraph (h)(2) as (h)(3) and adding a new paragraph (h)(2), to read as follows:

§ 1951.41 Special debt set-aside of a portion of the insured loan indebtedness of farmer program borrowers.

* * * * *

(h) * * *

The non set-aside portion of a partially set-aside note may be rescheduled or reamortized in accordance with §§ 1951.33, 1951.40, and 1951.41(h)(3) of this subpart during the set-aside period. Exhibit F, attachment 1 (available in any FmHA office), of this subpart will be completed when the non set-aside portion of a partially set-aside note is rescheduled or reamortized.

* * * * *

Date: January 27, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–3937 Filed 2–23–88; 8:45 am]
BILLING CODE 3410–07–M

7 CFR Parts 3800 and 3801

World Agricultural Outlook Board; Organization, Functions, and Availability of Information to the Pub'ic

AGENCY: World Agricultural Outlook Board, USDA.

ACTION: Final rule.

SUMMARY: This rule explains the organization and functions of the World Agricultural Outlook Board (WAOB) and the procedures for requesting records from WAOB under the Freedom of Information Act (FOIA). It supplements the Department's regulations at 7 CFR Part 1, Subpart A.

EFFECTIVE DATE: February 24, 1988.

FOR FURTHER INFORMATION CONTACT: Laura B. Snow, Economics Agencies FOIA Officer, Economics Management Staff, USDA, Room 4310, South Building, 12th and Independence Avenue SW., Washington, DC 20250. Telephone (202) 447–7590.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required and this rule may be made effective in less than 30 days after publication in the **Federal Register.** Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Also, this rule will not cause a significant economic impact or other substantial effect on small entities. Therefore, the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply.

List of Subjects

7 CFR Part 3800

Organization and functions (Government agencies).

7 CFR Part 3801

Freedom of information.

Accordingly, 7 CFR is amended by adding a new Chapter XXXVIII consisting of Parts 3800 and 3801, reading as follows:

CHAPTER XXXVIII—WORLD AGRICULTURAL OUTLOOK BOARD

PART 3800—ORGANIZATION AND FUNCTIONS

Sec.
3800.1 General.
3800.2 Organization.
3800.3 Functions.
3800.4 Authority to act for the Chairperson.

Authority: 5 U.S.C. 301 and 552, and 7 CFR 2.86, except as otherwise stated.

§ 3800.1 General.

The World Agricultural Outlook Board (WAOB) was established on June 3, 1977, by Secretary's Memorandum 1920, entitled "World Food and Agricultural Outlook and Situation Board." The primary responsibility of WAOB is to coordinate and review all commodity and aggregate agricultural and food data and analyses used to develop outlook and situation material within the Department of Agriculture.

§ 3800.2 Organization.

The central and only office of WAOB is located in Washington, DC, and consists of the Chairperson, Deputy Chairperson, and supporting staff.

§ 3800.3 Functions.

The WAOB has four major areas of responsibility:

(a) *Agricultural outlook and situation.* (1) Coordinate and review all crop and commodity data used to develop outlook and situation material within the Department of Agriculture.

(2) Oversee and clear for consistency of analytical assumptions and results, all estimates and analyses which significantly relate to international and domestic commodity supply and demand. This includes such estimates and analyses prepared for public distribution by the Foreign Agricultural Service, the Economic Research Service, or by any other agency or office of the Department.

(3) Participate in planning and developing research programs relating to improving the Department's forecasting and estimating capabilities.

(4) Provide liaison between the Department and Commodity Futures Trading Commission to assure that the futures market serves the best interest of agriculture and the public.

(5) Plan and participate in Departmental, interdepartmental, regional and international outlook conferences and briefings, to maintain an awareness of current and upcoming economic issues significant to the food and agricultural system.

(b) *Interagency commodity estimates.* (1) Establish Interagency Commodity Estimates Committees to bring together estimates and analyses from supporting agencies and to develop official estimates of supply, utilization, and prices for commodities.

(2) Review for consistency of analytical assumptions and results, all proposed decisions made by the Interagency Commodity Estimates Committee prior to any release outside the Department.

(c) *Weather and climate.* (1) Serve as a focal point within the Department for coordination of weather, climate, and related crop monitoring activities.

(d) *Remote sensing.* (1) Provide technical assistance, coordination, and guidance to Department agencies in planning, developing, and carrying out satellite remote sensing activities to assure full consideration and evaluation of advanced technology.

(2) Coordinate administrative, management, and budget information relating to Department's remote sensing activities.

§ 3800.4 Authority to act for the Chairperson.

When the Chairperson is absent or temporarily unavailable, the Deputy Chairperson is authorized to act for the Chairperson.

PART 3801—AVAILABILITY OF INFORMATION TO THE PUBLIC

Sec.
3801.1 General.
3801.2 Public inspection, copying, and indexing.
3801.3 Requests for records.
3801.4 Denials.
3801.5 Appeals.
3801.6 Requests for published data and information.

Authority: 5 U.S.C. 301 and 552; 7 CFR 1.1–1.23 and Appendix A.

§ 3801.1 General.

This part is issued in accordance with the regulations of the Secretary of Agriculture in §§ 1.1–1.23 of this title and Appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552), and governs the availability of records of the World Agricultural Outlook Board (WAOB) to the public.

§ 3801.2 Public inspection, copying, and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. WAOB does not maintain any materials within the scope of these requirements.

§ 3801.3 Requests for records.

Requests for records of WAOB shall be made in accordance with §1.6 (a) and (b) of this title and addressed to: Economics Agencies FOIA Officer, Economics Management Staff, USDA, Room 4310, South Building, 12th and Independence Avenue SW., Washington, DC 20250. This official is delegated authority to make determinations regarding such requests in accordance with § 1.3(a)(3) of this title.

§ 3801.4 Denials.

If the Economics Agencies FOIA Officer determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the Economics Agencies FOIA Officer shall give written notice of denial in accordance with § 1.8(a) of this title.

§ 3801.5 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be in accordance with § 1.6(e) of this title and addressed to the Chairperson, World Agricultural Outlook Board, U.S. Department of Agriculture, Washington, DC 20250.

§ 3801.6 Requests for published data and information.

Information on published data, subscription rates, and all WAOB programs is available from the Chairperson, World Agricultural Outlook Board, U.S. Department of Agriculture, Washington, DC 20250.

Done at Washington, DC, this 26th day of January, 1988.

James R. Donald,

Chairperson, World Agricultural Outlook Board.

[FR Doc. 88-3938 Filed 2-23-88; 8:45 am]

BILLING CODE 3410-38-M

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Reg. K; Docket No. R-0610]

International Banking Operations (Regulation K)

February 18, 1988.

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: After further review of its regulations and consideration of public comment, the Board has revised Regulation K governing foreign investments of U.S. banking organizations. The new regulation permits investors to acquire up to 40 percent of the shares of foreign nonfinancial companies where sovereign debt obligations are being exchanged for ownership interests in the companies. The Board also revised the regulation to permit companies acquired through debt-for-equity conversions in heavily indebted developing countries to be held for up to 15 years and liberalized the investment procedures for such investments.

EFFECTIVE DATE: February 24, 1988.

FOR FURTHER INFORMATION CONTACT: Ricki Rhodarmer Tigert, Assistant General Counsel (202–452–3428); Kathleen O'Day, Senior Counsel (202/452–3786), Legal Division; Michael G. Martinson, Assistant Director (202/452–3640); or James Keller, Manager, International Banking Applications (202/452–2523), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson, (202/452–3544).

SUPPLEMENTARY INFORMATION: On August 12, 1987, the Board amended Regulation K to permit investments to be made through debt-for-equity swaps in up to 100 percent of the shares of foreign nonfinancial companies, subject to certain limitations. Under the August revision to the regulation, a bank holding company may exchange sovereign debt obligations of a heavily indebted developing country for equity interests in companies being privatized by the government of the country. An investment under the August regulation must be made through a bank holding company, rather than a bank, and is required to be divested within five years, unless the time were to be extended for up to another five years. Loans made to the company are treated as investments for purposes of the investment procedures of Regulation K. The company may not bear a name similar to that of the banking organization and the bank holding company may not provide to the company any confidential information obtained from bank customers that are engaged in the same or related lines of business. In addition, the Board cautioned that, consistent with prudent banking practice, an investor should carefully evaluate the soundness of an investment before it is made, and that officer and director interlocks should be kept to as few as administratively feasible to oversee the investment.

The Board stated that its August action was the first result of its review of the area of debt-for-equity swaps. Consequently, the Board requested public comments on the revision to the regulation and stated it would consider the comments as part of its continuing evaluation of Regulation K.

The Board received 23 public comments: 18 from banks or bank holding companies, three from banking trade groups, and two from members of Congress. The comments focused generally on five areas: acquisition of private sector companies; the 10-year holding period; the requirement that the nonfinancial company be held through the holding company; the general consent procedures of Regulation K for making investments; and use of private sector debt as well as sovereign debt in making the investments. In addition, other technical comments and requests for clarification were received.

After further review of the regulation and consideration of the public comments, the Board has amended Regulation K to provide bank holding companies with greater flexibility in making debt-for-equity investments in heavily indebted developing countries. The following are the major changes to the regulation:

—A U.S. banking organization may invest in up to 40 percent of the shares of or other ownership interests in a private sector nonfinancial company through conversion of sovereign debt obligations in a heavily indebted developing country;

—If the U.S. banking organization acquires more than 25 percent of the voting shares of a nonfinancial company, another shareholder (or a control group of shareholders) would be required to own a larger block of shares;

—The U.S. banking organization that makes an investment in a company under the revised regulation would also be permitted to provide loans or other financing in amounts up to 50 percent of the total loans and extensions of credit to the affiliated company;

—The U.S. banking organization would be permitted to hold the investment for up to two years after the end of the period during which the debtor country restricts full repatriation of the investment, as long as the total holding period is not more than 15 years;

—The investment would be required to be held through the bank holding company and not the bank or its subsidiary, unless the Board permits a particular investment to be held through the bank; and

—The general consent limit of Regulation K (that is, the amount that an organization may invest without giving prior notice to the Board) for debt-for-equity swap investments under the revised regulation is increased to the greater of $15 million or one percent of the investor's equity capital.

A more detailed discussion of each aspect of the Board's action is provided below.

Investments in Private Sector Companies

As noted, the Board's action in August was limited to investments in public sector companies that were being privatized by the government of the foreign country. Most of the comments were favorable on the Board's decision to provide flexibility to banking organizations in dealing with their holdings of sovereign debt obligations by permitting the purchase of these companies. The commenters, however, also stated that the regulation did not go far enough and that such flexibility should be extended to allow acquisition of companies that are in the private sector. Various reasons were advanced in support of this proposal.

Most commenters noted that there are not a significant number of opportunities for investment in privatizations because many governments are reluctant to give up control of important state-owned enterprises and to allow important sectors of the economy to pass into foreign control. The amount of equity being made available for investment under privatization programs is small in relation to the amount of sovereign debt outstanding. Therefore, the commenters stated that, in order for the regulation to be meaningful, private sector companies must be eligible for investment. A number of commenters also stated that limiting debt-for-equity swap investments to companies being privatized places U.S. banking organizations at a competitive disadvantage compared to nonbanks and foreign banks, which are not subject to these limits. Moreover, some commenters said that limiting the participation of U.S. banking organizations to public sector companies will heighten competition for

the few good public companies being privatized, making the investments economically less attractive.

Some commenters stated that even if controlling investments in nonfinancial private sector companies are not permitted, noncontrolling investments in greater than 20 percent of the shares of a private sector company should be allowed. Several commenters suggested permitting noncontrolling investments to be made in up to 50 percent of the shares of a company; others suggested that the permissible investment should be at least 25–30 percent of the shares of a company. The reasons advanced were that allowing a greater than 20 percent investment would permit the use of equity accounting; would put the banking organization into a better position to supervise the investment; and would make it easier to divest the company because potential investors would be more likely to want to acquire a block of shares that could give them influence over the company. These commenters also suggested that, because of the special circumstances surrounding debt-for-equity investments and their temporary nature, there should be greater leeway for a bank holding company investor to take part in the affairs of the company without the investors being considered to control the company.

The Board has revised the regulation to permit a bank holding company to hold up to 40 percent of the shares of (whether voting or nonvoting) or other ownership interests in private sector nonfinancial companies through debt-for-equity investments in heavily indebted developing countries. The Board determined that this level of equity ownership is viewed as large enough to give U.S. banking organizations a significant stake in the company, but would also a assure that there would be substantial participation by other investors. However, it is not contemplated that the U.S. banking organization would have the chief management or operating responsibility for the nonfinancial company.

This approach responds to the interest some U.S. banking organizations have expressed in making more than just portfolio investments in private sector nonfinancial companies, while also helping to assure that banking organizations do not assume all of the risks associated with operating and controlling commercial and industrial companies. By increasing the scope of investments that U.S. banking organizations may make, the liberalized regulation would enable them to diversify further their asset portfolios.

The Board placed several conditions on a bank holding company's authority to make these sizeable equity investments in nonbank companies because it continues to believe that there are significant risks in a operational investments in foreign nonfinancial businesses with which bank management has little or no expertise or experience. In this regard, the Board noted that a number of banks have indicated that they are not interested in operational control over such companies and few banks have sufficient local staff to be in a position to exercise management control or supervision over a variety of business concerns. The risks associated with these investments may be exacerbated by the acquisition of the investment in a debt-for-equity swap environment where the investor may not devote the same care and attention to the acquisition because the investment is being made with funds already committed to heavily indebted countries. The experience of the Board has been that banking organizations tend to stand behind investments they have made in order to protect their own reputations in the funding markets.

In an effort to address these concerns, the regulation requires that, if a bank holding company owns more than 25 percent of the voting shares of a private sector nonfinancial company, then another shareholder (or control group of shareholders) must control a block of shares that is larger. This requirement serves a dual purpose. First, it demonstrates that there is another substantial equity holder with capital at risk. Second, because there would be a larger shareholder, the bank holding company would not bear sole operational responsibility for the company. Restricting debt-for-equity swap participation by an individual banking organization to a minority position would also help assure that this investor would not be put in a position where additional investments would be required to prop up an ailing enterprise. Restricting the level of ownership would also make it less likely that a local government might hold the U.S. organization responsible for problems caused by the nonfinancial company.

The regulation also places a limit on the amount of financing that may be provided by a bank holding company to private sector companies acquired through debt-for-equity swaps in which the bank holding company owns 20 percent or more of the voting shares (that is, above the level of share ownership in nonfinancial companies already permitted under Regulation K). Loans or other forms of financing (such as guarantees or letters of credit) are limited to not more than 50 percent of the total loans or other extensions of credit to the affiliated company. The purpose of this provision is similar to the limitation on share ownership. Because the nonfinancial company may not rely on its U.S. affiliates for all of its funding, at least half of the company's credit must be obtained in the marketplace, which would help assure that the company is creditworthy.

Such funding support from the bank, consistent with the requirements of section 23A of the Federal Reserve Act, would be permitted only where the investment is made through a direct holding company subsidiary. If, in special circumstances the Board were to permit an investment to be made through the bank or a subsidiary of the bank, additional support to the company in the form of financing by the bank would not be permitted in order to reduce risk to the bank. In assessing exposure to a company, it is realistic to look at the full range of a banking organization's financial commitments to the company. Loans would be substantially at risk, just as equity investments would be and, where an ownership interest is involved, an arms' length credit judgment is difficult to make.

Participation in major corporate decisions. The regulation provides that the bank holding company may have membership on the board of directors or on management committees of the nonfinancial company in which it invests through a debt-for-equity swap in proportion to the percentage of voting shares of the company that the bank holding company owns. In contrast with present rules on portfolio investments under Regulation K, which generally contemplate a relatively passive interest, bank holding companies could have an important voice in management of the companies through such vehicles as representation on boards of directors. In addition, there are no restrictions in the regulation on the ability of the bank holding company investor to veto major corporate actions, such as the sale or encumbrance of substantially all of the assets of the company, major mergers and acquisitions, or a dilution of shares, that could threaten the value of its investment. As noted in the comments, participation in the corporate affairs of the nonfinancial company to the extent described would allow the U.S. bank holding company to protect its investment without being in the position of exercising sole operational control

over or being responsible for the company.

Holding Period

Regulation K as revised in August permitted debt-for-equity investments in nonbank companies to be held for a period of five years with the possibility of an extension for an additional five years. All comments received stated that the time period for divestiture is too short and asked that the holding period be long enough to permit the investor to maximize recovery on investments. The comments noted that all of the debt-for-equity programs in heavily indebted countries include restrictions on repatriation of dividends and on the investor's ability to sell the investment to local investors and repatriate the capital. These restrictions extend beyond the initial five years provided in the Board's regulation and in many cases beyond the 10-year maximum available with extensions under the Board's regulation.

After further review, the Board determined to permit investments made under the revised regulation to be held for the lesser of 15 years or two years beyond the end of the period established by the country restricting repatriation of the investment. This liberalization would apply to investments in public sector companies being privatized as well as to private sector companies. Extending the period to 15 years would respond to the concerns of those banking organizations that believe that divestiture will be difficult and costly if required within the period during which repatriation of the capital investment is restricted by the foreign country. Under the debt-for-equity programs of the major Latin American countries 13 years is currently the longest period during which repatriation of the investment is restricted. As a result, a maximum holding period of 15 years (or two years beyond the restricted period if shorter than 13 years) should give U.S. banking organizations greater opportunity to sell such investments.

The Board continues to emphasize that investments in nonfinancial companies are intended to be temporary, particularly where they extend beyond the periods currently permitted for investments made under authority to collect on debts previously contracted, the longest of which is five years extendable to 10 years. Therefore, banking organizations will be required to report to the Board on their plans for divestiture of debt-for-equity investments on the tenth anniversary of the acquisition of an investment and two years before the end of the holding period. This requirement would apply to investments both in private sector companies and in public sector companies being privatized. Such requirements would not apply to otherwise permissible investments even where the investments resulted from debt-for-equity swaps.

Structure for Investments

In its amendments to Regulation K in August, the Board required that the debt-for-equity investments in nonfinancial companies be held through the bank holding company and not through a subsidiary of the bank because of the potential risks to the bank from investments in commercial and industrial companies. The Board observed that the form of ownership was intended to erect a barrier between the bank and the nonbanking activities in several ways: by isolating the bank as much as possible from the activities of the nonfinancial company; by making clear that the federal safety net does not apply to the nonbanking activity; and by taking advantage of the restrictions of section 23A of the Federal Reserve Act, which apply as a matter of law to transactions between banks and affiliated nonbanks. Moreover, the approach is in keeping with the Board's position in other contexts that nonbanking activities should generally not be conducted through the bank.

The reasons that led the Board to conclude that investments in public sector nonfinancial companies being privatized should be made through the bank holding company and not the bank apply as well to investments in private sector companies. However, a number of commenters on the August revision to Regulation K contended that transferring the debt to be swapped from the bank to the holding company raises a number of problems. They stated that the bank would record an immediate loss on the transfer but the holding company would reap all of the profits from the investment. They also argued that the application of the collateral requirements of section 23A of the Federal Reserve Act to loans by the bank to a subsidiary of the holding company would serve as a disincentive to debt-for-equity investments. In addition, several commenters suggested that there are certain tax benefits to holding the investments under the bank and that local legal requirements may make it more advantageous to hold the investments through the bank.

The Board determined that these assertions do not present a compelling case for permitting nonfinancial investments to be held by the bank. As to the issue of preventing the bank from reaping profits from the investment, whether the bank shares in any profits from the investment is entirely within the control of the bank holding company. Moreover, although the holding company might gain any profits from the investments, it is also the bank holding company that would be exposed to any potential losses, thereby protecting the bank.

As to the effect of section 23A, it is intended to protect the bank from being pressured to make potentially risky loans to nonbank affiliates based on the affiliate relationship rather than the creditworthiness of the affiliated borrower. The Board determined that the protection afforded by section 23A is entirely appropriate in the context of a bank lending to foreign commercial and industrial affiliates. With respect to the tax issues, consultations with staff of the Treasury Department suggest that whether a banking organization would want to hold a nonfinancial investment under the bank, as opposed to the bank holding company, solely for tax reasons, would very must depend on the circumstances of the organization.

Accordingly, the Board required that investments by bank holding companies acquired through debt-for-equity swaps generally be held through the bank holding company. However, the Board will consider requests for exemptions on a case-by-case basis where an applicant demonstrates some special need to hold a nonfinancial investment under the bank, as, for example, in connection with local legal requirements that impose such a structure.

Investment procedures. In August, the Board did not change the investment procedures of Regulation K for debt-for-equity swaps. Several banks that commented on the Board's revision to Regulation K asked for an increase in the maximum investment under the general consent procedures from approximately $15 million to some higher figure, such as a percentage of capital, and for expedited procedures for debt-for-equity investments.

The Board determined that additional flexibility should be available in the investment procedures for debt-for-equity swaps. The regulation grants the Board's general consent for investments that do not exceed the greater of $15 million or one percent of the equity of the investing bank holding company. The Board determined that, in the context of making debt-for-equity investments where funds are already committed to a country, a percentage of the investor's equity capital is a reasonable measure of the need for review of the investments. This new limit would also apply to investments

made under the previous amendment to Regulation K permitting controlling investments to be made in public sector companies.

Under the liberalized regulation, prior notice to or the specific consent of the Board will be required where (1) the amount to be invested exceeds the greater of $15 million or one percent of the investor's equity capital after the deduction of goodwill; (2) the country's debt-for-equity swap program requires the investor to invest new money in addition to swapping debt obligations, and then only if the new money portion of the investment exceeds $15 million; or (3) the investment is to be made through an insured bank or its subsidiary.

Use of private sector debt. The Board's August revision to Regulation K provided that the debt that is eligible to be swapped is sovereign debt of the heavily indebted developing countries. A number of commenters asked that all debt eligible for swapping under the various country programs should also be eligible under the Board's regulations. They stated that some country programs restrict the debt eligible for swapping and that the Board should not disadvantage U.S. banking organizations by further restricting the debt eligible for use. Rather, they stated that banking organizations should have the flexibility to swap any type of debt, regardless of the sector of the borrower.

Although the Board considered these comments, it determined that the regulation should continue to permit the use only of sovereign debt. The Board began its review and liberalization of debt-for-equity investments in order to provide banks with flexibility in dealing with their holdings of sovereign debt and continues to believe that this is an appropriate limitation. This is especially true in light of the fact that banking organizations already have other authorities to collect on debts previously contracted where the debt is in default. Sovereign debt does not fall within this category and therefore requires alternative approaches, such as the revised regulation.

Some commenters also requested clarification of what constitutes sovereign debt. It is contemplated that sovereign debt includes debts owed to or fully guaranteed by governments and their agencies and instrumentalities.

Definition of "investment." In its August amendment to Regulation K the Board defined the term "investment" for purposes of the Board's procedures for prior notice and review of investments to include extensions of credit by the investing bank holding company or its affiliates. This approach gives the Board an opportunity to examine the level of a U.S. banking organization's financial support for a foreign company from a safety and soundness perspective where the amounts are large. The Board determined that this requirement should apply to all debt-for-equity investments, including those in private sector nonfinancial companies.

Accounting for debt-for-equity investments. Under Generally Accepted Accounting Principles (GAAP) a U.S. banking organization that holds 20 percent or more of the shares of a company should generally use consolidation or equity accounting to reflect in its income statement undistributed earnings as well as dividends received from the company. However, GAAP also provides that the cost method of accounting should be used where there are severe restrictions on the ability of the organization to realize income from, or the principal of, an investment, or where the investment is likely to be temporary.

It appears that some banks want to be able to invest in 20 percent or more of the shares of nonfinancial companies in order to be able to use equity accounting for the investment, even though the investment would be temporary and would be subject to restrictions on repatriation of investments and dividends. In fact, some commenters cited the ability to use equity accounting as one of the reasons why the Board should permit larger percentage investments in nonfinancial companies. In contrast, other banking organizations intend to use cost accounting under which income is recognized essentially in the same accounting period in which the money is actually received.

Any banking organization considering the use of equity accounting for investments made through debt-for-equity swaps in heavily indebted countries should carefully evaluate whether that method of accounting would result in an accurate statement of the income and capital of the banking organization.

Other Comments

Several requests for clarification of the procedures for debt-for-equity investments were received. Debt-for-equity investments may continue to be made under other provisions of Regulation K. The requirements of § 211.5(f) must be followed only if the investment would not otherwise be permitted under § 211.5 (c) and (d) of Regulation K. Similarly, any investment acquired through a debt-for-equity swap must be divested only if it is not otherwise permissible for the bank holding company to own at the end of the divestiture period.

The investments permitted by the revised regulation may be made through an Edge corporation subsidiary of a bank holding company as long as the Edge corporation is not a subsidiary of an insured bank.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that the amendment will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation. The amendment would liberalize existing regulations and affects only those banking organizations engaged in international banking. It would not have any particular effect on small business entities.

The Board has determined that the provisions of section 553(b) of Title 5, United States Code, with respect to deferred effective date are not necessary with respect to this revision to Regulation K. As noted above, this amendment liberalizes the investment restrictions of the regulation. An immediate effective date will allow banking organizations to begin to make investments under the revised provisions upon publication in the **Federal Register.**

List of Subjects in 12 CFR Part 211

Banks, Banking, Federal Reserve System, Foreign banking, Investments, Reporting and recordkeeping requirements, Export trading companies, Allocated transfer risk reserve, Reporting and disclosure of international assets, Accounting for fees on international loans, Investment made through debt-for-equity conversions.

For the reasons set forth above, the Board amends 12 CFR Part 211 as follows:

PART 211—INTERNATIONAL BANKING OPERATIONS

1. The authority citation for Part 211 continues to read as follows:

Authority: Federal Reserve Act (12 U.S.C. 221 *et seq.*); Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); the International Banking Act of 1978 (Pub. L. 95-369); 92 Stat. 607; 12 U.S.C. 3101 *et seq.*); the Bank Export Services Act (Title II, Pub. L. 97-290, 96 Stat. 1235); and the International Lending Supervision Act (Title IX, Pub. L. 98-181, 97 Stat. 1153, 12 U.S.C. 3901 *et seq.*), unless otherwise noted.

2. Section 211.5 is amended by revising paragraph (f) to read as follows.

§ 211.5 Investments and activities abroad.

* * * * *

(f) *Investments made through debt-for-equity conversions*—(1) *Definitions.* For purposes of this paragraph:

(i) "Eligible country" means a country that, since 1980, has restructured its sovereign debt held by foreign creditors, and any other country the Board deems to be eligible;

(ii) "Equity" includes common stockholder's equity and minority interests in consolidated subsidiaries, less goodwill;

(iii) "Investment" has the meaning set forth in § 211.2(i) of this regulation and, for purposes of the investment procedures of this paragraph only, shall include loans or other extensions of credit by the bank holding company or its affiliates to a company acquired pursuant to this paragraph;

(iv) "Loans and extensions of credit" means all direct and indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds.

(2) *Permissible investments.* In addition to investments that may be made under other provisions of this section, a bank holding company may make the following investments through the conversion of sovereign debt obligations of an eligible country, either through direct exchange of the debt obligations for the investment or by a payment for the debt in local currency, the proceeds of which are used to purchase the investment:

(i) *Public sector companies.* A bank holding company may acquire up to and including 100 percent of the shares of (or other ownership interests in) any foreign company located in an eligible country if the shares are acquired from the government of the eligible country or from its agencies or instrumentalities.

(ii) *Private sector companies.* A bank holding company may acquire up to and including 40 percent of the shares, including voting shares, of (or other ownership interests in) any other foreign company located in an eligible country subject to the following conditions:

(A) A bank holding company may acquire more than 25 percent of the voting shares of the foreign company only if another shareholder or control group of shareholders unaffiliated with the bank holding company holds a larger block of voting shares of the company;

(B) The bank holding company and its affiliates may not lend or otherwise extend credit to the foreign company in amounts greater than 50 percent of the total loans and extension of credit to the foreign company; and

(C) The bank holding company's representation on the board of directors or on management committees of the foreign company may be no more than proportional to its shareholding in the foreign company.

(3) *Investments by bank subsidiary of bank holding company.* Upon application, the Board may permit an investment to be made pursuant to this paragraph through an insured bank subsidiary of the bank holding company where the bank holding company demonstrates that such ownership is necessary due to special circumstances such as the requirements of local law. In granting its consent, the Board may impose such conditions as it deems necessary or appropriate to prevent adverse effects, including prohibiting loans from the bank to the company in which the investment is made.

(4) *Divestiture*—(i) *Time limits for divestiture.* The bank holding company shall divest the shares of or other ownership interests in any company acquired pursuant to this paragraph (unless the retention of the shares or other ownership interest is otherwise permissible at the time required for divestiture) within two years of the date on which the bank holding company is permitted to repatriate in full the investment in the foreign company, but in any event within 15 years of the date of acquisition.

(ii) *Report to Board.* The bank holding company shall report to the Board on its plans for divesting an investment made under this paragraph no later than 10 years after the date the investment is made if the investment may be held for longer than 10 years and shall report to the Board again two years prior to the final date for divestiture, in a manner to be prescribed by the Board.

(iii) *Other conditions requiring divestiture.* All investments made pursuant to this paragraph shall be subject to paragraphs (b)(3)(i) (A) and (B) of this section requiring prompt divestiture (unless the Board upon application authorizes retention) if the company invested in engages in impermissible business in the United States.

(5) *Investment procedures*—(i) *General consent.* Subject to the other limitations of this paragraph, the Board grants its general consent for investments made under this paragraph if the total amount invested does not exceed the greater of $15 million or one percent of the equity of the investor.

(ii) All other investments shall be made in accordance with the procedures of paragraph (c) of this section requiring prior notice or specific consent.

(6) *Conditions*—(i) *Name.* Any company acquired pursuant to this paragraph shall not bear a name similar to the name of the acquiring bank holding company or any of its affiliates.

(ii) *Confidentiality.* Neither the bank holding company nor its affiliates shall provide to any company acquired pursuant to this paragraph any confidential business information or other information concerning customers that are engaged in the same or related lines of business as the company.

Board of Governors of the Federal Reserve System, February 18, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-3828 Filed 2-23-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-139-AD; Amdt. 39-5858]

Airworthiness Directives; British Aerospace Model DH/BH/HS 125 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model DH/BH/HS 125 series airplanes, which requires a one time structural inspection for fatigue cracks of the fuselage skin beneath the canopy blister and the wing skin at the outboard flap hinge fitting. This amendment is prompted by reports of cracks as a result of a Model HS 125 structural audit by the manufacturer. This condition, if not detected and repaired, could result in fatigue cracking and an inability of the structure to meet required loads.

EFFECTIVE DATE: April 6, 1988.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. R. Huhn, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway

South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires a one time inspection of the fuselage skin beneath the canopy blister and the wing skin at the outboard flap hinge fitting for fatigue cracks, was published in the Federal Register on October 29, 1987 (52 FR 41584)

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter concurred with the intent of the proposed AD. However, the commenter stated that 157 airplanes would be affected by Service Bulletin 57-67 and 7 airplanes would be affected by Service Bulletin 53-63, rather than a total of 30 affected airplanes, as reflected in the preamble to the Notice of Proposed Rulemaking. After investigating this point further with the manufacturer's representative, the FAA has determined that there are 125 U.S.-registered airplanes affected by Service Bulletin 57-67 and 4 U.S.-registered airplanes affected by Service Bulletin 53-63. The economic analysis paragraph in this preamble has been changed to reflect this information.

The commenter stated that the economic analysis should be revised to reflect that ½ hour per side, or 1 hour per airplane, will be required to accomplish the procedures of Service Bulletin 57-67, and 2 hours per airplane will be required to accomplish the procedures of Service Bulletin 53-63. After further investigation, the FAA concurs with the commenter and has revised the economic analysis in this preamble accordingly.

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

It is estimated that 129 airplanes of U.S. registry will be affected by this AD. For 125 airplanes, that it will take approximately 1 manhour per airplane to accomplish the required actions; for 4 airplanes, it will take approximately 2 manhours per airplane to accomplish the required actions. The average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $5,320.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($40 to $80). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace (BAe) PLC: Applies to Model DH/BH/HS 125 series airplanes listed in BAe 125 Service Bulletins 57-67 and 53-63, both dated February 27, 1987, certificated in any category.

Compliance is required as indicated, unless previously accomplished.

To detect fatigue cracking in the airplane structure, which could result in the inability of the structure to meet required loads, accomplish the following:

A. For airplane serial numbers as listed in BAe-125 Service Bulletin 57-67 dated February 27, 1987: Prior to the accumulation of 12,000 flights, or within 8 months after the effective date of this AD, whichever occurs later, visually inspect the wing bottom skin for cracks at the flap outboard hinge fitting in accordance with that service bulletin. Repair detected cracks prior to further flight in accordance with an FAA approved method.

B. For airplane serial numbers as listed in BAe-125 Service Bulletin 53-63, dated February 27, 1987: Prior to the accumulation of 7,500 flights, or within 6 months after the effective date of this AD, whichever occurs later, visually inspect the fuselage skin beneath the canopy blister for cracks in accordance with that service bulletin. Repair detected cracks prior to further flight in accordance with an FAA approved method.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective April 6, 1988.

Issued in Seattle, Washington, on February 12, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-3864 Filed 2-23-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-146-AD; Amdt. 39-5859]

Airworthiness Directive; British Aerospace Model HS 748 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts an airworthiness directive (AD), applicable to British Aerospace Model HS 748 series airplanes, which requires inspection and reorientation, if necessary, of the flight controls spring strut rudder lock control. This amendment is prompted by the potential for interference between the strut aft fasteners and the lower aft edge of the slotted hole in the rudder hinge box. This condition, if not corrected, could adversely affect operation of the rudder, and reduce controllability of the airplane.

EFFECTIVE DATE: April 6, 1988.

ADDRESSES: The applicable service bulletin may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office,

9010 East Marginal Way, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Huhn, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires inspection, and reorientation, if necessary, of the flight control spring strut rudder lock controls on British Aerospace Model HS 748 series airplanes, was published in the Federal Register on November 4, 1987 (52 FR 42308).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

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

It is estimated that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $600.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because of the minimal cost of compliance per airplane ($200). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model HS 748 series airplanes, certificated in any category. Compliance required within 60 days after the effective date of this AD, unless already accomplished.

To prevent reduced controllability of the airplane caused by interference between the spring strut rudder lock control and the lower rudder hinge box, accomplish the following:

A. Inspect the spring strut rudder lock control and reorient, if necessary, in accordance with British Aerospace HS-748 Service Bulletin 27/109, dated October 29, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, FAA, Northwest Mountain Region.

C. Airplanes may be flown to a maintenance base for repairs or replacements in accordance with FAR 21.197 and 21.199.

All persons affected by this airworthiness directive who have not already received copies of the appropriate service bulletin from the manufacturer may obtain copies upon request to British Aerospace PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This document may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way, Seattle, Washington.

This amendment becomes effective April 6, 1988.

Issued in Seattle, Washington, on February 12, 1988.

Wayne J. Barlow, Director,

Northwest Mountain Region.

[FR Doc. 88-3863 Filed 2-23-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-138-AD; Amdt. 39-5857]

Airworthiness Directives; SAAB Fairchild Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD), applicable to SAAB Fairchild Model SF-340A series airplanes, which requires special initialization techniques for the Attitude Heading Reference System (AHRS) to prevent incorrect attitude indications. That action was prompted by reports of erroneous attitude indications, which could result in inappropriate crew input. This action provides an optional modification which, if installed, allows use of a simplified initialization technique for the AHRS.

EFFECTIVE DATE: April 6, 1988.

ADDRESSES: The applicable service information may be obtained from SAAB Aircraft, Product Support, S-58188, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: R. Huhn, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 85-11-51, Amendment 39-5145 (50 FR 40189; October 2, 1985), applicable to SAAB Fairchild Model SF-340A series airplanes, which would provide an optional modification to allow use of a simplified initialization technique for the AHRS, was published in the Federal Register on October 29, 1987 (52 FR 41583).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received.

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

It is estimated that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours

per airplane to accomplish the optional modification, and that the average labor cost will be $40 per manhour. Based on these figures, the cost for an operator to incorporate the optional modification is estimated to be $80 per airplane.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($80). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By amending AD 85-11-51, Amendment 39-5145 (50 FR 40189; October 2, 1985), by reidentifying paragraph B. as paragraph C., and adding a new paragraph B., as follows:

B. Accomplishment of Modification 1438 in accordance with SAAB Service Bulletin SF 340-34-038, dated October 24, 1986, or an equivalent production change constitutes terminating action for requirements of paragraph A. of this AD. Thereafter, the AHRS initialization shall be accomplished in accordance with SAAB Aircraft Operations Manual (AOM) Bulletin Number 24. A copy of AOM Bulletin Number 24 must be readily available to the crew during operations.

This amendment becomes effective April 6, 1988.

Issued in Seattle, Washington, on February 12, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88-3865 Filed 2-23-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-ASW-4; Amendment 39-5856]

Airworthiness Directives; Sikorsky Model S-76B Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires an initial and repetitive visual inspection to detect cracking of the forward engine support cross beam on Sikorsky Model S-76B helicopters. This AD is needed as an immediate action to prevent operation with cracks in the web and cap angle of the forward engine support cross beam which could result in possible engine shutdown or loss of systems and potential loss of the helicopter.

DATES: *Effective Date:* March 10, 1988.

Compliance: As required in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Richard B. Noll, Airframe Branch, Boston Aircraft Certification Office, ANE-152, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7111.

SUPPLEMENTARY INFORMATION: During an annual inspection, a crack was found in a Sikorsky Model S-76B forward engine support cross beam cap and web. Two other reports of a cracked cap and web have also been received recently. Since this condition is likely to exist or develop on other helicopters of the same type design, and a failure of the cross beam structure could result in possible engine shutdown or loss of systems and the loss of the helicopter, an AD is being issued which requires inspection of the forward engine support beams for cracks and repair as necessary on Sikorsky S-76B helicopters.

The FAA has determined that the Model S-76B forward engine support cross beam of helicopters which have 300 or more hours' time in service must be visually inspected prior to the next 50 hours' time in service after the effective date of this AD, and at 50-hour intervals thereafter. Further, the operators are required to report the results of their inspection with respect to cracks discovered, crack location, length, growth, and total time in service.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Sikorsky Aircraft: Applies to Sikorsky Aircraft Model S-76B helicopters, Serial Numbers (S/N) 760262, 760269, 760299, 760310, 760311, 760312, and 760314 through 760337, certificated in any category, equipped with Part Number (P/N) 76070-20526-20526-102 cross beam cap angle and P/N 76070-20526-139 cross beam web.

For helicopters with 300 or more hours' time in service, compliance is required within the next 50 hours' time in service after the effective date of this AD, and thereafter at intervals not to exceed 50 hours' time in service from the last inspection.

To prevent failure of the helicopter forward engine support cross beam, accomplish the following:

(a) Visually inspect the forward engine support cross beam cap angle and web as follows:

Note: The forward engine support cross beam is accessed by opening the engine air inlet/bypass cowl per Sikorsky Supplemental

Maintenance Manual SA4047-76B-2, Section 53-20-03. The cross beam is located towards the rear of the inlet area opening and extends across the fuselage. The beam is attached to the engine compartment deck and the engine forward mount fittings are attached to the cross beam upper cap angle. If the cross beam cannot be inspected properly from the inlet area because of interference with existing components, remove the main transmission drain access panels in the baggage compartment overhead.

(1) Clean the forward surface of the cross beam as much as possible with dry cleaning solvent P-D-680, Type II, or equivalent.

(2) Visually inspect, using a flashlight and mirror as necessary, the forward side of the upper cross beam cap angle and web for evidence of cracks.

Note: Particular attention should be directed to areas under the inboard engine support fittings.

(b) If cracks are detected visually, verify cracks by using a dye penetrant or equivalent inspection method.

Note: Method Type II in MIL-STD-6866 is an acceptable inspection method.

(1) If cracks are found in the cap angle, replace cracked part prior to further flight with a new part of the same part number.

(2) If cracks are found in the web, prior to further flight, either replace the cracked part with a new part of the same part number or repair cracks found as a result of this AD with a method approved by the Manager, FAA, Boston Aircraft Certification Office.

(c) Report cracks found, including location, length, fasteners and holes affected, replacement of parts, and total time in service on helicopters, by letter, to the Manager, Boston Aircraft Certification Office, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, within 10 days of the inspection. (Reporting approved by the Office of Management and Budget under OMB No. 2120-1156.)

(d) Aircraft may be ferried in accordance with the provisions of the Federal Aviation Regulation (FAR) §§ 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Alternate inspections, repairs, modifications, or other means of compliance which provide an equivalent level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7118.

(f) Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Boston Aircraft Certification Office, may adjust the compliance time specified in this AD.

This amendment becomes effective March 10, 1988.

Issued in Fort Worth, Texas, on February 11, 1988.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 88-3861 Filed 2-23-88; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[PP 5H5467/R937; FRL-3331-4]

Pesticide Tolerances for Ethephon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a food and a feed additive regulation to permit the plant growth regulator ethephon in molasses (from sugarcane). These regulations to establish the maximum permissible levels for residues of the pesticide in or on the commodity were requested pursuant to a petition by Union Carbide Agricultural Products Co.

EFFECTIVE DATE: Effective on February 24, 1988.

ADDRESS: Written objections, identified by the document control number [PP 5H5467/R937], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the Federal Register of January 6, 1988 (53 FR 259), which announced that Union Carbide Agricultural Products Co., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted a food additive petition (FAP 5H5467) proposing to amend 21 CFR Parts 193 and 561 by establishing regulations permitting residues of the plant growth regulator ethephon [(2-chloroethyl) phosphonic acid] in the food commodity and feed item sugarcane molasses at 1.5 parts per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted and other relevant material have been evaluated and discussed in the proposed rulemaking. The pesticide is considered useful for the purpose for which the tolerance is sought. It is concluded that the tolerance will protect the public health and is established as set forth below.

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

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. (Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animal feeds, Pesticides and pests.

Dated: February 9, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 21 CFR Parts 193 and 561 are amended as follows:

PART 193—[AMENDED]

1. In Part 193:

a. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 193.186(a) by adding and alphabetically inserting in the table therein the food commodity sugarcane, molasses, to read as follows:

§ 193.186 Ethephon.

(a) * * *

Foods	Parts per million
* * * * *	
Sugarcane, molasses	1.5

PART 561—[AMENDED]

2. In Part 561:

a. The authority citation for Part 561 continues to read as follows:

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

b. In § 561.225(a), by adding and alphabetically inserting in the table therein the feed item sugarcane, molasses, to read as follows:

§ 561.225 Ethephon.

(a) * * *

Foods	Parts per million
* * * * *	
Sugarcane, molasses	1.5
* * * * *	

[FR Doc. 88-3557 Filed 2-23-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 299

[Docket No. 87N-0372]

Clarification of Established Names for Drugs

AGENCY: Food and Drug Administration.

ACTION: Final rule; clarification.

SUMMARY: The Food and Drug Administration (FDA) is revising the regulations on established names for drugs to clarify that an established name under the Federal Food, Drug, and Cosmetic Act refers to the current compendial name or the USAN adopted name as listed in the publication *USAN and the USP Dictionary of Drug Names*, unless FDA designates an official name for a drug. This action is being taken to clarify that not all names listed in that publication may be relied on as established names.

DATES: Effective March 25, 1988; comments by April 25, 1988.

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

FOR FURTHER INFORMATION CONTACT: Howard P. Muller, Center for Drug Evaluation and Research (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 25, 1984 (49 FR 37574), FDA issued a final rule revoking the existing list of official names of drugs designated by the agency. In its place, the agency stated that nonproprietary drug names adopted by the U.S. Adopted Name (USAN) Council and listed in the publication *USAN and the USP Dictionary of Drug Names* would serve as "established names" under section 502(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e)), unless FDA designates an official name for a drug because it finds the USAN or other official or common or usual name to be unduly complex or not useful. This action was taken because: (1) FDA's routine publication of official names of drugs was considered duplicative and unnecessary in light of the skill and expertise the USAN Council has shown in deriving useful nonproprietary names for drugs, (2) each USAN quickly received wide publicity, and (3) the drug names which FDA has designated in the past as official names have been almost identical to those adopted by the USAN Council.

This action clarifies § 299.4(e) (21 CFR 299.4(e)) by adding the words "current compendial" and the phrase "or the USAN adopted name" to further explain that only the current compendial names or the USAN adopted names listed in *USAN and the USP Dictionary of Drug Names* may be relied on as established names. Other drug names listed in that publication such as brand names, international nonproprietary names, investigational drug code designations, and miscellaneous nonproprietary names may not be relied on as established names. To highlight this distinction, the compendial names and the USAN adopted names have been printed in boldface type in the main list of drug names in the 1988 edition of *USAN and the USP Dictionary of Drug Names*. This action also clarifies § 299.4(e) by deleting the word "nonproprietary" from the regulation. This word becomes redundant when "current compendial" is added to the regulation.

This clarification is necessary in part because of misunderstandings that have arisen from the September 25, 1984 final rule. In response to one of the comments submitted on the proposed rule, the agency stated that established names would include USAN adopted names listed in *USAN and the USP Dictionary of Drug Names* as well as all names listed in that publication. In this action the agency is amending § 299.4(e) to clarify that only the current compendial names and USAN adopted names listed in that publication may be relied on as established names.

Notice and comment are not necessary before issuing this clarification (see 5 U.S.C. 553(b)(B)). The purpose and major aspects of this rule were described in the preamble to the July 16, 1982 (47 FR 31008) proposed rule, and in the preamble to the final rule published September 25, 1984 (49 FR 37574). This clarification is not a substantive revision of the regulation, but it is merely a technical correction specifying with more precision which drug names listed in *USAN and the USP Dictionary of Drug Names* may be relied on as established names. Because this clarification only states what has been agency practice and policy since the September 25, 1984, final rule and what has been understood by the U.S. Adopted Names Council, no purpose is served by notice and comment. Thus, the Commissioner has determined for good cause that notice and comment are unnecessary and contrary to the public interest.

This clarification becomes effective 30 days after the date of publication. If FDA receives comments that necessitate further changes in the regulation, FDA will publish a document making these changes.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354), the agency has carefully analyzed the economic consequences of this final rule. The final rule is merely a clarification of an existing rule and will have no economic consequences. The agency has determined that the rule is, therefore, not a "major rule" as defined in Executive Order 12291. Further, the agency certifies that this clarification will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

Interested persons may, on or before April 25, 1988, submit to the Dockets Management Branch (address above) written comments about this clarification. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Such comments will be considered in determining whether amendments, modifications, or revisions to the clarification are warranted. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 299

Drugs, Official names.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 299 is amended as follows:

PART 299—DRUGS; OFFICIAL NAMES AND ESTABLISHED NAMES

1. The authority citation for 21 CFR Part 299 is revised to read as follows:

Authority: Secs. 508, 701(a), 52 Stat. 1055, 76 Stat. 1789; 21 U.S.C. 358, 371(a); 21 CFR 5.10.

2. Section 299.4 is amended by revising paragraph (e) to read as follows:

§ 299.4 Established names for drugs.

* * * * *

(e) The Food and Drug Administration will not routinely designate official names under section 508 of the act. As a result, the established name under section 502(e) of the act will ordinarily be either the compendial name of the drug or, if there is no compendial name, the common and usual name of the drug. Interested persons, in the absence of the designation by the food and Drug Administration of an official name, may rely on as the established name for any drug the current compendial name or the USAN adopted name listed in *USAN and the USP Dictionary of Drug Names*. The Food and Drug Administration, however, will continue to publish official names under the provisions of section 508 of the act when the agency determines that:

(1) The USAN or other official or common or usual name is unduly complex or is not useful for any other reason;

(2) Two or more official names have been applied to a single drug, or to two or more drugs that are identical in chemical structure and pharmacological action and that are substantially identical in strength, quality, and purity; or

(3) No USAN or other official or common or usual name has been applied to a medically useful drug. Any official name published under section 508 of the act will be the established name of the drug.

* * * * *

Dated: February 16, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-3859 Filed 2-23-88; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 522 and 556

Animal Drugs, Feeds, and Related Products; Ceftiofur Sterile Powder

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by The Upjohn Co. providing for the use of ceftiofur sodium (Naxcel™) sterile powder for preparing an intramuscular injectable used to treat bacterial infections in beef and nonlactating dairy cattle. In addition, the regulations are amended to provide a safe concentration for residues of ceftiofur in edible tissues of treated animals.

EFFECTIVE DATE: February 24, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: The Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001, filed NADA 140-338 which provides for use of ceftiofur sodium (Naxcel™) sterile powder for preparing a prescription intramuscular injectable for beef and nonlactating dairy cattle. The drug is used to treat bovine respiratory disease (shipping fever, pneumonia) associated with *Pasteurella hemolytica, P. multocida,* and *Haemophilus somnus*. The NADA is approved and Part 522 is amended by adding § 522.313 to reflect this approval. In addition, Part 556 is amended by adding § 556.113 which provides for safe concentrations for residues of the drug in edible tissues of treated animals. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

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 Docket Management Branch (address above) between 9 a.m. to 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).

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Residues.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Veterinary Medicine, Parts 522 and 556 are amended as follows:

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

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

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

2. Part 522 is amended by adding new § 522.313 to read as follows:

§ 522.313 Ceftiofur sterile powder for injection.

(a) *Specifications.* Ceftiofur sodium sterile powder for injection is reconstituted to form an aqueous solution containing the equivalent of 50 milligrams ceftiofur per milliliter.

(b) *Sponsor.* See 000009 in § 510.600 of this chapter.

(c) *Related tolerances.* See § 556.113 of this chapter.

(d) *Conditions of use*—(1) *Cattle*—(i) *Amount.* 0.5 milligram ceftiofur per pound of body weight intramuscularly.

(ii) *Indications for use.* Treatment of bovine respiratory disease (shipping fever, pneumonia) associated with *Pasteurella hemolytica, P. multocida,* and *Haemophilus somnus* in beef and nonlactating dairy cattle.

(iii) *Limitations.* Treatment should be repeated once every 24 hours for 3 days. Treat for an additional 2 days if animals do not show a satisfactory response. Do not use in animals previously found to be hypersensitive to the drug. Use of doses in excess of those indicated may result in illegal residues in tissues. Not for use in lactating dairy animals. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved].

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR Part 556 continues to read as follows:

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

4. Part 556 is amended by adding new § 556.113 to read as follows:

§ 556.113 Ceftiofur.

A tolerance for a marker residue of ceftiofur in cattle tissue is not needed. The safe concentrations for total residues of ceftiofur in uncooked edible tissues of cattle are: 3.0 parts per million muscle, 9.0 parts per million kidney, 6.0 parts per million liver, 12.0 parts per million fat. "Tolerance" refers to a concentration of a marker residue in a target tissue selected to monitor for total residues of the drug in the target animal. "Safe concentration" refers to the concentrations of total residues considered safe in edible tissues.

Dated: February 12, 1988.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 88–3944 Filed 2–23–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Order No. 1251–88]

Department of Justice Organizational Structure; Deputy Attorney General et al.

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order makes certain changes in the delineation of the supervisory functions of the Deputy Attorney General and the Associate Attorney General in order to allow the Attorney General greater flexibility in the designation of supervisory responsibility.

EFFECTIVE DATE: February 16, 1988.

FOR FURTHER INFORMATION CONTACT: Harry H. Flickinger, Assistant Attorney General for Administration, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530 (202–633–3101).

SUPPLEMENTARY INFORMATION: This regulation is exempt from the requirements of Executive Order No. 12291 as a regulation related to agency organization and management. Furthermore, this regulation will not have significant impact on a substantial number of small business entities within the meaning of 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 0

Organizations and functions (Government agencies), Authority delegations (Government agencies), Government employees, Administrative practice and procedure.

By virtue of the authority vested in me including 28 U.S.C. 509, 510 and 5 U.S.C. 301, Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*; 50 U.S.C. App. 2001–2017p; Pub. L. No. 91–513, sec. 501; E.O. 11919; E.O. 11267; E.O. 11300.

2. Section 0.15 is amended by revising (b) introductory text and (c), and by adding (b)(1)(v) to read as follows:

§ 0.15 Deputy Attorney General.

* * * * *

(b) The Deputy Attorney General shall advise and assist the Attorney General in formulating and implementing Department policies and programs and in providing overall supervision and direction to all organizational units of the Department. Subject to the general supervision of the Attorney General, the Deputy Attorney General shall direct the activities of organizational units as assigned. In addition, the Deputy Attorney General shall:

(1) * * *

(v) The appointment of Assistant United States Attorneys and other attorneys to assist United States Attorneys when the public interest so requires and fixing their salaries.

* * * * *

(c) The Deputy Attorney General may redelegate the authority provided in paragraphs (b)(1) (i), (ii), (iii), and (v) of this section to take final action in matters pertaining to the employment, separation and general administration of attorneys and law students in grades GS–15 and below, to appoint special attorneys and special assistants to the Attorney General pursuant to 28 U.S.C. 515(b), to appoint Assistant United States Trustees and fix their compensation, and to appoint Assistant United States Attorneys and other attorneys to assist United States Attorneys when the public interest so requires and to fix their salaries to the official responsible for attorney personnel management.

* * * * *

4. Section 0.19 is amended by revising (a) introductory text and (a)(1) to read as follows:

§0.19 Associate Attorney General.

(a) The Associate Attorney General shall advise and assist the Attorney General and the Deputy Attorney General in formulating and implementing Departmental policies and programs. The Associate Attorney General shall also provide overall supervision and direction to organizational units as assigned. In addition the Associate Attorney General shall:

(1) Exercise the power and the authority vested in the Attorney General to take final action in matters pertaining to the employment, separation, and general administration of attorneys and law students in pay grades GS–15 and below in organizational units subject to his direction.

* * * * *

Date: February 16, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88–3834 Filed 2–23–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R; Amdt. 8]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Mental Health Counselors

AGENCY: Office of the Secretary, DoD.

ACTION: Amendment to final rule.

SUMMARY: This final rule amends DoD 6010.8–R (32 CFR Part 199) regarding authorized mental health providers. This amendment adds mental health counselors as authorized mental health providers and states the specific requirements that must be met. The amendment will help assure that CHAMPUS beneficiaries have greater access to quality mental health services.

EFFECTIVE DATE: February 24, 1988.

FOR FURTHER INFORMATION CONTACT: Reta M. Michak, Office of Program Development, OCHAMPUS, telephone (303) 361–4078.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. 32 CFR Part 199 (DoD 6010.8–R) was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

In FR Doc. 87017277 appearing in the **Federal Register** on July 31, 1987 (51 FR 285 68), the Office of the Secretary of Defense published for public comment a notice of proposed rulemaking regarding mental health counselors. The following summarizes the comments received and the actions we have taken based upon these comments.

Discussion of Comments

We received 9 timely items of correspondence in response to the proposed notice. Of these, 7 were from professional associations and 2 were from individual health professionals. The comments were generally supportive of the decision to recognize certified mental health as CHAMPUS-authorized providers of mental health services. One opposition to the proposed coverage of mental health counselors was received. A summary of the comments and our responses to them follows.

A. Opposition to Coverage

Comment: One commenter was opposed to the coverage of mental health counselors because mental health counselors do not have sufficient education, training and experience to provide care to the mentally ill, and the majority of states do not credential mental health counselors through state licensure.

Response: We do not find the commenters arguments against coverage persuasive. We have determined that certified clinical mental health counselors meeting the CHAMPUS criteria for education, experience, and licensure are qualified to provide otherwise covered mental health services.

B. Physician Referral

Comment: One commenter recommend that the requirement for physician referral and supervision be deleted.

Response: A demonstration on the issue of physician referral and supervision for marriage and family counselors was initiated by CHAMPUS on December 1, 1987. It would not be appropriate to make decisions on that issue until the results of the demonstration are available. There is also an existing requirement in the law (Chapter 55, title 10, U.S.C.) requiring physician referral and supervision of services provided by marital, child and family, and pastoral counselors.

Comment: One commenter suggested that a psychiatrist must be the referring physician.

Response: We do not agree. There is no requirement for treatment by a specialist under CHAMPUS and referral by any physician is acceptable. We are concerned that a patient is adequately evaluated and diagnosed prior to referral to an extramedical provider for treatment of a mental disorder. That does not require the services of a psychiatrist. Title 10, of chapter 55, of the United States Code states that this referral must be by a medical doctor.

C. Licensure

Comment: There were several comments recommending that the licensure or certification requirements be changed to read as follows: "is licensed to practice as a mental health counselor by the jurisdiction where practicing."

Response: We agree and have included similar language in this final rule.

Comment: There was a comment that the regulatory language include a statement about the requirement for certification by an appropriate national professional association in the absence of state licensure.

Response: Similar language has been added for clarification.

D. Rehabilitation Counseling

Comment: Several commenters asked for clarification on rehabilitation counseling.

Response: In the notice of proposed rulemaking, we stated that CHAMPUS will cost-share otherwise covered mental health services provided by mental health counselors, but that vocational, rehabilitation, or socio-economic counseling would not be covered. The statement was added to clarify that CHAMPUS would limit its coverage to otherwise covered mental health services as provided by mental health counselors. Rehabilitation counseling is not listed as a covered mental health service.

Comment: There were several recommendations that CHAMPUS recognize rehabilitation counselors.

Response: This rule was specifically limited to certified clinical mental health counselors. Although certified rehabilitation counselors are not listed as CHAMPUS-authorized providers, otherwise covered services by a certified rehabilitation counselor may be considered when the counselor meets existing requirements for another category of provider such as the category for marriage and family, pastoral, and mental health counselors.

E. Peer Review

Comment: There was an objection to the continued use of the fiscal intermediary medical review rather than peer review from the same provider group for mental health services by counselors.

Response: We do not plan to make any changes to the existing requirements for review of mental health claims by marriage, family, pastoral and mental health counselors at this time. There is a requirement that whenever possible, the medical review should be done by an individual with a medical specialty appropriate to the care and services in question.

F. Separate Categories

Comment: Several organizations recommended that a separate category be established for each type of counselor.

Response: We do not see an advantage to making totally separate categories. There are some provisions, such as the requirement for physician referral and supervision, that apply to all of these categories. Where there are separate and unique requirements, we have identified those.

Comment: There were several comments on the issue of placement in the category of extramedical versus the allied health category for marriage and family counselors as well as mental health counselors.

Response: Allied health providers can provide services independent of physician referral and supervision, extramedical providers cannot. Until the results of the demonstration project are completed and the CHAMPUS law changes, we must continue to place counselors it the extramedical category.

As stated in the notice of proposed rulemaking, the following professional benefits are payable when rendered in the diagnosis or treatment of a covered mental disorder by a CHAMPUS-authorized, qualified mental health provider practicing within the scope of his or her license:

a. Individual psychotherapy;

b. Group psychotherapy;

c. Family or conjoint psychotherapy;

d. Psychoanalysis;

e. Psychological testing and assessment;

f. Administration of psychotropic drugs;

g. Electroconvulsive treatment; and
h. Collateral visits.

Counseling services that are not medically necessary in the treatment of a diagnosed medical condition; for example, educational counseling, vocational counseling, and counseling for socio-economic purposes are not covered.

In this rule, mental health counselors meeting specific educational and experience requirements are included as qualified mental health providers under the referral and supervision of a physician. In the absence of state licensure, the mental health counselor must be certified by, or be eligible for, membership in a CHAMPUS-approved national association that sets standards for mental health counselors equivalent to or greater that those required by CHAMPUS.

CHAMPUS has established utilization review guidelines review requirements for specific diagnoses and treatment modalities, all outpatient mental health services are reviewed by third level (peer) review at the 48th session, and all inpatient case at the 30th day. Like marriage and family counselors and pastoral counselors, all mental health counselor claims will be reviewed at the established review points by the CHAMPUS Fiscal Intermediaries.

This amendment also clarifies the existing CHAMPUS requirement for physical referral and supervision for services provided by paramedical providers and certain extramedical providers.

Although there are approximately 1,000 Certified Clinical Mental Health Counselors who would potentially meet the requirements of this final rule, only a small number of these counselors will likely apply to CHAMPUS approval. There are approximately 100,000 CHAMPUS beneficiaries who utilize mental health services. Attending physicians and psychiatrists now provide more than 50 percent of these services while extramedical counselors provide approximately 0.2 percent. The average amount paid by the government for an outpatient visit provided by an extramedical counselor is approximately $44. We would anticipate that less than 1 percent of the CHAMPUS user beneficiaries will use mental health counselors. Because of the small number of CHAMPUS beneficiaries who will potentially use mental health counselors, and the limited amount paid for an outpatient visit, the net impact on the average mental health counselor will not be significant. Accordingly, the Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR, Part 199 is amended as follows:

PART 199—[AMENDED]

The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.2 is amended by adding a definition for mental health counselors in the proper alphabetical order to paragraph (b) as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Mental Health Counselor. An individual who meets the requirements established by 199.6 (c)(3)(iv)(A) of this part.

* * * * *

2. Section 199.4 is amended by revising paragraph (c)(3)(ix)(A) introductory text and paragraph (g)(39) as follows:

§ 199.4 Basic program benefits.

* * * * *

(c) * * *

(3) * * *

(ix) * * *

(A) *Covered diagnostic and therapeutic services.* Subject to the requirements and limitations stated, CHAMPUS benefits are payable for the following services when rendered in the diagnosis or treatment of a covered mental disorder by a CHAMPUS-authorized, qualified mental health provider practicing within the scope of his or her license. Qualified mental health providers are: psychiatrists or other physicians; clinical psychologists, certified psychiatric nurse specialists or clinical social workers; and marriage, family, pastoral, and mental health counselors, under a physician's supervision. No payment will be made for any service listed in this paragraph (c)(3)(ix)(A) rendered by an individual who does not meet the criteria of § 199.6 of this part for his or her respective profession, regardless of whether the provider is an independent professional provider or an employee of an authorized professional or institutional provider.

* * * * *

(g) Exclusions and Limitations.

* * * * *

(39) *Counseling.* Counseling services that are not medically necessary in the treatment of a diagnosed medical condition; for example, educational counseling, vocational counseling, and counseling for socio-economic purposes. Services provided by a marriage and family, pastoral or mental health counselor in the treatment of a mental disorder are covered only as specifically provided in § 199.6. Services provided by alcoholism rehabilitation counselors are covered only when rendered in a CHAMPUS-authorized alcohol rehabilitation facility and only when the cost of those services is included in the facility's CHAMPUS-determined allowable cost-rate.

3. Section 199.6 is amended by adding paragraph (c)(1)(iv), by revising paragraphs (c)(3)(iv)(A) introductory text, (c)(3)(iv)(A) (*1*), (*2*), (*3*), (*4*) introductory text; by redesignating and revising paragraph (c)(3)(iv)(A)(*4*)(*iii*) as (c)(3)(i)(A)(*6*); and by adding a new paragraph (c)(3)(iv)(A)(*5*) to read as follows:

§ 199.6 Authorized providers.

* * * * *

(c) * * *

(1) * * *

(iv) *Physician referral and supervision.* Physician referral and supervision is required for the services of paramedical providers as listed in paragraph (c)(3)(iii)(H) and for marriage and family counselors, pastoral counselors, and mental health counselors. Physician referral means that the physician must actually see the patient, perform an evaluation, and arrive at an initial diagnostic impression prior to referring the patient. Documentation is required of the physician's examination, diagnostic impression, and referral. Physician supervision means that the physician provides overall medical management of the case. The physician does not have to be physically located on the premises of the provider to whom the referral is made. Communication back to the referring physician is an indication of medical management.

* * * * *

(3) * * *

(iv) * * *

(A) *Marriage and family counselors, pastoral counselors, and mental health counselors.* The services of certain extramedical marriage and family counselors, pastoral counselors, and mental health counselors are coverable on a fee-for-service basis, under the following specified conditions:

(*1*) The CHAMPUS beneficiary must be referred for therapy by a physician.

(2) A physician is providing ongoing oversight and supervision of the therapy being provided.

(3) The marriage and family counselor, pastoral counselor, and mental health counselor must certify on each claim for reimbursement that a written communication has been made or will be made to the referring physician of the results of the treatment. Such communication will be made at the end of the treatment, or more frequently, as required by the referring physician (refer to section 199.7).

(4) Marriage and family counselors and pastoral counselors shall have the following:

* * * * *

(5) Mental health counselors shall have the following:

(i) Minimum of a master's degree in mental health counseling or allied mental health field from a regionally accredited institution, and

(ii) Two years of post-master's experience which includes 3,000 hours of clinical work and 100 hours of face-to-face supervision.

(6) These providers must also be licensed or certified to practice as a marriage and family counselor, pastoral counselor or mental health counselor by the jurisdiction where practicing; or if the jurisdiction does not provide for licensure or certification, is certified by or is eligible for membership in the appropriate national or professional association that sets standards for the profession.

* * * * *

3. Section 199.7 (e)(3) is revised as follows:

§ 199.7 Claims Submission, review, and payment.

* * * * *

(e) * * *

(3) *Claims involving the services of marriage and family counselors, pastoral counselors, and mental health counselors.* CHAMPUS requires that marriage and family counselors, pastoral counselors, and mental health counselors make a written report to the referrring physician concerning the CHAMPUS beneficiary's progress. Therefore, each claim for reimbursement for services of marriage and family counselors, pastoral counselors, and mental health counselors must include certification to the effect that a written communication has been made or will be made to the referring physician at the end of treatment, or more frequently, as required by the referring physician.

* * * * *

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 17, 1988.

[FR Doc. 88-3768 Filed 2-23-88; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 22

[FRL-3294-4]

Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of Permits

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today EPA is promulgating a final regulation which extends the applicability of the consolidated rules of practice governing the administrative assessment of civil penalties and the revocation and suspension of permits, 40 CFR Part 22, to administrative enforcement actions taken pursuant to section 9006 of the Solid Waste Disposal Act (SWDA), commonly referred to as the Resource Conservation and Recovery Act (RCRA). Section 9006 was added to the Solid Waste Disposal Act by the Hazardous and Solid Waste Amendments of 1984 (HSWA) as part of a new Subtitle I which provides for the regulation of underground storage tanks. Section 9006 of Subtitle I authorizes EPA to take enforcement action against any person who violates any requirement of Subtitle I. Administrative enforcement actions under section 9006 include orders assessing penalties and orders requiring both mandatory and prohibitive injunctive relief.

EFFECTIVE DATE: This rule is effective March 25, 1988.

ADDRESSES: The docket for this rule (Docket No. UST 6) is located at U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is open from 9:00 A.M. to 4:00 P.M., Monday through Friday, except for public holidays. The public may copy a maximum of 50 pages from any regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA/Superfund Hotline, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424-9346 (toll-free) or (202) 382-3000 locally.

For information on specific aspects of this final rule contact: Joseph Schive, Office of Enforcement and Compliance Monitoring (LE-134S), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-3068.

SUPPLEMENTARY INFORMATION:

I. Authority

The consolidated rules of practice were promulgated on April 9, 1980, at 45 FR 24360, under the authority of sections 2002 and 3008 of the Solid Waste Disposal Act (SWDA), as well as under the authority of sections 14 and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act, sections 211 and 301 of the Clean Air Act, sections 105 and 108 of the Marine Protection, Research, and Sanctuaries Act, and section 16 of the Toxic Substances Control Act. This amendment to the consolidated rules of practice, 40 CFR Part 22, is issued under the authority of sections 2002 and 9006 of SWDA, as amended, 42 U.S.C. 6912 and 6991e.

II. Background

On November 8, 1984, the President signed into law the Hazardous and Solid Waste Amendments of 1984. Among the significant changes included in HSWA is a major new program for the regulation of underground storage tanks, found in the new Subtitle I of SWDA, sections 9001-9010.

In response to the new regulatory program provided for in Subtitle I, EPA published several documents to assist the regulated community in understanding the technical and procedural requirements of Subtitle I. On November 8, 1985, EPA published in the **Federal Register**, 50 FR 46602, a final rule on notification requirements for owners of underground storage tanks, and on June 4, 1986, EPA also published in the **Federal Register**, 51 FR 20418, an interpretative rule on the interim prohibition against installation of unprotected underground storage tanks. In June 1986, EPA's Office of Underground Storage Tanks also published technical guidance entitled, "The Interim Prohibition: Guidance for Design and Installation of Underground Storage Tanks." On September 16, 1986, EPA issued a guidance memorandum entitled, "Enforcement Strategy and Procedures for the Interim Prohibition", which explained, *inter alia*, that the Consolidated Rules of Practice were to be used for hearings for violations of Subtitle I conducted under section 9006. On April 17, 1987, EPA published in the

Federal Register, 52 FR 12662, a proposed rule which sets out technical standards and financial responsibility requirements which are applicable to underground storage tanks.

On July 6, 1987, EPA published in the **Federal Register**, 52 FR 25255, a proposed rule to codify an extension of the Consolidated Rules of Practice to hearings on administrative enforcement actions taken pursuant to section 9006 of Subtitle I. The proposed rule provided a 60-day comment period which closed on September 4, 1987. Several comments were received from four commenters on the proposal and these are discussed below.

III. Response to Comments

Two commenters requested clarification on how the recent Supreme Court decision in *Tull v. United States*, _____ U.S. _____, 107 S.Ct. 1831 (1987), ("*Tull*"), will affect administrative enforcement actions which assess civil penalties under section 9006. One commenter suggested that *Tull* imposes a jury trial requirement prior to the assessment of a penalty for violations of Subtitle I. EPA disagrees. EPA believes that footnote 4 of the *Tull* decision and the line of cases cited therein make clear that the decision in *Tull* does not apply to administrative proceedings. For this reason, EPA concludes that the *Tull* decision does not affect the hearings provided for administrative enforcement actions under section 9006.

Three commenters responded to the issue raised in the preamble to the proposed rule regarding the appropriateness of the Part 22 procedures for administrative orders which seek injunctive relief, as well as those which seek civil penalties or permit revocation. Two commenters indicated that they favored the use of the Part 22 procedures in each instance, because they believed the procedural protections in the Part 22 procedures were consistent with due process. One commenter preferred the "streamlined" procedures which have been proposed for RCRA section 3008(h) corrective action orders, 52 FR 29222 (August 6, 1987), because he felt these procedures would be less burdensome to respondents of orders.

The Agency has decided not to use the "streamlined" procedures at this time for hearings under section 9006 for violations of Subtitle I requirements, as opposed to corrective action orders under section 3008(h). The Agency will continue to explore alternatives to the Part 22 procedures which will meet the demand for quick resolution of disputes, as well as adequate procedural due process. In the interim, however, the Agency has decided that the established procedures in Part 22 should be used for administrative hearings on both compliance orders and orders assessing penalties under section 9006. Because these procedures are used generally for hearings on orders on RCRA violations, EPA believes that to avoid confusion in the interim over the type of hearing applicable, it should continue to use the Part 22 procedures for all such orders until it has had time to complete its evaluation of alternative procedures.

IV. Executive Order No. 12291

Executive Order No. 12291 requires that all proposed and final regulations must be classified as major or non-major rules. The Agency has determined that this final rule is a non-major rule under Executive Order No. 12291 because it will not result in any of the impacts delineated in the Executive Order.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant economic impact on a substantial number of small entities." As required by the Regulatory Flexibility Act, EPA hereby certifies that this final rule will not have a significant impact on small business entities.

List of Subjects in 40 CFR Part 22

Administrative procedures and practice, Hazardous materials, Penalties, Solid Waste Disposal Act, Underground storage tanks.

Dated: February 9, 1988.

Lee M. Thomas,

Administrator.

For the reasons stated in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION OR SUSPENSION OF PERMITS.

1. The authority citation for Part 22 is revised to read as follows:

Authority: Sec. 16 of the Toxic Substances Control Act; Secs. 211 and 301 of the Clean Air Act; Secs. 14 and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act; Secs. 105 and 108 of the Marine Protection, Research, and Sanctuaries Act; Secs. 2002, 3008, and 9006 of the Solid Waste Disposal Act; and Sec. 501 of the Clean Water Act.

2. Section 22.01 is amended by revising paragraph (a)(4) to read as follows:

§ 22.01 Scope of these rules.

(a) * * *

(4) The issuance of a compliance order or the assessment of any civil penalty under sections 3008 and 9006 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6928 and 6991e);

* * * * *

[FR Doc. 88-3775 Filed 2-23-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 3F2824/R915; FRL-3331-1]

Pesticide Tolerance for Cypermethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide cypermethrin in or on the raw agricultural commodity head lettuce. This regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested pursuant to a petition by the FMC Corp.

EFFECTIVE DATE: Effective on February 24, 1988.

ADDRESSES: Written objections, identified by the document control number [PP 3F2824/R915], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, (PM) 15, Product Manager (PM) 15, Registration Division (TS-767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2400.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of April 13, 1983 (48 FR 15951), which announced that the FMC Corp., 2000 Market St., Philadelphia, PA 19103, had submitted a pesticide petition (PP 3F2824) to EPA proposing to amend 40 CFR 180.418 by establishing a tolerance for residues of the insecticide cypermethrin [(±)alpha-cyano-(3-phenoxyphenyl)methyl(±)-*cis,trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] and its metabolites *cis,trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid (DCVA) and 3-phenoxybenzoic acid (3-PB Acid) (sum of cypermethrin plus

metabolites) in or on the raw agricultural commodity lettuce at 4.0 parts per million (ppm).

The petition was subsequently amended as announced in the **Federal Register** of August 16, 1985 (50 FR 31733), to increase the tolerance level for lettuce 10.0 parts per million. The petition was amended later to express the tolerance as 10 ppm in or on lettuce, "head" rather than in or on lettuce. Since the available field residue studies indicate that there will be low levels of metabolic residues in the terminal residues (this is the total amount of pesticidal residue on the crop at the time of harvest), the Agency concludes that the tolerance expression regulate only the parent compound (cypermethrin).

The Agency issued a conditional registration for cypermethrin for use on cotton with an expiration date of December 1, 1988 (see the **Federal Register** of June 15, 1984 (49 FR 24864), January 9, 1985 (50 FR 1112), and September 27, 1985 (50 FR 39100)). One of the conditions of registration was the submission of a field study to determine the effect of cypermethrin on aquatic life. This study is required for all agricultural use patterns of cypermethrin, and the study must be submitted to the Agency by April 30, 1988. Tolerances have been established for cypermethrin on cabbage, cottonseed, pecans, meat, fat, and meat byproducts of hogs, horses, cattle, goats, sheep, and milk with an expiration date of December 31, 1989, to cover residues expected to be present from use during the period of conditional registration. To be consistent with the tolerance for cypermethrin on cabbage, cotton and pecans, the Agency is establishing the tolerance for this pesticide on lettuce, "head" with an expiration date of December 31, 1989.

There were no comments received in response to the notices of filing and amendment.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of tolerances are discussed in a document on cypermethrin that appeared in the **Federal Register** of June 15, 1984 (49 FR 24864).

The acceptable daily intake (ADI) is calculated to be 0.025 mg/kg/day based on a multi-generation reproduction study in rats with a NOEL of 2.5 mg/kg/day and using a 100-fold safety factor. The maximum permissible intake (MPI) is calculated to be 1.500 mg/day for a 60-kg person. Published tolerances result in a theoretical maximum residue contribution (TMRC) of 0.000512 mg/kg/day based on a 1.5-kg diet and utilize 2.05 percent of the ADI. The establishment of ths tolerance will increase the TMRC to 0.003787 mg/kg/day, resulting in a total use of 15.15 percent of the ADI.

There are no regulatory actions pending against the registration of cypermethrin. The metabolism of cypermethrin in plants and animals is adequately understood for the purposes of the tolerance set forth below.

Analytical methods using electron capture gas-liquid chromatography for parent and capillary gas chromatography with a mass-selective detector for metabolites for enforcement purposes have been published in the Pesticide Analytical Manual, Volume II.

Based on the above information, the Agency has determined that establishing the tolerance for residues of the pesticide in or on lettuce (head) will protect the public health. Therefore, as set forth below, the tolerance is established for a period extending to December 31, 1989, to cover residues existing from this conditional registration of cypermethrin, and the tolerance may be made permanent if registration is continued based on information received in 1988 (see **Federal Register** notice on conditional registration of cypermethrin for use on cotton, published January 9, 1985 (50 FR 1112)).

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: February 9, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

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

PART 180—[AMENDED]

Authority: 21 U.S.C 346a.

2. Section 180.418 is amended by adding, and alphabetically inserting, the raw agricultural commodity, to read as follows:

§ 180.418 Cypermethrin; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Lettuce, head	10.0
* * * * *	

[FR Doc. 88-3556 Filed 2-23-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 4F3142/R939; FRL-3331-5]

Pesticide Tolerance for Ethephon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY This rule establishes a tolerance for the plant growth regulator ethephon in or on the raw agricutural commodity sugarcane at 0.1 part per million (ppm). This regulation to establish the maximum permissible level for residues of ethephon in or on the commodity was requested pursuant to a petition by Union Carbide Agricultural Products Co., Inc.

EFFECTIVE DATE: Effective on February 24, 1988.

ADDRESS: Written objections, identified by the document control number [PP 4F3412/R939], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs,

Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1800.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of January 6, 1988 (52 FR 263), which announced that Union Carbide Agricultural Products Co., Inc., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted a pesticide petition (4F3142) to EPA, proposing to amend 40 CFR Part 180 by establishing a tolerance for residues of the plant growth regulator ethephon [(2-chloroethyl)phosphonic acid] in or on the raw agricultural commodity (RAC) sugarcane at 0.2 part per million (ppm). The use of this commodity is limited to Hawaii based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted and other relevant material have been evaluated and discussed in the proposed rulemaking. The pesticide is considered useful for the purpose for which the tolerance is sought. It is concluded that the tolerance will protect the public health and is established as set forth below.

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

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. (Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

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

Dated: February 9, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.300, by designating the existing text and table therein as paragraph (a) and adding new paragraph (b), to read as follows:

§ 180.300 Ethephon; tolerances for residues.

* * * * *

(b) A tolerance with regional registration, as defined in § 180.1(n), of 0.1 part per million is established for residues of the plant regulator ethephon [(2-chloroethyl)phosphonic acid] in or on the raw agricultural commodity sugarcane.

[FR Doc. 88–3674 Filed 2–23–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[PP 7E3527/R935; FRL–3331–3]

Pesticide Tolerance for Fluazifop-Butyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide fluazifop-butyl in or on the raw agricultural commodity rhubarb. This regulation to establish the maximum permissible level for residues of the herbicide in or on the commodity was requested pursuant to a petition by the Interregional Research Project No. 4 (IR–4).

DATE: Effective on February 24, 1988.

ADDRESS: Written objections, identified by the document control number [PP 7E3527/R935], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of December 30, 1987 (52 FR 49175), which announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 7E3527 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Stations of Maryland and New Jersey.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the herbicide (R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy] phenoxy] propanoic acid (resolved isomer of fluazifop), both free and conjugated and of butyl [R]-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]-oxy]phenoxy] propanoate (resolved isomer of fluazifop-P-butyl), all expressed as fluazifop, in or on the raw agricultural commodity rhubarb at 0.5 part per million (ppm). The petitioner proposed that use on this commodity be limited to Maryland and New Jersey based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted and other relevant material have been evaluated and discussed in the proposed rulemaking. The pesticide is considered useful for the purpose for which the tolerance is sought. It is concluded that the tolerance will protect the public health and is established as set forth below.

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

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

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

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

Dated: February 5, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.411 by adding new paragraph (d), to read as follows:

§ 180.411 Fluazifop-butyl; tolerances for residues.

* * * * *

(d) Tolerances with regional registration, see § 180.1(n), are established for residues of the resolved isomer of the herbicide fluazifop, (R)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]-oxy]phenoxy] propanoic acid, both free and conjugated and of fluazifop-P-butyl, butyl[R]-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy] propanoate, all expessed as fluazifop, in or on the raw agricultural commodities:

Commodities	Parts per million
Rhubarb	0.5

[FR Doc. 88-3559 Filed 2-23-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 7E3549/R934; FRL-3331-2]

Pesticide Tolerance for 2-[1-Ethoxyimino)Butyl]-5-[2-(Ethylthio)-Propyl]-3-Hydroxy-2-Cyclohexene-1-One

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the herbicide 2-[1-ethoxyimino)-butyl]-5-[2-(ethylthio)-propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites (also referred to in this document as "sethoxydim") in or on the raw agricultural commodity artichokes. This regulation to establish the maximum permissible level for residues of the herbicide in or on the commodity was requested pursuant to a petition by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on February 24, 1988.

ADDRESSES: Written objections, identified by the document control number [PP 7E3549/R934], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of December 30, 1987 (52 FR 49174), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 7E3549 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Station of California.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the herbicide 2-[1-ethoxyimino)-butyl]-5-[2-(ethylthio)-propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodity artichokes at 3.0 parts per million (ppm). The petitioner proposed that use of sethoxydim on artichokes be limited to California based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted and other relevant material have been evaluated and discussed in the proposed rulemaking. The pesticide is considered useful for the purpose for which the tolerance is sought. It is concluded that the tolerance will protect the public health and is established as set forth below.

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

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

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

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

Dated: February 5, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.412 is amended by designating the current paragraph and list of tolerances as paragraph (a) and by adding new paragraph (b), to read as follows:

§ 180.412 2-[1-Ethoxyimino)-butyl]-5-[2-(ethylthio)-propyl]-3-hydroxy-2-cyclohexene-1-one; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of the herbicide 2-[1-ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the following raw agricultural commodities:

Commodities	Parts per million
Artichokes	3.0

[FR Doc. 88-3558 Filed 2-23-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 6E3457/R938; FRL-3333-2]

Pesticide Tolerance for 3,5-Dichloro-N-(1,1-Dimethyl-2-Propynyl)Benzamide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the herbicide 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide and its metabolites (also referred to in this document as "pronamide") in or on the raw agricultural commodity winter peas. This regulation to establish the maximum permissible level for residues of the herbicide in or on the commodity was requested pursuant to a petition by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on February 24, 1988.

ADDRESSES: Written objections, identified by the document control number [PP 6E3457/R938], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail:

Hoyt Jamerson, Emergency Response and Minor Use Section, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of January 6, 1988 (53 FR 262), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 6E3457 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of Oregon.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the herbicide pronamide [3,5-dichloro-*N*-(1,1-dimenthyl-2-propynyl)benzamide] and its metabolites (calulated as 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide) in or on the raw agricultural commodity winter peas at 0.05 part per million (ppm). The petitioner proposed that use of pronamide on winter peas be limited to Idaho, Oregon, and Washington based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted and other relevant material have been evaluated and discussed in the proposed rulemaking. The pesticide is considered useful for the purpose for which the tolerance is sought. It is concluded that the tolerance will protect the public health and is established as set forth below.

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

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

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

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

Dated: February 12, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.317(b) is amended by adding and alphabetically inserting the raw agricultural commodity winter peas, to read as follows:

§ 180.317 3,5-Dichloro-N-(1,1-dimethyl-2-propynl)benzamide; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
Peas, dired (winter)	0.05

* * * * *

[FR Doc. 88-3899 Filed 2-23-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 7F3558/R940; FRL-3332-8]

Sesame Stalk; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement for a tolerance for residues of the biorational nematicide sesame stalk in or on the following raw agricultural commodities: cotton, soybeans, potatoes, sugarbeets, tomatoes, bell peppers, squash, strawberries, egg plants, cucumbers, carrots, radishes, turnips, onions, peas, melons, grapes, walnut, almond, orange, grapefruit, mulberry, peach, apple, apricot, blackberry, loganberry, pecan, cherry, plum, and cranberry. This exemption was requested by Shotwell and Carr, Inc., on behalf of Bob McBrayer of Acampo, CA..

EFFECTIVE DATE: February 17, 1988.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:
By mail:

Lois Rossi, Product Manager 21, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal **Register** of December 16, 1987 (52 FR 47754), which announced that Mr. Bob McBrayer, 4350 E. Acampo St., Acampo, CA, had submitted pesticide petition 7F3558 to EPA. The petition proposed that an exemption from the requirement of a tolerance under 40 CFR Part 180 be established for residues of the biorational nematicide sesame stalk in or on the following commodities: cotton, soybeans, potatoes, sugarbeets, tomatoes, bell peppers, squash,

strawberries, eggplants, cucumbers, carrots, radishes, turnips, onions, peas, melons, grapes, walnut, almond, orange, grapefruit, mulberry, peach, apple, apricot, blackberry, loganberry, pecan, cherry, plum, and cranberry.

Ground sesame stalk (there are no inert ingredients) is to be used as soil mulch for the control of various nematodes. This product is prepared by cutting the sesame plant stalks remaining after the harvest of the seed and then processing these stalks through a grinder to produce a coarsely ground product ranging in size from dust to pices ½" wide by 2" long. Ground sesame stalk is intended for use for preplanting of annual plants or postplanting applications of annual, perennial, or established plants or trees to control root knot, root lesion, citrus, stubby root, stylet, and dagger nematodes. The product is broadcast over the entire treatment area by a hand or power operated gravity or rotary-type spreader designed for application of fibrous types of materials. Band application of the ground sesame stalk is also permitted after spreading; the material is incorporated into the soil by dicing or other suitable means. The material may be applied to dry or wet soil; however, moisture is required to activate the nematicide action. According to the petitioner, the primary constituents of the sesame stalk are lignin, cellulose and fiber. The petitioner also submitted information from the University of California, Irvine, concerning the chemical analysis of sesame stalk, which contains the following three naturally occurring compounds that are not known to be toxic to humans or livestock: sesamin, sesamolin, and quercetin 3-o-glycoside. These three compounds contribute less than 1 percent to the overall composition.

In support of his request, the petitioner noted that sesame has been grown as a food crop for years with no known toxicity problems. In areas where sesame is raised, after the seed has been harvested the fields are frequently used as pasture land for all types of grazing animals. The U.S. Food and Drug Administration has granted a generally recognized as safe (GRAS) status to sesame oil as both a human and animal food substance. These are referenced under 21 CFR 182.10 and 21 CFR 582.10. In addition, the petitioner stated that the sesame stalks have been commonly used as mulch around fruit and other trees for years.

The petitioner requested a waiver from data requirements for determining the magnitude of the residues from crop field trials, for a description of the residue analytical method used, and for the submittal of analytical reference standards. The petitioner's rationale was that the product is incorporated into the soil and is not sprayed or dusted upon the plant or edible portions thereof. The petitioner also requested a waiver from the data requirements of practicable methods for removing residues that exceed any proposed tolerance since there is no resulting residue of significance and any residue that may be present would be of no known toxicological concern.

The Agency waives the data requirement for the residue analytical method, submittal of analytical reference standards, and determining the magnitude of the residue crop field trials. Data on chemical identity, direction for use, and nature of the residues in plants have been submitted. Acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this exemption. No enforcement actions are expected. Therefore, the requirement for an analytical method for enforcement purposes is not applicable to this exemption request. This is the first exemption from the requirement of a tolerance for this biorational nematicide.

The biorational nematicide is considered useful for the purpose for which the exemption from the requirement of a tolerance is sought. Based on the information considered, the Agency concludes that establishment of the exemption will protect the public health. Therefore, the regulation is established as set forth below.

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

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

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

Date: February 17, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recordkeeping and reporting requirements.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1087 is added to read as follows:

§ 180.1087 Sesame stalks; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the biorational nematicide sesame stalk in or on the following raw agricultural commodities: cotton, soybeans, potatoes, sugarbeets, tomatoes, bell peppers, squash, strawberries, eggplants, cucumbers, carrots, radish, turnips, onions, peas, melons, grapes, walnuts, almond, orange, grapefruit, mulberry, peach, apple, apricot, blackberry, loganberry, pecan, cherry, plum, and cranberry.

[FR Doc. 88–3900 Filed 2–23–88; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1312 and 1313

[Ex Parte No. 387]

Railroad Transportation Contracts; Tariffs and Schedules

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting changes, under 49 U.S.C. 10713, to the interim contract rules adopted at 3 I.C.C. 2d 219 (1986), 51 FR 45898 (December 23 1986). That decision recodified existing contract rules from 49 CFR Parts 1309 and 1312.41 to 49 CFR Part 1313 and

modified some of these rules. Comments were requested and received.

A decision served January 22, 1987, 52 FR 3663 (February 5, 1987) postponed the effective date of interim rules 49 CFR 1313.10(b)(4)(i) and 1313.11(b)(3)(i) pending comments and final rules, and retained the rule at 49 CFR 1312.41(d)(1)(iii). The final rules here remove § 1312.41(d)(1)(iii) from the CFR and replace that section with § 1313.10(b)(4)(ii) and § 1313.11(b)(3)(i).

The final rules revise the content of contract summaries, guidelines and procedures for rail contract discovery, and procedures for complaints against rail contracts.

EFFECTIVE DATE: The rules and decision are effective March 25, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7246.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamics Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup through Dynamic Concepts, Inc. in Room 2229 at Commission headquarters).

The Commission certifies that the final rules will not have a significant impact on a substantial number of small entities.

This decision will not significantly affect either the quality of the human environment or energy conservation.

List of Subjects

49 CFR Part 1312

Railroads.

49 CFR Part 1313

Agricultural commodities, Forests and forest products, Railroads.

Decided: February 2, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Lamboley commented with a separate expression. Commissioner Simmons dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

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

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES, AND RELATED DOCUMENTS

1. The authority citation for 49 CFR Part 1312 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10762; 5 U.S.C. 553.

2. Part 1312 is amended by removing § 1312.41.

3. Part 1313 is revised to read as follows:

PART 1313—RAILROAD CONTRACTS ENTERED INTO PURSUANT TO 49 U.S.C. 10713

Sec.

1313.1 Definitions of the terms "contract" and "amendment."
1313.2 Jurisdiction; contract approval/disapproval.
1313.3 Contract implementation date.
1313.4 Common carrier responsibility: limitations on future contracts.
1313.5 Remedies for breach of approved contracts.
1313.6 Limitation on equipment; and relief.
1313.7 Contract filing, title pages, and numbering.
1313.8 Contract and contract summary availability.
1313.9 Formats for initial and amended contract summaries.
1313.10 Contract summary content-agricultural commodities.
1313.11 Contract summary content—forest products and paper.
1313.12 Contract summary content—port traffic (other than agricultural commodities, forest products, and paper).
1313.13 Contract summary content—other commodities or services not involving a port.
1313.14 Informal discovery.
1313.15 Contract discovery.
1313.16 Procedures for contract discovery and complaints.
1313.17 Grounds for contract review and complaints.

Authority: 49 U.S.C. 10321 and 10713; 5 U.S.C. 553

§ 1313.1 Definitions of the terms "contract" and "amendment."

(a) A contract made pursuant to 49 U.S.C. 10713 is a written agreement, including any amendment, entered into by one or more rail carriers with one or more purchasers of rail service, to provide specified services under specified rates, charges and conditions.

(b) A contract filed under these rules must:

(1) Specify that the contract is made pursuant to 49 U.S.C. 10713, and

(2) Be signed by duly authorized parties.

(c) The term "amendment" includes written contract modifications signed by the parties.

(d) An amendment is treated as a new contract. [To the extent contract extensions or amendments change any term of the contract, remedies are revived and review is again available.] An amendment is lawful only if it is filed and approved in the same manner as the original contract and is consistent with these rules, including the filing of a complete contract summary.

§ 1313.2 Jurisdiction; contract approval/disapproval.

(a) *Jurisdiction.* (1) The contract or amendment and transportation are subject to Commission jurisdiction until Commission approval under 49 U.S.C. 10713 and applicable regulations. (2) Railroad transportation contracts (other than agricultural commodity contracts) made by the United States Department of Defense are exempt from the requirements of 49 U.S.C. 10713.

(b) *Contract approval date.* Except as provided in § 1313.7(a)(2):

(1) The contract is approved on the 30th day after the filing of the contract if the Commission does not institute a proceeding to review the contract.

(2) If the Commission institutes a proceeding to review a contract, it has jurisdiction for 60 days after the contract is filed. Under these circumstances the contract will be approved:

(i) On the date the Commission approves the contract, if the date of approval is 31 or more days after the filing date of the contract;

(ii) On the 31st day after the contract filing date if the Commission denies the complaint against the contract by the 30th day after the contract filing date; or

(iii) On the 60th day after the contract filing date, if the Commission fails to disapprove the contract.

(c) *Contract disapproval.* If the Commission finds that the contract violates the provisions of 49 U.S.C. 10713, it will:

(1) Disapprove the contract; or

(2) In the case of agricultural contracts (including forest products and paper) where the Commission finds unreasonable discrimination by a carrier in accordance with 49 U.S.C. 10713 and § 1313.17(b)(3), allow the carriers the option to:

(i) Provide rates and services substantially similar to the contract at issue, with such differences in terms and conditions as are justified by the evidence; or

(ii) Cancel the contract.

(d) *Applicable rates/charges if contract disapproved.* If the Commission disapproves or rejects the contract or amendment, the appropriate non-contract tariffs or the contract

provisions otherwise in effect under previously approved contracts will be applicable.

§ 1313.3 Contract implementation date.

(a) Transportation or service performed under a contract or amendment may begin, without specific Commission authorization, on or after the date the contract (or amendment) and contract summary (or amended contract summary) are filed and before Commission approval as defined in 49 CFR 1313.2, subject to the following conditions:

(1) The contract or contract amendment shall specifically state that the transportation or service may begin on the date of filing.

(2) The contract summary shall separately reflect the date of commencement of service.

(b) Except as provided under paragraph (c) of this section, transportation or service may not begin under a contract or an amendment to a contract before the filing date of either the contract or the amendment, respectively.

(c) Railroad transportation or service is exempt from the requirements of 49 U.S.C. 10761, 11902, 11903, and 11904 to the extent that a railroad may apply a contract or amended contract rate rather than an otherwise applicable tariff or prior contract rate and pay reparations or waive undercharges under the following conditions:

(1) A transportation contract or amendment under 49 U.S.C. 10713 has been filed with the Commission and has been approved by the Commission or by operation of law;

(2) The shipment at issue falls within the terms of the contract or amendment; and

(3) The shipment was transported before the contract or amendment was approved but:

(i) After the contract or amendment was signed; or

(ii) After the parties agreed on the rate to be charged and they either agreed to be bound by the contract or amendment or intended the movement to be covered by the contract and amendments.

(d) Except as provided elsewhere in this section, all transportation under the contract may begin only in accordance with 49 CFR 1313.2.

§ 1313.4 Common carrier responsibility; limitations on future contracts.

(a) The terms of a contract approved by the Commission determine completely the obligations of the parties to the contract with respect to the services provided under the contract. The contract does not affect the parties' responsibilities for any services which are not included in the contract.

(b) Service under a contract approved by the Commission is deemed a separate and distinct class of service and the equipment used to fulfill the contract shall not be subject to car service limitations under 49 U.S.C. 11123.

(c) *Limitation of rail carrier rights to enter future contract.* The Commission may limit the right of a rail carrier to enter into future contracts if the Commission determines that additional contracts would impair the ability of the rail carrier to fulfill its common carrier obligations under 49 U.S.C. 11101. The Commission will handle these determinations on a case-by-case basis and may investigate, either on its own initiative or upon the filing of a verified complaint by a shipper which demonstrates that it individually had been or will be harmed by a carrier's inability to fulfill its common carrier obligations as a result of existing contracts.

§ 1313.5 Remedies for breach of approved contracts.

(a) The exclusive remedy for an alleged breach of a contract approved by the Commission shall be an action in the appropriate State Court or United States District Court, unless the parties otherwise agree in the contract.

(b) The Commission may not require a rail carrier to violate the terms of a contract that has been approved under 49 CFR 1313.2, except to the extent necessary to comply with 49 U.S.C. 11128.

§ 1313.6 Limitation on equipment; and relief.

(a) A rail carrier may enter into contract for the transportation of agricultural commodities (including forest products but not including wood pulp, wood chips, pulpwood, or paper) that involve the use of carrier owned or leased equipment not in excess of 40 percent of the total number of the carrier's owned or leased equipment, by major car type, except as provided in paragraph (b) of this section.

(b) In the case of a proposed contract between a class I carrier and a shipper originating an average of 1,000 cars or more per year during the prior 3-year period by major car type on a particular carrier, not more than 40 percent of carrier owned or leased equipment used on the average during the prior 3-year period may be used for the contract without prior Commission authorization.

(c) If the rail equipment standards of 49 U.S.C. 10713(k) are exceeded, prior relief must be obtained from the Commission and must be specifically identified in the contract summary.

(d) The Commission may grant relief from the limitations of paragraphs (a) and (b) of this section if:

(1) A rail carrier or other party requests such relief; or the Commission on its own initiative considers granting such relief; and

(2) The Commission determines that making additional equipment available does not impair the rail carrier's ability to meet its common carrier obligations under 49 U.S.C. 11101.

§ 1313.7 Contract filing, title pages, and numbering.

(a) *Filing of Rail Contracts.* (1) Rail carriers providing transportation subject to Subchapter I of Chapter 105 of Title 49, United States Code, must file with the Commission an original contract (or amendment) entered into with one or more purchasers of rail service. The contract (or amendment) must be accompanied by three copies of a contract summary (or amended contract summary) of the non-confidential elements of the contract as specified in §§ 1313.10, 1313.11, 1313.12, or 1313.13. The contract (or amendment) must also be accompanied by the appropriate filing fee (see 49 CFR Part 1002).

(2) A contract (or amendment) and contract summary (or amended contract summary) may be rejected for noncompliance with applicable statutes and regulations.

(3) Contracts and contract summaries must not be filed in the same package with standard tariff filings.

(4) The confidential contract shall not be attached to the contract summary.

(5) The outside envelope or wrapper containing the contract/contract amendment and summary must be prominently marked "Confidential, Rail Contract" and addressed to: Interstate Commerce Commission, Section of Tariffs, Washington, DC 20423.

(6) A contract and summary must be accompanied by a transmittal letter identifying the submitted documents, and the name and telephone number of a contact person.

(b) *Contract and contract summary title pages.* (1) The title page of every contract and amendment must contain only the following information:

(i) In the upper right corner, the contract number (see paragraph (c) of this section).

(ii) In the center of the page, the issuing carrier's name, followed by the word "CONTRACT" in large print.

(iii) Amendments to the contract must also show in the upper right corner, the

amendment number (see paragraph (c) of this section).

(iv) A solid one inch black border down the right side of the title page.

(v) Date of issue and date to be effective.

(2) The title page of every contract summary and amended contract summary must contain only the following information:

(i)(A) If contract summary, in the upper right corner, the contract summary number (see paragraph (c) of this section).

(B) If amended contract summary, in the upper right corner, the contract summary number, followed by the corresponding contract amendment number.

(ii)(A) In the center of the page, the issuing carrier's name, followed by the words "CONTRACT SUMMARY" in large print.

(B) If a contract summary for an amendment to a contract: in the center of the page, the issuing carrier's name, followed by the words "AMENDED CONTRACT SUMMARY".

(iii) Date of issue and date to be effective.

(iv) In the center lower portion, the issuing individual's name and address. The name of the individual for service of complaints and petitions for discovery must also appear, if different from the issuing individual. If not otherwise noted, a complainant/petitioner may rely on service to the issuing individual.

(c) *Contract and contract summary numbering system.* (1) Each issuing carrier shall sequentially number each contract and contract summary (and amendment and amended contract summary) it issues. The contract and contract summary identification number must include the word "ICC," the industry standard alphabet code for the issuing railroad (limited to four letters), the letter "C," and the sequential number, with each separated by a hyphen. The following is an example: the 357th contract filed by the Conrail would have the following identification number: "ICC–CR–C–0357."

(2) Amendments to contracts shall be reflected in a corresponding amended contract summary.

(3) At the carrier's option, it may issue contracts with nonconsecutive numbers if it assigns blocks of numbers to different departments. An index to the blocks of reserved numbers shall be filed with the Commission.

(4) Contract amendments and amended contract summaries must be sequentially numbered.

§ 1313.8 Contract and contract summary availability.

(a)(1) Except as provided in paragraph (a)(2) of this section, the contract filed under these rules shall not be available to persons other than the parties to the contract and authorized Commission personnel, except by informal discovery under 49 CFR 1313.14 and/or by Commission decision.

(2) A contract and its summary filed under 49 U.S.C. 10713 may be labeled "nonconfidential." Such a designation will permit the general public to inspect the entire contract.

(b)(1) The contract summary filed under these rules shall be available from the Commission's Bureau of Traffic and Contract Advisory Service.

(2) The contract summary filed under these rules shall not be required to be posted in any stations, but shall be made available upon reasonable request from the carriers participating in the contract.

§ 1313.9 Formats for initial and amended contract summaries.

(a) The contract summary must enumerate and have each item completed. When the item does not pertain to the contract, the term "Not Applicable" ("NA") shall be used.

(b)(1) Changes in prior contract summaries must be underscored and must be followed by the words "addition," "deletion," "extension," "cancellation," or other appropriate descriptive phrase in parentheses. If the change to the contract is only in confidential matter, a statement to that effect must be made in the amended contract summary and must indicate the particular feature to which the change applies (i.e., rate, special feature, etc.). If "not applicable" is permitted in the original summary under §§ 1313.10–1313.12, the amended summary may use "not applicable" with a notation that a change pertained only to confidential data.

(2) Amended contract summaries filed under this provision may not substitute phrases such as "not applicable" or "no change" where disclosure was required in the original contract (such as in the commodity description); amended contract summaries must set forth all non-confidential terms in the contract, whether amended or not.

(3) An amendment that shortens the life of a contract must be publicized in a contract summary for the amendment.

§ 1313.10 Contract summary content—agricultural commodities.

(a) Contract summaries for agricultural commodities (excluding forest products and paper) must contain the following information which includes that required to be disclosed under 49 U.S.C. 10713(b)(2)(A). These requirements also apply to amended contract summaries.

(b)(1) *Carrier names.* A list, alphabetically arranged, of the corporate names of all carriers that are parties to the contract plus the addresses for service of complaints [must be provided].

(2) *Specific commodity.* The specific commodity or commodities to be transported under the contract must be identified. Vague commodity descriptions such as "grain" are not permitted, even if that is the commodity description in the contract.

(3) *Shipper identity.* The specific identity of the shipper party to the contract must be disclosed. A shipper that is party to the contract who is acting on behalf of another party or parties at the time the contract is entered into must identify the other party or parties to the extent known at the time.

(4) *Specific origins, destinations, transit points, and other shipper facilities.* (i) Each specific origin and destination point to and from which the contract applies must be shown except that references to tariffs or broad geographic descriptions such as "all stations in Kansas" shall be permitted only to the extent such terms are actually used in the contract and such origins and destination are subject to specific identification by reference to tariffs or broad geographic descriptions. Tariff references must be accompanied by some geographic reference. Vague descriptions such as "various points in Kansas" are prohibited.

(ii) Each port must be identified.

(iii) Each transit point identified in the contract must be identified in the contract summary.

(iv) Each shipper facility affecting the contract must be listed if it is not included in the origin/destination points or transit points, but affects performance under the contract. Identification is required only to the extent such facilities are identified in the contract or are known to the contracting parties at the time of filing the contract.

(5) *Contract duration.* (i) If applicable, the date on which the transportation service has begun under a contract before the date such contract is filed with or approved by the Commission.

(ii) The date on which the contract became applicable to the transportation services provided under the contract.

(iii) Termination date of the contract.

(iv) Provisions for optional extension.

(6) *Rail car data.* Provide, by number of dedicated cars, or, at the carrier's option, car days:

(i) By major car type used to fulfill the contract or contract options:

(A) Available and owned by the carrier(s) listed in paragraph (b)(1) of this section;

(B) Available and leased by the carrier(s) with average number of bad-order cars identified;

(C) (Optional) On order (for ownership or lease) along with delivery dates; and

(D) In the event a complaint is filed involving common carrier obligation and carrier furnished cars, the carrier(s) shall immediately submit to the Commission and the complainant additional data on cars used to fulfill the challenged contract. Data shall include (by major car type used to fulfill the contract):

(*1*) Total bad-car orders;

(*2*) Assigned car obligations; and

(*3*) Free-running cars.

(ii) In addition to subparagraph (b)(6)(i) of this subsection if agricultural commodities (including forest products but not including woodpulp, wood chips, pulpwood or paper) the carrier must submit a certified statement:

(A) That the cumulative equipment total for all contracts does not exceed 40 percent of the capacity of carrier owned and leased cars by applicable major car type; and

(B) In the case of the agricultural shipper which originated an average 1,000 cars or more per year during the prior 3-year period by major car type, that the equipment used does not exceed 40 percent of the carrier owned or leased cars used on the average by that shipper during the previous 3 years.

(iii) Rail car data need not be furnished if:

(A) The shipper furnishes the rail cars, unless the rail cars are leased from the carrier; or,

(B) The contract is restricted to certain services which do not entail car supply.

(7) *Base rates and charges.* (i) Identify the specific base rates and/or charges. This is satisfied by identifying the specific tariff provisions which would apply without the contract.

(ii) Summarize escalation provisions.

(8) *Volume.* Identify all volume, car and/or train size requirements as set forth in the contract including:

(i) Movement type (single car, multiple car, unit train),

(ii) Minimum and actual volume requirements under contract for the applicable period(s) (annual, quarterly, etc.),

(iii) Volume breakpoints affecting the contract.

(9) *Special features.* Identify existence (but not the terms or amount) of special features such as transit time commitments, credit terms, discounts, switching, special demurrage, guaranteed or minimum percentages, etc.

§ 1313.11 Contract summary content—forest products and paper.

(a) Contract summaries for forest products and paper must contain the following terms in the order named. These requirements also apply to amended contract summaries.

(b)(1) *Carrier names.* A list, alphabetically arranged, of the corporate names of all carriers that are parties to the contract plus the addresses for service of complaints [must be submitted].

(2) *Specific commodity.* The specific commodities to be transported under the contract must be identified except that broad commodity descriptions such as "forest products" are permitted only to the extent that is the commodity description in the contract.

(3) *Specific origins and destinations.* (i) Each specific origin and destination point to and from which the contract applies must be shown except that references to tariffs or broad geographic descriptions such as "all stations in Oregon" are permitted only to the extent such terms are actually used in the contract and such origins and destinations are subject to specific identification by reference to tariffs or broad geographic descriptions. Tariff references must be accompanied by some geographic reference. Vague descriptions such as "various points in Oregon" are prohibited.

(ii) Each port must be identified.

(4) *Contract duration.* (i) If applicable, the date on which the transportation service has begun under a contract before the date such contract is filed with or approved by the Commission.

(ii) The date on which the contract services became applicable to the transportation services provided under the contract.

(iii) Termination date of the contract.

(5) *Rail car data.* The information required under § 1313.10(b)(6) must be provided.

(6) *Base rates and charges.* (i) Identify the specific base rates and/or charges. This is satisfied by identifying the general tariff provisions, or the general tariff provisions which would apply without the contract.

(ii) Identify existence of, but not terms or amount of, any movement type (e.g. single car, multiple car, unit train), minimum volume requirement (if applicable), or escalation provisions.

(7) *Special features.* Identify existence (but not the terms or amount) of special features such as transit time commitments, guaranteed car supply, minimum percentage of traffic requirements, credit terms, discounts, etc.

§ 1313.12 Contract summary content—port traffic (other than agricultural commodities, forest products, and paper).

(a) Contract summaries for other commodities or services involving a port must contain the information required in § 1313.11(b) (1), (2), (4), (6) and (7) and 1313.10(b)(6). In addition, the port shall be named and the tariff mileage rounded to the nearest 50 miles shall be disclosed (or, at the contracting parties' option, the origin and destination shall be specified). The required information shall be disclosed for each movement involving multiple origins and destinations. These requirements also apply to amended contract summaries.

§ 1313.13 Contract summary content—other commodities or services not involving a port.

(a) Contract summaries for other commodities not involving a port must contain the commodity or commodities to be transported under the contract and the information required in § 1313.11(b) (1) and (4), and § 1313.10(b)(6). Paragraph (b)(7) of § 1313.11 is applicable only to the extent that service requirements are placed in the contract. These requirements also apply to amended contract summaries.

§ 1313.14 Informal discovery.

(a) Prior to filing a petition for formal discovery under 49 CFR 1313.15, a petitioner may request discovery from the carrier.

(b) The carrier must promptly grant or deny the request.

(c) Agreements between carriers and shippers for informal discovery are permitted under these rules.

§ 1313.15 Contract discovery.

(a) *Petition.* A petition to discover contract provisions must show that petitioner is a shipper or port, has standing to file a complaint under 49 U.S.C. 10713(d)(2) (A) or (B), and that petitioner is affected by the contract. The following information will be considered in making a determination on whether to permit discovery.

(1) *Standing.* Identify the provision(s) in 49 U.S.C. 10713(d) under which petitioner has standing to file a complaint.

(2) *Affected party.* An affected party is one that is an actual or potential participant in the relevant market. The following information is relevant to making that determination and should be provided.

(i) Nature and volume of petitioner's relevant business.

(ii) Relevant commodities petitioner ships or receives;

(iii) Comparisons between petitioner's commodities, locations of shipping facilities and serving carriers, actual or potential traffic patterns and serving carrier(s), with the traffic patterns and serving carrier(s) identified in the contract summary. State whether petitioner is a consignor or consignee.

(iv) Showing of an ability to ship the commodity in question at a time generally simultaneous with the contract at issue.

(v) Any additional information petitioner considers appropriate to support its request, including prior negotiations, if any.

(vi) Demonstrate how and to what degree the petitioner's relevant business may be affected by the contract terms as disclosed in the summary.

(vii) Proof of actual injury is not required to satisfy this rule.

(3) *Demonstrated need.* (i) With regard to the grounds for complaint under 49 U.S.C. 10713(d)(2)(B), the demonstrated need test applies to contracts for forest products and paper, non-agricultural port traffic, and other commodities. The test does not apply to agricultural commodity contracts.

(ii) A petitioner seeking disclosure of non-agricultural contract information must show that the contract terms it seeks are relevant to its potential challenge to the contract.

(iii) As car data is published in the contract summary, a petition for further disclosure on the basis that the contract may impair the contracting carrier's common obligation must establish a nexus between the information sought and the common carrier obligation. Before information regarding special features will be disclosed, a petitioner must show how the special feature or certain forms of that special feature could impair the contracting carrier's common carrier obligation and how that impairment may affect the petitioner. On receiving such a petition, the carrier must furnish to the petitioner and the Commission the data required by § 1313.10(b)(6)(i)(D).

§ 1313.16 Procedures for contract discovery and complaints.

(a) *Complaints, discovery petitions, replies, and appeals.* (1) Discovery petitions and/or sketetal complaints must be filed no later than the 18th day after the contract and summary are properly filed.

(2) Petitions must note on the front page "Petition for Discovery of Rail Contract" and note the contract and amendment numbers.

(3) A skeletal complaint as required under paragraph (b) of this section must accompany the petition.

(4) Petitioner must certify that 2 copies of the petition and complaint have been sent to the contracting carrier(s) either by hand, express mail, or other overnight delivery service the same day as filed at the Commission. The contracting carrier shall in turn serve the contracting shipper with a copy of the petition and complaint. Replies shall be served in the same manner on complainant/petitioner.

(5) Replies to the petition are due within 5 days from the date of filing of the petition and in no event later than noon on the 23rd day following filing of the contract.

(6) An original and 10 copies of the petition, skeletal complaint and replies plus 2 transmittal letters must be filed with the Commission in an envelope labeled "Suspension/Special Permission Board—Confidential Contract Material."

(7) An appeal of a Suspension/Special Permission Board's decision must be made in accordance with 49 CFR 1132.2, subject to the following:

(i) An appeal must be received within 2 days of the Board's decision (anticipated by day 26 after the contract filing date), but in no event later than the 28th day after the contract filing date.

(ii) The appeal shall be filed with the Suspension/Special Permission Board for handling and will be considered by the entire Commission.

(iii) Telegraphic notice or its equivalent must be given to the opposing party.

(iv) Replies to the appeal must be received within one day after the appeal is filed.

(v) The number of copies of appeals and replies required is the same as provided in paragraphs (a) (4) and (6) of this section.

(8) *Protective order.* If confidential contract data or data disclosed pursuant to §§ 1313.15, 1313.16, or 1313.17 are filed with the Commission in a complaint, petition, reply or other pleading, the party filing these data should submit them as a separate package, clearly marked on the outside "Confidential Material Subject to Protective Order." The order in paragraph (a)(9) of this section applies to the parties specified in the order who receive confidential information through proceedings before the Commission or through informal discovery.

(9) *Order.* Petitioner and carriers, and their duly authorized agents agree to limit to the discovery/complaint proceeding involving the contract, the use of contract information or other confidential commercial information which may be revealed in the contract, the complaint, reply, or any other pleading relating to the contract. This agreement shall be a condition to release of any contract term by a petitioner/complainant and shall operate similarly on a carrier in possession of confidential information which may be contained in a complaint, petition for discovery, or request for informal disclosure. Any information pertaining to parties to the contract, or subject to the contract (including consignors, consignees and carriers), or pertaining to the terms of the contract, or relating to the petitioner's/complainant's confidential commercial information, must be kept confidential. Neither the information nor the existence of the information shall be disclosed to third parties, except for: consultants or agents who agree, in writing, to be bound by this regulation; information which is publicly available; information which, after receipt, becomes publicly available through no fault of the party seeking to disclose the information after it has become publicly available, or is acquired from a third party free of any restriction as to its disclosure. The petitioner/complainant or carrier must take all necessary steps to assure that the information will be kept confidential by its employees and agents. No copies of the contract terms or other confidential information are to be retained by the parties not originally privy to the data subsequent to the termination of the proceeding or the expiration of Commission jurisdiction under 49 CFR 1313.2.

(b)(1) *Complaint proceedings, complainants and replies.* On receipt of a skeletal complaint by the 18th day after the contract filing date, a complaint proceeding will be instituted to extend this Commission's jurisdiction to 60 days after the contract filing date regardless whether a petition for discovery is filed or approved. The decision will provide for automatic dismissal of the proceeding and approval of the contract if complainant(s) fail to submit the case-in-chief by the due date established in paragraph (b)(5) of this section.

(2) The skeletal complaint must contain the correct, unabbreviated names and addresses of the complainant(s) and defendant. The

complainant must set out the statutory provisions under which it has standing to file a complaint.

(3) If discovery is granted, the carrier must furnish the required information by the 1st working day after the Commission issues a final decision.

(4) Upon institution of a complaint proceeding, approval of the contract is postponed to 60 days after the contract filing date or until the Commission issues a decision approving the contract, if earlier.

(5) The amended complaint and case-in-chief are due 39 days after the filing of the contract.

(6) Replies of the carrier defendant(s) are due 46 days after the filing of the contract.

§ 1313.17 Grounds for contract review and complaints.

(a) Within 30 days of the contract filing date, the Commission may, on its own motion or on complaint, begin a proceeding to review the contract. Review can be based only on allegation of violations as described in paragraph (b) of this section.

(b) A contract may be reviewed only on the following grounds:

(1) In the case of a contract, other than a contract for the transportation of agricultural commodities (including forest products and paper), a complaint may be filed:

(i) By a shipper only on the grounds that the shipper individually will be harmed because the proposed contract unduly impairs the ability of the contracting carrier to meet common carrier obligations under 49 U.S.C. 11101; or

(ii) By a port on the grounds that the port individually will be harmed because the proposed contract will result in unreasonable discrimination against the port.

(2) In the case of a contract for the transportation of agricultural commodities (including forest products and paper), in addition to the grounds for a complaint described in paragraph (b)(1)(i) of this section, a complaint may be filed on the grounds that the shipper individually will be harmed because:

(i) The rail carrier(s) unreasonably discriminated by refusing to enter into a similar contract with the shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue and that the shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract was offered; or

(ii) The proposed contract constitutes a destructive competitive practice.

(3) "Unreasonable discrimination" as used in these rules means, when applied to shippers of agricultural commodities (including forest products and paper), that the railroad has refused to enter into a contract with the shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that the shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered; and, when applied to a port, has the same meaning as the term has under 49 U.S.C. 10741.

(4) The definitions for "agricultural commodities," "forest products," and "paper" will be decided on a case-by-case basis.

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Proposed Rules

Federal Register
Vol. 53, No. 36
Wednesday, February 24, 1988

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

Agricultural Marketing Service

7 CFR Part 1050

Milk in the Central Illinois Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to suspend the limits on the amount of milk that may be moved directly from producers' farms to nonpool plants for manufacturing and still be pooled and priced under the Central Illinois order. The proposal would remove the limits during the months of March and April 1988. The action was requested by Prairie Farms Dairy, Inc., a cooperative association that represents producers who supply milk to the market. Proponent contends that the action is necessary to assure the efficient disposition of an increasing supply of milk by producers who are furnishing the market's fluid requirements.

DATE: Comments are due on or before March 2, 1988.

ADDRESS: Comments (two copies) should be filed with USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: 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 proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers supplying the market's fluid needs would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing. This proposed 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.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Central Illinois marketing area is being considered for the months of March and April 1988:

In § 1050.13(d)(1), the words "During May, June and July".

In § 1050.13, paragraphs (d)(2), (3), (4) and (5) in their entirety.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include March in the suspension period.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposal for March and April 1988 would suspend the limits on the amount of milk that may be moved directly from producers' farms to nonpool plants and still be priced under the Central Illinois order. The order provides that a handler (cooperative association or pool plant operator) may not divert more days of an individual dairy farmer's milk production than is physically received at a pool plant during each such month. It also provides that the total quantity of milk diverted by such handler may not exceed 35 percent of the milk that the cooperative or pool plant operator caused to be physically received at pool plants during the month.

The suspension was requested by Prairie Farms Dairy, Inc. (Prairie Farms), a cooperative association that supplies milk for the market. Another cooperative association (Associated Milk Producers, Inc.), that also supplies milk for this market, has indicated its support for the suspension proposal. Proponent contends that the action is needed to assure the efficient disposition of the market's reserve milk supplies that must be processed into manufactured dairy products.

In support of its suspension request, Prairie Farms presented data showing that during 1987 its Peoria distributing plant packaged 12 percent more milk than 1986. However, the data indicate that the handler's receipts from dairy farmers who were associated with such plant during the last three months of 1987 were almost 20 percent above the plant's receipts for the same three-month period of 1986. They also show that distant producers supplying milk to the Peoria distributing plant through a reload station at Preston, Iowa, are increasing production at a much greater rate than nearby producers. Because of this, Prairie Farms claims that a greater portion of its milk receipts will have to be shipped to manufacturing plants during March and April of this year than can be accommodated under the order's current diversion provisions.

Prairie Farms contends that a suspension of the diversion limitations for such months is needed to enable the cooperative to dispose of its excess milk supplies in an orderly manner. Unless the diversion limits are suspended, Prairie Farms contends that it would have to receive the Iowa milk at its Peoria distributing plant and then reload the milk and transport it back to a manufacturing plant located near the area where the milk was produced to qualify such milk for pool participation.

List of Subjects in 7 CFR Part 1050

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1050 continues to read as follows:

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

Signed at Washington, DC, on: February 19, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-3872 Filed 2-23-88; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 350 and 352

[Docket Number 86-043P]

Voluntary Inspection of Exotic Animals

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to adopt regulations providing for the voluntary inspection of certain exotic animals under the Agricultural Marketing Act of 1946, as amended. This proposal would amend Part 352 of the regulations, which provides for voluntary inspection of American bison, catalo, and cattalo, to provide for the voluntary ante-mortem and post-mortem inspection of elk, deer, antelope, reindeer and water buffalo in the same manner as is presently performed for American bison.

A triangular brand would be applied to exotic animal carcasses, meat and meat food products inspected and passed by authorized USDA or State employees in official exotic animal establishments.

The proposal would facilitate the sale and export of exotic animal carcasses, meat, and meat food products of the additional animals. The proposal is a result of requests from exotic animal producers to provide Federal inspection for reindeer, elk, deer, antelope, and water buffalo under FSIS's voluntary inspection program.

DATE: Comments must be received on or before April 25, 1988.

ADDRESS: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under Supplementary Information.)

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

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this proposed rule is not a "major rule" under Executive Order 12291. This proposed rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or have 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. Currently less than 2,000 exotic animals are slaughtered annually compared to over 32,000,000 cattle slaughtered in fiscal year 1986. It is not expected that the number of exotic animals slaughtered annually will substantially increase. In addition, since this is a voluntary fee-for-service program, producers must decide if the ability to market a federally inspected product offsets the resulting costs of inspection.

Effect on Small Entities

The Administrator has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601) because currently less than 2,000 exotic animals are slaughtered annually compared to over 32,000,000 cattle slaughtered in fiscal year 1986. It is not expected that the number of exotic animals slaughtered annually will substantially increase.

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent in duplicate to the Policy Office. Please include the docket number that appears in the heading of this document. All comments submitted in response to this proposal will be made available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

The Agricultural Marketing Act of 1946, as amended, provides the Secretary of Agriculture with the authority to furnish a voluntary inspection service, on a fee basis, for exotic animals (7 U.S.C. 1622). Under Parts 350 and 352 of the regulations (9 CFR Parts 350 and 352), the Department provides inspection and certification services for reindeer and American bison, catalo, and cattalo, respectively. These inspection services enable persons to have ante-mortem and post-mortem inspection performed on these exotic animals. The inspected and passed meat is branded with a USDA mark of inspection and can be sold interstate or exported.

The increasing consumer demand for exotic animal meat and the increasing number of exotic animals being raised for food have prompted exotic animal producers to request the adoption of similar regulations for the inspection and marking of these animals and meat as are currently provided for American bison, catalo, and cattalo.

In response to these requests, FSIS is proposing to add other exotic animal species to Part 352 which currently provides only for the voluntary inspection of American bison, catalo, and cattalo, and to change the title to "Voluntary Inspection of Exotic Animals." Elk, deer, antelope, and water buffalo would be incorporated into the rule, and reindeer would be transferred from Part 350 to Part 352 to consolidate the provisions for voluntary inspection of all exotic animals. To avoid confusion, the proposed rule would redefine buffalo as animals belonging to the buffalo family and bison would be defined as animals belonging to the bison family.

The proposed rule would allow the following three alternative locations for ante-mortem inspection of reindeer, elk, deer, antelope, and water buffalo, which are presently allowed for American bison, catalo, and cattalo: (1) In the field in a designated area of an owner's premises; (2) on an appropriate transport vehicle at an official exotic animal establishment; and (3) in ante-mortem pens at an official exotic animal establishment. The ante-mortem inspection performed on reindeer, elk, deer, antelope, water buffalo, and bison which is either in the field or on a transport vehicle would be dependent on the adequacy and safety of the particular situation. Humane handling of exotic animals during ante-mortem inspection would be in accordance with § 313.2 of the Federal meat inspection regulations (9 CFR 313.2) which prescribes various methods of humane slaughter.

The post-mortem inspection procedure would be performed in an official exotic animal establishment by a USDA inspector or an inspector of a cooperating State, with the post-mortem disposition determined by the authorized veterinarian. The proposed rule would allow the utilization of Federal and State meat inspection personnel for ante-mortem and post-

mortem inspection of reindeer, elk, deer, antelope, water buffalo, and bison.

The triangular brand was designed not only to identify inspected and passed bison and bison meat food products under FSIS's voluntary inspection service, but was also designed to identify meat of other exotic animals approved for inspection at a future date. The triangular brand would be applied to these specific exotic animal carcasses, meat and meat food products inspected and passed by authorized USDA or State employees in an official exotic animal establishment.

For the reasons discussed in the preamble, FSIS is proposing to amend Parts 350 and 352 of the Federal meat inspection regulations as follows:

List of Subjects in 9 CFR Parts 350 and 352

Meat inspection, Voluntary inspection, Exotic animals, Food labeling.

PART 350—SPECIAL SERVICES RELATING TO MEAT AND OTHER PRODUCTS

1. The authority citation for Part 350 continues to read as follows:

Authority: 41 Stat. 241, 7 U.S.C. 394; 60 Stat. 1087, as amended, 7 U.S.C. 1622; 60 Stat. 1090, as amended, 7 U.S.C. 1624; 34 Stat. 1264, as amended, 21 U.S.C. 621; 62 Stat. 334, 21 U.S.C. 695; 7 CFR 2.15(a), 2.92.

§ 350.2 [Removed and reserved]

2. Paragraph (j) of § 350.2 would be removed and reserved.

§ 350.3 [Removed and reserved]

3. Paragraph (d) of § 350.3 would be removed and reserved.

PART 352—EXOTIC ANIMALS; VOLUNTARY INSPECTION

4. The authority citation for Part 352 continues to read as follows:

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

5. The title of Part 352 would be revised to read as above.

6. The table of contents of Part 352 would be revised to read as follows:

Sec.
352.1 Definitions.
352.2 Type of service available.
352.3 Application by official exotic animal establishment for inspection service.
352.4 Application for ante-mortem inspection service in the field.
352.5 Fees and charges.
352.6 Denial or withdrawal of inspection service.
352.7 Marking inspected products.
352.8 Time of inspection in the field and in an official exotic animal establishment.
352.9 Report of inspection work.
352.10 Ante-mortem inspection.
352.11 Post-mortem inspection.
352.12 Disposal of diseased or otherwise adulterated carcasses and parts.
352.13 Handling and disposal of condemned or other inedible exotic animal products at official exotic animal establishments.
352.14 Entry into official establishments; reinspection and preparation of products.
352.15 Records, registration and reports.
352.16 Exports.
352.17 Transportation.
352.18 Cooperation of States in Federal programs.

7. Section 352.1 would be revised to read as follows:

§ 352.1 Definitions.

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

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

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

(c) "Antelope" means any animal belonging to the antelope family.

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

(e) "Bison" means any American bison or catalo or cattalo.

(f) "Buffalo" means any animal belonging to the buffalo family.

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

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

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

(j) "Deer" means any member of the deer family.

(k) "Exotic animal" means any reindeer, elk, deer, antelope, water buffalo or bison.

(l) "Elk" means any American elk.

(m) "Exotic animal inspection service" means the personnel who are engaged in the administration, application, and direction of exotic animal inspection programs and services pursuant to the regulations in this Part.

(n) "Exotic animal producer" means any interested party that engages in the marketing of an exotic animal.

(o) "Field ante-mortem inspection" means the ante-mortem inspection of an exotic animal away from the official exotic animal establishment's premises.

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

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

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

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

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

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

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

(w) "Program" means the Voluntary Exotic Animal Inspection Program of the Food Safety and Inspection Service.

(x) "Reindeer" means any reindeer commonly referred to as caribou.

(y) "Transport vehicle" means any vehicle used to transport an exotic animal.

(z) "Veterinarian" means an authorized veterinarian of the Program employed by the Department or any

cooperating State who is authorized by the Secretary to do work or perform any duty in connection with the Program.

(aa) "Water buffalo" means any Asiatic water buffalo, commonly referred to as carabao; and the water buffalo of India, commonly referred to as the Indian buffalo.

8. Section 352.2 would be revised to read as follows:

§ 352.2 Type of service available.

Upon application, in accordance with § 352.3, § 352.4, and § 352.5, the following type of service may be furnished under the regulations in this Part:

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

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

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

9. Section 352.3 would be revised to read as follows:

§ 352.3 Application by official exotic animal establishment for inspection service

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

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

10. Section 352.4 would be revised to read as follows:

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

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

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

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

(c) All fees involved for the approval of the designated area, including but not limited to any travel, per diem costs, and time required to perform such approval services, shall be paid directly by the applicant to the Regional Director.

11. Section 352.6 would be amended by revising paragraphs (a) and (b) to read as follows:

§ 352.6 Denial or withdrawal of inspection service.

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

(b) *For disciplinary reasons—Basis for denial or withdrawal.* An application or request for service may be denied, or the benefits of the service may be withdrawn from, any person or entity who, or whose officer, employee or agent in the scope of his employment or agency—

(1) Has willfully made any misrepresentation or has committed any other fraudulent or deceptive practice in connection with any application or request for service under this Part;

(2) Has given or attempted to give, as a loan or for any other purpose, any money, favor or other thing of value, to any employee or agent of the Department or a cooperating State authorized to perform any function under this Part;

(3) Has interfered with or obstructed, or attempted to interfere with or to obstruct, any employee or agent of the Department or cooperating State in the performance of his or her duties under this Part by intimidation, threats, assaults, abuse, or any other improper means;

(4) Has knowingly represented that any exotic animal carcass, or exotic animal product has been officially inspected and passed by an authorized inspector under this Part, when it had not, in fact, been so inspected;

(5) Has been convicted of more than one misdemeanor under any law based upon the acquiring, handling, or distributing of adulterated, mislabeled, or deceptively packaged food, or fraud in connection with transactions in food, or any felony.

Provided, an application or a request for service made in the name of a person or entity otherwise eligible for service under the regulations may be denied, or the benefits of the service may be withdrawn, from such a person or entity

in case the service is or would be performed at a location operated by a person or entity, from whom the benefits of the service are currently being denied or have been withdrawn under this Part; or by a person, firm or corporation having an officer, director, partner, manager or substantial investor from whom the benefits of service under this Part who has any authority with respect to the location where service is or respect to any exotic animal or exotic animal product in which any person or entity, from whom the benefits of service are currently being denied or have been withdrawn under this Part, has contract or other financial interest.

* * * * *

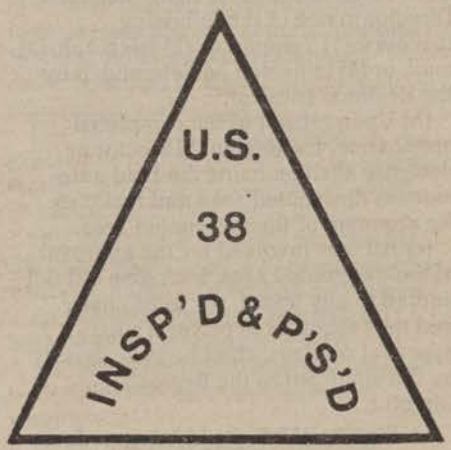
12. Section 352.7 would be amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 352.7 Marking inspected products.

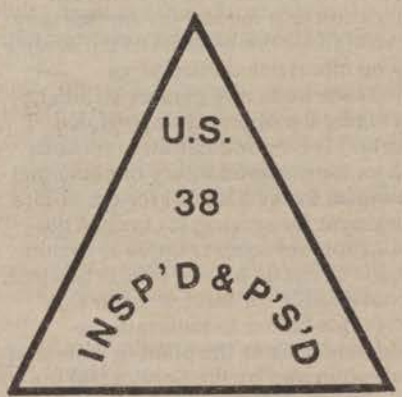
Wording and form of inspection mark. Except as otherwise authorized by the Administrator, the inspection mark applied to inspected and passed exotic animal carcasses, meat or meat food products under this Part shall include wording as follows: "Inspected and Passed by U.S. Department of Agriculture."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

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

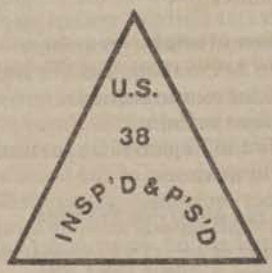
(1) For application to exotic animal carcasses, primal parts and cuts therefrom, exotic animal livers, exotic animal tongues, and exotic animal hearts.



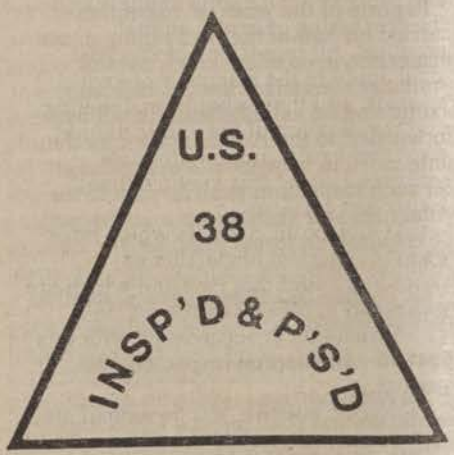
(2) For application to exotic animal calf carcasses.



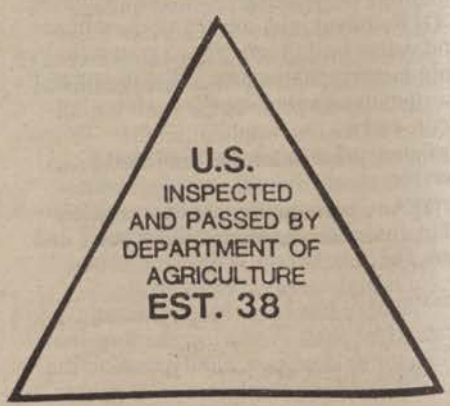
(3) For application to exotic animal tails.



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



(b) The official inspection mark to be shown on all labels.[1] (1) For inspected and passed products of an exotic animal shall be in the following form, except that it need not be of the size illustrated, provided that it is a sufficient size and of such color as to be conspicuously displayed and readily legible and the same proportions of letter size and boldness are maintained as illustrated:



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

* * * * *

13. Section 352.8 would be revised to read as follows:

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

The official exotic animal establishment on behalf of the applicant shall notify the Regional Director or designee, in advance, of the hours when such inspection is desired. Inspection personnel shall have access at all times to every part of any field ante-mortem inspection area and/or official exotic animal establishment to which they are assigned.

14. Section 352.9 would be revised to read as follows:

§ 352.9 Report of inspection work.

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

15. Section 352.10 would be revised to read as follows:

§ 352.10 Ante-mortem inspection.

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

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

(1) Reindeer, elk, deer, antelope, bison and water buffalo are eligible for field ante-mortem inspection. The field ante-mortem designated area must be approved by the Regional Director or designee prior to rendition of the service.

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

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

(ii) A field ante-mortem designated area.

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

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

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

(4) An exotic animal that, in the ante-mortem inspector's opinion, will not pass ante-mortem inspection must be withheld from slaughter.

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

(6) All stunned/slaughtered and bled exotic animals shall be tagged with a "U.S. Suspect" tag in an ear by the ante-mortem inspector or designee prior to loading on the transport vehicle.

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

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

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

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

(1) Reindeer, elk, deer, antelope, bison, and water buffalo are eligible for transport vehicle inspection.

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

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

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

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

16. Section 352.11 would be revised to read as follows:

§ 352.11 Post-mortem inspection.

(a) Post-mortem inspection of reindeer, elk, deer, antelope, bison and water buffalo shall be conducted in accordance with the provisions contained in 9 CFR Part 310 or as determined by the Administrator.

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

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

17. The heading of § 352.13 would be revised to read as follows:

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

Done at Washington, DC, on February 18, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-3766 Filed 2-23-88; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

Rules of Practice and Procedures

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is publishing for comment a revised version of 12 CFR Part 308—*Rules of Practice and Procedures*—which governs the conduct of administrative proceedings before the FDIC. The proposed changes include a reorganization of existing sections of Part 308, revisions of some sections that existed previously, and the addition of new sections. Provisions that the FDIC proposes to add or significantly revise concern the following general topics: authority of the FDIC Board of Directors ("Board") and the Executive Secretary, selection and authority of administrative law judges, appearance before the FDIC, good faith certification, pleadings, intervention, consolidation and severance of actions, scope of and time limits for discovery, motions, prehearing preparations and submissions, conduct and timing of hearings, evidence, use of written testimony, stays of administrative orders pending appeals, collateral attacks on administrative proceedings, conflicts of interest, sanctions, suspension and disbarment, ex parte communications, and miscellaneous provisions including ones concerning the maintenance of the administrative record, filing and service of papers, construction of time limits, and transition rules. Additionally, sections that are neither new nor substantially revised often contain some language changes in order to enhance clarity. The purpose of the provisions proposed herein is to secure a just and orderly determination of administrative proceedings before the FDIC.

DATES: Comments should be received on or before April 25, 1988.

ADDRESSES: Comments should be sent to Office of the Executive Secretary, 6th Floor, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, Attention: Margaret M. Olsen, Deputy Executive Secretary. Comments will be available for inspection and photocopying at that address.

FOR FURTHER INFORMATION CONTACT: John V. Thomas, Senior Attorney, Open Bank and Corporate Litigation Section, telephone 202/898-7275, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429; or Christine C. A. Tullio, Senior Regional Attorney, Regional and Corporate Affairs Branch, telephone 312/207-0495, Federal Deposit Insurance Corporation, 30 South Wacker Drive, Suite 3300, Chicago, Illinois 60606.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking revises 12 CFR Part 308—*Rules of Practice and Procedures* ("Part 308")—which governs the FDIC's administrative proceedings. Subpart A—Definitions and General Provisions—applies to formal and certain informal administrative proceedings. Subpart B—*Rules of Practice*—applies to formal administrative proceedings. Subparts C through M provide rules applicable only to cases involving the indicated, specific statutory provisions.

I. General Propose of the Revisions

Existing Part 308 was largely written in the late 1970s. At that time the FDIC brought relatively few administrative enforcement actions, and the cases that were brought were almost invariably settled. In the intervening years the number of FDIC administrative enforcement proceedings has increased dramatically, and the FDIC now tries numerous proceedings each year. This increased experience has persuaded us that existing Part 308 is inadequate to deal with the volume and nature of current FDIC administrative enforcement proceedings.

The most substantive of the proposed revisions flow from one, or more, of the following problems. First, a disproportionate number of cases take far longer than they should to come to hearing. Second, pre-hearing practices and rulings vary widely among administrative law judges handling FDIC proceedings. And third, many Respondents and/or Respondents' counsel do not consistently abide by orders of the administrative law judges and/or the provisions of Part 308.

To alleviate these problems, revised Part 308, principally subpart B, spells out in considerable detail what each party may and must do to prepare a proceeding for hearing, and when those acts must be done. These provisions should move cases forward to a relatively early hearing (generally 90 to 120 days after the proceeding is commenced); eliminate the need to go to the administrative law judge on a number of issues that are not resolved in existing Part 308; give considerable guidance to administrative law judges hearing the issues that still require litigation; and reduce the ambiguities and gaps that are often used as excuses for failures to comply with orders and regulations. Failures to comply should be further reduced by the introduction of a good faith pleading requirement and the availability of sanctions and, in extreme cases, suspension or disbarment from practicing before the FDIC.

The bulk of the substantive revisions are found in subpart B, which has been largely rewritten. Subparts A and K also contain considerable substantive revisions. The changes in other subparts are largely, but not exclusively, made to conform those subparts to the general provisions of subpart B or to resolve ambiguities in the existing language.

Summarized and discussed below, on a section-by-section basis, are the most important revisions of Part 308. Given the extent of the revisions, little purpose would be served by pointing out in the text that the language in almost every important provision in Subparts A, B, and K is either new to Part 308 or revises the existing language.

Finally, we note that while several of the concepts, and most of the language, in revised Part 308 is new to the part, those concepts, and much of the language, are not unique to revised Part 308. Rather, most have their origins in the Federal Rules of Civil Procedure, other agencies' regulations, and, to a lesser degree, in standing pretrial orders and practices of various United States district court judges and administrative law judges and in the Federal Rules of Evidence.

II. Section-by-Section Summary and Discussion

A. Subpart A—Definitions And General Provisions (§§ 308.01–308.03)

Section 308.01, "Definitions," leaves unchanged the terms "FDIC," "foreign bank," "insured bank," "insured branch," and "official." Some definitions which applied to only discrete portions of Part 308 were either broadened to apply to all of Part 308 or were moved to the subpart to which the definition was applicable. An example of the former is the term "person;" an example of the latter is "ex parte communication."

Several definitions were deleted because changes in the regulation made them unnecessary. More specifically, changes in Subpart K eliminate the need to define "presiding officer" and "proceeding pursuant to section 10(c)." The terms "bank" and "officer" have been deleted because there seemed no reason to define them in light of the other definitions. Finally, definitions which are completely new or have been changed are the terms "Act," "Board's

designee" (which is broken out from the term "Board of Directors"), "Executive Secretary" (which is expanded to include his or her designee), the term "Notice" (which is defined to include the entire document issued by the Board of Directors or its designee to commence an administrative proceeding), and the term "Respondent" (which is defined for the first time in the proposed regulation).

Section 308.02, "Rules of Construction," has been expanded to make clear that any use of masculine, feminine, or neuter genders should be read as encompassing all three. Further, because subpart B of Part 308 allows for non-attorney representation under certain circumstances, the Rules of Construction have been expanded to clarify that any use of the term "attorney" or "counsel" shall be read to include non-attorney representatives. And, the rules of construction explicitly state that any action required to be taken by a party to a proceeding may be taken by that party's attorney or non-attorney representative.

Section 308.03, "Transition Rules," is written to avoid confusion concerning when to apply existing Part 308 and when to apply revised Part 308. However, because revised Part 308 provides resolutions to many questions which are not specifically addressed in existing Part 308, § 308.03 suggests that revised Part 308 may under appropriate circumstances be used for guidance in cases governed by existing Part 308.

B. Subpart B—Rules of Practice (§§ 308.04–308.50)

1. General Provisions (§§ 308.04–308.19)

As set forth in § 308.04, "Scope," the rules of practice set forth in subpart B are to be followed in hearings on the record pursuant to the provisions of the Federal Deposit Insurance Act, unless otherwise specified in subparts C through L. Paragraphs (a) through (g) of § 308.04 list specific provisions of the Federal Deposit Insurance Act, and other applicable law, to which subpart B pertains.

Section 308.05, "Authority of Board and Executive Secretary," makes explicit that the Board may perform, direct performance of, or waive performance of any act which could otherwise be done or ordered by the Executive Secretary or an administrative law judge. Additionally, the section spells out that the Executive Secretary may act with the same authority as an administrative law judge when no judge has been given jurisdiction over a proceeding. The exception to this provision is that the Executive Secretary may not hear a case on its merits or make a recommended decision to the Board. At the same time, § 308.21(d) makes clear that a default order may be entered by the Executive Secretary.

In accordance with § 308.06, "Appointment of Administrative Law Judges," a hearing which falls under the scope of subpart B will be held before an administrative law judge appointed by the United States Office of Personnel Management. The Executive Secretary shall make the request for an administrative law judge to the United States Office of Personnel Management, and shall advise the parties in writing that a judge has been appointed.

Section 308.07, "Powers of Administrative Law Judges," corresponds to § 308.07(b) of existing Part 308. Section 308.07(b) of the new regulation spells out that the administrative law judge obtains jurisdiction over a proceeding upon appointment and retains that jurisdiction until a recommended decision is rendered, assuming the administrative law judge has not resigned or been removed. If a matter is remanded by the Board, the administrative law judge regains jurisdiction over the proceeding.

Section 308.07(b)(7) of the amended regulation clarifies § 308.08(b)(9) of the existing regulation by stating that the administrative law judge has the power to deny dispositive motions such as motions for summary judgment and motions to dismiss, but may only recommend to the Board a decision granting a dispositive motion.

Section 308.08, "Appearance Before the FDIC," has undergone several changes from the previous provision at § 308.04. First, any appearance by an attorney, or a duly authorized official of a corporation, government unit, or partnership is subject to the conditions § 308.47, "Conflict of Interest," and the limitations of § 308.50, "Suspension and Disbarment." Section 308.08(c) also allows for representation of non-parties and provides that a non-party may be represented by any person qualified to represent a part before the FDIC.

The concept presented in § 308.09, "Short and Plain Statement Required," is reduced to writing for the first time in Part 308. As the title suggests, any presentation of record must contain a short and plain statement of the claim or position being advanced, the factual and legal basis for the position, the relief requested, and the basis for granting such relief.

Rule 11 of the Federal Rules of Civil Procedure is the basis for § 308.10, "Good Faith Certification." The general requirement of § 308.10(a) is that every written presentation made by a party after the issuance of the Notice must be signed by that party or his or her attorney, as set out in § 308.10(b). A signature on a post-Notice written presentation constitutes a certification that the attorney or party has read the written presentation, that the presentation is well-grounded in fact and is warranted by existing law or a good faith argument for extending or modifying existing law, and is not interposed for any improper purpose to the best of that attorney's or party's knowledge, information, and belief formed after reasonable inquiry. Failure to sign a written presentation results in it being stricken from the record unless it is signed promptly after the signature omission is called to the attention of the attorney or party. Paragraph (c) of section 308.10 provides that the making of an oral motion or argument constitutes the same certification as the signing of a written presentation. Finally, § 308.10(d) notes the authority to impose sanctions authorized in §§ 308.49 and 308.50 upon the attorney, the represented party, or both for violation of the good faith certification requirements.

Housekeeping matters concerning maintenance of the record and filing of papers are covered in §§ 308.11 and 308.12, respectively. Section 308.11, "Maintenance of the Record," states that the Executive Secretary shall maintain the official record for all proceeddings until such time as an administrative law judge is appointed. Section 308.12, "Filing Papers," provides that the original and one copy of all papers required to be filed under subpart B shall be filed with the Executive Secretary. Certain exceptions apply, including pre-marked proposed exhibits, transcripts, and hearing exhibits which must be filed with the administrative law judge and need not be filed by the parties with the Executive Secretary.

Section 308.13, "Service of Papers," provides that the Executive Secretary, or such other person as the Board's designee may cause to make service, shall serve all papers required to be served by the Board or its designee. Any papers filed in accordance with subpart B shall be served upon the attorneys of record for all represented parties to the proceeding and upon all unrepresented parties. Service by the Executive Secretary, a person assigned by the Board's designee, or a party to the proceeding is to be accomplished in the manner set forth in § 308.13(a). Service of subpoenas may be accomplished in any manner set out in § 308.13(c).

Section 308.14, "Construction of Time Limits," sets forth the general rule in computing time periods prescribed in Subpart B. The date of the act or event of the default from which the time period begins to run is not to be included in the computation, but the last day is to be included. If the last day falls on a Saturday, Sunday, or Federal holiday, the last day of the designated time period becomes the next day that is not a Saturday, Sunday, or federal holiday. Intervening Saturdays, Sundays, and Federal holidays are not included in the computation of the designated period if the time period involved is ten days or less.

Because Subpart B is intended to bring cases to a hearing on an orderly and prompt basis, the schedules mandated by Subpart B, particularly the prehearing schedules, are compressed. With these concerns in mind, §308.14(b) provides that when papers are to be served or filed by a fixed or determinable date, all parties and the administrative law judge shall be served by that date. To accomplish timely service, the serving party must make personal service on or before the due date; deliver the papers to a reliable commercial service or to the U.S. Post Office for Express Mail delivery sufficiently in advance of the due date so that the papers are scheduled to be delivered not later than the due date; or mail by first class, registered, or certified mail. If the serving party chooses to use first class, registered, or certified mail, the papers must be mailed not less than three calendar days before the due date.

Section 308.15, "Time Limits," provides that the administrative law judge, for good cause shown, may fix or change the time when an action shall be taken and fix or change the place for a hearing to commence or continue. Extensions of time normally require a decision by the administrative law judge that there is good cause for the extension. However, a finding of good cause need not be made where the parties agree to certain extensions of not more than five days.

Section 308.15(c) sets forth the course of action to be followed when a bilateral settlement agreement has been agreed to by a Respondent and FDIC enforcement counsel, but is awaiting a final decision by the FCIC. In such instances, at the request of either signing party, the proceedings are to be stayed as to any settling Respondent pending a final FDIC decision on whether to accept the settlement. A bilateral settlement agreement between a Respondent and the FDIC shall not be a basis for delaying the proceeding as to any non-settling Respondent, unless such other Respondent and the FDIC agree to a delay, and the delay is approved by the administrative law judge. Should the FDIC determine to reject a bilateral settlement proposal, the proceeding shall resume at the point it had reached when it was interrupted due to the settlement proposal.

Section 308.16, "Witness Fees and Expenses," provides that subpoenaed witnesses shall be paid the same fees as are paid in the United States district courts, with the exception of parties subpoenaed under discovery subpoenas pursuant to § 308.27. Such parties are not entitled to receive fees. Section 308.16 also makes clear that the FDIC shall not be required to pay any fees or expenses of a witness it does not subpoena.

Unilateral settlement offers to the Board are covered by § 308.17. Any Respondent may, at any time, without prejudice to the rights of any party, submit a unilateral settlement proposal to the Executive Secretary for consideration by the Board or its designee. However, such a submission does not provide a basis for adjourning or delaying any portion of a proceeding, nor is it admissible into evidence over the objection of any party.

Section 308.18 addresses confidentiality issues that arise in proceedings under subpart B. Hearings under Subpart B will ordinarily be private unless the Board or its designee determines, after considering the views of the Respondent, that a public hearing is necessary to protect the public interest. No Respondent shall disclose or use any information which is not publicly available and which was obtained through discovery or at a hearing for any purpose other than litigation of the proceeding, including any appeal of the proceeding. If an FDIC proceeding or other order has been appealed to, or otherwise brought before, any court of the United States, § 308.18 is not to be read as limiting public access to any record, papers filed, or evidence presented in the court proceeding. Finally, § 308.19 spells out that nothing contained in subpart B shall be construed to limit the right of the FDIC to conduct examinations or visitations of any insured bank, or the right of the FDIC to conduct any form of investigation authorized by law.

2. Pleadings and Parties (§§ 308.20–308.24)

A meaningful discussion of the pleadings and parties section of subpart B is most easily accomplished by beginning with a brief discussion of § 308.34, "Hearings." The overall structure of this portion of subpart B is premised on hearings commencing approximately 90 days after the Respondent's receipt of the Notice. This period may be extended for up to 30 days upon a finding by the administrative law judge that there is good cause for a continuance. A hearing is not to be continued to a date more than 120 days after receipt of the Notice unless one of five findings is made on the record. *See* § 308.34(a)(1)(i)-(v). The general 90-day rule is not applicable to hearings held under 12 U.S.C. 1818(b) and 1818(e) if any party objects to continuing the hearing beyond the 60-day period provided in those sections, unless the administrative law judge makes a determination that holding a hearing within 60 days is impractical, would materially and unfairly prejudice one or more parties, or otherwise would be unjust. Because the FDIC has found that scheduling a formal hearing within 60 days after the proceeding is commenced tends to result in numerous practical problems, § 308.34(a)(2) allows the parties to an action under 12 U.S.C. 1818(b) or 1818(e) to extend the 60-day period to the general 90 to 120 day schedule without seeking approval from the administrative law judge.

For purposes of illustration, we assume in the following discussion that the hearing will be held 90 days after service of the Notice.[1]

Section 308.20, "The Notice," provides that the 90-day time period begins running when the Notice is served. As provided in § 308.01(j), the Notice includes the entire document issued by the Board of Directors or its designee and served upon the party, which initiates the proceeding conducted under Part 308. In addition to giving notice of the basic facts and law upon which action is proposed to be taken, the Notice is to include a prayer for relief and/or a proposed order.

The Notice, among other things, advises the Respondent that an answer must be filed within 20 days after service of the Notice as required by § 308.21. In actions involving civil money penalties under 12 U.S.C. 1818(i) and 1828(j), and in a denial of a change in bank control under 12 U.S.C. 1817(j)(4), the Notice advises the Respondent that a request for a hearing must also be filed. The extension of time from 10 to 20 days for filing a request for a hearing in actions under 12 U.S.C.

[1] If the hearing is scheduled to be held within 60 days after service of the Notice, all time periods beginning with the pre-trial exchange of proposals and drafts are reduced by 30 days.

1818(i) and 1828(j) was made in order to reduce confusion that has arisen because of the difference in when the request for a hearing, and the answer, are now due in such cases.

In addition to setting forth the time period in which to file an answer (paragraph (a)) and the requirements of the answer (paragraph (b)), § 308.21, "Answer," sets forth the effect of admitting allegations (paragraph (c)). When the respondent's answer admits the allegations of fact, the first portion of paragraph (c) limits any hearing to the issue of relief. The second portion of paragraph (c) provides that where the Respondent's answer admits the allegations of fact and does not contest the relief requested, the administrative law judge is to certify the record to the Executive Secretary who shall have authority to enter an order granting the relief sought by the Notice.

Section 308.21(d) provides that failure of a Respondent to file an answer within 20 days of receipt of the Notice is deemed to be a waiver of the right to appear and a consent to the entry of an order granting the relief south by the Notice. Section 308.20 provides that a Notice of Disapproval of a change in bank control under section 7(j) of the Act, as well as a Notice of Assessment of Civil Money Penalties under sections 8(i) and 18(j) of the Act, requires that both a request for a hearing and an answer be filed. Unless both a request for a hearing and an answer are filed, said Notices automatically become final and unappealable, pursuant to §§ 308.21(d)(1). In all other proceedings governed by subpart B, the Executive Secretary, upon the written request of FDIC enforcement counsel, may enter a default order when a Respondent has failed to timely file an answer.

Occasionally it is necessary for a Notice or answer to be amended or supplemented. Section 308.22(a), "Amended Pleadings," allows for the Notice or answer to be amended or supplemented upon good cause shown, and by leave of the administrative law judge. In the case of an amended Notice, the Respondent must answer in the time remaining for Respondent's answer to the original Notice or within 10 days after service of the amended Notice, whichever is later.

As provided in § 308.22(b), "Amendments to Conform to the Evidence," amendments to the Notice and answer are not required when issues not raised by the Notice or answer are tried by express or implied consent of the parties. If, at the hearing, evidence is objected to on the ground that it is not within the issues raised by the Notice or answer, the administrative law judge has the dircretion to allow the Notice or answer to be amended when the presentation of the merits of the case will be served and the administrative law judge is convinced that the admission of such evidence would not unfairly prejudice the objecting party's action or defense. The administrative law judge may grant a continuance, if justice requires, to enable the objecting party to meet such evidence.

Section 308.23, "Intervention; Persons Having Official Interest," gives the administrative law judge discretion to allow a person to intervene for limited or all purposes. Section 308.23(a) sets forth a three-pronged test that must be met before a person may be allowed to intervene. An intervenor is not allowed to appear through any attorney or law firm representing any Respondent in the action.

Section 308.23(b) acknowledges that a person may have an official interest in a proceeding without the necessity of becoming an intervenor. Examples of persons who may have an official interest are the bank, when not a Respondent or intervenor, other federal banking regulators, appropriate state banking agencies, and other interested governmental agencies. Persons having an official interest may, at the discretion of the administrative law judge, attend the hearing, be served with papers, and submit amicus curiae briefs within the same time periods as the parties.

Section 308.24, "Consolidation and Severance of Actions," addresses circumstances that arise both when more than one action is taken against a Respondent (paragraph (a)(1)) and when similar actions are brought against several Respondents (paragraph (a)(2)). In such situations, consolidation generally should take place unless it would cause unreasonable delay or injustice.

Section 308.24(b) provides that a proceeding involving two or more Respondents may be served on the motion of any party or on the administrative law judge's own motion. Severance may be appropriate if the proceeding against one or more Respondents is being stayed, if severance would promote the prompt resolution of the proceeding, or if severance is otherwise required to prevent injustice.

3. Discovery (§§ 308.25–308.29)

Section 308.25 provides for limited discovery. Paragraph (a) states that discovery may be obtained only through production of documents, and through no other means. Relevant documents may be obtained in discovery, as well as documents that may be inadmissible at the hearing but which appear reasonably calculated to lead to the discovery of admissible evidence. *See* § 308.25(b). However, as provided in § 308.25(c), privileged documents are not discoverable.

Section 308.26, "Time Limits for Discovery," provides that all initial requests for discovery must be made within 30 days after the Respondent receives the Notice. An exception to the 30-day period is made in § 308.26(a)(2) for "follow up" discovery requests; that is, if a discovery request is based upon or otherwise follows up on an earlier discovery response, a follow up request may be served within ten days after service of the response upon which it is based. If an extension is granted to permit a Respondent to file a late answer, FDIC enforcement counsel are given ten days following the late answer to serve discovery requests on that party. The time to file discovery requests is similarly extended until ten days after the answer is filed if the FDIC amends the Notice and an answer is required.

The procedure to be used for document discovery from parties is described in § 308.27. It is basically a "notice" procedure similar to that used under the Federal Rules of Civil Procedure. It is a departure from the procedure found in the present regulations which requires a party seeking documents from another party to file with the administrative law judge an application for a subpoena. Under § 308.27 of the proposed regulations, any party may serve on any other party a request to produce documents.

Unless the parties agree to other arrangements, the party to whom a document request is made shall bear the cost of copying documents if they are asked to copy no more than 250 pages. If more than 250 pages of copying is requested, the cost of copying (at $.20 per page) and shipping shall be borne by the requesting party. *See* § 308.27(b). Certain updating of responses to discovery requests is required by § 308.27(c).

Section 308.27(d) sets forth procedures to be followed when the party upon whom a document request is served objects to any portion, or all, of the document request. Section 308.27(d)(4) provides that a general objection to all or virtually all of a document request shall, unless there is substantial justification for such a general objection, be stricken. Paragraph (f) sets forth the procedure and timetable to be followed in discovery disputes, including moving for an order or subpoena requiring production. Paragraph (g) provides for

discovery conferences to resolve discovery disputes. Finally, § 308.27(i) reiterates the authority of an appropriate United States district court, pursuant to 12 U.S.C. 1818(n), to issue an order requiring compliance with a subpoena issued by an administrative law judge.

Obtaining documents from a non-party continues to require a document subpoena. Section 308.28 provides for the issuance of a third-party document subpoena by the administrative law judge, upon receipt of an application containing a brief statement of the reasons for its issuance. This procedure is similar to that outlined in section 308.08 of the present regulations. If compliance with a subpoena is ordered by the administrative law judge, but refused, the subpoenaing party may apply to the appropriate United States district court for an order compelling compliance.

Section 308.29, "Depositions of Witnesses Unavailable for Hearing," states that the administrative law judge may issue a subpoena requiring the attendance of a witness at a deposition only upon a showing by the requesting party that the witness will be unavailable for the hearing, that the witness's unavailability was not caused by the subpoenaing party, that the witness's testimony will be material, and that taking the deposition will not result in an undue burden or delay. In the event of noncompliance, the subpoenaing party or other aggrieved party may apply to an appropriate United States district court for an order requiring compliance.

4. Motions (§§ 308.30–308.31)

Section 308.30 applies to all motions except discovery motions. Unless made during a pre-trial conference or a hearing, applications for orders must be written motion, and must be accompanied by a statement of the relief or order sought. A period of 10 days is allowed for filing a written response, including a proposed order. If a written response to a motion is filed and it raises new issues or arguments, the moving party has 5 days in which to reply, with such reply limited to the new issues or arguments raised in the response.

Section 308.30(d) requires that a good faith attempt to resolve disputes must be made before a motion may be filed under this section. Counsel for the moving party (or the moving party, if not represented by cousel) must certify that he or she has met in person or by telephone with opposing counsel in an effort to resolve the dispute (or that opposing counsel refused to discuss the matter) before a motion may be filed. However, this good faith requirement does not apply to motions that would substantially dispose of the case, such as motions for summary judgment or motions to dismiss.

The ruling of an adminstrative law judge on a motion may not be appealed to the Board prior to the Board's consideration of the administrative law judge's recommended decision on the entire case, unless the Board grants special permission to appeal, pursuant to § 308.31, "Interlocutory Appeals to the Board." In addition to setting forth the procedure to be followed in an interlocutory appeal, § 308.31(c) makes clear that such an appeal shall not stay the proceedings before the administrative law judge. However, the administrative law judge or the Board may grant a stay upon a showing that the aggrieved party has a substantial likelihood of success on the merits and that hardship or injustice will result if a stay is not granted.

5. Prehearing Procedures and Conferences (§§ 308.32–308–33)

"Prehearing Procedures and Conferences," including section 308.32, "General Procedures," and § 308.33, "Prehearing Submissions and Conference," are intended to: provide continuous control over an action so that the action will not become protracted, discourage wasteful pretrial activities, result in orderly and expeditious preparation of a case for a hearing, avoid unnecessarily lengthy hearings, and assure that a party who complies with the requirements of subpart B and with the orders of the administrative law judge will not be unfairly prejudiced by the failure of any other party to comply with such regulations and orders.

The hearing date establishes the timeframe for making prehearing submissions and taking other prehearing actions as required or allowed by § 308.33. The date of the hearing will ordinarily be 90 days after receipt of the Notice, except in proceedings under 12 U.S.C. 1818(b) and 1818(e) where the 60-day period has not been waived or extended pursuant to § 308.34(a)(2).

Section 308.33 governs prehearing submissions and conferences. Section (b) provides that not less than twenty-five days before the hearing date, each party shall serve on every other party a proposed statement of the issues, proposed stipulations, proposed trial exhibits, and a proposed witness list, including a short summary of the expected testimony of each witness. Counsel for all parties and any unrepresented parties shall then meet and attempt to agree upon a joint statement of the issues, stipulations, and admissibility of proposed trial exhibits (or a stipulation that proposed trial exhibits are authentic). This meeting must be held sufficiently in advance of the fifteenth day before the hearing so that on the fifteenth day before the hearing the parties can file with the administrative law judge a joint statement of the issues for hearing and stipulations. If a single statement of the issues cannot be agreed upon, each party shall file its own statement of issues. Further, on the fifteenth day before the hearing, each party shall file its pre-marked trial exhibits, together with any stipulations concerning their admissibility or authenticity, and that party's witness list. Pre-hearing briefs may also be filed by any party on the fifteenth day before the hearing is to begin.

Section 308.33(e) expressly authorizes a final prehearing conference to be held close to the time of the hearing. If a conference is called in accordance with § 308.33(e), such conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties. By dictation on the record at the conference, or by written memorandum or order within a reasonable time following the conclusion of the conference, the administrative law judge shall set forth the agreements reached and determinations made at the pre-hearing conference.

Section 308.33(f) sets forth limitations on any party who fails to exchange proposed exhibits or a witness list as required by section (b) or fails to file exhibits or a witness list as required by section (c). Such parties forfeit their right to introduce any exhibits and/or call any witness at the hearing during their case-in-chief. Failure to timely file a pre-hearing brief operates as a waiver of the right to file such a brief.

Should any party fail to exchange or file documents required under sections (b) or (c), namely, exchanging and/or filing a proposed statement of the issues, proposed stipulations, proposed trial exhibits, and proposed witness lists, the administrative law judge or any other party may require that such party state in writing, within five days of receipt of the request, whether that party will appear at the hearing and litigate the case on the merits. Failure of the party to respond by filing a timely and express written statement that the party will appear at the hearing and litigate on the merits shall be deemed a waiver of that party's right to a hearing, and a default order may be entered by the Executive

Secretary. Finally, if any party fails to comply fully and in good faith with the requirements of section 308.33, the administrative law judge, on the motion of any party or on his or her own motion, may impose appropriate sanctions authorized in section 308.49, in addition to enforcing the specific limitations set forth in section 308.33.

6. Hearings (§§ 308.34–308.38)

As discussed above, § 308.34 sets out the time period for commencement of hearings under this part. Generally, hearings are to be commenced 90 days after service of the Notice. This time period may be extended if the administrative law judge makes a finding, on the record, that good cause is shown for continuing the matter. No hearing is to be continued to a date more than 120 days after service of the Notice except upon a finding, on the record, of impracticality, or a need to provide time to obtain a final decision by the Board or its designee on whether to accept an agreed settlement offer (*see* § 308.15), a need to stay the proceeding pending a final Board decision on an interlocutory appeal (*see* § 308.31), that the ends of justice require a continuance, or that a delay to a date not more than 135 days after service of the Notice will resolve or alleviate a scheduling, or similar, problem.

Actions under 12 U.S.C. 1818(b) and 1818(e) may not be continued beyond 60 days after service of the Notice over the objection of any party, unless the administrative law judge makes a finding on the record that commencing a hearing within this time period is impractical, would materially and unfairly prejudice one or more parties, or would otherwise be unjust.

A party's failure to appear at a hearing personally or by an authorized representative is deemed a waiver of the right to appear and results in the entry of an order of default, as provided in § 308.21.

Section 308.35, "Hearing Subpoenas," provides that a party who intends to call a person as a witness may apply to the administrative law judge for a hearing subpoena requiring the witness to appear at the hearing. Objections may be made to the hearing subpoena either by the person named therein or by any party. A hearing subpoena duces tecum addressed to a party shall not be issued by the administrative law judge unless he or she finds that either the subpoenaing party could not have reasonably anticipated the need for the subpoenaed documents during the discovery period (see § 308.26) or the subpoenaed documents were requested previously be document request, and the relevant portion of the document request was not quashed by the administrative law judge. The party obtaining the hearing subpoena is responsible for serving it on the witness.

Section 308.36, "Conduct of Hearings," authorizes the administrative law judge to exercise control over the hearing. As is true in the present regulations, § 308.36 provides the general rule that FDIC enforcement counsel shall present their case-in-chief first. Additionally, at the beginning of the hearing, unless otherwise ordered by the administrative law judge, all stipulations of fact and law filed 15 days prior to the commencement of the hearing shall automatically be admitted into evidence. Documents, the admissibility of which has been previously stipulated to, shall also be automatically admitted into evidence.

Section 308.36(c) is based on Rule 611 of the Federal Rules of Evidence. Like Rule 611, this section limits cross-examination under most circumstances to the subject matter of that witness's direct examination and matters pertaining to the credibility of the witness. The administrative law judge may use his or her discretion to permit cross-examination into additional matters, but only under limited circumstances.

Rebuttal evidence may be presented in accordance with § 308.36(d), but shall be limited to material new issues or to new evidence concerning material disputes. The parties' presentation of rebuttal evidence shall be in the same order as their presentation of their cases-in-chief.

Section 308.37, "Written Testimony in Lieu of Oral Hearing," expressly authorizes hearings in which most, or all, of the direct testimony is present in written form. Section (a) parovides that absent objection by a party, the administrative law judge may order that the parties present their cases-in-chief and rebuttal in the form of exhibits and written statements sworn to by the witness offering the evidence. Any such order shall also allow any party to call hostile witnesses or adverse parties to testify orally and shall give all parties a right of oral cross-examination.

Paragraph (c) of § 308.37 sets forth the limitations to be applied if a party fails to file written testimony. A failure to file written testimony is deemed to be a waiver of that party's right to present any evidence, except the testimony of a previously identified adverse party or hostile witness. A party's right of cross-examination or right to present rebuttal evidence (if not required to be submitted in written form) is not waived by that party's failure to file written testimony.

Section 308.38, "Evidence," provides that non-repetitive evidence is admissible in accordance with the Administrative Procedure Act and other applicable laws. Further, any evidence that would be admissible in a United States district court under the Federal Rules of Evidence is admissible in a proceeding under Subpart B.

Generally, to be admissible, evidence must concern acts occurring prior to issuance of the Notice, except that in actions to terminate FDIC insurance under 12 U.S.C. 1818(a), evidence through the date of the hearing is admissible. In addition, prior to the commencement of the hearing, and upon a finding that the admission of evidence generally excluded by this section is necessary to avoid injustice, the administrative law judge may determine to admit post-Notice evidence. Any motion to set a cut-off time for evidence different from that provided in this section must be made by the date for filing or prehearing statements of issues.

The rules of privilege applicable to discovery (*see* § 308.25) are applicable to hearings. Consistent with those rules, evidence which a party had previously withheld from discovery under a claim of privilege can be received at the hearing only upon a finding by the administrative law judge that the exclusion of such evidence would result in manifest injustice. The admission of such evidence may be conditioned on terms that the administrative law judge deems are just to all parties.

Section 308.38(c) allows the administrative law judge to take official notice of any material fact which might be judicially noticed by a United States district court and any material information in the official public records of the FDIC. Upon timely request, the parties are afforded an opportunity to dispute any fact officially noticed or requested to be noticed under this seciton.

Section 308.38(d) provides: (1) That a duplicate copy of a document is admissible to the same extent as the original, unless there is a genuine issue as to whether the copy, in some material respect, is not a true and legible copy of the original; (2) that FDIC examination and visitation reports are admissible with or without a sponsoring witness; and (3) that witnesses may use illustrative or summary charts, exhibits, calendars, calculations, or outlines during their testimony, with the administrative law judge having discretion concerning the admission of such documents into evidence.

Under § 308.38(e), if a witness who has been deposed under § 308.29 is

unavailable to testify at the hearing, all or part of that witness's deposition transcript, including exhibits, may be introduced into evidence. Generally, the deposition transcript is admissible to the same extent that the testimony would have been. If a witness refused to answer proper questions during the deposition, the administrative law judge may limit the admissibility of the deposition as justice requires. Only those portions of a deposition received in evidence at the hearing shall constitute a part of the record.

Section 308.38(f) requires that objections to evidence be made timely and state the grounds relied upon. Debate concerning an objection is to be included in the transcript unless the administrative law judge, with the consent of the parties, orders otherwise, and rulings on objections are to be made on the record. Finally, failure to object is deemed a waiver of objection.

Section 308.38(f)(2) provides that when an objection to a question or a line of questioning is sustained, the examining attorney may make a proffer on the record of what was expected to be proven by the testimony of the witness. This can be done either by representation of counsel or by interrogation of the witness. Further, the administrative law judge is required to retain rejected exhibits, marked for identification, and transmit them to the Executive Secretary pursuant to § 308.40.

7. Post-Hearing Proceedings (§§ 39–308.308.42)

Section 308.39, "Post-Hearing Papers," provides that within 30 days after the hearing transcript is delivered to all parties or is filed, whichever is earlier, each party who participated in the hearing shall file proposed findings of fact with specific page references to the record to support those proposed findings, proposed conclusions of law, and a proposed order. At that time, a post-hearing brief may also be filed by any party.

A reply brief may be filed within 15 days after the date that the proposed findings, conclusions, and orders are due. This brief is restricted to responding to new matters, issues, or arguments raised by another party. If a party failed to file proposed findings of fact, conclusions of law, and a post-hearing brief, that party is not permitted to file a reply brief. Thus, while the filing of a post-hearing brief is optional, it is a condition of being permitted to file a reply brief..

Section 308.40, "Recommended Decision and Filing of Record," directs the administrative law judge to file with the Executive Secretary the record of the proceeding within 45 days after the date for the parties' filing of proposed findings, conclusions, and orders under § 308.39(a). The record of the proceeding shall include the administrative law judge's recommended decision, findings of fact, conclusions of law, and proposed order, as well as all pre-hearing, hearing, and post-hearing exhibits, memoranda, motions, transcripts, and the like. If requested by any party, the hearing record shall also include any profferred evidence which was excluded. Upon filing with the Executive Secretary, the administrative law judge is to serve upon each party a copy of the recommended decision, findings of fact, conclusions of law, and proposed order.

Section 308.41, "Exceptions to Recommended Decision," states that a party to the proceeding may file with the Executive Secretary written exceptions to the administrative law judge's decision, findings, conclusions, and proposed order, and a supporting brief, within twenty days after service of the administrative law judge's decision. Exceptions may be taken to the administrative law judge's failure to make any recommendation for relief, finding, or conclusion, to the admission or exclusion of evidence, and to any other ruling. Exceptions are to include page and paragraph references to the record, or legal citations, which support each exception. A request for oral argument may also be filed. *See* § 308.43(a). Exceptions and briefs not filed within the 20-day time period will normally not be accepted. As provided in § 308.41(c), no replies to exceptions shall be filed unless the Board, on its own motion, requests them.

Section 308.42, "Notice of Submision to the Board," states that after the administrative law judge has filed the record of the proceeding with the Executive Secretary pursuant to § 308.40, and the time period for filing exceptions has expired, the Executive Secretary shall submit the official record of the action to the Board, and shall notify the parties of such submission.

8. Board Action (§§ 308.43–308.44)

Pursuant to § 308.43(a), the Board may, in its sole discretion, order oral argument on the findings, conclusions, and recommeded decision of the administrative law judge, or on any issue raised in the proceeding. Written requests for oral argument must be made within the time prescribed for filing exceptions under § 308.41. If the Board requires oral argument, it may set aside the notice of submission of the record.

Oral arguments shall be made before one or more members of the Board, and shall be recorded, as specified in § 308.43(b). Unless the Board orders otherwise, oral arguments will be limited to 40 minutes. The FDIC enforcement counsel will open oral argument and may reserve up to one-half of their time for reply.

Section 308.44, "Decision by the Board," provides that after the Executive Secretary has submitted the record of the proceeding to the Board, a decision is to be issued within 90 days. However, within this 90-day period the Board may remand the case to the administrative law judge. The provisions of §§ 308.43 and 308.44 shall apply to the remanded proceedings, unless otherwise ordered by the Board or the administrative law judge. The 90-day period will begin anew when the record is resubmitted to the Board upon completion of the proceedings on remand. Further, if oral argument has been ordered, the Board shall issue a decision by the later of 30 days from the date of the oral argument or the expiration of the orignial 90-day period.

Section 308.44 of the revised regulation is comparable to § 308.18(b) of the current regulation in providing that members of the FDIC staff who have not participated in the investigatory or prosecutorial functions, or in a factually related case, may adivse and assist the Board in its consideration of the case.

Finally, § 308.44(c) provides that the Executive Secretary will serve copies of the Board's decision and order on the parties and on the bank concerned. Copies will also be furnished to appropriate state or federal supervisory authorities.

9. Stays (§§ 308.45–308.46)

Section 308.45, "Stays Pending Appeal," provides that commencement of proceedings for judical review of a decision and order of the Board shall not operate as a stay of the order, unless a stay is specifically ordered by the Board or by the court.

Section 308.46, "Collateral Attacks on Administrative Proceedings," provides that if an interlocutory appeal or collateral attack on an administrative proceeding governed by Subpart B is brought in any court, the challenged administrative proceeding is to continue without regard to the pendency of the court proceeding. Further, no default or other failure to act at the administrative level is to be excused based on the pendency of any such interlocutory appeal or collateral attack.

10. Conflicts of Interest and Sanctions (§§ 308.47–308.50)

Section 308.47 is new to revised Part 308 and addresses the recurisng problem of conflicts of interest. Paragraph (a) of § 308.47 states the general rule that no attorney, law firm, or other person acting in a representative capacity shall represent two or more persons when one or more of them is a party to a proceeding under Subpart B and there is a material and actual conflict of interest between or among the persons represented as to any matter relating directly or indirectly to the proceedings. Further, no attorney, law firm, or other person acting in a representative capacity may represent two or more parties to a proceeding under Subpart B, or a party and a bank to which notice of a Subpart B proceedings has been given, unless the attorney certifies in writing at the time of filing the notice of appearance required by § 308.08: (1) That the attorney has personally and fully discussed the possibility of conflicts of interest with each represented party or bank; (2) that each party or bank has advised the attorney that to its knowledge there is no existing or anticipated material conflict between its interest and the interest of others represented by the same attorney or law firm; and (3) that each party or bank waives any right it might otherwise have had during the course of the proceeding, including any appeal, to assert any known or non-material conflict of interest. These conditions precedent to an attorney's or law firm's multiple representation are set forth in § 308.47(b).

Section 308.47(c) authorizes the administrative law judge, at any stage of a proceeding under Subpart B, to take measures to cure a conflict of interest, including issuance of an order to disqualify an individual or firm from representing one or more of the participants in a proceeding.

Under the existing regulation, "ex parte communication" is defined in § 308.01(f), and the prohibition against, and sanctions based upon, such communications are set forth in § 308.07(c). In the revised regulation, the definition, prohibitions, and sanctions are all located in § 308.48, "Ex Parte Communications." Ex parte communications include any material communication, made orally or in writing, which were neither on the record nor on reasonable prior notice to all parties, between a party or other interested person and the administrative law judge, a member of the FDIC's Board, or any person assisting the Board or the administrative law judge in preparing a decision. Section 308.48(b) states that from the time the Notice is served, no pereson shall make or knowingly cause to be made an ex parte communication concerning the proceeding. Requests for status reports are not ex parte communications.

Absent giving all parties notice and an opportunity to participate, the administrative law judge shall not consult with anyone within the FDIC on any matter in issue, except that the administrative law judge may consult with the Office of the Executive Secretary concerning procedural matters. This limited exception to the general prohibition is made explicit in § 308.48(c).

Section 308.48(d) sets forth the procedure to be followed when an ex parte communication nonetheless occurs. It provides that all such written communications, or, if the ex parte communication was oral, a memorandum setting forth the substance of the communication, shall be placed on the record of the proceeding and served on all parties.

If the prohibition against ex parte communication in § 308.48 is knowingly violated by a party, such violation may be a ground for sanctions, including a decision adverse to the party, if justice and the policies of the Act would be served by such an action. Further, ex parte communications engaged in by an attorney may be sanctioned under § 308.50.

Section 308.49, "Sanctions," is included in revised subpart B to make clear that administrative law judges and the Board have authority to effectively deal with the significant problem of parties and their counsel failing to comply with the requirements of Part 308 and/or with orders. Under § 308.49(a), sanctions may be imposed when any counsel or party has acted in a manner contrary to any applicable statute, regulation, or order, and the party's or counsel's conduct is contemptuous or has materially injured or prejudiced some other party.

Sanctions imposed in accordance with § 308.49(b) may include one or more of the following: (1) Issuing an order against the party; (2) striking any testimony, rejecting any documentary evidence offered, or striking papers filed by the party; (3) precluding the party from contesting specific issues; (4) precluding the party from challenging certain evidence offered by another party; (5) refusing a late filing or conditioning acceptance of a late filing on any terms that are just; and (6) assessing reasonable expenses, including attorney's fees, incurred by the other party as a result of the offending party's improper action or inaction.

Under § 308.49(c), dismissal of an action as a sanction for the failure to hold a hearing within the time period specified in Part 308 or based upon the failure of an administrative law judge to render a recommended decision within the time period specified in Part 308 may only be granted if the delay is solely the result of the conduct of the FDIC enforcement counsel, that conduct is unexcused, the moving Respondent took all reasonable steps to oppose and prevent the delay, the Respondent has been materially prejudiced or injured, and no lesser or different sanction is adequate.

Paragraph (d) of § 308.49 sets out the general procedure for the imposition of sanctions. The administrative law judge may impose sanctions on his or her own motion or at the request of any party. Prior to their imposition, all sanctions, except the refusal to accept late papers, require notice to the parties and opportunity for counsel or the party against whom sanctions would be imposed to be heard. The form that the opportunity to be heard shall take is largely left to the discretion of the administrative law judge. For example, the opportunity to be heard may be limited to an oral response immediately after the violative action or inaction is noted by the administrative law judge. Requests for, and the imposition of, sanctions are to be treated for interlocutory review purposes in the same manner as any other ruling by the administrative law judge, *i.e.*, in accordance with § 308.31.

Section 308.50, "Suspension and Disbarment," is a considerable expansion of § 308.04(b) of the existing regulations, which authorizes summary suspension from practice in a particular FDIC matter based upon contemptuous conduct in that matter. Section 308.50 of the proposed regulations provides for mandatory and automatic suspension and disbarment of attorneys under certain circumstances and gives the Board discretion to suspend and disbar under other circumstances.

Under § 308.50(a), the Board has the power to suspend or revoke an attorney's privilege of practicing before the FDIC based not only on the Board finding that the attorney engaged in contemptuous conduct before the agency, but also upon a finding that the attorney does not possess the requisite qualifications to represent others, is seriously lacking in integrity or has engaged in material unethical or improper professional conduct, or has engaged in or aided another in engaging

in a material and knowing violation of the Federal Deposit Insurance Act. The Board may suspend or revoke the privilege to practice before the FDIC on these grounds only after notice of and opportunity for a hearing.

Once suspended or disbarred from practice before the FDIC by the Board pursuant to § 308.50(a), an attorney may not make an application for reinstatement for at least three years, and thereafter, may make a new request for reinstatement no sooner than one year after the attorney's most recent reinstatement application. An attorney may be reinstated by the Board for good cause shown.

Under § 308.50(b) an attorney is automatically suspended or disbarred if he or she is suspended or disbarred by any court of the United States or by the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Home Loan Bank Board, the Securities and Exchange Commission, or the Commodity Futures Trading Commission. A person who has within the past 10 years been convicted of a felony, or of a misdemeanor involving moral turpitude, is also automatically suspended from practicing before the FDIC.

Reinstatement after a suspension or disbarment under § 308.50(b) may be made by the Executive Secretary if all grounds for suspension are subsequently removed by a reversal of the conviction or termination of the underlying suspension or disbarment. An application for reinstatement under § 308.50(b) on any other grounds may be filed at any time not less than one year after the applicant's most recent application. Until the Board has reinstated the applicant for good cause shown, the suspension shall continue.

An applicant for reinstatement under either the discretionary or mandatory suspension and disbarment provisions may, in the Board's sole discretion, be afforded a hearing. Hearings conducted pursuant to this sectioin shall be handled in the same manner as other hearings under this Subpart B, except that in proceedings to terminate an existing FDIC suspension or disbarment order, the person seeking the termination shall bear the burden of going forward with the application and with proof, and provided that the Board may limit any such hearings to written submissions.

Finally, § 308.50(d) of the proposed regulations largely mirrors § 308.04(b) of the current regulation by providing that any attorney or representative found in contempt by the administrative law judge may be summarily suspended from participation in that proceeding.

C. Subparts C through M

Subparts C through M contain rules and procedures that govern specific types of formal and informal proceedings conducted by the FDIC. Generally, revisions made to these subparts are either clarifying in nature or were made to conform the subparts to, or avoid overlaps with, Subpart B.

1. Subpart C—Rules and Procedures Applicable to Proceedings Relating to Disapproval of Acquisition of Control (§§ 308.51–308.54)

New Subpart C replaces old subpart I and governs proceedings in connection with the disapproval of a proposed acquisition of control of an insured nonmember bank. The changes made to Subpart C generally were made to make this subpart consistent with revised Subpart B.

Since new § 308.51 states that the rules and procedures of Subpart B shall apply to all proceedings under this subpart, the requirements contained in old § 308.77 have been dropped as being redundant. New § 308.53 is a combination of old §§ 308.75 and 308.76. Section 308.53(b) is taken from old § 308.75(d). New § 308.54 replaces old § 308.76 and redesignates "exceptions" as "answer" in order to be consistent with the terminology used in Subpart B.

2. Subpart D—Rules and Procedures Applicable to Proceedings Relating to Assessments of Civil Penalties for Willful Violations of the Change in Bank Control Act (§§ 308.55–308.57)

New Subpart D replaces old subpart J and governs proceedings relating to assessments of civil penalties for willful violations of the Change in Bank Control Act. Redundant sections have been deleted (old §§ 308.80 and 308.81) and other sections (old §§ 308.79 and 308.82) have been condensed into new section 308.56.

3. Subpart E—Rules and Procedures Applicable to Proceedings for Involuntary Termination of Insured Status (§§ 308.58–308.63)

New Subpart E replaces old Subpart C and governs proceedings for the involuntary termination of insured status. A major change from old Subpart C is that the full APA hearing procedure of Subpart B will no longer apply to proceedings for the termination of deposit insurance under section 8(p) of the Act, *i.e.*, for failure to receive deposits. Under existing regulations, a bank is entitled to receive a full APA hearing prior to the termination of insured status. Section 8(p) of the Act does not require such a hearing process, and the FDIC's experience with section 8(p) terminations indicates that they can be properly handled using informal procedures.

The structure of this subpart has been changed somewhat for clarification purposes. The existing provisions concerning grounds for termination under section 8(a) of the Act (old §§ 308.24.–308.26) have been consolidated into one section, *i.e.*, new § 308.54. Old §§ 308.27(b), 308.78 and 308.29 have been deleted since they reiterate provisions contained in new Subpart B.

4. Subpart F—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders (§§ 308.64–308.68)

New Subpart F replaces old Subpart D and governs proceedings relating to cease-and-desist orders. The changes in Subpart F were made for purposes of clarity. The existing provisions regarding grounds for the issuance of a Notice (old §§ 308.33 and 308.38) have been consolidated into one section, *i.e.*, new § 308.65. Old §§ 308.35 and 308.36(a) have been deleted since the provisions contained in these sections are found in new Subpart B.

5. Subpart G—Rules and Procedures Applicable to Proceedings Relating to Removal and Suspension Orders (§§ 308.69–308.73)

New Subpart G replaces old Subpart E and governs proceedings relating to removal, prohibition and suspension orders. A new provision has been added to regularize the process by which a person removed or suspended from a bank under section 8(e) of the Act may, no less than three years after the entry of the original order, apply to have the order modified or terminated. With that exception, only minor changes have been made to Subpart G in order to clarify these rules and procedures. Old §§ 308.44–308.45, which pertain to temporary suspension orders, have been consolidated into one section, new § 308.73. Old § 308.42 has been deleted, since the provisions contained in that section are found in new Subpart B.

6. Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Penalties for the Violation of Cease-and-Desist Orders and of Certain Federal Statutes (§§ 308.74–308.76)

New Subpart H modifies old Subpart H and governs proceedings relating to assessment and collection of civil money penalties for the violation of cease-and-desist orders and of certain

Federal statutes. Several sections of old Subpart H (old §§ 308.69–308.71) have been deleted as being redundant with provisions of Subpart B. Old §§ 308.65–308.67 have been deleted as being redundant in light of the modifications made to the new "Scope" section, § 308.74.

7. Subpart I—Rules and Procedures for Imposition of Sanctions Upon Municipal Securities Dealers or Persons Associated with Them and Clearing Agencies or Transfer Agents (§§ 308.77–308.80)

New Subpart I replaces old Subpart K and governs procedures for the imposition of sanctions upon municipal securities dealers or persons associated with them and clearing agencies or transfer agents. There have been minor modifications in structure (compare old § 308.85 with new § 308.78), and old §§ 308.87 and 308.88 have been deleted as being redundant with provisions in new Subpart B.

8. Subpart J—Rules and Procedures Relating to Exemption Proceedings under Section 12(h) of the Securities Exchange Act of 1934 (§§ 308.81–308.86)

New Subpart J replaces old Subpart L and governs exemption proceedings under section 12(h) of the Securities Exchange Act of 1934. There have been minor structural changes in order to clarify this subpart. It should be noted that under new § 308.85(b)(2), the presiding officer will now have the discretion to order the swearing of any witness in an exemption proceeding.

9. Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the Act (§§ 308.87–308.93)

New Subpart K replaces old Subpart F and governs procedures applicable to investigations pursuant to section 10(c) of the Act. The changes noted below are designed to spell out the scope of the FDIC's authority under 10(c) of the Act to conduct investigations of both open and failed insured banks, institutions making applications to become insured banks, and any other types of investigations. The changes also make more specific certain of the procedures to be used during such investigations.

Section 308.87, "Scope," has been revised to spell out that the FDIC's investigatory power under section 10(c) of the Act extends to both open and failed insured banks.

Under § 308.88, "Order to conduct investigation", the Director of the Division of Liquidation, or designee thereof, has been added to the list of people authorized to open 10(c) investigations. The regulation also provides that the General Counsel or designee, and either the Division of Bank Supervision or Division of Liquidation, must act together to open a 10(c) investigation under delegated authority. This section has been further modified to require that the order of investigation indicate the purpose of the investigation and that the persons who authorized the investigation terminate it upon completion.

Consistent with the changes made in Subpart B regarding sanctions, § 308.89, "Powers of Person Conducting Investigation," has been revised to spell out the Board's authority to summarily suspend for contemptuous conduct any attorney representing a witness during the investigation. This section also has made explicit that the person conducting the investigation may obtain assistance from others both within and outside the FDIC.

Section 308.91, "Rights of Witnesses", has been revised to spell out that a witness is to be furnished with a copy of the order of investigation if the witness so requests. Consistent with the changes made in Subpart B regarding conflicts of interest and sanctions, authority is given to the person conducting the investigation to order compliance with the same conflict of interest provisions found in § 308.47(b) of Subpart B.

Old § 308.51(d) has been deleted. Our experience is that rather than producing useful rebuttal information, as had been hoped, the primary products of this paragraph have been pointless delays and arguments. In short, this provision has proved to be confusing and unworkable, and has often resulted in considerable delays with little or no benefit to the decision-making process. The deletion of this provision, of course, does not preclude the person conducting the investigation from nonetheless using his or her discretion to seek out evidence or testimony rebutting or otherwise relating to any apparent wrongdoing.

Section 308.93, "Transcripts." Paragraph (b), concerning subscription by witness, is a new provision and was added in order to reduce challenges to the completeness or accuracy of deposition transcripts if the transcripts are used in subsequent proceedings.

10. Subpart L—Procedures and Standards Applicable to Suspension, Removal, and Prohibition Where a Felony is Charged and Petitions for Reconsideration of Denial of Application under Section 19 of the Act (§§ 308.94–308.99)

New Subpart L replaces old Subpart G and governs proceedings for suspension, removal, and prohibition where a felony is charged and proceedings for petitions for reconsideration of denials of applications under section 19 of the Act. In addition to minor structural changes made in this subpart, old § 308.50–308.61 have been consolidated into new § 308.97. Paragraph (b)(4) of § 308.97 has been added in order to make clear that there is no discovery in proceedings conducted under this subpart. Paragraph (b)(9) of § 308.97 is also new and was added to make the procedures under this subpart consistent with other proceedings in which a presiding officer makes recommended decisions to the Board.

11. Subpart M—Rules and Procedures Relating to the Recovery of Attorney Fees and Other Expenses (§§ 308.100–308.114)

New Subpart M modifies old Subpart M and governs proceedings relating to the recovery of attorney fees and other expenses under the Equal Access to Justice Act, 5 U.S.C. 504. The revisions to this subpart are minor. For example, §§ 308.101 and 308.102 were removed closer to the beginning of the subpart, and new §§ 308.101, 308.102, 308.103(c), and 308.108 rearrange provisions found in existing sections of Subpart M (old §§ 308.104, 308.105, 308.97, and 308.102. Paragraph (c) of new § 308.102 is derived from old § 308.106, and new § 308.110 is derived from old § 308.106(b).

The scope of subpart M, new § 308.100, has been changed to reflect amendments made by Congress when the Equal Access to Justice Act was re-enacted in 1985. (*See* Pub. L. 99–80, 99 Stat. 183). The types of eligible applicants, new § 308.101(b), has also been modified for consistency with the 1985 amendments.

III. Regulatory Factors

Part 308 was selected for review under FDIC's Regulation Review Program (*see* 50 FR 14247, April 11, 1985). This revised Part 308 is a result of the review conducted.

The collections of information imposed by this Part 308 are a consequence of and are related to the administrative enforcement actions and proceedings conducted by the FDIC against specific individuals or entities. According to the Paperwork Reduction Act (44 U.S.C. 3518(c)(1(B)), these collections are not subject to OMB review.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) the Board of Directors hereby certifies that this revised Part 308 will not have a significant economic impact on a

substantial number of small entities. The purpose of this revised regulation is to secure a just and orderly determination of administrative proceedings before the FDIC.

List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Claims, Courts, Equal access to justice, Lawyers, Penalties.

For the reasons set out in the preamble, Title 12, Part 308 of the Code of Federal Regulations is proposed to be revised as follows:

PART 308—RULES OF PRACTICE AND PROCEDURES

Subpart A—Definitions and General Provisions

Sec.
308.01 Definitions.
308.02 Rules of construction.
308.03 Transition rules.

Subpart B—Rules of Practice

308.04 Scope.
308.05 Authority of Board and Executive Secretary.
308.06 Appointment of administrative law judges.
308.07 Powers of administrative law judges.
308.08 Appearance before the FDIC.
308.09 Short and plain statement required.
308.10 Good-faith certification.
308.11 Maintenance of the record.
308.12 Filing papers.
308.13 Service of papers.
308.14 Construction of time limits.
308.15 Time limits.
308.16 Witness fees and expenses.
308.17 Unilateral settlement offers to the Board.
308.18 Confidentiality.
308.19 FDIC's right to conduct examinations is unaffected.
308.20 The Notice.
308.21 Answer.
308.22 Amending pleadings.
308.23 Intervention; persons having official interest.
308.24 Consolidation and severance of actions.
308.25 Scope of discovery.
308.26 Time limits for discovery.
308.27 Document discovery from parties.
308.28 Document subpoenas to nonparties.
308.29 Depositions of witnesses unavailable for hearing.
308.30 Motions.
308.31 Interlocutory appeals to the Board.
308.32 General procedures.
308.33 Prehearing submissions and conferences.
308.34 Hearings.
308.35 Hearing subpoenas.
308.36 Conduct of hearings.
308.37 Written testimony in lieu of oral hearing.
308.38 Evidence.
308.39 Post-hearing papers.
308.40 Recommended decision and filing of record.
308.41 Exceptions to recommended decision.

Sec.
308.42 Notice of submission to the Board.
308.43 Post-hearing oral argument before the Board.
308.44 Decision by the Board.
308.45 Stays pending appeal.
308.46 Collateral attacks on administrative proceedings.
308.47 Conflicts of interest.
308.48 Ex parte communications.
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Authority: Sec. 2(9), Pub. L. No. 797, 64 Stat. 881 (12 U.S.C. 1819); Sec. 18, Pub. L. No. 94–29, 89 Stat. 155 (15 U.S.C. 78w); sec. 801, Pub. L. 95–630, 92 Stat. 3641 (12 U.S.C. 1972); sec. 203, Pub. L. No. 96–481, 94 Stat. 2325 (5 U.S.C. 504).

Subpart A—Definitions and General Provisions

§ 308.01 Definitions.

For purposes of this Part 308, unless explicitly stated to the contrary:

(a) "Act" means the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811–31;

(b) "Board of Directors" or "Board" means the Board of Directors of the Federal Deposit Insurance Corporation;

(c) Board's "designee" means officers or officials of the FDIC acting pursuant to authority delegated by the Board of Directors as provided in 12 CFR Part 303 or by specific resolution of the Board of Directors;

(d) "Executive Secretary" means the Executive Secretary of the FDIC or his or her designee;

(e) "FDIC" means the Federal Deposit Insurance Corporation;

(f) "Foreign bank" means any company which engages in the business of banking and which is organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands. "Foreign bank" includes, without limitation, foreign commercial banks, foreign merchant banks, and other institutions which engaged in usual banking activities in connection with the business of banking in the countries where such foreign institutions are organized or operating;

(g) "Insured bank" means any bank or banking institution (including a savings bank and a foreign bank having an insured branch) any deposits of which are insured in accordance with the Act;

(h) "Insured branch" means a branch of a foreign bank any deposits of which are insured in accordance with the Act;

(i) "Insured nonmember bank" means any insured bank which is not a national bank, a District bank, a member of the Federal Reserve System, or a Federal savings bank;

(j) "Notice" means the entire document issued by the Board of Directors or its designee which is served upon a party and which initiates a proceeding conducted under this part. The Notice sets forth the charges, a statement of facts underlying the charges, and the proposed relief including a proposed order, if any;

(k) "Official" means any director, trustee, officer, employee, or agent of a bank to which reference is being made, or any other person participating in the conduct of the affairs of a bank;

(l) "Party" means, a person named or admitted as a party for some or all purposes;

(m) "Person" means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, agency, or any other entity; and

(n) "Respondent" means any person against whom the FDIC seeks relief in the Notice.

§ 308.02 Rules of construction.

For purposes of this Part 308:

(a) Any use of a term in the singular shall include the plural, and the plural shall include the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender shall be read as encompassing all three, if such use would be appropriate;

(c) Any use of the term "attorney" or "counsel" shall be read to include a non-attorney representative; and

(d) Unless the context requires otherwise, a party's attorney of record, if any, may, on behalf of that party, take any action required to be taken by the party.

§ 308.03 Transition rules.

(a) *General rule.* (1) This revised Part 308 shall be applicable to any proceeding instituted after _____, 1988, the effective date of this revised Part 308.

(2) The preexisting provisions of Part 308 shall be applicable to any proceeding instituted before _____, 1988, the effective date of this revised Part 308, unless the parties, with the consent of the administrative law judge, agree that this revised Part 308 shall apply to the proceeding.

(b) *Guidance provided by revised Part 308.* In those proceedings in which revised Part 308 is not applicable, the Executive Secretary, administrative law judge, and Board or its designee may, unless fairness requires otherwise, look to revised Part 308 for guidance to the extent that revised Part 308 is not inconsistent with the express provisions of the preexisting Part 308.

Subpart B—Rules of Practice

§ 308.04 Scope.

Except as otherwise specified in Subparts C through I, this subpart B prescribes rules of practice and procedures to be followed in all hearings pursuant to the provisions of the Federal Deposit Insurance Act, and all other applicable law, pertaining to:

(a) Disapproval of a proposed acquisition of control of an insured nonmember bank (*see* 12 U.S.C. 1817(j));

(b) Assessment of civil money penalties based on violations of the Change in Bank Control Act (*see* 12 U.S.C. 1817(j)(16));

(c) Involuntary termination of the insured status of an insured bank (*see* 12 U.S.C. 1818(a));

(d) Issuance of cease-and-desist orders against any insured nonmember bank or its official (*see* 12 U.S.C. 1818(b));

(e) Removal from office or prohibition from further participation in the conduct of the affairs of an insured nonmember bank (*see* 12 U.S.C. 1818(e) (1), (2), (3) and (5));

(f) Assessment of civil money penalties against (1) an insured nonmember bank or its official for violation of a cease-and-desist order which has become final (*see* 12 U.S.C. 1818(i)(2)); or (2) an insured nonmember bank or its official for violation of (i) the provisions of sections 22(h), 23A, or 23B of the Federal Reserve Act (*see* 12 U.S.C. 375b, 371c, 371c–1) or (ii) the provisions of section 106(b)2) of the Bank Holding Company Act Amendments of 1970 (*see* 12 U.S.C. 1972(2));

(g) Imposition of sanctions upon (1) any municipal securities dealer for which the FDIC is the appropriate regulatory agency; (2) any person associated or seeking to become associated with such a municipal securities dealer; or (3) any clearing agency or transfer agent for which the FDIC is the appropriate regulatory agency (except for hearings on postponement of registration by such clearing agency or transfer agent pending registration denial proceedings, and for hearings on suspension of registration by such clearing agency or transfer agent pending registration revocation proceedings) (*see* 15 U.S.C. 78o); and

(h) Any other types of FDIC hearings which are required by statute to be held on the record, and as to which neither the applicable statute nor other FDIC regulations set forth the procedures to be used in conducting the required hearing on the record.

§ 308.05 Authority of Board and Executive Secretary.

(a) *The Board.* (1) The Board may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of, any act which could be done or ordered by the Executive Secretary or the administrative law judge.

(2) Nothing contained in Part 308 shall be construed to limit the power of the Board granted by applicable statutes or regulations.

(b) *The Executive Secretary.* When no administrative law judge has jurisdiction over a proceeding, the Executive Secretary may act in place of, and with the same authority as, an administrative law judge, except that the Executive Secretary may not hear a case on the merits or make a

recommended decision on the merits to the Board.

§ 308.06 Appointment of administrative law judges.

(a) *Appointment.* Unless otherwise directed by the Board, a hearing within the scope of this subpart shall be held before an administrative law judge appointed by the United States Office of Personnel Management.

(b) *Procedures.* (1) The Executive Secretary may at any time after issuance of the Notice, and shall promptly after receipt of an answer, secure the appointment of an administrative law judge to hear the proceeding through the United States Office of Personnel Management.

(2) The Executive Secretary shall advise the parties, in writing, that an administrative law judge has been appointed.

(3) If, for any reason, an administrative law judge is unable to, or, for any reason, does not bring the proceeding on for hearing, render a recommended decision, or otherwise perform the duties of an administrative law judge as provided in this subpart, a successor administrative law judge may be requested and appointed. Such substitution shall not be a basis for delaying the proceeding, unless such delay is a practical necessity, or for reopening any matter previously decided, unless the ends of justice so require.

§ 308.07 Powers of administrative law judges.

(a) *General rule.* The administrative law judge shall conduct all proceedings governed by this subpart B in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 554–557) and other applicable law. The administrative law judge shall conduct the hearing in a fair and impartial manner and shall avoid unnecessary delay in the disposition of proceedings.

(b) *Powers.* The administrative law judge obtains jurisidiction over a proceeding upon appointment and retains that jurisdiction until such time as he or she submits a recommended decision to the Executive Secretary, resigns, or is removed or replaced. Further, the administrative law judge regains jurisdiction over a proceeding if the matter or any aspect thereof is remanded by the Board. In addition to all of the specific powers granted by applicable law and in this subpart B, the administrative law judge shall have all powers necessary to conduct the hearing including, without limitation, the power:

(1) To administer oaths and affirmations;

(2) To issue subpoenas, subpoenas duces tecum, and protective orders and to revoke, quash, or modify any such subpoenas and orders;

(3) To hold conferences for settlement, for simplification of issues, or for any other proper purpose;

(4) To regulate the course of the hearing and the conduct of the parties and their counsel;

(5) To receive relevant evidence and rule upon the admission of evidence and offers of proof;

(6) To continue or adjourn a hearing from time to time and place to place, as permitted by law and this Subpart B;

(7) To consider and rule upon procedural and other motions. The administrative law judge shall have the power to deny a motion for summary judgment, motion to dismiss, and any other dispositive motion properly brought before the administrative law judge; the administrative law judge may, however, only recommend to the Board a decision to grant a dispositive motion;

(8) To reopen the hearing record at any time prior to the transmission of the recommended decision to the Executive Secretary and to call for the production of further evidence, to permit oral argument, and to permit the submission of briefs; and

(9) To disqualify himself or herself upon motion made by a party or on his or her own motion.

§ 308.08 Appearance before the FDIC.

(a) *Qualification.* Subject to the conditions, limitations, and qualifications appearing in §§ 308.47 and 308.50:

(1) Any member in good standing of the bar of the highest court of any state, commonwealth, possession, territory, or the District of Columbia may represent others before the FDIC if such person is not currently suspended or disbarred from practice before the FDIC; and

(2) A member of a partnership may represent the partnership; a duly authorized officer of a corporation, trust, or association may represent the corporation, trust, or association; and an authorized officer or employee of any government unit, agency, or authority may represent that unit, agency, or authority, if such individual partner, officer, or employee is not currently suspended or disbarred from practice before the FDIC.

(b) *Authorization and notice of appearance.* Any attorney or non-attorney representative representing any Respondent under paragraph (a) of this sections must file with the Executive Secretary, at or before the time that attorney or representative submits papers or otherwise appears on behalf of a party before the FDIC, a Notice of Appearance that includes a written declaration of current qualification to represent that Respondent before the FDIC and a statement of authorization to represent each party he or she is authorized to represent. The Notice of Appearance shall be accompanied by the certification required under § 308.47(b), if applicable.

(c) *Representatives of nonparties.* A nonparty, who has a right to be represented in any deposition or other proceeding under this Subpart B, may be represented by any person qualified to represent a party before the FDIC. Anyone representing a nonparty in such a situation is not required to file a Notice of Appearance unless expressly ordered to do so, but any party or the administrative law judge may require that the attorney state either on the record or in writing the information required in a Notice of Appearance, and no attorney who refuses to provide that information shall be allowed to represent any person in the proceeding.

§ 308.09 Short and plain statement required.

Each pleading, motion, and other presentation of record shall consist of a short and plain statement of:

(a) The claim or position being advanced;

(b) The factual and legal bases for that claim or position; and

(c) The relief requested and the basis for granting such relief.

Subject to the requirements of § 308.10, bases for a claim or position may be set forth hypothetically or in the alternative and are not required to be consistent. Relief in the alternative, or several different types of relief, may be requested.

§ 308.10 Good faith certification.

(a) *General requirement.* After the Board or its designee issues the Notice, every subsequent written presentation by a party represented by an attorney shall be signed by at least one attorney of record in his or her individual name and shall state that attorney's address and telephone number. A party who is not represented by an attorney shall sign his or her presentation of record and state his or her address and telephone number.

(b) *Effect of signature.* (1) The signature of an attorney or party constitutes a certification that the attorney or party read the written presentation of record; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the pleading, motion, or other

presentation of record is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a written presentation of record is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any attorney or party constitutes a certification by him or her that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, his or her statements are well grounded in fact and are warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and are not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(d) *Sanctions for violations.* If a pleading, motion, or other presentation is made in violation of this section, on the motion of any party or on his or her own motion, the administrative law judge may impose upon the attorney, the represented party, or both, any appropriate sanction authorized in §§ 308.49 and 308.50.

§ 308.11 Maintenance of the record.

(a) *Duties of the Executive Secretary.* (a) The Executive Secretary shall maintain the official record of all papers filed in each proceeding. For purposes of Subpart B, the official record shall not include settlement offers and related papers, Board resolutions, internal staff recommendations, and other deliberative-process memoranda.

(2) Upon appointment of the administrative law judge, the Executive Secretary shall forward to the administrative law judge a copy of the then existing official record of the proceeding.

(b) *Certification of record by administrative law judge.* The administrative law judge shall transmit to the Executive Secretary a copy of the record of the proceeding upon transmittal of the recommended decision to the Executive Secretary pursuant to § 308.40. The record shall be accompanied by a docket sheet or similar summary.

§ 308.12 Filing papers.

(a) *Filing with Executive Secretary.* Unless expressly provided to the contrary, the original and one copy of all papers required by Subpart B to be filed or served shall be filed with the Executive Secretary, provided that premarked proposed exhibits, transcripts, and hearing exhibits shall be filed with the administrative law judge and need not be filed with the Executive Secretary. Filing with the Executive Secretary may be accomplished by regular mail postmarked on or before the due date or by any means authorized in § 308.14.

(b) *Filing with the administrative law judge.* During the period between the appointment of the administrative law judge and the transmittal of a recommended decision by the administrative law judge, one copy of all papers shall be filed with the administrative law judge. During such period, filing with the administrative law judge shall be made in conformity with the time limits and procedures set forth in § 308.14.

(c) *Form of papers.* All papers filed must set forth the name, address, and telephone number of the attorney or party making the filing and shall be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must set forth on the first page the caption of the case, the FDIC docket number, the party filing the paper, and the nature or subject matter of the filing.

§ 308.13 Service of papers.

(a) *By the Board or its designee.* (1) All documents or papers required to be served by the Executive Secretary or by such other person as the Board's designee may select. Service shall be made on a party by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the person's residence, by registered or certified mail addressed to the party's last known address, or in any other manner reasonably calculated to give actual notice.

(2) As to a party who has appeared in a proceeding through an attorney of record, service upon that attorney by any means by which a party may be served, by commercial courier, or by first class or express mail shall constitute service on the party.

(b) *By the parties.* Except as otherwise expressly provided, a party filing papers in accordance with this subpart B shall serve them upon the attorneys of record of all other parties to the proceeding, or upon the other parties if they have no attorney of record. Service by a party may be accomplished in any manner in which the Board or its designee can serve an attorney of record under the provisions of paragraph (a) of this section.

(c) *Subpoenas.* Service of a subpoena may be made by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence, by registered or certified mail addressed to the person's last known address, or in such other manner as is reasonably calculated to give actual notice.

(d) *Nationwide service.* Service in any state, territory, possession, or the District of Columbia or on any person or company doing business in any state, territory, possession, or the District of Columbia, is effective without regard to the place where the hearing is held, provided that if service is made on a foreign bank in connection with an action or proceeding involving one or more of its branches or agencies located in any State, territory or the District of Columbia, service shall be made on at least one branch or agency so involved.

§ 308.14 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this subpart B, the date of the act or event of default from which the designated period of time begins to run is not to be included. The last day so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday, or Federal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays shall be included in the computation of time, except that, when the period of time within which an act or event of default is to be performed is ten days or less, intermediate Saturdays, Sundays, and Federal holidays shall not be included.

(b) *Service and filing of papers.* (1) When papers are to be serviced or filed by a fixed or determinable date, all parties and the administrative law judge, if any, shall be served by that date. To accomplish service the serving party shall use one or more of the following methods of service:

(i) Personal service on or before the due date;

(ii) Delivering the papers to a reliable commercial courier service, or to the U.S. Post Office for Express Mail delivery, sufficiently in advance of the due date so that the papers are scheduled to be delivered not later than the due date; or

(iii) Mailing the papers by first class, registered, or certified mail not Less than three calendar days before the due date.

(2) Papers served or filed under the provisions of paragraph (b)(1)(ii) of this section shall be deemed served or filed on the day that delivery is scheduled to occur. Papers served or filed under the provisions of paragraph (b)(1)(iii) of this section shall be deemed served three calendar days after mailing.

(3) If the time any action must be taken by any other person is based on the date upon which papers were served by a party, that date shall be calculated based on the date of service if served by personal service. Otherwise, the date to be used shall be based on the date service is deemed to have been accomplished under paragraph (b)(2)(ii) or (iii) of this section.

§ 308.15 Time limits.

(a) *Grounds for extension of time.* The administrative law judge may for good cause shown:

(1) Fix or change the time when any action shall be taken; and

(2) Fix, or change, the place for a hearing to commence or continue.

(b) *On the record.* An extension of time shall only be granted by the administrative law judge in a decision on the record which sets forth the factual basis for that finding that there is good cause for an extension. This requirement applies to contested matters and to requests made on consent of the parties, except that the administrative law judge, in the case of requests on consent for delays or extensions, may, in his or her discretion, grant extensions of five days or less without making such a finding, provided that the heairng date will not be delayed as a result of such extension.

(c) *Extension during consideration of bilateral settlement proposals.* (1) Upon being advised that a stipulation or agreement to settle has been signed by any Respondent and by enforcement counsel for the FDIC, the administrative law judge shall, upon the request of either signing party, stay the proceedings as to that Respondent pending a final decision by the Board or its designee on whether to accept the settlement.

(2) No stipulation or agreement to settle under paragraph (b)(1) of this section which involves less than all of the Respondents shall provide a basis for delaying the proceeding as to any other Respondent who has not signed a settlement stipulation or agreement that has been signed by the FDIC unless the FDIC and such other Respondent agree to the delay, and the administrative law judge approves that agreement.

(3) If the Board of its designee rejects any stipulation or agreement to settle covered by paragraph (c)(1) of this section, the schedule of acts to be accomplished in the proceeding shall resume as though the date upon which the Respondent was advised of the rejection of the settlement was the day the proceeding was stayed under paragraph (c)(1) of this section, provided that the administrative law judge may make such adjustments as may be reasonable in light of the delay and in light of proceedings, if any, against other Respondents in the same action.

§ 308.16 Witness fees and expenses.

Witnesses subpoenaed to testify or for depositions shall be paid the same fees for attendance and mileage as are paid in the United States district courts, provided that in the case of a discovery subpoena addressed to a party under the provisions of § 308.27, no witness fees or mileage need be tendered or paid. Fees of the witness shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where the FDIC is the subpoenaing party. The FDIC shall not be required to pay any fees to, or expenses of, any witness not subpoenaed by the FDIC.

§ 308.17 Unilateral settlement offers to the Board.

(a) *Submission of unilateral settlement offers.* At any time, and without prejudice to the rights of any party, any Respondent may unilaterally submit to the Executive Secretary for consideration by the Board or its designee, a written offer to settle a proceeding.

(b) *Unilateral settlement offers do not stay proceedings.* Submission of a unilateral settlement offer shall not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this Subpart B.

(c) *Settlement offer inadmissible as evidence.* No settlement offer, whether made pursuant to paragraph (a) of this section or otherwise, shall be admissible into evidence over the objection of any party.

§ 308.18 Confidentiality.

(a) *All papers and proceedings confidential.* Hearings under this subpart B shall be private unless the Board or its designee determines, after considering the views of the Respondent, that a public hearing is necessary to protect the public interest.

(b) *Unauthorized disclosure prohibited.* No Respondent shall disclose or otherwise use any information which is not publicly available and which was obtained through discovery or at the hearing for any purpose other than litigation of the proceeding, including appeals, if any.

(c) *Disclosure in court proceedings.* Where any FDIC proceeding or order has been appealed to, or otherwise brought before, any court of the United States, this section shall not be read as limiting, or stating a policy favoring limits on, public access to any record or other papers filed, or evidence presented, in such court proceeding.

§ 308.19 FDIC's right to conduct examinations is unaffected.

Nothing contained in this Subpart B shall be construed as limiting in any manner the right of the FDIC to conduct any examination or visitation of any insured bank or the right of the FDIC to conduct any form of investigation authorized by law.

§ 308.20 The Notice.

(a) *Commencement of action.* A proceeding governed by this subpart B shall be commenced by issuance of a Notice.

(b) Contents of Notice. *(1) The Notice shall set forth:*

(i) The basis for the FDIC's jurisdiction over the proceeding;

(ii) the claim showing that the FDIC is entitled to relief; and

(iii) A prayer for an order granting the requested relief.

A proposed order may be served in lieu of, or as a supplement to, a prayer for relief.

(2) The Notice shall advise the Respondent:

(i) That an answer must be filed within twenty days after service of the Notice;

(ii) That in actions involving civil money penalties under 12 U.S.C. 1818(i) and 1828(j) a request for hearing must be filed within twenty days after service of the Notice;

(iii) That in actions involving denial of a change in bank control under 12 U.S.C. 1817(j)(4), a request for hearing must be filed within ten days after service of the Notice;

(iv) That a hearing will be held within the judicial district in which a Respondent bank is found or within a judicial district in which at least one Respondent or the bank is found (if the bank is not a Respondent); and

(v) That, unless the administrative law judge sets another date, the hearing will commence;

(A) Within sixty days after service of the Notice for actions involving cease-and-desist orders under 12 U.S.C. 1818(B) or removals and prohibitions under 12 U.S.C. 1818(e); or

(B) Within ninety days for all other actions.

§ 308.21 Answer.

(a) *Timely answers are required.* (1) Every Respondent shall file an answer with the Executive Secretary within twenty days after service of the Notice. For purposes of Part 308, service of a Notice is deemed to have been accomplished:

(i) At the time personal service or service on an agent is accomplished, or

(ii) If the Notice is mailed, or served in any other manner authorized by § 308.13(a), at the time the Notice is received by the Respondent.

(2) The time to file an answer is not extended by the making of any motion. The administrative law judge may grant an extension of the time to answer for good cause shown. Except as provided in paragraph (d) of this section, only the Board may permit filing of a later answer where a default order has been entered against the Respondent pursuant to paragraph (d) of this section or a Notice of disapproval has become final under the provisions of § 308.54 or an assessment of civil money penalties has become final under the provisions of § 308.75. Extensions of time to answer may be conditioned upon such terms or sanctions as the administrative law judge deems appropriate.

(b) *Content of answer.* An answer shall specifically respond to each paragraph or allegation of fact contained in the Notice and shall admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information shall have the effect of a denial. Denials shall fairly meet the substance of each allegation of fact denied. When a Respondent intends to deny part of an allegation, that part shall be denied and the remainder specifically admitted. Any allegation of fact in the Notice which is not denied in the answer shall be deemed admitted for purposes of the subject proceeding. A Respondent is not required to plead to the portion of a Notice that constitutes the prayer for relief or a proposed order. The answer shall set forth affirmative defenses, if any, asserted by the Respondent.

(c) *Effect of admitted allegations.* (1) If a Respondent does not contest any of the allegations of fact contained in the Notice, the Respondent's answer shall consist of a statement that all of the allegations of fact are admitted. Such an answer shall constitute a waiver of hearing on the allegations of fact contained in the Notice, and any further proceedings, including any hearing, shall be limited to the issue of relief.

(2) In cases where the Respondent does not contest any of the allegations of fact contained in the Notice and does not contest the requested relief, the Respondent's answer shall consist of a statement that all of the allegations of fact are admitted and that the request for relief is not contested. Such an answer will constitute a waiver of a hearing on both the allegations of fact and the requested relief, and the administrative law judge shall certify the record to the Executive Secretary, who shall enter an order granting any proper relief that is sought by the Notice.

(d) *Default.* Failure of a Respondent to file an answer within twenty days shall be deemed a waiver of the right to appear and contest the allegations of fact and the requested relief contained in the Notice and a consent by that Respondent to entry of an order granting any proper relief that is sought by the Notice.

(1) When a Notice of disapproval of a change in bank control has been issued under section 7(j) of the Act or an assessment of civil money penalties has been made under section 8(i) or 18(j) of the Act, they shall automatically become final and unappealable unless both the required request for hearing and an answer are timely filed.

(2) In all other proceedings governed by this subpart B, upon the written request of FDIC enforcement counsel, which shall be served on all parties, the Executive Secretary may, at any time more than five days after such service enter a default order granting any proper relief that is sought by the Notice. The Executive Secretary shall not enter a default order under this paragraph if in the Executive Secretary's sole discretion, he or she determines that no default has occurred or that for some other reason the matter should be referred to either the Board or an administrative law judge for further proceedings. The Executive Secretary shall also retain jurisdiction to vacate a default order entered under this paragraph if the Executive Secretary subsequently determines that no default had in fact occurred or that for some other ministerial reason a default order entered under this paragraph should be vacated. Any order entered under this paragraph shall be final and unappealable.

§ 308.22 Amending pleadings.

(a) *Amendments.* A Notice or answer may be amended or supplemented upon good cause shown, by leave of the administrative law judge. The Respondent shall answer an amended Notice within the time remaining for the Respondent's answer to the original Notice or within ten days after service of the amended Notice, whichever period is longer.

(b) *Amendments to conform to the evidence.* When issues not raised by the Notice or answer are tried at hearing by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the Notice or answer, and amendments to the Notice and answer are not required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the Notice or answer, the administrative law judge may allow the Notice or answer to be amended when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the administrative law judge that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. If justice so requires, the administrative law judge may grant a continuance to enable the objecting party to meet such evidence.

§ 308.23 Intervention; persons having official interest.

(a) *Intervention.* The administrative law judge may, in his or her discretion, allow a person to intervene for limited purposes, or for all purposes, upon a showing that:

(1) The intervening person has a substantial interest which may be adversely affected by the outcome of the proceeding;

(2) The intervening person's interests may not be fully and adequately represented if that person is not allowed to intervene; and

(3) The intervention will not delay the proceeding or otherwise unfairly prejudice any party, provided that no intervenor shall be allowed to appear through counsel for, or any firm representing, any Respondent in the action.

(b) *Persons having an official interest.* (1) The administrative law judge may, in his or her discretion, permit persons having an official interest in the substance of the proceeding to attend the hearing and to be served with papers. Such persons may include the bank, when not a Respondent or intervenor, other federal banking regulators, any appropriate state banking agency and other interested government agencies.

(2) Persons having an official interest may, if permitted by the administrative law judge in his or her discretion, submit amicus curiae briefs to the administrative law judge within the time periods during which parties may submit briefs.

§ 308.24 Consolidation and serverance of actions.

(a) *Consolidation.* (1) On the motion of any party, or on the administrative law judge's own motion:

(i) Any two or more proceedings may be consolidated for some or all purposes if each proceeding involves or arises out of the same transaction, occurrence, or series of transactions of occurrences and material common questions of law or fact will arise in each of the proceedings, unless consolidation would cause unreasonable delay or injustice; and

(ii) Any two or more proceedings against the same, or at least one common, Respondent which involve common questions of fact or law may be consolidated for some or all purposes, unless such consolidation would cause unreasonable delay or injustice.

(2) In the event of consolidation under paragraph (a)(1) of this section, appropriate adjustment to the prehearing schedule shall be made to avoid unnecessary expense or inconvenience, provided that such adjustment shall not result in delaying the hearing beyond the latest date upon which an unconsolidated hearing involving at least one Respondent in the consolidaated proceeding would otherwise have commenced under this subpart.

(b) *Severance.* On the motion of any party or on the administrative law judge's own motion, a proceeding involving two or more Respondents may be severed for some or all purposes if severance:

(1) Is appropriate because the proceeding against one or more Respondents cannot proceed or is being stayed:

(2) Will promote the prompt resolution of the proceeding as to some or all Respondents, or

(3) Is otherwise required to prevent injustice.

§ 308.25 Scope of discovery.

(a) *Limits of discovery.* Parties to proceedings under this subpart B may obtain discovery only through the production of documents (including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, which documents shall be translated, if necessary, by the responder through detection devices into reasonably usable form). No other form of discovery shall be allowed.

(b) *Relevance.* Parties may obtain document discovery regarding any matter, not privileged, which has material relevance to the merits of the pending action. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Privileged matter.* Privileged documents are not discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative-process privilege, and such other privileges as the Constitution, any applicable act of Congress, or the principles of common law provide.

§ 308.26 Time limits for discovery.

(a) *General rule.* (1) All initial requests for discovery must be made within thirty days after service of the Notice on the Respondent. If there are multiple Respondents, the time for making discovery requests by, and to, each Respondent shall be separately measured from the date on which each Respondent received the Notice.

(2) Except as provided in paragraph (b) of this section, only discovery requests that are based upon or otherwise follow up on discovery responses, including objections, to timely discovery requests may be served after the initial thirty day period for making discovery requests. All such follow up requests shall be served within ten days after service of the response upon which they are based.

(b) *Extensions of time.* (1) No extension of the thirty-day period to commerce discovery shall be granted unless the administratve law judge finds on the record that good cause exists for the extension.

(2) The foregoing notwithstanding:

(i) If a Respondent is permitted to file a late answer, FDIC enforcement counsel shall be entitled to serve discovery requests on that party within ten days following the filing of the late answer; and

(ii) If the FDIC amended the Notice, and an answer is required, the Respondent shall be entitled to serve discovery requests within the later of thirty days following the service of the original Notice of ten days following the filing of the answer to amended Notice.

§ 308.27 Document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents which are in the possession, custody, or control of the party upon whom the request is served. The request shall identify the documents to be produced either by individual item or by category, and shall describe each item and category with reasonable particularity. Documents shall be produced as they are kept in the usual course of business or organized and labeled to correspond with the categories in the request.

(b) *Production or copying.* The request shall specify a reasonable time and manner of production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents are to be copied and the copies delivered to the requesting party. If copying is requested, the party to whom the request is addressed shall bear the cost of copying and shipping if less than 250 pages of copying are requested. If more than 250 pages of copying are requested, the requesting party shall pay for copying, unless the parties agree otherwise, at a rate of $.20 per page plus the cost of shipping.

(c) *Obligation to update responses.* Unless expressly stated to the contrary on its face, or unless otherwise ordered by the administrative law judge, all discovery requests served on a party impose an obligation on that party:

(1) To update promptly the response through the cut-off date for evidence to be admitted at the hearing as provided in § 308.38(a) if that cut-off date occurs after the date of compliance with the request; and

((2) To amend or supplement promptly the response if the resonding party learns that:

((i) The response was materially incorrect when made or

(ii) The response is no longer true and a failure to amend the response is, is substance, a knowing concealment.

(d) *Objections.* (1) The party upon whom a request is served shall serve its objections to the request within twenty days after service of the request. Any objections not made in writing and within the prescribed period are waived.

(2) The reason for each objection shall be stated with reasonable particularity. If objection is made to only a protion of an item or category in a request, the portion objected to shall be specified.

(3) The date set forth in the request for production of documents shall not be a ground for relief from any provision of the request unless that date is less then twenty days after service of the request or unless the party to whom the request was made certifies that the search for and compilation and copying of the requested documents is expected to require more than 40 hours of work. Under either of those circumstances, the party upon whom the request was served may apply for a reasonable extension of time for production of the

requested documents, which extension may be granted for good cause shown. Any extension of time for production shall not extend the time to object to discovery requests under paragraph (d)(1) of this section.

(4) If a party generally objects to all or virtually all of a discovery request without substantial justification, upon motion, the entire objection (except for bona fide privilege claims) shall be stricken. The aministrative law judge need not consider whether any specific objections (other than privilege claims) would have been sustained had they been made separately.

(5) Objection to part of a request shall not operate to delay or excuse production of documents pursuant to portions of the request to which no objection is made.

(e) *Privilege.* At the time other documents are produced or within twenty days after service of the discovery request, whichever is later, all documents withheld on grounds of any privilege, other than work-product privilege, shall be reasonably identified, including the basis for the claim of privilege. If a party withholds documents on the ground of work-product privilege, the party shall so state.

(f) *Discovery disputes.* (1) if a party objects to all or any part of a request, fails to comply fully with a request, or withholds any documents as privileged, the requesting party may, within ten days of the making of the objections or the assertion of the privilege claim, or if later, within ten days of the time the failure to comply becomes known, move before the administrative law judge for an order or subpoena requiring production.

(2) A discovery motion provided for in paragraph (f)(1) of this section shall contain a short and plain summary of the matters in dispute, and the nature of the dispute; a precise statement of the relief requested; and the certification required by § 308.30(d). The motion shall have attached to it a copy of the discovery request and the objections thereto. A brief in support of the motion may be filed when the motionis filed.

(3) In response to a discovery motion, any other party shall have the right to submit written views to the administrative law judge at least one business day prior to the discovery conference provided for in paragraph (g) of this section. Any such response shall specifically identify and address each issue disputed by that party and may include a brief.

(g) *Discovery conferences.* (1) When a discovery motion is made under paragraph (f)(1) of this section, the administrative law judge shall promptly set a discovery conference, unless the administrative law judge concludes, and advises the parties, that the disputed matters can be more expeditiously, or better, resolved by handling this dispute as other written motions are handled under § 308.30, or is some other manner. At any discovery conference, each party shall be given an opportunity to be heard. The administrative law judge shall rule on each disputed matter unless the administrative law judge, in his or her discretion, determines that one or more issues should be further briefed or should be taken under advisement. As to all matters not resolved at the discovery conference, the administrative law judge shall promptly after the conference decide those matters that are not more properly held for decision at the hearing.

(2) If the moving party fails to attend the discovery conference and such failure is not excused, the motion shall be denied. If the party from whom discovery is sought does not either attend the discovery conference or submit a written response to the motion, that party shall be deemed to have waived any right to object to the requested discovery and to have consented to entry of an appropriate order or ruling.

(3) In addition to, or in lieu of, ordering production of requested documents or issuing a subpoena under this section, the administrative law judge may impose any appropriate sanctions authorized in § 308.49.

(h) *Enforcing discovery subpoenas.* If the administrative law judge issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with that subpoena. A party's right to seek court enforcement of a subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who fails to produce subpoenaed documents.

§ 308.28 Document subpoenas to nonparties.

(a) *General rule.* (1) Any party may apply to the administrative law judge for the issuance of a document subpoena addressed to any person who is not a party to the proceeding. The application shall contain a proposed document subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoenaing party shall specify a reasonable time, place, and manner for making production under the document subpoena. Any requested subpoena shall be promptly issued unless the administrative law judge determines that the application does not set forth a valid basis for issuance of the subpoena or otherwise fails to conform to the requirements of this Subpart B, provided that the administrative law judge may, on his or her own motion, request briefs or hold a conference concerning whether a requested subpoena should be issued.

(2) The party obtaining the document subpoena shall be responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any State, territory, possession, or the District of Columbia or on any person or company doing business in any state, territory, possession, or the District of Columbia.

(3) Issuance of any subpoena under this paragraph (a) is without prejudice to the right of the subpoenaed person to object before the administrative law judge, in the manner set forth in paragraph (c) of this section, to all or any part of the subpoena.

(b) *Scope of document subpoenas.* (1) The scope of document subpoenas issued under this section is the same as that for document requests under § 308.25(b). Any document subpoena sought under this section must be applied for within the period during which the applying party could serve a document request under the provisions of § 308.26.

(2) Any questioning at a deposition of a person producing documents pursuant to a document subpoena shall be strictly limited to the identification of documents produced by that person and a reasonable examination to determine whether the subpoenaed person made an adequate search for, and has produced, all subpoenaed documents.

(3) Every party shall have a right to inspect and copy all documents produced pursuant to a document subpoena.

(4) If the subpoenaing party agrees to inspect documents other than at the time and place disignated in the document subpoena, or to receive copies in lieu of inspecting documents, it shall be the duty of the subpoenaing party to assure that all other parties have access to all documents inspected by or delivered to the subpoenaing party, at substantially the same time as access is obtained by the subpoenaing party.

(c) *Objections.* (1) The subpoenaed person may object within the time limits and on the same basis, including assertion of privilege, upon which a

party could object under § 308.27(d) to a document request.

(2) If the subpoenaed person objects to all or any part of a document subpoena, fails to fully comply with a document subpoena, or withholds any documents as privileged, the subpoenaing party may, within ten days of the making of the objections or the assertion of the claim of privilege, or if later, within ten days of the time the failure to comply becomes known, seek to compel compliance with the document subpoena in the manner provided in § 308.27 (f) and (g).

(3) In lieu of objecting to a document subpoena, the subpoenaed person may within twenty days after service of the subpoena on the subpoenaed person move before the administrative law judge to revoke, quash, or modify the subpoena. A statement of the basis for the motion to revoke, quash, or modify a subpoena issued under this section must accompany the motion. The motion must be on notice to all parties. Any party may respond to the motion within ten days after the motion is made.

(d) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any order of the administrative law judge issued pursuant to paragraph (c) of this section which directs compliance with all or any portion of a document subpoena, the subpoenaing party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the document subpoena as the administrative law judge has not quashed or modified. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who procures a failure to comply with a subpoena issued under this section.

§ 308.29 Depositions of witnesses unavailable for hearing.

(a) *General rule.* (1) If a witness will not be available for the hearing, the administrative law judge may issue a subpoena, including a subpoena duces tecum, requiring the attendance of the witness at a deposition. The administrative law judge may issue a deposition subpoena under this section upon a showing by the party requesting the subpoena that:

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness or infirmity, or will otherwise be unavailable;

(ii) The witness' unavailability was not procured or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party or in undue delay of the proceeding.

If the application for a subpoena sets forth a valid basis for its issuance, the administrative law judge may either issue the deposition subpoena or, on his or her own motion, request briefs or hold a conference concerning whether a requested subpoena should be issued.

(2) The subpoena shall name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed at any place within the country in which that witness resides or has a regular place of employment or such other convenient place within one hundred miles of the witness's residence or regular place of employment as the administrative law judge shall fix.

(3) The party obtaining deposition subpoenas shall be responsible for serving them on the witness and for serving copies on all parties. Unless the administrative law judge orders otherwise, no deposition under this section shall be taken on less than ten days' notice to the witness and all parties. Deposition subpoenas may be served in any state, territory, possession, or the District of Columbia or on any person or company doing business in any state, territory, possession, or the District of Columbia.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may move before the administrative law judge to revoke, quash, or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than ten days after service of the subpoena.

(2) A statement of the basis for the motion to revoke, quash, or modify a subpoena issued under this section must accompany the motion. The motion must be on notice to all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying upon oral deposition shall be duly sworn, and each party shall have the right to examine the witness. Objections to questions or evidence shall be in short form, stating the grounds for the objection. Failure to object to questions or evidence shall not be deemed a waiver except where the ground for the objection is one which might have been avoided or removed if presented at that time. All questions, answers, and objections shall be on the record.

(2) The deposition shall be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(3) Any party may move before the administrative law judge for an order compelling the witness to answer any questions or submit any evidence the witness has refused to answer or submit during the deposition. The motion must be on notice to all parties.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any order of the administrative law judge which directs compliance with all or any portion of a deposition subpoena under paragraph (b) or (c)(3) of this section, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the subpoena as the administrative law judge has ordered complied with. A party's right to seek court enforcement of a deposition subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who fails to comply with, or procures a failure to comply with, a subpoena issued under this section.

§ 308.30. Motions.

(a) *General rule.* (1) This section governs all motions except motions concerning discovery disputes which are governed by § 308.27. An application for an order shall be made by written motion, unless made during a conference or a hearing. The administrative law judge may, in his or her discretion, require that any oral motion be submitted in writing.

(2) All motions shall state with particularity the grounds therefor and the relief or order sought. A memorandum of law, affidavits, or other appropriate papers may be filed in support of any motion at the time the motion is made. All written motions shall be accomplished by a form of proposed order. No oral argument shall be heard on written motions unless the administrative law judge directs otherwise.

(3) All motions shall be decided promptly and each decision shall be memorialized either in writing or on the record.

(b) *Responses.* (1) Within ten days, or such shorter period as the

administrative law judge may direct, after service of any written motion under paragraph (a) of this section, any other party may file a written response to a motion. Any such responses shall be accompanied by a form of proposed order.

(2) When an oral motion is made under paragraph (a) of this section, unless the administrative law judge in his or her discretion directs that the response be in writing, any opposing party shall be given an opportunity to response to the motion orally before the administrative law judge rules on the motion.

(3) The failure of any party to oppose a motion shall be deemed a waiver of the right to oppose the motion and a consent by that party to the entry, in the case of written motions, of an order substantially in the form of the order accompanying the motion, and in the case of oral motions, of an order providing the relief requested.

(c) *Replies.* If any party's written response to a motion raises new issues or arguments, the moving party may, within five days of service of that response, serve a reply that is strictly limited to addressing those new issues or arguments. No further filing relating to the motion shall be permitted unless the administrative law judge, on his or her own motion, so directs.

(d) *Good-faith attempt to resolve disputes.* (1) No written motion shall be made under this section unless the attorney for the moving party, or the moving party if unrepresented, certifies that (i) the attorney or party has met (in person or by telephone) with opposing counsel, or if unrepresented, the opposing party, in a good-faith effort to resolve the dispute that is the subject of the motion, or (ii) the opposing attorney or party, despite the moving party's reasonable efforts, cannot be contacted or has refused to participate in such a meeting.

(2) The requirement of paragraph (d)(1) of this section shall not apply to motions for summary judgment, motions to dismiss, or other dispositive motions that would, if granted, substantially dispose of the case as to one or more Respondents.

§ 308.31 Interlocutory appeals to the Board.

(a) *General rule.* (1) Rulings or orders by an administrative law judge may not be appealed to the Board prior to submission of the record to the Board pursuant to the provisions of section 308.42, unless the Board, in its sole discretion, grants special permission to appeal.

(2) Special permission to appeal a ruling or order will only be granted if (i) the interlocutory appeal involves an important, unresolved issue of general application that should be immediately decided by the Board or (ii) the interlocutory appeal involves clear error below, and the rights of a party are likely to be severely prejudiced if the matter is not immediately decided by the Board. A party's ongoing costs of administrative litigation will not be considered as a basis for hearing an interlocutory appeal.

(b) *Procedures.* (1) A party may, within ten days after the entry of an interlocutory ruling or order by the administrative law judge, apply to the Board for special permission to appeal that ruling or order. Any such application shall state with particularity the basis under paragraph (a) of this section upon which special permission to appeal should be granted. The application shall also either state that the party relies on its brief before the administrative law judge or be accompanied by the party's brief to the Board on the merits.

(2) Any other party may, within ten days of service of the application, file a brief with the Board opposing the grant of special permission to appeal. Any other party may, regardless of whether that party opposes the grant of special permission, within the same ten-day period, either file a brief with the Board concerning the merits or advise the Board, in writing, that the party relies on its brief before the administrative law judge.

(3) There shall be no right of reply to the briefs filed or relied upon pursuant to paragraph (b)(2) of this section unless the Board, on its own motion, requests a reply.

(4) When an application has been made and the time within which to file papers pursuant to paragraphs (b)(1) and (b)(2) of this section has expired, the Executive Secretary shall submit the application and all other papers to the Board. The Executive Secretary shall notify the administrative law judge and all parties when the application has been submitted to the Board.

(c) *Proceedings not stayed.* Interlocutory appeals under this section do not stay proceedings before the administrative law judge. The Board or the administrative law judge may, however, order a stay upon a finding on the record that the party aggrieved by the appealed ruling or order has shown a substantial likelihood of success before the Board on the merits of the interlocutory appeal and that substantial hardship or injustice is likely to result if a stay is not granted, provided that only the Board may grant any stay or series of stays exceeding a total of thirty days.

§ 308.32 General procedures.

(a) *Scheduling when there is a fixed date of hearing.* If a hearing date has been fixed by the administrative law judge, then that hearing date shall be used in determining dates for making the prehearing submissions and taking the prehearing actions required or authorized by § 308.33.

(b) *Scheduling when the date of hearing is not fixed.* If a hearing date has not been fixed by the administrative law judge, a date ninety days after service of the Notice shall be used as the hearing data in determining dates for making the submissions and taking the actions required or authorized by § 308.33, provided that in proceedings under 12 U.S.C. 1818(b) and (e), as to which the sixty-day period for hearing has not been waived or extended pursuant to the provisions of § 308.34(a)(2), a date sixty days after service of the Notice shall be used as the hearing date in determining dates for making the submissions and taking the actions required or authorized by § 308.33, provided further that unless the administrative law judge orders otherwise, in cases involving multiple Respondents, the ninetieth day, or sixtieth day, shall be measured from the date the last Respondent was served with the Notice.

§ 308.33 Prehearing submissions and conferences.

(a) *Prehearing preparations.* Prehearing preparations for each action governed by this subpart B shall, unless the administrative law judge orders to the contrary, include:

(1) The exchange of proposed statements of the issues, stipulations, exhibits, and witness lists as provided in paragraph (b) of this section;

(2) The filing of a joint statement of issues and stipulations and of each party's exhibits and witness list as provided in paragraph (c) of this section;

(3) The simultaneous filing of prehearing briefs as provided in paragraph (d) of this section;

(4) The holding of a prehearing conference as provided in paragraph (e) of this section; and

(5) Any other prehearing preparations, such as other filings, conferences, schedules, and other orders, as the adminstrative law judge, on motion of any party, or on the administrative law judge's own motion, deems appropriate.

(b) *Prehearing exchange and meeting of counsel.* (1) Not less than twenty-five

days before the hearing date, each party shall serve on every other party (but unless otherwise ordered shall not file, except in connection with proceedings for sanctions under paragraph (f)) of this section, the party's:

(i) Proposed statement of the issues;

(ii) Proposed stipulations;

(iii) Proposed trial exhibits; and

(iv) Proposed witness list, including the name and address of each witness and a short summary of the expected testimony by each witness.

(2) Sufficiently in advance of the fifteenth day before the hearing date as to allow compliance with paragraph (c) of this section, all parties shall meet and attempt to agree upon:

(i) A joint statement of the issues,

(ii) Stipulations, and

(iii) Stipulations that proposed trial exhibits are admissible or, if admissibility is not stipulated, that proposed trial exhibits are authentic.

(c) *Prehearing filings.* (1) Not less than fifteen days before the hearing date, the parties shall file:

(i) A joint statement of the issues for hearing, provided that if there is no joint statement of issues, each party shall file its own statement of issues, and

(ii) Stipulations, if any.

(2) Not less than fifteen days before the hearing date, each party shall file:

(i) That party's premarked trial exhibits with an accompanying stipulation concerning the admissibility or authenticity of each exhibit and

(ii) That party's witness list.

(e) *Prehearing brief.* Not less than fifteen days before the hearing date, each party shall file a prehearing brief.

(d) *Prehearing conference.* (1) A prehearing conference may be held at such time and place as the administrative law judge designates. If such a conference is required by the administrative law judge, the conference shall be participated in by at least one of the attorneys who will conduct the trial for each of the parties, and by any unrepresented parties. Unless otherwise directed by the administrative law judge the conference shall be recorded by a court reporter. The participants at the conference shall formulate a plan for trial, including a program for facilitating the admission of evidence and shall address such other matters as the administrative law judge may reasonably direct.

(2) At or within a reasonable time following the conclusion of the prehearing conference, the administrative law judge shall serve on each party a prehearing memorandum or order containing agreements reached and any determinations made. Such an order may, in the administrative law judge's discretion, be dictated into the record at the conference.

(f) *Effect of failure to comply.* (1) Any party who fails to exchange proposed exhibits or witness lists as required by paragraph (b) of this section or fails to submit exhibits or witness lists as required by paragraph (c) of this section shall be deemed to have forfeited its rights to introduce any exhibits or call any witness in its case-in-chief at the hearing. Any exhibit or witness not included in the party's final exhibit or witness list may not be introduced or called by that party in its case-in-chief at the hearing. Relief from this paragraph (f) may be granted only for good cause shown and upon such terms as are just.

(2) Failure to file a prehearing brief as required in paragraph (d) of this section shall be deemed a waiver of the right to file a prehearing brief. Late briefs may be accepted for filing only if the moving party can show that failure to accept the late brief would materially prejudice the movant and injustice would result.

(3) If any party fails to exchange or file documents required under paragraph (b) or (c) of this section, any other party, or the administrative law judge, on his or her own motion, may serve a request that the party state, within five days of receipt of the request, whether that party will appear at the hearing and litigate the case on the merits. The response shall be signed by counsel (if any) appearing for the party or by any party who is not represented by counsel. Failure of a party to respond by filing a timely and express statement that the party will appear at the hearing and litigate on the merits shall be deemed a waiver by that party of his or her right to a hearing, and a default order may be entered against that party by the Executive Secretary as provided for in § 308.21(d).

(4) Upon the failure of any party to comply fully and in good faith with the requirements of this section, including without limitation, the failure to stipulate to facts or to the authenticity or admissibility of documents as to which there is no good-faith dispute, the administrative law judge may, on the motion of any party, or on the administrative law judge's own motion, impose any appropriate sanction authorized in § 308.49.

§ 308.34 Hearings.

(a) *When held.* (1) Except as provided in paragraph (a)(2) of this section, hearings shall commence within ninety days of service of the Notice, unless the administrative law judge makes a finding of good cause for holding the hearing at a later date. No hearing shall be continued to a date more than one hundred and twenty days after service of the Notice except upon a finding, on the record, that:

(i) It is impractical to commence the hearing within one hundred and twenty days of service of the Notice;

(ii) Scheduling or similar difficulties can, and should, be alleviated or resolved by an extension to a date not more than 135 days after service of the Notice upon the Respondent;

(iii) There is a need to provide time to obtain a final decision by the Board or its designee on whether to accept an agreed settlement offer, as provided in § 308.15;

(iv) There is a need to stay the proceeding pending a final Board decision on whether to accept and decide an interlocutory appeal, as provided in § 308.31; or

(v) The ends of justice require a continuance.

(2) Hearings under 12 U.S.C. 1818 (b) and (e) may not be continued beyond sixty days after service of the Notice over the objection of any party, unless the administrative law judge finds, on the record, that holding the hearing within sixty days is impractical or would materially and unfairly prejudice one or more parties or otherwise would be unjust. The parties to any action under 12 U.S.C. 1818 (b) or (e) may, at any time, agree in writing to waive the subject sixty-day period and to have the provisions of paragraph (a)(1) of this section govern the schedule upon which the action will be heard.

(b) *Effect of failure to appear at hearing.* The failure of any party to appear at the hearing personally or by a duly authorized attorney shall be deemed a waiver of the right to a hearing and a consent to the entry of an order of default. The default order shall be entered by the Executive Secretary, as provided for in § 308.21(d).

§ 308.35 Hearing subpoenas.

(a) *Issuance.* (1) Upon the representation of any party that it intends to call a named person as a witness or has a good-faith intention of calling that person as a witness if certain evidence is or is not admitted, any party may apply for the issuance of, and the administrative law judge may at any time during the proceeding issue, hearing subpoenas requiring the attendance of the subpoenaed person at a hearing.

(2) The administrative law judge shall not issue a hearing subpoena duces tecum addressed to a party except upon a finding, on the record, that either

(i) The subpoenaing party could not reasonably have anticipated the need for the subpoenaed documents during the discovery period prescribed by § 308.26 or

(ii) The subpoenaed documents were requested in a document request that was served on the subpoenaed party during the discovery period, and the relevant portion of that document request was not quashed or modified in writing.

(3) Hearing subpoenas may require that the witness appear at any place designated for the hearing. The party obtaining a hearing subpoena shall be responsible for serving it on the witness and for serving copies on all other parties. There shall be service of process for hearing subpoenas in any state, territory, possession, the District of Columbia or on any person or company doing business in any state, territory, possession, or the District of Columbia.

(b) *Objections to hearing subpoenas.* (1) A person named in a hearing subpoena, or any party, may apply to the administrative law judge to revoke, quash, or modify the subpoena. The application must be on notice to all parties. The application must be made prior to the time for compliance specified in the subpoena and must be made within ten days after service of the subpoena on the person making the application.

(2) A statement of the basis for the order to revoke, quash, or modify a hearing subpoena under this paragraph (b) must accompany the application.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any order of the administrative law judge which directs compliance with all or any portion of a hearing subpoena, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the subpoena as the administrative law judge has ordered complied with. A party's right to seek court enforcement of a subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party that fails to comply with, or procures failure to comply with, a hearing subpoena.

§ 308.36 Conduct of hearings.

(a) *General rules.* (1) Hearings shall be conducted to provide a fair and expeditious trial of the relevant, disputed issues.

(2) The administrative law judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(i) Make the interrogation and presentation effective for the ascertainment of the truth;

(ii) Avoid needless consumption of time; and (iii) protect witnesses from harassment.

(b) *Order of hearing.* (1) Unless the administrative law judge directs otherwise, all stipulations of fact and law previously filed in the case, and all docuemnts the admissibility of which has been previously stipulated in the case, shall automatically be admitted into evidence upon commencement of the hearing.

(2) The administrative law judge shall determine, and advise the parties, prior to the commencement of the hearing, whether opening and/or closing statements will be allowed.

(3) FDIC enforcement counsel shall present its case-in-chief first, unless otherwise ordered by the administrative law judge or unless otherwise expressly provided in this Part 308. If there are multiple Respondents, Respondents may agree among themselves as to the order in which Respondents shall present their case-in-chief, but if they do not agree, the administrative law judge shall fix the order.

(c) *Cross-examination.* (1) Each party shall have the right to cross-examine the other parties' witnesses, provided that he administrative law judge shall limit cross-examination that is unduly repetitive.

(2) During cross-examination any party may move the admission into evidence of any admissible document shown to the witness during that cross-examination.

(3) Cross-examination should be limited to the subject matter of what witness's direct examination and matters pertaining to the credibility of the witness. The administrative law judge may permit inquiry into additional matters as if on direct examination if:

(i) It appears likely to facilitate completion of the proceeding,

(ii) It will not unfairly disrupt presentation of the case-in-chief (or rebuttal case) of the party calling the witness, and

(iii) All parties (other than the party who has called that witness) agree that if such broader inquiry is permitted, they will not call that witness during their case-in-chief or, if they have presented their case-in-chief, in their rebuttal case. Such broader inquiry on corss-examination should generally not be permitted if the winess was called as an adverse party, a hostile witness, or a witness identified with an adverse party.

(d) *Rebuttal evidence.* Rebuttal evidence shall be limited to material new issues or to new evidence concerning material disputes, including expert opinion. The parties shall present their rebuttal evidence, if any, in the same order in which they presented their case-in-chief.

(e) *Leading questions.* Leading questions should not be used on the direct examination of a witness except as may be necessary to develop that witness's testimony. Ordinarily leading questions should be permitted on cross-examination except where matters outside the scope of the direct examination are inquired into under paragraph (c) of this section. When a party calls an adverse party, a hostile witness, or a witness identified with an adverse party, interrogation may be by leading questions.

§ 308.37 Written testimony in lieu of oral hearing.

(1) *General rule.* (1) At any time more than fifteen days before the hearing is to commence, on the motion of any party or on his or her own motion, the administrative law judge may order that the parties present part or all of their case-in-chief and, if ordered, their rebuttal, in the form of exhibits and written statements sworn to by the witness offering such statements as evidence, provided that if any party objects, the administrative law judge shall not required such a format if that format would violate the objecting party's rights under the Administration Procedure Act, or other applicable law, or would otherwise unfairly prejudice that party.

(2) Any such order shall provide that each party shall, upon request, have the same right of oral cross-examination (or redirect examination) as would exist had the witness testified orally rather than through a written statement. Such order shall also provide that any party has a right to call any hostile witness or adverse party to testify orally.

(b) *Scheduling of submission of written testimony.* (1) If written direct testimony and exhibits are ordered under paragraph (a) of this section, the administrative law judge shall require that it be filed within the time period of commencement of the hearing under § 308.34, and the hearing shall be deemed to have commenced on the day such testimony is due.

(2) Absent good cause shown, written rebuttal, if any, shall be submitted and the oral portion of the hearing begun within thirty days of the date set for filing written direct testimony.

(3) Unless the administrative law judge directs otherwise, (i) all parties shall simultaneously file any exhibits and written direct testimony required under paragraph (b)(1) of this section, and (ii) all parties shall simultaneously file any exhibits and written rebuttal required under paragraph (b)(2) of this section.

(c) *Failure to comply with order to file written testimony.*

(1) The failure of any party to comply with an order to file written testimony or exhibits at the time and in the manner required under this section shall be deemed a waiver of that party's right to present any evidence, except testimony of a previously identified adverse party or hostile witness. Failure to file written testimony or exhibits is, however, not a waiver of that party's right of cross-examination or a waiver of the right to present rebuttal evidence that was not required to be submitted in written form.

(2) Late filings of papers under this section may be allowed and accepted only upon good cause shown.

§ 308.38 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material, and reliable evidence that is not unduly repetitive shall be admissible to the fullest extent authorized by the Administrative Procedure Act, other applicable statutes, and the common law. Without limiting the foregoing, any evidence that would be admissible in a United States district court under the Federal Rules of Evidence is admissible in any proceeding governed by this Subpart B.

(2) No evidence concerning any act or event occurring after the date of the Notice shall be deemed relevant or otherwise admissible, except that evidence thorugh the date of hearing shall be admissible in any action brought under 12 U.S.C. 1818(a), and except that if, in a specific case, the administrative law judge finds, on the record and prior to the commencement of the hearing, that the limitation contained in this paragraph would result in manifest injustice, the administrative law judge may allow the admission of such evidence as may be necessary to avoid injustice. No motion to set a different cut-off time for evidence shall be heard by the administrative law judge unless that motion is made by the date for filing prehearing statements of issues required by § 308.33.

(b) *Privilege.* (1) The rules of privilege contained in § 308.25 which are applicable to discovery apply equally to hearings.

(2) Documentary evidence which a party had previously withheld from discovery under a claim of privilege shall not be received on behalf of such party at the hearing, nor shall related testimony, unless the administrative law judge finds that the exclusion of this evidence would result in manifest injustice. The administrative law judge may condition the admission of such evidence on such terms as are just to all parties.

(c) *Official notice.* Official notice may be taken of any material fact which might be judicially noticed by a district court of the United States and any material information in the official public records of the FDIC. All matters officially noticed by the administrative law judge shall appear on the record. If official ntoice is requested or taken of any fact, the parties, upon timely request, shall be afforded an opportunity to establish the contrary.

(d) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as an original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Relevant Reports of Examination or Visitation Reports prepared by the FDIC, whether or not such documents were prepared as a result of joint or concurrent examinations or visits, are admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, or outlines to summarize, illustrate, or simplify the presentation of testimony. Such documents may, subject to the administrative law judge's discretion, be used with or without being admitted into evidence.

(e) *Unavailable witness.* If a witness is unavailable to testify at the hearing, and that witness has been deposed under the provisions of § 308.29, any party offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any. Such deposition transcript shall be admissible to the same extent that the testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the deposition, the administrative law judge may on that basis limit the admissibility of the deposition in any manner that justice requires. Only those portions of a deposition received in evidence at the hearing shall constitute a part of the record.

(f) *Objections to evidence.* (1) Objections to evidence must be timely made and shall briefly state the grounds relied upon. The transcript shall include any argument of debate thereon, except as otherwise ordered by the administrative law judge with the consent of all parties. Rulings on all objections shall appear in the record. Failure to object shall be deemed a waiver of any objection.

(2) When an objection to a question or line of questioning propounded to a witness is sustained, the examining attorney may make a specific proffer on the record of what he or she expected to prove by the expected testimony of the witness, either by representation of counsel or by direct interrogation of the witness. The administrative law judge shall retain rejected exhibits, adequately marked for identification, for the record and transmit such rejected exhibits to the Executive Secretary pursuant to § 308.40.

§ 308.39 Post-hearing papers.

(a) *Post-hearing filings.* Each party who participates in a hearing shall file with the administrative law judge:

(1) Proposed findings of facts, which shall set forth specific page references to those portions of the record relied upon to support each proposed finding;

(2) Proposed conclusions of law; and

(3) A proposed order.

Any party may, at that time, file a post-hearing brief. The papers required or allowed by this paragraph (a) shall be filed within thirty days after the date the hearing transcript is delivered to all parties or is filed, whichever is earlier.

(b) *Reply briefs.* Reply briefs may be filed within fifteen days after the date on which the parties' proposed findings, conclusions, and order are due. Reply briefs shall be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed either proposed findings of fact and conclusions of law or a post-hearing brief, shall not be permitted to file a reply brief.

§ 308.40 Recommended decision and filing of record.

(a) *Post-hearing filings.* (1) Within forty-five days after expiration of the time allowed for filing proposed findings, conclusions, and orders under § 308.39(a), the administrative law judge shall file with the Executive Secretary the record of the proceeding which shall include the administrative law judge's recommended decision, findings of fact, conclusions of law, and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. At the request of any party, the

record shall also include any proffered evidence which was excluded.

(2) At the time of filing of the record with the Executive Secretary, the administrative law judge shall serve upon each party a copy of the recommended decision, findings, conclusions, and proposed order.

(3) The Executive Secretary may extend the period for the filing of the recommended decision, findings, conclusions, proposed order, and record by the administrative law judge.

(b) *Filing when a summary judgment is recommended.* If the administrative law judge recommends a final disposition of an action in response to a motion for summary judgment, motion to dismiss, or comparable dispositive motion as to one or more parties, the administrative law judge shall promptly file with the Executive Secretary that recommendation and the portion of the record (or a copy thereof) which pertains to that dispositive motion.

§ 308.41 Exceptions to recommended decision.

(a) *Filing.* (1) Within twenty days after service of the recommended decision, findings, conclusions, and proposed order under § 308.40, a party may file with the Executive Secretary written expections thereto. The exceptions may include exceptions to the failure of the administrative law judge to make any recommendation for relief, finding, or conclusion; to the admission or exclusion of evidence; and to any other ruling. A supporting brief may be filed at the time the exceptions are filed.

(2) Exceptions and briefs in support thereof which are not filed within the time period provided in paragraph (a)(1) of this section shall not be accepted for filing, except that prior to the Executive Secretary's certification of the record to the Board for decision pursuant to § 308.42, the Executive Secretary may upon a showing of good cause allow late filing. Exceptions and briefs in support thereof shall not be accepted for filing after the record is certified to the Board under § 308.42 unless the Board, in its sole discretion, decides to accept them.

(b) *Contents.* (1) All exceptions and briefs in support of exceptions shall be confined to the particular matters in, or omissions from, the administrative law judge's recommendations as to which that party takes exception.

(2) All exceptions and briefs in support of exceptions shall set forth page or paragraph references to the specific parts of the administrative law judge's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception, and the legal authority relied upon to support each exception.

(c) *No replies permitted.* There shall be no replies to exceptions, or other additional papers however styled, unless the Board, on its own motion, requests the filing of additional papers.

(d) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed shall be deemed a waiver of objection thereto.

(2) No exceptions shall be considered if the party taking exception had an opportunity to raise the same objection, issue, or argument before the administrative law judge and failed to do so.

§ 308.42 Notice of submission to the Board.

When the administrative law judge has filed the record of proceeding with the Executive Secretary pursuant to § 308.40, the Executive Secretary shall submit the official record of the action to the Board after expiration of the time for filing exceptions and shall notify the parties that the action has been submitted to the Board.

§ 308.43 Post-hearing oral argument before the Board.

(a) *When oral argument is permitted.* (1) Upon the written request of a party, or on its own motion, the Board may, in its sole discretion, order oral argument on the findings, conclusions, and recommended decision of the administrative law judge, or on any specific issue raised in the action.

(2) Any party's request for oral argument must be made within the time prescribed in § 308.41 for filing exceptions. The Board may enter an order requiring oral argument and setting aside the notice of submission of the record to the Board at any time before the Board renders its final decision on the case.

(b) *Procedure for oral argument.* (1) Oral argument ordered under this section shall be before the entire Board or one or more members of the Board. Oral arguments under this section shall be recorded.

(2) Unless the Board directs otherwise:

(i) Oral argument shall be limited to a total of forty minutes of which FDIC enforcement counsel shall be allotted one-half; and

(ii) FDIC enforcement counsel shall open the oral argument and may reserve up to one-half of their time for reply.

§ 308.44 Decision by the Board.

(a) *Decision to be made within ninety days.* (1) The Board shall issue its decision within ninety days after the Executive Secretary has submitted the record to the Board. If oral argument is ordered under § 308.43, the Board shall issue its decision within ninety days after the submission of the record to the Board or thirty days after oral argument, whichever is later.

(2) Within the ninety-day period provided in this section, the Board may set aside any notice that the case has been submitted to the Board for final decision and remand the case or any aspect thereof to the administrative law judge for further proceedings. In such a case, the provisions of §§ 308.34 through 308.44 shall apply to the remanded proceeding, unless the Board or administrative law judge orders otherwise. When a case is remanded, the ninety-day period within which the Board shall issue its decision shall start anew upon the submission of the record to the Board following the completion of the hearing on remand.

(b) *FDIC staff participation.* Appropriate members of the FDIC staff who have not participated in the performance of investigative or prosecutorial functions in the particular case, or in a factually related case, may advise and assist the Board in the consideration of the particular case and in the preparation of documents for its disposition.

(c) *Copies.* The Executive Secretary shall serve copies of the decision and order of the Board on the parties and on the bank concerned. Copies shall also be furnished to the appropriate state supervisory authority in the case of an insured nonmember bank, including a state branch of a foreign bank. Where the proceedings involve termination of the insured status of a state member bank, copies shall be furnished to the Board of Governors of the Federal Reserve System and to the appropriate state supervisory authority. Where the proceedings involve termination of the insured status of a national bank, a district bank, or a federal branch of a foreign bank, copies shall also be furnished to the Comptroller of the Currency. Where proceedings involve termination of the insured status of a federal savings bank, copies shall also be furnished to the Federal Home Loan Bank Board.

§ 308.45 Stays pending appeal.

The commencement of proceedings for judicial review of a decision and order of the Board shall not, unless specifically ordered by the Board or the

court, operate as a stay of any order issued by the Board. The Board may, in its discretion, and on such terms as it finds just, stay the effectiveness of all or any part of its order pending a final decision on an appeal of that order.

§ 308.46 Collateral attacks on administrative proceedings.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an administrative proceeding governed by this Subpart B, the challenged administrative proceeding shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the administrative proceeding within the times prescribed in this subpart B shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

§ 308.47 Conflicts of interest.

(a) *General rule.* No attorney, law firm, or other person acting in a representative capacity shall represent two or more persons, at least one of whom is a party to a proceeding governed by this Subpart B, if there is, as to any matter relating directly or indirectly to the proceeding under this Subpart B, any material and actual conflict of interest between the persons represented.

(b) *Certification and waiver.* No attorney, law firm, or other person may represent two or more parties to a proceeding under this Subpart B, or a party and a bank to which notice of a proceeding must be given under this Subpart B, unless the attorney certifies in writing at the time of filing the notice of appearance required by § 308.08:

(1) That the attorney has personally and fully discussed the possibility of conflicts of interest with each such party or bank;

(2) That each such party or bank has advised the attorney that to its knowledge there is no existing or anticipated material conflict between its interests and the interests of others represented by the same attorney or his or her firm; and

(3) That each such party or bank waives any right it might otherwise have had to assert any known conflicts of interest of to assert any non-material conflicts of interest during the course of the proceeding, including any appeals.

(c) *Disqualification.* The administrative law judge may take protective measures at any stage of a proceeding to cure a conflict of interest, including issuance of an order disqualifying an individual or firm from appearing in a representative capacity in that proceeding.

§ 308.48 Ex parte communications.

(a) *Definition.* "Ex parte communication" means any material oral or written communication concerning a proceeding, which takes place between a party or another person interested in the proceeding and the administrative law judge handling that proceeding, any member of the Board, or any person assisting the administrative law judge or Board in preparing a decision with respect to that proceeding, and which was neither on the record nor on reasonable prior notice to all parties. Requests for status reports are not ex parte communications.

(b) *Prohibition of ex parte communications.* From the time the Notice is served, no person, including any person involved in the decisional process concerning the proceeding, shall make or knowingly cause to be made an ex parte communication concerning the proceeding.

(c) *Communications involving the administrative law judge.* (1) The administrative law judge shall not consult anyone within the FDIC on any matter in issue, unless upon notice and opportunity for all parties to participate. This section shall not be construed as prohibiting the administrative law judge from consulting with the Office of the Executive Secretary concerning procedural matters.

(2) The administrative law judge shall not be responsible to, or subject to the supervision or direction of, any officer, employee, or agent of the FDIC engaged in the performance of investigative or prosecutorial functions.

(d) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is made, all such written communications, or if the communication is oral, a memorandum stating the substance of the communication, shall be placed on the record of the proceeding and served on all parties.

(e) *Sanctions.* To the extent consistent with the interests of justice and the policy of the Act, knowing violation of this section may be a ground for a decision adverse to a party who violates this section or may be a ground for suspension or disbarment of any person engaging in such conduct, as provided for in § 308.50

§ 308.49 Sanctions.

(a) *General rule.* Appropriate sanctions may be imposed when any counsel or party has acted, or failed to act, in a manner required by applicable statute, regulations, or order, and that act or failure to act:

(1) Constitutes contemptuous conduct;

(2) Has in a material way injured or prejudiced some other party in terms of substantive injury, incurring additional expenses including attorney's fees, prejudicial delay, or otherwise;

(3) Is a clear and unexcused violation of an applicable statute, regulation, or order; or (4) has unduly delayed the proceeding.

(b) *Sanctions.* Sanctions which may be imposed include any one or more of the following:

(1) Issuing an order against the party;

(2) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(3) Precluding the party from contesting specific issues or findings;

((4) Precluding the party from offering certain evidence or from challenging or contesting certain evidence offered by another party;

(5) Precluding the party from making a late filing or conditioning a late filing on any terms that are just; and

(6) Assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act.

(c) *Limits on dismissal as a sanction.* No recommendation of dismissal shall be made by the administrative law judge or granted by the Board based on the failure to hold a hearing within the time period called for in this Part 308, or on the failure of an administrative law judge to render a recommended decision within the time period called for in this Part 308, absent a finding that the delay:

(1) Resulted solely or principally from the conduct of the FDIC enforcement counsel;

(2) That the conduct of the FDIC enforcement counsel is unexcused;

(3) That the moving Respondent took all reasonable steps to oppose and prevent the subject delay;

(4) That the moving Respondent has been materially prejudiced or injured; and

(5) That no lesser or different sanction is adequate.

(d) *Procedure for imposition of sanctions.* (1) The administrative law judge, upon the request of any party, or on his or her own motion, may impose sanctions in accordance with this section, provided that the administrative law judge may only recommend to the Board the sanction of entering a final order determining the case on the merits.

(2) No sanction, other than refusing to accept late papers, authorized by this section shall be imposed without prior

notice to all parties and an opportunity for any counsel or party against whom sanctions would be imposed to be heard. Such opportunity to be heard may be on such notice, and the response may be in such form, as the administrative law judge directs. The opportunity to be heard may be limited to an opportunity to respond orally immediately after the act or inaction covered by this section is noted by the administrative law judge.

(3) Requests for the imposition of sanctions by any party, and the imposition of sanctions, shall be treated for interlocutory review purposes in the same manner as any other ruling by the administrative law judge.

(e) *Section not exclusive.* Nothing in this section shall be read as precluding the administrative law judge or the Board from taking any other action, or imposing any restriction or sanction, authorized by applicable statute or regulation.

§ 308.50 Suspension and disbarment.

(a) *Discretionary suspension and disbarment.* (1) The Board may suspend or revoke the privilege of any attorney to appear or practice before the FDIC if, after notice of an opportunity for hearing in the matter, that attorney is found by the Board:

(i) Not to possess the requisite qualifications to represent others:

(ii) To be seriously lacking in character or integrity or to have engaged in material unethical or improper professional conduct:

(iii) To have engaged in, or aided and abetted, a material and knowing violation of the Act; or

(iv) To have engaged in contemptuous conduct before the FDIC.

Suspension or revocation on the grounds set forth in paragraphs (a)(i), (ii), (iii) and (iv) of this section shall only be ordered upon a further finding that the attorney's conduct or character was sufficiently egregious as to justify suspension or revocation.

(2) Unless otherwise ordered by the Board, an application for reinstatement by a person suspended or disbarred under paragraph (a)(1) of this section may be made in writing at any time more than three years after the effective date of the suspension or disbarment and, thereafter, at any time more than one year after the person's most recent application for reinstatement. The suspension or disbarment shall continue until the applicant has been reinstated by the Board for good cause shown or until, in the case of a suspension, the suspension period has expired. An applicant for reinstatement under this provision may, in the Board's sole discretion, be afforded a hearing.

(b) *Mandatory suspension and disbarment.* (1) Any attorney who has been and remains suspended or disbarred by a court of the United States or of any state, territory, district, commonwealth, or possession; or any person who has been and remains suspended or barred from practice before the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Home Loan Bank Board, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or any person who has been convicted of a felony, or of a misdemeanor involving moral turpitude, within the last ten years, shall be suspended automatically form appearing or practicing before the FDIC. A disbarment, suspension, or conviction within the meaning of this paragraph (b) shall be deemed to have occurred when the disbarring, suspending, or convicting agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken, and includes a judgment or an order on a plea of nolo contendere or on consent, regardless of whether a violation is admitted in the consent.

(2) Any person appearing or practicing before the FDIC who is the subject of an order, judgment, decree, or finding of the types set forth in paragraph (b)(1) of this section shall promptly file with the Executive Secretary a copy thereof, together with any related opinion or statement of the agency or tribunal involved. Failure to file any such paper shall not impair the operation of any other provisions of this section.

(3) A suspension or disbarment under paragraph (b)(1) of this section from practice before the FDIC shall continue until the applicant has been reinstated by the Board for good cause shown, provided that any person suspended or disbarred under paragraph (b)(1) of this section shall be automatically reinstated by the Executive Secretary, upon appropriate application, if all the grounds for suspension under the provisions of that paragraph are subsequently removed by a reversal of the conviction (or the passage of time since the conviction) or termination of the underlying suspension or disbarment. An application for reinstatement on any other grounds by any person suspended or disbarred under paragraph (b)(1) of this section may be filed at any time not less than one year after the applicant's most recent application. An applicant for reinstatement under this provision may, in the Board's sole discretion, be afforded a hearing.

(c) *Hearings under this section.* Hearings conducted under this section shall be conducted in substantially the same manner as other hearings under this Subpart B, provided that in proceedings to terminate existing FDIC suspension or disbarment orders, the person seeking the termination of the order shall bear the burden of going forward with an application and with proof, and that the Board may, in its sole discretion, direct that any proceeding to terminate an existing suspension or disbarment by the FDIC be limited to written submissions.

(d) *Summary suspension for contemptuous conduct.* A finding by the administrative law judge of contemptuous conduct during the course of any proceeding shall be grounds for summary suspension by the administrative law judge of any attorney or other representative from any further participation in that proceeding for the duration of that proceeding.

(e) *Practice defined.* Unless the Board orders otherwise, for the purposes of this section, practicing before the FDIC includes, but is not limited to:

(1) Transacting any business with the FDIC as an attorney or agent for any other person; and

(2) The preparation of any statement, opinion, or other paper by any attorney, which statement, opinion, or paper is filed with the FDIC in any registration statement, notification, application, report, or other document, with the consent of such attorney.

Subpart C—Rules and Procedures Applicable to Proceedings Relating to Disapproval of Acquisition of Control

§ 308.51 Scope.

The rules and procedures in this subpart and Subpart B shall apply to proceedings in connection with the disapproval by the Board or its designee of a proposed acquisition of control of an insured nonmenber bank.

§ 308.52 Grounds for disapproval.

The following are grounds for disapproval of a proposed acquisition of control of an insured nonmember bank:

(a) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the banking business in any part of the United States;

(b) The effect of the proposed acquisition of control in any section of the United States may be to substantially lessen competition or to tend to create a monopoly or would in

any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(c) The financial condition of any acquiring person might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(d) The competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public, to permit such person to control the bank; or

(e) Any acquiring person neglects, fails, or refuses to furnish to the FDIC all the information required by the FDIC.

§ 308.53 Notice of disapproval.

(a) *General rule.* (1) Within three days of the decision by the Board or its designee to disapprove a proposed acquisition of control of an insured nonmember bank, a written notice of disapproval shall be mailed by first class mail to, or otherwise served upon, the party seeking to acquire control.

(2) The notice of disapproval shall:

(i) State the basis for the disapproval; and

(ii) Indicate that (A) a hearing may be requested by filing a written request with the Executive Secretary within ten days after service of the notice of disapproval and (B) if a hearing is requested, that an answer to the notice of disapproval, as required by § 308.54, must be filed within twenty days after service of the notice of disapproval.

(b) *Waiver of hearing.* Failure to request a hearing pursuant to this section shall constitute a waiver of the opportunity for a hearing and the notice of disapproval shall constitute a final and unappealable order.

§ 308.54 Answer to notice of disapproval.

(a) *Contents.* An answer to the notice of disapproval of a proposed acquisition of control shall be filed within twenty days after service of the notice of disapproval and shall specifically deny those portions of the notice of disapproval which are disputed. Those portions of the notice of disapproval which are not specifically denied are deemed admitted by the applicant. Any hearing under this Subpart C shall be limited to those parts of the notice of disapproval that are specifically denied.

(b) *Failure to answer.* Failure of a party to file a timely answer pursuant to this section shall be deemed a waiver of the party's right to appear at a hearing and contest the disapproval, and the notice of disapproval shall automatically constitute a final and unappealable order.

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Assessment of Civil Money Penalties for Willful Violations of the Change in Bank Control Act

§ 308.55 Scope.

The rules and procedures of this subpart and subpart B shall apply to proceedings to assess civil penalties against any person for willful violation of the Change in Bank Control Act of 1978, or any regulation or order issued pursuant thereto, in connection with the affairs of an insured nonmember bank.

§ 308.56 Assessment of penalties.

(a) *Relevant considerations.* The Board or its designee may, in its discretion, assess civil penalties for willful violations of the Change in Bank Control Act after taking into consideration the gravity of the violation and the Respondent's financial resources, good faith, and any other arguments, information, and data submitted by the Respondent.

(b) *Amount.* The Board or its designee may assess against the Respondent a penalty of not more than $10,000 per day for each day the violation of the Change in Bank Control Act continues.

§ 308.57 Collection of penalties.

The FDIC may collect may civil penalty assessed pursuant to this subpart by agreement with the Respondent, or the FDIC may bring an action against the Respondent to recover the penalty amount in the appropriate United States district court. All penalties collected under this section shall be paid over to the Treasury of the United States.

Subpart E—Rules and Procedures Applicable to Proceedings for Involuntary Termination of Insured Status

§ 308.58 Scope.

(a) *Involuntary termination of insurance pursuant to section 8(a) of the Act.* The rules and procedures in this subpart and Subpart B shall apply to proceedings in connection with the involuntary termination of the insured status of an insured bank or an insured branch of a foreign bank pursuant to section 8(a) ofthe Act, 12 U.S.C. 1818(a).

(b) *Involuntary termination of insurance pursuant to section 8(p) of the Act.* The rules and procedures in § 308.63 of this Subpart E shall apply to proceedings in connection with the involuntary termination of the insured status of an insured bank or an insured branch of a foreign bank pursuant to section 8(p) of the Act, 12 U.S.C. § 1818(p). Subpart B shall not apply to proceedings under section 8(p) of the Act.

§ 308.59 Grounds for termination of insurance.

(a) *General rule.* The following are grounds for involuntary termination of insurance pursuant to section 8(a) of the Act:

(1) An insured bank or its directors or trustees have engaged or are engaging in unsafe or unsound practices in conducting the business of such bank;

(2) An insured bank is in an unsafe or unsound conditon such that it should not continue operations as an insured bank; or

(3) An insured bank or its directors or trustees have violated an applicable law, rule, regulation, or order, or any condition imposed in writing by the FDIC in connection with the granting of any application or other request by the bank or have violated any written agreement entered into with the FDIC.

(b) *Extraterritorial acts of foreign banks.* An act or practice committed outside the United States by a foreign bank or its directors or trustees which would otherwise be a ground for termination of insured status under this section shall be a ground for termination if the Board finds:

(1) The act or practice has been, is, or is likely to be a cause of, or carried on in connection with or in furtherance of, an act or practice committed within any state, territory, or possession of the United States or the District of Columbia that, in and of itself, would be an appropriate basis for action by the FDIC; or

(2) The act or practice committed outside the United States, if proven, would adversely affect the insurance risk of the FDIC.

(c) *Failure of foreign bank to secure removal of personnel.* The failure of a foreign bank to comply with any order of removal or prohibition issued by the Board under Subpart G or the failure of any person associated with a foreign bank to appear promptly as a party to a proceeding pursuant to Subpart G shall be a ground for termination of insurance of deposits in any branch of the bank.

§ 308.60 Order of correction.

(a) *Notice to bank.* (1) Upon a finding by the Board or its designee pursuant to § 308.59 of an unsafe or unsound

practice or condition or of a violation, there shall be served upon the insured bank an Order of Correction specifying the findings and ordering correction of the practices, conditions, or violations within one hundred twenty days after receipt of an Order of Correction.

(2) A shorter period of correction of not less than twenty days may be fixed in any case where the Board or its designee, in its discretion, has determined that the insurance risk of the FDIC is unduly jeopardized, or may be fixed by the Comptroller of the Currency in the case of a national bank, a district bank, or an insured federal branch of a foreign bank, by the state authority in the case of an insured nonmember bank, including an insured State branch of a foreign bank, by the Board of Governors of the Federal Reserve System in the case of a state member bank, or by the Federal Home Loan Bank Board in the case of an insured federal savings bank.

(b) *Notice to supervisory authority.* The Executive Secretary shall also serve the Order of Correction on the Comptroller of the Currency in the case of a national bank, a district bank, or an insured federal branch of a foreign bank, on the Board of Governors of the Federal Reserve System in the case of a state member bank, on the Federal Home Loan Bank Board in the case of an insured federal savings bank, and on the appropriate state supervisory authority in the case of an insured state bank, including a state branch of a foreign bank, for the purpose of securing correction of the practices or violations of the bank or its directors or trustees, or of the condition of the bank.

§ 308.61 Notice of intent to terminate.

Unless correction of the practices, condition, or violations specified in the Order of Correction is made within the time period provided therein, the Board or its designee, if it determines to proceed further, shall cause to be served upon the insured bank a Notice of its intention to terminate insured status not less than thirty days after the service of that Notice.

§ 308.62 Notice to depositors.

If the Board enters an order terminating the insured status of a bank or branch, the bank shall, on the day that order becomes final, or on such other day as that order prescribes, mail a notification of termination of insured status to each depositor at the depositor's last address of record on the books of the bank or branch. The bank shall also publish the notification in two issues of a local newspaper of general circulation and shall furnish the FDIC with proof of such publications. The notification to depositors shall include information provided in substantially the following form:

Notice

(Date)

1. The status of the _____, as an (insured bank) (insured branch) under the provisions of the Federal Deposit Insurance Act, will terminate as of the close of business on the _____ day of _____, 19_____.

2. Any deposits made by you after that date, either new deposits or additions to existing deposits, will not be insured by the Federal Deposit Insurance Corporation.

3. Insured deposits in the (bank) (branch) on the _____ day of _____, 19_____, will continue to be insured, as provided by the Federal Deposit Insurance Act, for 2 years after the close of business on the _____ day of _____, 19_____. Provided, however, that any withdrawals after the close of business on the _____ day of _____, 19_____, will reduce the insurance coverage by the amount of such withdrawals.

(Name of bank or branch)

(Address)

The notification may include any additional information the bank deems advisable, provided that the information required by this section shall be set forth in a conspicuous manner on the first page of the notification.

§ 308.63 Involuntary termination of insured status for failure to receive deposits.

(a) *Notice to show cause.* When the Board or its designee has evidence that an insured bank is not engaged in the business of receiving deposits, other than trust funds, the Board or its designee shall give written notice of this evidence to the bank and shall direct the bank to show cause why its insured status should not be terminated under the provisions of section 8(p) of the Act. The bank shall have thirty days after receipt of the notice, or such longer period as is prescribed in the notice, to submit affidavits, other written proof, and any legal arguments that it is engaged in the business of receiving deposits other than trust funds.

(b) *Notice of termination date.* If, upon consideration of the affidavits, other written proof, and legal arguments, the Board determines that the bank is not engaged in the business of receiving deposits, other than trust funds, the finding shall be conclusive and the Board shall notify the bank that its insured status will terminate at the expiration of the first full semiannual assessment period following issuance of that notification.

(c) *Notification to depositors of termination of insured status.* Within the time specified by the Board and prior to the date of termination of its insured status, the bank shall mail a notification of termination of insured status to each depositor at the depositor's last address of record on the books of the bank. The bank shall also publish the notification in two issues of a local newspaper of general circulation and shall furnish the FDIC with proof of such publications. The notification to depositors shall include information provided in substantially the following form:

Notice

(Date)

The status of the _____ as an (insured bank) (insured branch) under the Federal Deposit Insurance Act, will terminate on the _____ day of _____, 19_____, and its deposits will thereupon cease to be insured.

(Name of bank or branch)

(Address)

The notification may include any additional information the bank deems advisable, provided that the information required by this section shall be set forth in a conspicuous manner on the first page of the notification.

Subpart F—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders

§ 308.64 Scope.

(a) *Cease-and-desist proceedings under section 8 of the Act.* The rules and procedures of this subpart and Subpart B shall apply to proceedings to order an insured nonmember bank or its official to cease and desist from practices and violations described in section 8(b) of the Act, provided that the provisions of Subpart B shall not apply to the issuance of temporary cease-and-desist orders pursuant to section 8(c) of the Act.

(b) *Proceedings under the Securities Act of 1934.* (1) The rules and procedures of this subpart and Subpart B shall apply to proceedings by the Board to order a municipal securities dealer or a person associated with a municipal securities dealer to cease and desist from any violation of law or regulation specified in section 15B(c)(5) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78o–4(c)(5), where the municipal securities dealer is an insured nonmember bank or a subsidiary thereof.

(2) The rules and procedures of this subpart and Subpart B shall apply to proceedings by the Board to order a clearing agency or transfer agent to cease and desist from failure to comply with the applicable provisions of sections 17, 17A, and 19 of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78q, 78q-1, 78s, and the applicable

rules and regulations thereunder, where the clearing agency or transfer agent is an insured nonmember bank or a subsidiary thereof.

§ 308.65 Grounds for cease-and-desist orders.

(a) *General Rule.* The Board or its designee may issue and have served upon any insured nonmember bank or its official a Notice, as described in § 308.20 of Subpart B, if:

(1) In the opinion of the Board or its designee the bank or official is engaging or has engaged in an unsafe or unsound practice;

(2) The Board or its designee has reasonable cause to believe the bank or official is about to engage in an unsafe or unsound practice in conducting the business of such bank; or

(3) In the opinion of the Board or its designee, the bank or official has violated, or there is reasonable cause to believe that the bank or official is about to violate, a law, rule, or regulation, or any condition the FDIC has imposed in writing in connection with granting an application or other request by the bank, or any written agreement with the FDIC.

(b) *Extraterritorial acts of foreign banks.* An act or practice committed outside the United States by a foreign bank or its official that would otherwise be a ground for issuing a cease-and-desist order under paragraph (a) of this section on a temporary cease-and-desist order under § 308.68 of this subpart, shall be a ground for an order if the Board or its designee finds that:

(1) The act or practice has been, is, or is likely to be a cause of, or carried on in connection with or in furtherance of, an act or practice committed within any state, territory, or possession of the United States or the District of Columbia which act or practice, in and of itself, would be an appropriate basis for action by the FDIC; or

(2) The act or practice, if proven, would adversely affect the insurance risk of the FDIC.

§ 308.66 Notice to state supervisory authorities.

The Board or its designee shall give the appropriate state supervisory authority notification of its intent to institute a proceeding pursuant to Subpart F, and the grounds thereof. Any proceedings shall be conducted according to Subpart F, unless, within the time period specified in such notification, the state supervisory authority has effected satisfactory corrective action.

§ 308.67 Effective date of order and service on bank.

(a) *Effective date.* A cease-and-desist order issued by the Board after a hearing, and a cease-and-desist order issued based upon a default, shall become effective at the expiration of thirty days after the service of the order upon the bank or its official. A cease-and-desist order issued upon consent shall become effective at the time specified therein. All cease-and-desist orders shall remain effective and enforceable, except to the extent they are stayed, modified, terminated, or set aside by the Board or its designee or by a reviewing court.

(b) *Service on banks.* In cases where the bank is not the Respondent, the cease-and-desist order shall also be served upon the bank.

§ 308.68 Temporary cease-and-desist order.

(a) *Issuance.* (1) When the Board or its designee determines that the violation, threatened violation, or the unsafe or unsound practice, as specified in the Notice, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the bank, or is likely to seriously weaken the condition of the bank or otherwise seriously prejudice the interests of its depositors prior to the completion of the proceedings under section 8(b) of the Act and § 308.65 of this subpart, the Board or its designee may issue a temporary order requiring the bank or its official to immediately cease and desist from any such violation or practice and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of the proceedings under section 8(b) of the Act.

(2) The temporary order shall be served upon the bank or official named therein and shall also be served upon the bank in the case where the temporary order applies only to an official of the bank.

(b) *Effective date.* A temporary order shall become effective when served upon the bank or its official. Unless the temporary order is set aside, limited, or suspended by a court in proceedings authorized under section 8(c)(2) of the Act, the temporary order shall remain effective and enforceable pending completion of administrative proceedings pursuant to section 8(b) of the Act and entry of an order which has become final.

(c) *Subpart B does not apply.* The provisions of subpart B shall not apply to the issuance of temporary orders under this section.

Subpart G—Rules and Procedures Applicable to Proceedings Relating to Removal and Suspension Orders

§ 308.69 Scope.

The rules and procedures of this subpart and Subpart B shall apply to proceedings to remove, or prohibit from further participation in the conduct of the affairs of a bank as provided in section 8(e) of the Act, 12 U.S.C. 1818(e), any director, officer, or other person participating in the conduct of the affairs of an insured nonmember bank, provided that the provisions of Subpart B shall not apply to issuance of a temporary suspension order pursuant to section 8(e)(4) of the Act.

§ 308.70 Grounds for removal or prohibition.

(a) *Removal of director or officer.* The Board or its designee may issue and have served upon a director or officer of any insured nonmember bank and on such bank a Notice of intent to remove a director or officer from office when in the opinion of the Board or its designee:

(1) (i) The director or officer has committed any violation of law, rule, regulation, or of a cease-and-desist order which has become final; or has engaged or participated in any unsafe or unsound practice in connection with the bank; or has committed or engaged in any act, omission, or practice which constitutes a breach of fiduciary duty as a director or officer;

(ii) The violation, practice, or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer or is one which demonstrates the director's or officer's willful or continuing disregard for the safety or soundness of the bank; and

(iii) The bank has suffered or will probably suffer substantial financial loss or other damage, or the interests of its depositors could be seriously prejudiced by reason of such violation, practice, or breach of fiduciary duty, or the director of officer has received financial gain by reason of such violation, practice, or breach of fiduciary duty; or

(2) The director or officer:

(i) Has engaged in conduct or practices with respect to another insured bank or other business institution that resulted in substantial financial loss or other damage;

(ii) Has evidenced either personal dishonesty or a willful or continuing disregard for the safety or soundness of the previously affected institution or of the subject insured bank; and

(iii) Has evidenced unfitness to continue as a director or officer of an insured bank; or

(3) The director or officer has committed any violation of the Depository Institution Management Interlocks Act.

(b) *Prohibition of person participating in conduct of bank.* The Board or its designee may issue, and have served upon any person participating in the conduct of the affairs of an insured nonmember bank, a Notice of intention to prohibit the individual's further participation in any manner in the conduct of the affairs of the bank when in the opinion of the Board or its designee the individual;

(1) Has engaged in conduct or practices with respect to such bank or other insured bank or other business institution that resulted in substantial financial loss or other damage;

(2) Has evidenced either personal dishonesty or a willful or continuing disregard for the safety or soundness of the previously affected institution or of the subject insured bank; and

(3) Has evidenced unfitness to participate in the conduct of the affairs of an insured bank.

§ 308.71 Notice to state supervisory authority.

The Board or its designee shall give the appropriate state supervisory authority notification of its intent to institute a proceeding pursuant to this Subpart G, and the grounds therefor. The proceeding shall be conducted according to this Subpart G unless within the time specified in such notification, the state supervisory authority has effected satisfactory corrective action.

§ 308.72 Effective date of removal or prohibition order.

(a) *Effective date.* An order of removal or prohibition issued by the Board after a hearing, and an order of removal or prohibition issued on default, shall become effective at the expiration of thirty days after the service of the order upon the Respondent and the bank. An order issued upon consent shall become effective at the time specified therein. All orders shall remain effective and enforceable, except to the extent that they are stayed, modified, terminated, or set aside by the Board or its designee or by a reviewing court.

(b) *Applications to terminate removal or prohibition orders.* Unless otherwise ordered by the Board or its designee, an application to terminate or modify an order of removal or prohibition issued under section 8(e) of the Act may be made in writing at any time more than three years after the effective date of the removal or prohibition and, thereafter, at any time more than one year after the person's most recent application for termination of the order. The order of removal or prohibition shall continue until the applicant has been reinstated by the Board or its designee for good cause shown. Unless otherwise ordered by the Board or its designee, an application for termination of an order under this provision shall be decided on the basis of written submissions.

§ 308.73 Temporary suspension order.

(a) *Issuance.* (1) The Board may suspend from office or prohibit from further participation in the conduct of the affairs of an insured nonmember bank, a director, an officer, or any other person participating in the conduct of the affairs of such bank pending the completion of the proceeding initiated by the Notice issued pursuant to section 8(e)(1)(2) of the Act and § 308.70 of this subpart G when the Board deems the suspension or prohibition necessary for the protection of the bank or the interests of its depositors.

(2) The temporary suspension order shall be served upon the individual being suspended or prohibited and upon the bank.

(b) *Effective date.* A suspension or prohibition shall become effective when served upon the individual being suspended or prohibited. Unless set aside, limited, or suspended by a court in proceedings authorized by the Act, the temporary suspension order shall remain effective and enforceable pending completion of the administrative proceedings and entry of an order which has become final pursuant to the provisions of section 8(e)(5) of the Act.

(c) *Subpart B does not apply.* The provision of Subpart B shall not apply to the issuance of temporary suspension orders under this section.

Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Penalties for the Violation of Cease-and-Desist Orders and of Certain Federal Statutes

§ 308.74 Scope.

(a) *General rule.* The rules and procedures in this subpart and Subpart B shall apply to proceedings to assess and collect civil penalties from:

(1) An insured nonmember bank or its official where the bank or official has violated the terms of any order which has become final and was issued pursuant to section 8(b) (c) or (s) of the Act;

(2) An insured nonmember bank or its official where the bank or official has violated the provisions of section 22(h), 23A, or 23B of the Federal Reserve Act, 12 U.S.C. 375b, 371c, or 371c–1 or any rule or regulation promulgated thereunder;

(3) An insured nonmember bank or its official where the bank or official has violated the provisions of section 106(b)(2) of the Bank Holding Company Act, as amended, 12 U.S.C. 1972(2), or any rule or regulation promulgated thereunder; or

(4) An insured nonmember bank or its official where the bank or official has violated the provisions of Chapter 40 of Title 12 of the United States Code, or any rule, regulation, or order issued thereunder by the FDIC.

(b) *Definition of "has violated."* As used in this subpart, the term "has violated" includes, but is not limited to, any action, alone or with others, for or towards causing, bringing about, participating in, counseling, or aiding or abetting a violation.

§ 308.75 Assessment of penalties.

(a) *Assessment.* The civil penalty shall be assessed upon service of the Notice of Assessment and shall automatically become final and unappealable unless the Respondent both:

(1) Requests a hearing pursuant to the provisions of § 308.20; and

(2) Answers the Notice pursuant to the provisions of § 308.21 of Subpart B.

(b) *Relevant considerations.* In determining the amount of the civil penalty to be assessed, the Board or its designee shall consider the financial resources and good faith of the bank or official, the gravity of the violation, the history of previous violations, and any such other matters as justice may require.

(c) *Amount.* The Board or its designee may assess upon the bank or official a civil penalty of not more than $1,000 per day for each day the violation of an order or statute specified in § 308.74 of this subpart continues.

§ 308.76 Effective date of, and payment under, an order to pay.

(a) *Effective date.* (1) Unless otherwise provided in the Notice, except in situations covered by paragraph (a)(2) of this section, civil penalties assessed pursuant to this subpart are due and payable sixty days after the Notice is served upon the Respondent.

(2) If the Respondent both requests a hearing and serves an answer, civil penalties assessed pursuant to this subpart are due and payable sixty days after an order to pay, issued after the

hearing or upon default, is served upon the Respondent, unless the order provides for a different period of payment. Civil penalties assessed pursuant to an order to pay issued upon consent are due and payable within the time specified therein.

(b) *Payment.* All penalties collected under this section shall be paid over to the Treasury of the United States.

Subpart I—Rules and Procedures for Imposition of Sanctions Upon Municipal Securities Dealers or Persons Associated With Them and Clearing Agencies or Transfer Agents

§ 308.77 Scope.

The rules and procedures in this subpart and subpart B shall apply to proceedings by the Board or its designee:

(a) To censure, limit the activities of, suspend, or revoke the registration of, any municipal securities dealer for which the FDIC is the appropriate regulatory agency;

(b) To censure, suspend, or bar from being associated with such a municipal securities dealer, any person associated with such a municipal securites dealer; and

(c) To deny registration to, censure, limit the activities of, suspend, or revoke the registration of, any transfer agent or clearing agency for which the FDIC is the appropriate regulatory agency.

This subpart and Subpart B shall not apply to proceedings to postpone or suspend registration of a transfer agent or clearing agency pending final determination of denial or revocation of registration.

§ 308.78 Grounds for imposition of sanctions.

(a) *Action under section 15(b)(4) of the Securities Exchange Act of 1934.* The Board or its designee may issue and have served upon any municipal securities dealer for which the FDIC is the appropriate regulatory agency, or any person associated or seeking to become associated with a municipal securities dealer for which the FDIC is the appropriate regulatory agency, a written Notice of its intention to censure, limit the activities or functions or operations of, suspend, or revoke the registration of, such municipal securities dealer, or to censure, suspend, or bar the person from being associated with the municipal securities dealer, when the Board or its designee determines:

(1) That such municipal securities dealer or such person:

(i) Has committed any prohibited act or omitted any required act specified in subparagraph (A), (D), or (E) of section 15(b)(4) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78o),

(ii) Has been convicted of any offense specified in section 15(b)(4)(B) of that act within 10 years of commencement of proceedings under this subpart; or

(iii) Is enjoined from any act, conduct, or practice specified in section 15(b)(4)(C) of that act; and

(2) That is in the public interest to impose any of the sanctions set forth in paragraph (a) of this section.

(b) *Action under sections 17 and 17A of Securities Exchange Act of 1934.* The Board or its designee may issue, and have served upon any transfer agent or clearing agency for which the FDIC is the appropriate regulatory agency, a written Notice of its intention to deny registration to, censure, place limitations on the activities or functions or operations of, suspend, or revoke the registration of, the transfer agent or clearing agency, when the Board or its designee determines;

(1) That the transfer agent or clearing agency has willfully violated, or is unable to comply with, any applicable provision of section 17 or 17A of the Securities Exchange Act of 1934, as amended, or any applicable rule or regulation issued pursuant thereto; and

(2) That it is in the public interest to impose any of the sanctions set forth in paragraph (b) in this section.

§ 308.79 Notice to and consultation with the Securities and Exchange Commission.

Before initiating any proceedings under § 308.78, the FDIC shall:

(a) Notify the Securities and Exchange Commission of the identity of the municipal securities dealer or associated person against whom proceedings are to be initiated, and the nature of and basis for the proposed action; and

(b) Consult with the Commission concerning the effect of the proposed action on the protection of investors and the possibility of coordinating the action with any proceeding by the Commission against the municipal securities dealer or associated person.

§ 308.80 Effective date of order imposing sanctions.

An order issued by the Board after a hearing or an order issued upon a default shall become effective at the expiration of thirty days after the service of the order, except that an order of censure, denial, or revocation of registration is effective when served. An order issued upon consent shall become effective at the time specified therein. All orders shall remain effective and enforceable except to the extent they are stayed, modified, terminated, or set aside by the Board, its designee, or a reviewing court, provided that orders of suspension shall continue in effect no longer than twelve months.

Subpart J—Rules and Procedures Relating to Exemption Proceedings Under Section 12(h) of the Securities Exchange Act of 1934

§ 308.81 Scope.

The rules and procedures of this subpart J shall apply to proceedings by the Board or its designee to exempt, in whole or in part, an issuer of securities from the provisions of section 12(g), 13, 14(a), 14(c), 14(d), or 14(f) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 781, 78m, 78n (a), (c), (d) or (f), or to exempt an officer or a director or benefical owner of securities of such an issuer from the provisions of section 16 of that act, 15 U.S.C. 78p.

§ 308.82 Application for exemption.

Any interested person may file a written application for an exemption under this subpart with the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. The application shall specify the exemption sought and the reason therefore, and shall include a statement indicating why the exemption would be consistent with the public interest or the protection of investors.

§ 308.83 Newspaper notice.

(a) *General rule.* If the Board or its designee, in its sole discretion, decides to further consider an application for exemption, there shall be served upon the applicant instructions to publish one notification in a newspaper of general circulation in the community where the main office of the issuer is located. The applicant shall furnish proof of such publication to the Executive Secretary or such other person as may be directed in the instructions.

(b) *Contents.* The notification shall contain:

(1) The name and address of the issuer and the name and title of the applicant;

(2) The exemption sought;

(3) A statement that a hearing will be held; and

(4) A statement that within thirty days of publication of the newspaper notice, interested persons may submit to the FDIC written comments on the application for exemption and a written request for an opportunity to be heard.

The address of the FDIC must appear in the notice.

§ 308.84 Notice of hearing.

Within ten days after expiration of the period for receipt of comments pursuant to § 308.83, the Executive Secretary shall serve upon the applicant and any person who has requested an opportunity to be heard written notification indicating the place and time of the hearing. The hearing shall be held not later than thirty days after service of the notification of hearing. The notification shall contain the name and address of the presiding officer designated by the Executive Secretary and a statement of the matters to be considered.

§ 308.85 Hearing.

(a) *Proceedings are informal.* Formal rules of evidence, the adjudicative procedures of the Administrative Procedures Act (5 U.S.C. 554–557), and Subpart B shall not apply to hearings under this subpart.

(b) *Hearing procedure.* (1) Parties to the hearing may appear personally or through counsel and shall have the right to introduce relevant and material documents and to make an oral statement.

(2) The presiding officer shall have discretion to permit presentation of witnesses within specified time limits, provided that a list of witnesses is furnished to the presiding officer prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness and each party may cross-examine any witness presented by an opposing party.

(3) The proceedings shall be recorded and the transcript shall be promptly submitted to the Board. If the hearing is conducted by a presiding officer other than one or more members of the Board, the presiding officer shall make recommendations to the Board, unless the Board, in its sole discretion, directs otherwise.

§ 308.86 Decision of Board.

Following submission of the hearing transcript to the Board, the Board may grant the exemption where it determines, by reason of the number of public investors, the amount of trading interest in the securities, the nature and extent of the issuer's activities, the issuer's income or assets, or otherwise, that the exemption is consistent with the public interest or the protection of investors. Any exemption shall be set forth in an order specifying the terms of the exemption, the person to whom it is granted, and the period for which it is granted. A copy of the order shall be served upon each party to the proceeding.

Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the Act

§ 308.87 Scope.

The procedures of this subpart shall be followed when an investigation is instituted and conducted in connection with any open or failed insured bank, any institutions making application to become insured banks, and affiliates thereof, or with other types of investigations to determine compliance with applicable law and regulations, pursuant to section 10(c) of the Act, 12 U.S.C. 1820(c). Subpart B shall not apply to investigations under this subpart.

§ 308.88 Conduct of investigation.

An investigation conducted pursuant to section 10(c) of the Act shall be initiated only upon issuance of an order by the Board, or by the General Counsel or designee thereof together with either the Director of the Division of Bank Supervision or designee thereof or the Director of the Division of Liquidation or designee thereof. The order shall indicate the purpose of the investigation and designate FDIC's representative(s) to direct the conduct of the investigation. Upon application and for good cause shown, the persons who issue the order of investigation may limit, quash, modify, or withdraw it. Upon the conclusion of the investigation, an order of termination of the investigation shall be issued by the persons issuing the order of investigation.

§ 308.89 Powers of person conducting investigation.

The person designated to conduct a section 10(c) investigation shall have the power, among other things, to administer oaths and affirmations, to take and preserve testimony under oath, to issue subpoenas and subpoenas duces tecum and to apply for their enforcement to the United States District Court for the judicial district or the United States court in any territory in which the main office of the bank, institution, or affiliate is located or in which the witness resides or conducts business. The person conducting the investigation may obtain the assistance of counsel or others from both within and outside the FDIC. The persons who issue the order of investigation may limit, quash, or modify and subpoena or subpoena duces tecum, upon application and for good cause shown. The person conducting an investigation may report to the Board any instance where any attorney has been guilty of contemptuous conduct. The Board, upon motion of the person conducting the investigation, or on its own motion, may make a finding of contempt and may then summarily suspend, without a hearing, any attorney representing a witness from further participation in the investigation.

§ 308.90 Investigations confidential.

Investigations conducted pursuant to section 10(c) shall be confidential. Information and documents obtained by the FDIC in the course of such investigations shall not be disclosed, except as provided in Part 309 of the FDIC's rules and regulations and as otherwise required by law.

§ 308.91 Rights of witnesses.

In an investigation pursuant to section 10(c) of the Act:

(a) Any person compelled or requested to furnish testimony, documentary evidence, or other information, shall upon request be shown and provided with a copy of the order initiating the proceeding;

(b) Any person compelled or requested to provide testimony as a witness or to furnish documentary evidence may be represented by an attorney who meets the requirements of § 308.08(c). That attorney may be present and may:

(1) Advise the witnees before, during, and after such testimony;

(2) Briefly question the witness at the conclusion of such testimony for clarification purposes; and

(3) Make summary notes during such testimony solely for the use and benefit of the witnesss;

(c) All persons testifying shall be sequestered. Such persons and their counsel shall not be present during the testimony of any other person, unless permitted in the discretion of the person conducting the investigation;

(d) In cases of a perceived or actual conflict of interest arising out of an attorney's or law firm's representation of multiple witnesses, the person conducting the investigation may require the attorney to comply with the provisions of § 308.47(b) of Subpart B; and

(e) Witness fees shall be paid in accordance with § 308.16 of Subpart B.

§ 308.92 Service of subpoena.

Service of a subpoena shall be accomplished in accordance with § 308.13 of Subpart B.

§ 308.93 Transcripts.

(a) *General rule.* Transcripts of testimony, if any, in an investigation pursuant to section 10(c) shall be recorded by an official reporter, or by any other person or means designated

by the person conducting the investigation. A witness may, solely for the use and benefit of the witness, obtain a copy of the transcript of his or her testimony at the conclusion of the investigation or, at the discretion of the person conducting the investigation, at an earlier time, provided the transcript is available. The witness requesting a copy of his or her testimony shall bear the cost thereof.

(b) *Subscription by witness.* The transcript of testimony shall be subscribed by the witness, unless the person conducting the investigation and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the transcript of the testimony is not subscribed by the witness, the official reporter taking the testimony shall certify that the transcript is a true and complete transcript of the testimony.

Subpart L—Procedures and Standards Applicable to Suspension, Removal, and Prohibition Where a Felony is Charged, and Petitions for Reconsideration of Denial of Applications Under Section 19 of the Act

§ 308.94 Scope.

The rules and procedures set forth in this subpart shall apply to the following proceedings:

(a) To suspend any director, officer, or other person praticipating in the conduct of the affairs of an insured state nonmember bank, or to prohibit such idividuals from further participation in the conduct of the affairs of the bank, where the individual is charged in any state, Federal, or territorial information or indictment, or charged in any complaint authorized by a United States attorney, with the commission of, or participation in, a crime involving dishonesty or breach of trust punishable by imprisonment exceeding one year under State or Federal law;

(b) To remove from office any director, officer, or other person, or to prohibit any person from further participation in the conduct of the affairs of the bank, except with the consent of the Board or its designee, where a judgment of conviction not subject to further appellate review has been entered against the individual for the commission of, or participation in, a crime involving dishonesty or breach of trust punishable by imprisonment exceeding one year under State or Federal law; or

(c) Petitions for reconsideration of a denial of an application by an insured bank under section 19 of the Act, 12 U.S.C. 1829 to engage the services of an individual who has been convicted of any criminal offense involving dishonesty or a breach of trust.

§ 308.95 Relevant considerations.

(a) *Suspension, removal, or prohibition.* (1) In proceedings to suspend, remove, or prohibit any individual under § 308.94 (a) and (b), the following shall be considered:

(i) Whether the alleged offense is a crime which is punishable by imprisonmnet for a term exceeding one year under state or federal law, and which involves dishonesty or breach of trust; and

(ii) Whether continued service or participation by the individual may pose a threat to the interest of the bank's depositors or any threaten to impair public confidence in the bank.

(2) Additional factors in the specific case that appear relevant to its decision to continue in effect, rescind, terminate, or modify a suspension, removal or prohibition order may be considered. However, the question of whether an individual charged with a crime is guilty of the crime charged shall not be tried in a proceeding under this subpart.

(b) *Denial of petition.* (1) In proceedings under § 308.94(c) for reconsideration of a denial of an application, the following shall be considered:

(i) Whether the conviction is for a criminal offense, either misdemeanor or felony, involving dischonesty or breach of trust;

(ii) Whether service of the individual to the bank constitutes a significant threat to the safety and soundness of the applicant bank or the interests of its depositors, or threatens to impair public confidence in the bank;

(iii) Evidence of the affected individual's rehabilitation;

(iv) The position to be held by the affected individual;

(v) Applicable fidelity bond coverage for the affected individual; and

(vi) Additional factors in the specific case that appear relevant. However, the question of whether an individual convicted of a crime was guilty of that crime shall not be tried in a proceeding under this subpart.

(2) In evaluating these factors, weight may be given to the judgment of the applicant bank's board of directors and bonding company, provided the judgments are made at arm's length.

§ 308.96 Notice of suspension, orders of removal or prohibition, and denial of applications.

(a) *Notice of suspension or prohibition.* (1) The Board or its designee may suspend or prohibit further participation by a director, an officer, or other person participating in the conduct of the affairs of the bank by written notice of suspension or prohibition upon a determination by the Board or its designee that the grounds for such suspension or prohibition specified in § 308.94(a) exist. The written notice of suspension or prohibition shall be served upon the individual and the bank.

(2) The written notice of suspension shall:

(i) Inform the individual that a written request for a hearing, stating the relief desired and grounds therefor, and any supporting evidence, may be filed with the Executive Secretary within thirty days after receipt of the written notice; and

(ii) Summarize or cite to the relevant considerations specified in § 308.95(a) of this subpart.

(3) The suspension or prohibition shall be effective immediately upon service on the individual, and shall remain in effect until final disposition of the information, indictment, complaint, or until it is terminated by the Board or its designee under the provisions of § 308.97 or § 308.99 or otherwise.

(b) *Order of removal or prohibition.* (1) The Board or its designee may issue an order removing or prohibiting from further participation in the conduct of the affairs of the bank director, officer, or other person participating in the conduct of the affairs of the bank, when:

(i) A final judgment of conviction not subject to further appellate review is entered against the individual for a crime referred to in § 308.94(b) and

(ii) The Board or its designee determines that continued service or participation of the individual may threaten the interests of the bank's depositors or may threaten to impair public confidence in the bank.

The order shall be served upon the individual and the bank.

(2) The order shall(i) inform the individual that a written request for a hearing, stating the relief desired and grounds therefor, and any supporting evidence, may be filed with the Executive Secretary within thirty days after receipt of the order and (ii) summarize or cite the relevant considerations specified in § 308.95(a) of this subpart.

(3) The order shall be effective immediately upon service on the individual, and shall remain in effect until it is terminated by the Board or its designee under the provisions of section 308.97 or 308.99 or otherwise.

(c) *Denial of applications.* An initial denial of an application under section 19 of the Act shall:

(1) Inform the affected individual or bank that a written request for a hearing, stating the relief desired and the grounds therefor, and any supporting evidence, may be filed with the Executive Secretary within thirty days after receipt of the denial; and

(2) Summarize or cite the relevant considerations specified in § 308.95(b) of this subpart.

§ 308.97 Appeals of orders and denials.

(a) *Hearing dates.* The Executive Secretary shall order a hearing to be commenced within thirty days after receipt of a request for hearing filed pursuant to § 308.96. Upon the request of the petitioning individual or bank, the presiding officer or the Executive Secretary may order a later hearing date.

(b) *Hearing procedure.* (1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Executive Secretary.

(2) The provisions of §§ 308.08, 308.10, 308.14 and 308.18 of Subpart B shall apply to hearings held pursuant to this section, but except as expressly provided in this subpart, the balance of subpart B shall not apply to such hearings.

(3) The individual, or in the case of a denial of an application under section 19 of the Act, the affected bank, may appear at the hearing and shall have the right to introduce relevant and material documents and oral argument. Staff members of the FDIC's Office of the General Counsel may attend the hearing and participate as a party.

(4) There shall be no discovery in proceedings under this Subpart L.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The proceedings shall be recorded and a transcript shall be furnished, upon request and payment of the cost thereof, to the affected individual or the bank afforded the hearing.

(6) In the course of or in connection with any hearing under this subpart, the presiding officer shall have the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with § 306.16 of Subpart B.

(7) Upon the request of the affected individual or the bank afforded the hearing, or the staff members of the FDIC's Office of the General Counsel, the record shall remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board, where possible, within ten days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Executive Secretary who shall promptly certify the entire record, including the recommendation, to the Board. The Executive Secretary's certification shall close the record.

(c) *Written submissions in lieu of hearing.* The affected individual or the bank may in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(d) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of hearing. If a hearing is waived, the order shall be final and unappealable, and shall remain in full force and effect until it is terminated or modified by the Board or its designee.

§ 308.98 Decision by Board.

Within sixty days following the Executive Secretary's certification of the record to the Board, the Board shall notify the affected individual or the bank whether the suspension or prohibition, or the denial, will be continued, terminated, or otherwise modified, or whether the order of removal or prohibition or the denial will be rescinded or otherwise modified. The notification shall state the basis for any decision of the Board adverse to the affected individual or bank. The Board Shall promptly rescind or modify an order of removal or prohibition or the denial where the decision is favorable to the affected individual or bank.

§ 308.99 Reconsideration by Board.

(a) *Petition for reconsideration.* An affected individual or bank subject to any notice or order issued under § 308.96 or § 308.98 shall be entitled to petition the Board for reconsideration after the expiration of twelve months from the later of:

(1) The date of the notice or order or the Board's decision upholding the notice or order, or

(2) The Board's most recent reconsideration of the notice or order.

(b) *Contents of petition.* A petition under this section shall state with particularity the basis for reconsideration and the relief sought. It may be accompanied by a supporting memorandum and by other documentation. The Board, in its sole discretion, shall determine whether to grant a hearing on the petition. If a hearing is granted, it shall be conducted in the same manner as other hearings conducted under this Subpart L.

Subpart M—Rules and Procedures Relating to the Recovery of Attorney Fees and Other Expenses

§ 308.100 Scope.

This subpart, and the Equal Access to Justice Act (5 U.S.C. 504), which it implements, apply to adversary adjudications before the FDIC. The types of adjudication covered by this subpart are those listed in § 308.04 of Subpart B. Subpart B does not apply to any proceedings to recover fees and expenses under this subpart.

§ 308.101 Filing, content, and service of documents.

(a) *Time to file.* An application and any other pleading or document related to the application may be filed with the Executive Secretary whenever the applicant has prevailed in the proceeding or in a discrete significant substantive portion of the proceeding within thirty days after service of the final order of the Board in disposition of the proceeding.

(b) *Content.* The application and related documents shall conform to the requirements of § 308.12 Subpart B.

(c) *Service.* The application and related documents shall be served on all parties to the adversary adjudication in accordance with § 308.13 of Subpart B, except that statements of net worth shall be served only on counsel for the FDIC.

(d) Upon receipt of an application, the Executive Secretary shall refer the matter to the administrative law judge who heard the underlying adversary proceeding, provided that if the original administrative law judge is unavailable, or the Executive Secretary determines, in his or her sole discretion, that there is cause to refer the matter to a different

administrative law judge, the matter shall be referred to a different administrative law judge.

§ 308.102 Responses to application.

(a) *By FDIC.* (1) Within twenty days after service of an application, counsel for the FDIC may file with the Executive Secretary and serve on all parties an answer to the application. Unless counsel for the FDIC requests and is granted an extension of time for filing or filed a statement of intent to negotiate under § 308.110 of this subpart, failure to file an answer within the twenty-day period will be treated as a consent to the award requested.

(2) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the FDIC's position. If the answer is based on any alleged facts not already in the record of the proceeding, the answer shall include either supporting affidavits or a request for further proceedings under § 308.111.

(b) *Reply to answer.* The applicant may file a reply if the FDIC has addressed in its answer any of the following issues: that the position of the FDIC was substantially justified, that the applicant unduly protracted the proceedings, or that special circumstances make an award unjust. The reply shall be filed within fifteen days after service of the answer. If the reply is based on any alleged facts not already in the record of the proceeding, the reply shall include either supporting affidavits or a request for further proceedings under § 308.111.

(c) *By other parties.* Any party to the adversary adjudication, other than the applicant and the FDIC, may file comments on an application within twenty days after service of the application. If the applicant is entitled to file a reply to the FDIC's answer under paragraph (b) of this section, another party may file comments on the answer within fifteen days after service of the answer. A commenting party may not participate in any further determines that the public interest requires such participation in order to permit additional exploration of matters raised in the comments.

(d) *Additional response.* Additional filings in the nature of pleadings may be submitted only by leave of the administrative law judge.

§ 308.103 Eligibility of applicants.

(a) *General rule.* To be eligible for an award under this subpart, an applicant must have been named or admitted as a party to the proceeding. In addition, the applicant must show that it meets all other conditions of eligibility set out in paragraph (b) of this section.

(b) *Types of eligible applicant.* The types of eligible applicant are:

(1) An individual with a new worth of not more than $2 million at the time the adversary adjudication was initiated; or

(2) Any owner of an unincorporated business, or any partnership, corporation, associations, unit of local government or organization, the net worth of which did not exceed $7,000,000 and which did not have more than 500 employees at the time the adversary adjudication was initiated.

(c) *Factors to be considered.* In determining the types of eligible applicant:

(1) An applicant who owns an unicorporated business shall be considered as an "individual" rather than a "sole owner of an unicorporated buisness" if the issues on which he or she prevails are related to personal interests rather than to business interests.

(2) An applicant's net worth includes the value of any assets disposed of for the purpose of meeting an eligibility standard and excludes the value of any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably equivalent value will be presumed to have been made for this purpose.

(3) The net worth of a bank shall be established by the net worth information reported in conformity with applicable instructions and guidelines on the bank's Consolidated Report of Condition and Income filed for the last reporting date before the initiation of the adversary adjudication.

(4) The employees of an applicant include all those persons who were regularly providing services for remuneration for the applicant, under its direction and control, on the date the adversary adjudication was initiated. Part-time employees are included as though they were full-time employees.

(5) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. The aggregated net worth shall be adjusted if necessary to avoid counting the net worth of any entity twice. As used in this subpart, "affiliates" are:

(i) Individuals, corporations, and entities that directly or indirectly or acting through one or more entities control a majority of the voting shares of the applicant; and

(ii) Corporations and entities of which the applicant directly or indirectly owns or controls a majority of the voting shares.

The Board may, however, on the recommendation of the administrative law judge, or otherwise, determine that such aggregation with regard to one or more of the applicant's affiliates would be unjust and contrary to the purposes of this subpart in light of the actual relationship between the affiliated entities. In such a case the net worth and employees of the relevant affiliate or affiliates will not be aggregated with those of the applicant. In addition, the Board may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(6) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 308.104 Prevailing party.

(a) *General rule.* An eligible applicant who, following an adversary adjudication has gained victory on the merits in the proceeding is a "prevailing party". An eligible applicant may be a "prevailing party" if a settlement of the proceeding was effected on terms favorable to it or if the proceeding against it has been dismissed. In appropriate situations an applicant may also have prevailed if the outcome of the proceeding has substantially vindicated the applicant's position on the significant substantive matters at issue, even though the applicant has not totally avoided adverse final action.

(b) *Segregation of costs.* When a proceeding has presented a number of discrete substantive issues, an applicant may have prevailed even though all the issues were not resolved in its favor. If such an applicant is deemed to have prevailed, any award shall be based on the fees and expenses incurred in connection with the discrete significant substantive issue or issues on which the applicant's position has been upheld. If such segregation of costs is not practicable, the award may be based on a fair proration of those fees and expenses incurred in the entire proceeding which would be recoverable under § 308.105 if proration were not performed. Whether separate or prorated treatment is appropriate, and the appropriate propration percentage, shall be determined on the facts of the particular case. Attention shall be given to the significance and nature of the respective issues and their separability and interrelationship.

§ 308.105 Standards for awards.

A prevailing applicant may receive an award for fees and expenses unless the position of the FDIC during the proceeding was substantially justified or special circumstances make the award unjust. An award will be reduced or denied for the applicant has unduly or unreasonably protracted the proceedings. Awards for fees and expenses incurred before the date on which the adversary adjudication was initiated are allowable if their incurrance was necessary to prepare for the proceeding.

§ 308.106 Measure of awards.

(a) *General rule.* Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate, provided that no award under this subpart for the fee of an attorney or agent may exceed $75 per hour. No award to compensate an expert witness may exceed the highest rate at which the FDIC pays expert witnesses. An award may include the reasonable expenses of the attorney, agent, or expert witness as a separate item, if the attorney, agent, or expert witness ordinarily charges clients separately for such expenses.

(b) *Determination of reasonableness of fees.* In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the administrative law judge shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fee for like services, or, if he or she is an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(c) *Awards for studies.* The reasonable cost of any study, analysis, test, project, or similar matter prepared on behalf of an applicant may be awarded to the extent that the charge for the service does not exceed the prevailing rate payable for similar services, and the study or other matter was necessary for preparation of the applicant's case and not otherwise required by law or sound business or financial practice.

§ 308.107 Application for awards.

(a) *Contents.* An application for an award of fees and expenses under this subpart shall contain:

(1) The name of the applicant and an identification of the proceeding;

(2) A showing that the applicant has prevailed, and an identification of each issue with regard to which the applicant believes that the position of the FDIC in the proceeding was not substantially justified;

(3) A statement of the amount of fees and expenses for which an award is sought;

(4) If the applicant is not an individual, a statement of the number of its employees on the date the proceeding was initiated;

(5) A description of any affiliated individuals or entities, as defined in § 308.103(c)(5), or a statement that none exist;

(6) A declaration that the applicant, together with any affiliates, had a net worth not more than the ceiling established for it by § 308.103(b) as of the date the proceeding was initiated; and

(7) Any other matters that the applicant wishes the FDIC to consider in determining whether and in what amount an award should be made.

(b) *Verification.* The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application and supporting documents is true and correct.

§ 308.108 Statement of net worth.

(a) *General rule.* A statement of net worth must be filed with the application for an award of fees. The statement shall reflect the net worth of the applicant and all affiliates of the applicant.

(b) *Contents.* (1) The statement of net worth may be in any form convenient to the applicant which fully discloses all the assets and liabilities of the applicant and all the assets and liabilities of its affiliates, as of the time of the initiation of the adversary adjudication. Unaudited financial statements are acceptable unless the administrative law judge or the Board otherwise requires. Financial statements or reports to a Federal or State agency, prepared before the initiation of the adversary adjudication for other purposes, and accurate as of a date not more than three months prior to the initiation of the proceeding, are acceptable in establishing net worth as of the time of the initiation of the proceeding, unless the administrative law judge or the Board otherwise requires.

(2) In the case of applicants or affiliates that are not banks, net worth shall be considered for the purposes of this subpart to be the excess of total assets over total liabilities, as of the date the underlying proceeding was initiated, except as adjusted under § 308.103(c)(2). Assets and liabilities of individuals shall include those beneficially owned within the meaning of the FDIC's rules and regulations.

(3) If the applicant or any of its affiliates is a bank, the portion of the statement of net worth which relates to the bank shall consist of a copy of the bank's last Consolidated Report of Condition and Income filed before the initiation of the adversary adjudication. In all cases the administrative law judge or the Board may call for additional information needed to establish the applicant's net worth as of the initiation of the proceeding. Except as adjusted by additional information that was called for under the preceding sentence, net worth shall be considered for the purposes of this subpart to be the total equity capital (or, in the case of mutual savings banks, the total surplus accounts) as reported, in conformity with applicable instructions and guidelines, on the bank's Consolidated Report of Condition and Income filed for the last reporting date before the initiation of the proceeding.

(c) *Statement confidential.* Unless otherwise ordered by the Board or required by law, the statement of net worth shall be for the confidential use of counsel for the FDIC, the Board, and the administrative law judge.

§ 308.109 Statement of fees and expenses.

The application shall be accompanied by a statement fully documenting the fees and expenses for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in work in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services performed. The administrative law judge or the Board may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 308.110 Settlement negotiations.

If counsel for the FDIC and the applicant believe that the issues in a fee application can be settled, they may jointly file with the Executive Secretary a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer under § 308.102 for an additional twenty days, and further extensions may be granted by the administrative law judge upon the joint request of counsel for the FDIC and the applicant.

§ 308.111 Further proceedings.

(a) *General rule.* Ordinarily, the determination of a recommended award will be made by the administrative law judge on the basis of the written record. However, on request of either the applicant or the FDIC, or on his or her own initiative, the administrative law judge may order further proceedings such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings will be held only when necessary for full and fair resolution of the issues arising from the application and will be conducted promptly and expeditiously.

(b) *Request for further proceedings.* A request for further proceeding under this section shall specifically identify the information sought or the issues in dispute and shall explain why additional proceedings are necessary.

(c) *Hearing.* Ordinarily, the administrative law judge shall hold an oral evidentiary hearing only on disputed issues of material fact which cannot be adequately resolved through written submissions.

§ 308.112 Recommended decision.

The administrative law judge shall file with the Executive Secretary a recommended decision on the fee application not later than ninety days after the filing of the application or thirty days after the conclusion of the hearing, whichever is later. The recommended decision shall include written proposed findings and conclusions on the applicant's eligibility and its status as a prevailing party and an explanation of the reasons for any difference between the amount requested and the amount of the recommended award. The recommended decision shall also include, if at issue, proposed findings on whether the FDIC's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. The administrtive law judge shall file the record of the proceeding on the fees application and, at the same time, serve upon each party a copy of the recommended decision, findings, conclusions, and proposed order.

§ 308.113 Board action.

(a) *Exceptions to recommended decision.* Within twenty days after service of the recommended decision, findings, conclusions, and proposed order, the applicant or counsel for the FDIC may file with the executive Secretary written exceptions thereto. A supporting brief may also be filed.

(b) *Decision of Board.* The Board shall render its decision within sixty days after the matter is submitted to it by the Executive Secretary. The Executive Secretary shall furnish copies of the decision and order of the Board to the parties. Judicial review of the decision and order may be obtained as provided in 5 U.S.C. 504(c)(2).

§ 308.114 Payment of awards.

An applicant seeking payment of an award made by the Board shall submit to the Executive Secretary a statement that the applicant will not seek judicial review of the decision and order or that the time for seeking further review has passed and no further review has been sought. The FDIC will pay the amount awarded within thirty days after receiving the applicant's statement, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

By order of the Board of Directors.

Dated at Washington, DC, this 12th day of February, 1988.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 88-3683 Filed 2-23-88; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-167-AD]

Airworthiness Directives; General Dynamics Models 340, 440, and C-131 (Military) Series Airplanes, Including Those Modified for Turbo-Propeller Power

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to all General Dynamics Models 340, 440, and C-131 (Military) series airplanes, including turbo-propeller conversions, that would require supplemental structural inspections and repair or replacement, as necessary, to assure continued airworthiness. Some General Dynamics Models 340, 440, and C-131 series airplanes are approaching or, in some cases, have exceeded the manufacturer's original design goal. This proposal is prompted by a structural reevaluation, which has identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed the manufacturer's original design life. Fatigue cracks in these areas, if not detected and corrected, could result in a compromise of the structural integrity of these airplanes.

DATE: Comments must be received no later than April 21, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-167-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The applicable service information may be obtained from General Dynamics, Convair Division, Lindberg Field Plant, P.O. Box 85377, San Diego, California 92138, Attention: Derek Trust. This information may be examined at the FAA Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Don Dirian, Aerospace Engineer, Western Aircraft Certification Office, ANM-172W, FAA, Northwest Mountain Region, 15000 Aviation Boulevard, Hawthorne, California; telephone (213) 297-1167.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date

for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-167-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

A significant number of transport category airplanes are approaching their design life goal. It is expected that these airplanes will continue to be operated beyond this point. The incidence of fatigue cracking on these airplanes is expected to increase as airplanes reach and exceed this goal. In order to evaluate the impact of increased fatigue cracking with respect to maintaining the safe design of the General Dynamics 340/440 airplane stucture, the manufacturer has conducted a structural reassessment of these airplanes using engineering evaluation techniques. The criteria for this reassessment are contained in FAA Advisory Circular (AC) 91-60, "Continued Airworthiness of Older Airplanes."

In response to AC-91-60, General Dynamics initiated the development of a Supplemental Inspection Document (SID) for the Models 340/440 and C-131 (Military) airplanes. General Dynamics coordinated their efforts with the operators of Model 340/440 airplanes. To make maximum use of service experience and existing maintenance programs, Model 340/440 operators have participated with the manufacturer and the FAA in generating the Model 340/440 SID. Advisory Circular 91-60 promotes the preparation and approval of a criteria document for such a program. General Dynamics developed criteria and guidelines for: (a) Selecting the major areas of the structure, identified as Principal Structural Elements (PSE), which are candidates for supplemental inspection by using the latest engineering analysis techniques; and (b) analyzing existing inspection programs. This supplemental inspection program evaluates the adequacy of current normal maintenance inspection programs to detect fatigue damage, and provides detailed non-destructive inspection procedures to supplement the operators' existing inspection programs, as necessary. The program was established on evaluation of each PSE selected. A PSE is defined as "that structure whose failure, if it remained undetected, could lead to the loss of the aircraft." Selection of a PSE is influenced by the susceptibility of a structural area, part, or element to fatigue, corrosion, stress corrosion, or accidental damage.

The 340/440 Supplemental Inspection Document, Report No. ZS-340-1000, with addendum I, II and III, addresses five basic issues: (a) Identification of the selected PSE's, (b) when to accomplish inspection, (c) frequency of inspection, (d) number of inspections required, and (e) non-destructive inpection (NDI) procedures for detecting cracks.

The SID inspection program is based on Model 340/440 current usage, durability assessment of the structure using current analysis techniques, and selection of the current non-destructive inspection methods. In order to implement the SID inspection program, each operator must compare its current structural maintenance program to the SID requirements for each PSE. If the current inspections equal or exceed the SID requirements for a given PSE, no supplemental inspections would be required for that PSE under the SID program. However, if the opposite is true, supplemental inspections in the form of more frequent inspections or more sensitive NDI methods, or both, would be necessary in addition to the operator's normal maintenance program. Since the emphasis of the SID program is on aging aircraft, the inspection program emphasis is on the high time aircraft of each PSE population. The date and flight hours (or landings) at which modification or replacement of a PSE is made, would be required to be reported by the operator to the manufacturer for each applicable airplane by fuselage number and/or factory serial number and PSE number. That particular configuration is then evaluated by General Dynamics. The inspection threshold and interval will be established and a change, if needed, published in the next revision of the SID.

Inspection Program

The expected fatigue life of each PSE is determined by a demonstrated life, either by service experience or by analysis. The time when the supplemental inspections are to begin or be completed is determined from the expected fatigue life and crack propagation characteristics of each PSE. All inspections are to be accomplished before the airplane exceeds the fatigue life threshold.

The results of the supplemental inspections are to be reported to the manufacturer on a form provided in the SID. This information will be presented in the periodic revisions.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

Effects on Existing Maintenance Programs

In developing the SID, the manufacturer, operators, and the FAA reviewed the operation and maintenance practices of existing maintenance programs with respect to the basic requirements of the SID program. As a result, the General Dynamics 340/440 SID allows affected operators to take credit for maintenance already being performed and gives the operators flexibility in revising their maintenance programs to incorporate this supplemental program for their airplanes.

It is estimated that 350 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1,000 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhuor. Based on these figures, the intial cost to incorporate SID program on U.S. operators is estimated to be $14,000,000.

The recurring inspection cost to the affected operators is estimated to be 500 manhours per airplane per year, at an average labor cost of $40 per manhour. Based on these figures, the annual recurring cost of this AD is estimated to be $7,000,000.

Based on the above figures, the total cost impact of this AD is estimated to be $14,000,000 for the first year, and $7,000,000 for each year thereafter.

For these reasons, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 340/440 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft, Incorporation by Reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

2. By adding the following new airworthiness directive:

General Dynamics (Convair): Applies to Models 340/440 and C131 (Military) series airplanes, all serial numbers, certificated in any category, including those modified for turbo-propeller power. Compliance required as indicated in the body of the AD, unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

A. Within one year the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program that provides for inspection of the Principal Structural Elements (PSE) defined in Section 3 of Genral Dynamics, Report No. 25–340–1000, 340/440 Supplemental Inspeciton Document (SID), dated November 14, 1986, Addendum I, dated April 14, 1987, Addendum II, dated May 4, 1987, and Addendum III, dated August 4, 1987, or later FAA-approved revisions. The non-destructive inspection techniques set forth in the SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results (negative or positive) must be reported to General Dynamics, in accordance with the instructions of the SID.

B. Cracked structure detected during the inspection required by paragraph A., above, must be repaired or replaced, prior to further flight, in accordance with instructions in the SID.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of the FAA Principal Maintenance Inspector, may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the General Dynamics/Convair Division, Lindberg Field Plant, P.O. Box 85377, San Diego, California 92138, Attention: Derek Trusk. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 15000 Aviation Boulevard, Hawthorne, California.

The FAA has requested **Federal Register** approval to incorporate by reference the manufacturer's service documents identified and described in this proposed directive.

Issued in Seattle, Washington, on February 12, 1988.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 88–3862 Filed 2–23–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 702

Surface Coal Mining and Reclamation Operations; Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of reopening of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) published a proposed rule on June 1, 1987. The proposal would establish regulations relating to the exemption contained in section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (the Act) concerning the extraction of coal incidental to the extraction of other minerals. The proposed rule would provide guidance to the coal and noncoal mining industry and State regulatory authorities concerning the implementation of the exemption.

By this notice, OSMRE is reopening the comment period on all issues associated with the proposed rule. This notice decribes modifications to certain features of the proposed rule to reflect concerns raised by commenters. Under the amended proposed rule that OSMRE is currently considering, operators would be required to apply for an exemption, and receive approval from the regulatory authority before being allowed to begin operations based upon the exemption.

DATE: Written Comments: OSMRE will accept written comments on the proposed rule until 5 p.m., Eastern time on March 25, 1988.

ADDRESSES: Written Comments: Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street, NW., Washington, DC., or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L, 1951 Constitution Avenue, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: James Fary, Division of Abandoned Mine Land Reclamation, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–5284 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: .

I. Public Comment Procedures
II. Regulatory Text of Proposed Modifications
III. Discussion of Proposed Modifications

I. Public Comment Procedures

Written comments may be submitted on the proposed modifications. Such comments should be specific, confined to issues pertinent to the June 1, 1987 (52 FR 20546) proposed rules and modifications contained in this notice, and should explain the reason for any recommended change. Where practical, commenters should submit three copies of their comments (see "ADDRESSES"). Comments received after the close of the comment period (see "DATES") may not necessarily be considered or included in the Administrative Record for the final rule.

II. Regulatory Text of Proposed Modifications

The major proposed regulatory changes from the June 1, 1987 proposal which OSMRE is considering are provided below. A discussion describing the changes follows the regulatory text. The textual changes would replace the language proposed in the corresponding sections published on June 1, 1987. Where no replacement language is proposed by this notice, the June 1 notice continues to be the agency's proposal.

Section 702.11 Application requirements and procedures.

(a) *New operations.* Any person who plans to commence coal extraction in reliance on the incidental mining exemption shall file a complete application for exemption with the regulatory authority for each mining

area. Except as provided in paragraph (e)(2) of this section, an operator may not commence coal extraction based upon the exemption until the regulatory authority approves such application.

(b) *Existing operations.* Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to the effective date of this part may continue for 90 days following that date. Coal extraction may not continue after such 90-day period unless that person files an administratively complete application for exemption with the regulatory authority. If an administratively complete application is filed within 90 days, the person may continue extracting coal in reliance on the exemption beyond the 90-day period until the regulatory authority makes an initial administrative decision on such application.

(c) *Additional information.* The regulatory authority shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.

(d) *Public comment period.* Following publication of the newspaper notice required by § 702.12(e), the regulatory authority shall provide a period of no less than 30 days during which time any person having an interest which is or may be adversely affected by a decision on the application may submit written comments or objections.

(e) *Exemption determination.* (1) No later than 90 days after the publication of the newspaper notice required by § 702.12(e), the regulatory authority shall make a written determination whether, and under what conditions, the operations claiming exemption are exempt under this part, and shall provide the applicant with the determination and the basis for the determination.

(2) If the regulatory authority fails to notify an operator as specified in paragraph (e)(1) of this section, an operator who has not begun may commence coal extraction pending a determination on the application unless the regulatory authority issues an interim finding, together with reasons therefor, that the operator may not begin coal extraction.

(f) *Adminstrative review.* (1) Where OSMRE is the regulatory authority, determination under paragraph (e) of this section shall constitute a decision of the Office within the meaning of 43 CFR 4.1281 and shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR Part 4.

(2) Where the State is the regulatory authority, a decision under paragraph (e) of this section, shall be subject to administrative review under the provisions of the State program.

Section 702.12 Contents of application for exemption.

An application for exemption shall include at a minimum:

* * * * *

(b) A list of the other minerals sought to be extracted and estimates of the annual and life-of-the-mine production to include:

(1) Tonnages of other minerals to be extracted for commercial use or sale and coal to be produced within each mining area, and

(2) The basis of all tonnage estimates.

* * * * *

(e) Evidence of publication in a newspaper of general circulation in the county of the mining area of a public notice of filing of an application for exemption with the regulatory authority where the public notice identifies the persons claiming the exemption;

* * * * *

Section 702.15 Conditions of exemption and right of inspection and entry.

(a) A person conducting activities covered by this part shall:

* * * * *

(3) In good faith conduct its operations in accordance with (i) the approved application; or (ii) the standards of this part when authorized to extract coal under § 702.11(b) or § 702.11(e)(2) prior to approval of the application.

* * * * *

Section 702.17 Revocation and enforcement.

(a) *Regulatory authority responsibility.* If it has reason to believe that the operation granted an exemption for a specific mining area is not exempt under the provisions of this part, the regulatory authority shall notify the operator that the exemption may be revoked unless the operator demonstrates to the regulatory authority that the mining area in question continues to meet the exemption criteria. The operator shall have no more than 30 days to do so.

(b) If the regulatory authority finds that activities conducted in the mining area do not qualify for the exemption, the regulatory authority shall revoke the exemption. A decision to revoke an exemption shall be subject to administrative review under 43 CFR Part 4 when OSMRE is the regulatory authority or a State program equivalent when the State is the regulatory authority. Any coal extraction in a mining area following revocation of an exemption shall be considered surface coal mining operations subject to the requirements of the Act.

(c) *Direct enforcement.* (1) An operator mining in good faith under an approved exemption pursuant to § 702.15(a)(3) shall not be cited for violations of the Act or the regulatory program or assessed abandoned mine reclamation fees until the exemption is revoked.

(2) An operator who is not conducting its activities in good faith in accordance with § 702.15(a)(3) for a period of time shall be subject to direct enforcement action for violations of the regulatory program which occur during that period, and will be liable for reclamation fees for that period.

Section 702.18 Reporting requirements.

(a) At the conclusion of each 12-month period following approval of the exemption, a person conducting activities covered by this part shall file a written report with the regulatory authority containing the information required by paragraphs (b) and (c) of this section with respect to:

(1) The preceding 12-month period; and

(2) The entire preceding period of active operations at the mining area.

(b) The report shall be filed no later than 30 days following the end of such 12-month period. Information in the report shall be separately identified for each mining area covered by the exemption.

(c) For each period and mining area covered by the report, the report shall specify:

(1) The number of tons of extracted coal sold in bona fide sales;

(2) The number of tons of coal extracted and used by the operator or related entity;

(3) The number of tons of other commercially valuable minerals removed and sold in bona fide sales;

(4) The number of tons of other commercially valuable minerals removed and used by the operator or related entity.

III. Discussion of Proposed Modifications

Section 702.11—Application Requirements and Procedures.

The proposed modification would change the requirement for filing a notice of exemption to a procedure requiring an application for and approval of an exemption. Commenters have suggested that the regulatory authority should approve claims for

exemption before operations are allowed to commence, rather than merely being notified, as was originally proposed.

Under § 702.11(a), new operations would be required to file a complete application for exemption which would require an administrative decision by the regulatory authority before the operator would be allowed to commence coal extraction based upon the exemption. Requiring operators to apply for and receive exemptions is a procedure OSMRE successfully used earlier with regard to the special small operator exemption in 30 CFR 710.12.

Under proposed § 702.11(b), existing operations would be authorized to extract coal for 90 days following the effective date of Part 702. If they intend to continue to extract coal after the 90-day period, such persons would have to file an administratively complete application for exemption with the regulatory authority for each mining area within 90 days of the effective date of Part 702. If an existing operator timely files the administratively complete application for exemption, he may continue to extract coal beyond the 90-day period until the regulatory authority makes an administrative decision on the application. An administratively complete application is one which properly addresses each requirement that has to be satisfied by the application.

Comments are requested as to whether State regulatory authorities would be able to receive and process applications as set forth above. If problems exist, OSMRE will address them in the preamble to the final rule.

Under proposed § 702.11(c), the regulatory authority shall notify the persons if the application is incomplete and may require the submittal of additional information at any time.

It has been suggested that OSMRE allow for public participation in the exemption process. Although OSMRE proposed under § 702.12(e) that notice be published in a newspaper of general circulation, the June 1 proposal did not specify a time period during which public comments would be accepted on an application for an exemption. Under proposed § 702.11(d) that OSMRE is currently considering, the regulatory authority would provide a public comment period of no less than 30 days following publication of the newspaper notice required by § 702.12(e). During the comment period, any person having an interest which is or may be adversely affected by a decision on the application would be allowed to submit written comments or objections. The regulatory authority shall consider any comments received in arriving at its exemption decision.

Proposed § 702.12(e) has been modified slightly to require only one rather than two newspaper notices. This change would lessen the burden placed on affected operators.

It has also been suggested that new operations be allowed to operate immediately after filing a complete application even though the regulatory authority has not determined whether to grant the exemption. These commenters believe that it would be unfair to make operators, with legitimate claims to the exemption, wait until the regulatory authority has approved the application. OSMRE has taken this concern into account and under § 702.11(e)(1) would require the regulatory authority to make a written determination within 60 days after close of the 30-day public comment period. The operator would have to be given notice of the determination. Under § 702.11(e)(2) failure by the regulatory authority to make a written determination within the specified time period would allow the new operator to commence coal extraction unless the regulatory authority issued an interim finding, together with the reasons therefor.

Under proposed § 702.11(f), a decision of the regulatory authority either granting or denying an exemption would be subject to administrative review.

Section 702.12—Contents of Application for Exemption.

Proposed § 702.12 would be modified to reflect the change from a notice process to an application process.

Section 702.14—Requirements for Exemption.

Time period for exemption. Proposed § 702.14 would set forth the substantive criteria to qualify for an exemption. In response to numerous concerns, OSMRE is reconsidering the time period over which the exemption will be judged. Section 702.14(a) of the proposed rule provided that the exemption would be judged over the life of the mining operation. Some commenters felt that this time frame was too long and requested OSMRE to consider a shorter period. OSMRE is specifically requesting comments on whether it should change the proposed standard, and if so, what period of time would be proper. In addition, commenters should consider whether different time periods should be established for certain types of operations.

Market for other minerals. As proposed in June 1987, § 702.14(c) would make it clear that for coal extraction to be incidental to the extraction of another commercially valuable mineral, either (1) a market must already exist for such other mineral or (2) bona fide anticipation exists that a market for such mineral will develop in the reasonably foreseeable future, not to exceed 12 months. OSMRE is concerned that this latter standard may provide an area of abuse because it may not be possible to project with precision the future marketability of any mineral. Thus any expectation might qualify as a "bona fide anticipation."

In response to its concern, OSMRE is considering adopting a rule which would only allow an exemption if the market exists for the other commercially valuable mineral at the time of the exemption application. Alternatively, if OSMRE were to allow future marketability to establish that the other mineral is commercially valuable, OSMRE is considering requiring documentary evidence to establish the likelihood that a market for the other mineral will in fact develop during the next 12 months. OSMRE is specifically requesting comments on this issue.

Section 702.15—Conditions of Exemption and Right of Inspection and Entry.

Proposed § 702.15 would be modified to reflect the change from a procedure under which the filing of a notice of exemption would confer the ability to claim the exemption to one in which the terms of the exemption have to be approved.

Under proposed § 702.15(a)(3), an operator would be able to rely upon the exemption only if in good faith it conducts its operation in accordance with the approved application. If an operator is authorized to extract coal prior to approval of its application, either because it filed an application within 90 days after the effective date of a final rule or because the regulatory authority does not act within 60 days after the close of the comment period, the operator would also have to conduct its operation in good faith, in accordance with the exemption criteria of Part 702. The "good faith" standard is proposed to be included to avoid abuse by operators of the exemption either before or after approval of the exemption application.

Section 702.17—Revocation and enforcement.

Under the June proposal, § 702.17 would have allowed enforcement action to be taken by the regulatory authority or OSMRE if an operation claiming an exemption was in fact not exempt. Such an approach made sense where

operators did not need approval to operate under the exemption.

The thrust of proposed § 702.17 would be modified from the June 1 proposal. Under the terms of the current proposal, enforcement action is inappropriate against an operator who applied for, received, and in good faith is operating in accordance with an approved exemption. Current regulatory policy, as set forth in 30 CFR 700.11(c), precludes enforcement action following a regulatory determination of exemption until the determination is reversed. The approach that would be established in § 702.17 would be to revoke an exemption prospectively and not to impose sanctions upon an operator conducting its activities in good faith in reliance upon an approved exemption application.

Under proposed § 702.17(a) if, after granting an exemption, the regulatory authority has reason to believe that the operation is no longer exempt, it would notify the operator that the exemption may be revoked for a specific mining area. The operator would be provided a period of no more than 30 days to demonstrate that it continues to meet the exemption criteria.

Under proposed § 702.17(b), if the regulatory authority determines that the activities conducted in the mining area do not qualify for the exemption, it would revoke the exemption. This decision would be subject to administrative review.

Any coal extraction in the area following revocation would be considered surface coal mining operations, subject to the requirements of the Act

Proposed § 702.17(c) would set forth OSMRE's enforcement policy concerning the exemption. Under 702.17(c)(1), a person conducting its operations in good faith under an approved exemption pursuant to § 702.15(a)(3) could not be cited for violations of the Act or the regulatory program or assessed reclamation fees until the exemption is revoked.

Under proposed § 702.17(c)(2), a person who is not conducting its activities in good faith in accordance with § 702.15(a)(3) for a period of time would be subject to direct enforcement action for violations of the Act or regulatory program which occur during that period, and would be liable for reclamation fees for that period.

Section 702.18—Reporting Requirements.

To prevent abuse of the exemption, proposed § 702.18 would impose an annual reporting requirement relating to the proposed tonnage test. The regulatory authority would not have to reapply the tonnage tests every year and each operator would not have to demonstrate that it satisfies the test for every 12-month period. OSMRE recognizes that in certain instances, the tonnage of the coal extracted may exceed 16⅔ percent for a particular period, but would be less over the life of the mine. Such circumstances would depend upon the mining sequence and location of the coal relative to the other minerals in the mining area and would have been projected in the exemption application. The annual report would provide a basis for monitoring to assure that the operation is proceeding as contemplated in the approved application.

Under proposed § 702.18, each person conducting activities covered by Part 702 would be required annually to file a report with the regulatory authority once a year. Under the proposal, information in the report would have to be separately identified for each mining area covered by the exemption. Such information would cover two periods. It would cover the 12 consecutive month period following approval of the exemption or the last annual report and it would also cumulatively cover the entire period of active operation at the mining area.

For each period and mining area covered by the report, the report would have to specify: (1) The number of tons of extracted coal sold in bona fide sales: (2) the number of tons of coal extracted and used by the operator or related entity; (3) the number of tons of other commercially valuable minerals removed and sold in bona fide sales; and (4) the number of tons of other commerically valuable minerals removed and used by the operator or related entity. Having this information would enable the regulatory authority to monitor the progress of the operation.

OSMRE specifically solicits comments on whether the information which would have to be filed is or reasonably can be obtained by operators. If such information is not readily available, OSMRE solicits comments on what information can be submitted that would allow the regulatory authority to monitor exempt operations.

List of Subjects in 30 CFR Part 702

Administrative practice and procedures, Surface mining, Underground mining.

Date: February 18, 1988.

Jed D. Christensen,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 88–3873 Filed 2–23–88; 8:45 am]

BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans Education; Amendments to VEAP Required by the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986; Correction

AGENCY: Veterans Administration and Department of Defense.

ACTION: Correction.

SUMMARY: On pages 4186 through 4192 of the **Federal Register** of February 12, 1988, the Veterans Administration and the Department of Defense published proposed rules concerning provisions of Pub. L. 99–576 which affect the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP). The amount of time for the public to offer its written comments was inadvertently made too short. This notice is to correct that error. The correct dates are listed below.

DATES: Comments must be received on or before March 14, 1988. The comments will be available for public inspection until March 28, 1988.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until March 28, 1988.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (202) 233–2092.

Dated: February 18, 1988.

Priscilla B. Carey,

Chief, Directives Management Division.

[FR Doc. 88–3927 Filed 2–23–88; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 88-55; FCC 88-36]

World Administrative Telegraph and Telephone Conference (WATTC-88); Draft International Telecommunications Regulations

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission has issued a Notice of Inquiry (NOI) regarding proposed changes to the existing International Telegraph and Telephone Regulations, which will be considered at the World Telegraph and Telephone Conference (WATTC-88) in November 1988. The Notice of Inquiry (NOI) solicits comments on the Final Report of the Preparatory Committee for this conference (PC/WATTC) which contains Draft Telecommunication Regulations.

DATES: Interested parties may file comments on or before March 10, 1988, and reply comments on or before March 25, 1988.

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

FOR FURTHER INFORMATION CONTACT: Wendell R. Harris, Assistant Bureau Chief/International *or* Douglas V. Davis, International Conference Staff, Common Carrier Bureau, telephone (202) 632-3214.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Inquiry in CC Docket 88-55, adopted February 2, 1988, and released February 9, 1988.

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.

Summary of Notice of Inquiry

1. By this Notice of Inquiry (NOI), the Commission informs the general public of the upcoming World Administrative Telegraph and Telephone Conference (WATTC-88) to be held under the auspices of the International Telecommunication Union (ITU) in Melbourne, Australia in November 1988. Due to the potential impact of proposed changes to existing International Telegraph and Telephone Regulations on users and providers of international telecommunications services, the Commission believes that this matter should be as widely disseminated within the U.S. as possible.

2. Appended to this NOI is the 39 page Final Report [1] of the Preparatory Committee for this conference (PC/WATTC), which contains Draft International Telecommunication Regulations and comments from several Administrations (including the United States) on the work of the PC/WATTC. The Commission solicits comments on this Final Report and the Draft International Telecommunication Regulations, with a view toward providing the information developed in this proceeding, and any conclusions drawn therefrom, to the preparatory process of the United States WATTC Delegation.

Procedural Matters:

3. Pursuant to applicable provisions of § 1.415 and 1.419 of the Commission's Rules, 47 CFR 415 and 419, all interested persons may file comments on the matters in this proceeding on or before March 10, 1988 and reply comments on or before March 25, 1988. An original and five copies of all statements, briefs, comments or replies shall be filed with the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. All filings in this proceeding will be available for public inspection in the Docket Reference Room at the Commission's Washington, DC offices. All relevant and timely comments will be considered by the Commission before final acton is taken in this proceeding. The Commission may consider information and ideas not contained in filings, provided that such information or a writing indicating its nature and/or source is placed in the public file, or is otherwise publically available, and provided that the Commission's reliance on such information is noted in its written disposition of this proceeding.

4. Pursuant to § 1.1204(a)(4) of the Commission's Rules, 47 CFR 1204(a)(4), no *ex parte* restrictions apply to this proceeding. Also, due to the nature of this Notice of Inquiry, provisions of the Regulatory Flexibility Act of 1980 and the Paperwork Reduction Act of 1980 are not applicable in this proceeding.

[1] Editorial Note: The Report was not submitted for publication in the **Federal Register**.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-3856 Filed 2-23-88; 8:45 am

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on the Proposed Endangered Status for the Independence Valley Speckled Dace and the Clover Valley Speckled Dace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period will be reopened for the proposed determination of endangered status for the Clover Valley speckled dace (*Rhinichthys osculus oligoporus*) and the Independence Valley speckled dace (*Rhinichthys osculus lethoporus*). The former is known from only two small springs in northwestern Nevada and the latter from only one spring in the same area. Both are in jeopardy because of their extremely limited distribution, the vulnerability of their habitats to perturbation by human irrigation practices, and the introduction of non-native aquatic species. The extension of the comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The comment period, which originally closed on November 22, 1987, and then was extended to February 1, 1988, now closes April 25, 1988.

ADDRESSES: Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Regional Endangered Species Office at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The Independence Valley and Clover Valley speckled daces are very limited

in distribution in northwestern Nevada. Both are in jeopardy because of their extremely limited distribution, the vulnerability of their habitats to perturbation by human irrigation practices, and the introduction of non-native aquatic species. A proposal of endangered status for both fish was published in the **Federal Register** (52 FR 35282) on September 18, 1987. Extension of the comment period was published in the **Federal Register** (52 FR 45976) on December 3, 1987.

The comment period on the proposal originally closed on November 17, 1987. The Service extended the comment period to February 1, 1988. The Comment period is now extended an additional 60 days, to April 25, 1988. Written comments may now be submitted until April 25, 1988, to the Service office in the Addresses section.

Author

The primary author of this notice is Mr. Wayne S. White, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.;* Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: February 18, 1988.

Wally Steucke,

Acting Regional Director.

[FR Doc. 88-3897 Filed 2-23-88; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 53, No. 36
Wednesday, February 24, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Export Administration
Title: Notification of Delivery Verification Requirement
Form Number: Agency—ITA-648P; OMB—0625-0005
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 510 respondents; 264 reporting/recordkeeping hours
Needs and Uses: This form is used to notify U.S. exporters that they must require from their foreign consignee a certification that the commodities exported were actually delivered to the foreign consignee. This procedure is used by the U.S. and other free world countries to increase the effectiveness of their controls over international trade in strategic commodities.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: February 10, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-3907 Filed 2-23-88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: The U.S. Geostationary Operational Environmental Satellite (GOES) Data Collection System (DCS) Application
Form Number: Agency-N/A; OMB—0648-0157
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 6 respondents; 24 reporting hours
Needs and Uses: The GOES Data Collection System (GOES DCS) is a system for collecting and transmitting data from remote platforms via a government-owned geostationary satellite, the purpose of which is to collect environmental data. Current loading on the GOES DCS does not use the entire capacity of the system. NOAA allows qualified users to use the excess capacity. The information provided is used to determine if the applicant is eligible to participate in this system.
Affected Public: State or local governments; businesses or other for-profit institutions; federal agencies; non-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: February 10, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-3908 Filed 2-23-88; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Order No. 371]

Resolution and Order Approving the Application of the Bi-State Authority, Lawrenceville-Vincennes Municipal Airport, for a General-Purpose Foreign-Trade Zone and Subzones in Lawrence and Clay Counties, IL

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 USC 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Bi-State Authority, Lawrenceville-Vincennes Airport, a public corporation of the States of Indiana and Illinois, filed with the Foreign-Trade Zones Board (the Board) on April 1, 1986, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Lawrence County, Illinois, and a special-purpose subzone for the joint auto components manufacturing operations of North American Lighting, Inc., and Hella Electronics, Inc., in Clay County, Illinois, adjacent to the Owensboro-Evansville Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the

U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 USC 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Bi-State Authority, Lawrenceville-Vincennes Airport (the Grantee), a public corporation of the States of Illinois and Indiana, has made application (filed April 1, 1986, Docket 12–86, 51 FR 12356) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone and subzones in Lawrence and Clay Counties, Illinois, adjacent to the Ownesboro-Evansville Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone and subzones, designated on the records of the Board as Zone No. 146 and Subzone Nos. 146A and 146B, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone and subzones shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone and subzone sites in the performance of their official duties.

The grant does not include authority for manufacturing in the general-purpose zone, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the general-purpose zone and any new manufacturing within the subzones.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC., this 11th day of February, 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board

C. William Verity,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–3921 Filed 2–23–88; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–588–066]

Impression Fabric of Man-Made Fiber From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner and two exporters, the Department of Commerce has conducted an administrative review of hte antidumping finding on impression fabric of man-made fiber from Japan. The review covers two exporters of this merchandise to the U.S. and the period May 1, 1986 through April 30, 1987. There were no known shipments of this merchandise to the U.S. by the two firms during the period and there are no known unliquidated entries.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 24, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 1987, the Department of Commerce ("Department") published in the **Federal Register** (52 FR 41601) the final results of its last administrative review of the antidumping finding on impression fabric of man-made fiber from Japan (43 FR 22344, May 25, 1978). The petitioner and two exporters requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation on June 19, 1987 (52 FR 23330). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

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 the Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated ("TSUSA")* item number(s) and the HS item number(s) with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as TSUSA 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 & Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs

offices have reference copies, and petitioners may contract the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of impression fabric of man-made fiber, currently classifiable under TSUSA items 338.5001, 338.5002, and 347.6030 and HS item numbers 5407.41.00 and 5806.32.10.

The review covers two exporters of Japanese impression fabric of man-made fiber to the United States and the period May 1, 1986 through April 30, 1987.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period May 1, 1986 through April 30, 1987.

Exporter	Margin (percent)
Mitsui & Co., Ltd.	[1] 7.5
Nissei Co., Ltd.	[1] 10.12

[1] No shipments during the period; margins from the last review in which there were shipments.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for all shipments by the reviewed firms of Japanese impression fabric of man-made fiber. For any shipments from the remaining known manufacturers/exporters not covered by this review, the cash deposit will continue to be at the rates published in the final results of the last administrative review for each of those firms (49 FR 19560, May 8, 1984, 52 FR 41601, October 29, 1987).

For any future entries of this merchandise from a new manufacturer/exporter, not covered in this or prior administrative reviews whose first shipments occurred after April 30, 1987 and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 10.12 percent shall be required. These deposit requirements are effective for all shipments of Japanese impression fabric of man-made fiber entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 16775(a)(1)) and 19 CFR 353.53a.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: February 16, 1988.

[FR Doc. 88-3922 Filed 2-23-88; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; California State University

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket No.: 87-035. *Applicant:* California State University, Los Angeles, Los Angeles, CA 90032. *Instrument:* NMR Spectrometer, Model AM 400 with Accessories. *Manufacturer:* Bruker Instruments Inc., West Germany. *Denial Without Prejudice to Resubmission:* September 25, 1987.

Docket No.: 87-064. *Applicant:* Smithsonian Institution, Washington, DC 20560. *Instrument:* Scanning Electron Microscope, Model JSM-840 with Accessories. *Manufacturer:* JEOL Ltd., Japan. *Denial Without Prejudice to Resubmission:* November 18, 1987.

Docket No.: 87-082. *Applicant:* University of California, San Diego, La Jolla, CA 92093. *Instrument:* Triaxial Load Cell Apparatus, Model LLP. *Manufacturer:* Seiken Inc., Japan. *Denial Without Prejudice to Resubmission:* September 22, 1987.

Docket No.: 87-094. *Applicant:* Hunter College of the City University of New York, New York, NY 10021. *Instrument:* Stopped-Flow Apparatus. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Denial Without Prejudice to Resubmission:* August 31, 1987.

Docket No.: 87-097. *Applicant:* U.S. Geological Survey, Building 2101, NSTL, MS 39529. *Instrument:* Sediment Sampler and Concentrator. *Manufacturer:* Envirodate Ltd., Canada. *Denial Without Prejudice to Resubmission:* August 31, 1987.

Docket No.: 87-103. *Applicant:* University of Rochester, Rochester, NY 14620. *Instrument:* Mass Spectrometer, Model SIRA 12 with Accessories. *Manufacturer:* VG Instruments Inc., United Kingdom. *Denial Without Prejudice to Resubmission:* September 15, 1987.

Docket No.: 87-119. *Applicant:* University of Georgia, Complex Carbohydrate Research Center, Athens, GA 30613. *Instrument:* Superconducting Fourier NMR Spectrometer, Model AM 500. *Manufacturer:* Bruker Instruments Inc., West Germany. *Denial Without Prejudice to Resubmission:* September 28, 1987.

Docket No.: 87-148. *Applicant:* Washington University, St. Louis, MO 63130. *Instrument:* Scanning Electron Microscope. *Manufacturer:* JEOL Ltd., Japan. *Denial Without Prejudice to Resubmission:* November 18, 1987.

Docket No.: 87-150. *Applicant:* University of Illinois, Urbana, IL 61801. *Instrument:* Excimer Laser/Dye Laser System, Model EMG-203 MSC. *Manufacturer:* Lambda-Physik, West Germany. *Denial Without Prejudice to Resubmission:* Augut 31, 1987.

Docket No.: 87-165. *Applicant:* University of Virginia Medical School, Charlottesville, VA 22908. *Instrument:* Spectropolarimeter, Model J-600. *Manufacturer:* JASCO, Japan. *Denial Without Prejudice to Resubmission:* September 15, 1987.

Docket No.: 87-168. *Applicant:* University of Montana, Missoula, MT 59812. *Instrument:* Portable Rock Magnetometer and Rock Demagnetizer. *Manufacturer:* Molspin Ltd., United Kingdom. *Denial Without Prejudice to Resubmission:* September 22, 1987.

Docket No.: 87-171. *Applicant:* Henry Ford Hospital, Detroit, MI 48202. *Instrument:* Microcomputer Controlled Voltage/Current Clamp System. *Manufacturer:* F & P Datensysteme, GmbH, West Germany. *Denial Without*

Prejudice to Resubmission: September 25, 1987.

Docket No.: 87–212. *Applicant:* NASA, Pasadena, CA 91109. *Instrument:* Xenon Chloride Excimer Laser System. *Manufacturer:* Lambda Physik, West Germany. *Denial Without Prejudice to Resubmission:* September 25, 1987.

Leonard E. Mallas,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 88–3925 Filed 2–23–88; 8:45 am]

BILLING CODE 3510-DS-M

Exporters' Textile Advisory Committee; Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held March 3, 1988 at 10:00 a.m. in Room 3407 of the U.S. Department of Commerce, Main Commerce Building, 14th and Constitution Avenue NW., Washington, DC. The Committee provides advice about ways to promote increased exports of U.S. textiles and apparel.

Agenda: Review of export data; report on conditions in the export market; Canada Free Trade Area; recent foreign restrictions affecting textiles; export expansion activities; and other business. The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact Alfreda Burton (202/377–5761).

Date: February 19, 1988.

James Babb,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 88–3916 Filed 2–23–88; 8:45 am]

BILLING CODE 3510-DR-M

Short-Supply Review on Certain Semi-Finished Steel Slabs; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, the U.S.-Mexico Understanding Concerning Trade in Certain Steel Products, and the U.S.-Australia Arrangement Concerning Trade in Certain Steel Products, with respect to certain semi-finished steel slabs.

DATE: Comments must be submitted no later than March 7, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement, the U.S.-Brazil Arrangement, the U.S.-Mexico Understanding, and the U.S.-Australia Arrangement provides that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for various grades of semi-finished carbon and alloy steel slabs for use in producing hot-rolled sheet and strip, galvanized sheet, plate, cold-rolled sheet and electric-resistance-welded pipe. Requested sizes for sheet and strip mill applications include thicknesses ranging from 4.25 inches to 8.81 inches, widths ranging from 24 inches to 74 inches, and lengths ranging from 212 inches to 264 inches. Slab sizes for plate mill applications include thicknesses ranging from 4 inches to 17 inches, widths ranging from 28 inches to 66 inches, and lengths ranging from 76 inches to 98 inches.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than March 7, 1988. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce, at the above address.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

February 18, 1988.

[FR Doc. 88–3923 Filed 2–23–88; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Tin-Free Steel; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, with respect to certain tin-free steel.

DATE: Comments must be submitted on or before March 7, 1988.

ADDRESSE: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC. 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for certain tin-free steel made to the following specifications:

(a) Chromium Coating Weight: aim for metallic chromium 100 m/m2; chromium oxide 10 mg/m2.

(b) Width: 28 through 36 inches (−0.0, +0.25 inch).

(c) Thickness: 0.0066 and 0.0094 (+0.0005 inch).

(d) Appearance: scratch-free, hole-free, rust-free.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than (March 7, 1988). Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

February 19, 1988.

[FR Doc. 88-3924 Filed 2-23-88; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

National Fire Codes, Request for Proposals for Revision of Standards

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770-3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Proposals should be submitted on forms available from the NFPA Standards Administration Office.

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5:00 P.M. e.d.s.t. on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

At a later date, each NFPA Technical Committee will issue a report that will include a copy of written proposals that have been received and an account of their disposition. Each person who has submitted a written proposal will receive a copy of the report.

Ernest Ambler,

Director.

Date: February 17, 1988.

NFPA No. and Title	Prop. closing date
NFPA 10-1988, Portable Fire Extinguishers.	July 15, 1988.
NFPA 10L-1988, Model Enabling Act for the Sale or Leasing and Servicing of Portable Fire Extinguishers.	July 15, 1988.
NFPA 12A-1987, Halon 1301	Jan. 15, 1988.
NFPA 12B-1985, Halon 1211	Jan. 15, 1988.
NFPA 13E-1984, Fire Dept. Operations in Properties Protected by Sprinkler and Standpipe Systems.	Jan. 15, 1988.
NFPA 14-1986, Installation of Standpipe & Hose Systems.	July 15, 1988.
NFPA 15-1985, Water Spray Fixed Systems.	Jan. 15, 1988.
NFPA 17-1985, Dry Chemical Extinguishing Systems.	Jan. 15, 1988.
NFPA 17A-1986, Liquid Agency Extinguishing Systems.	Jan. 15, 1988.
NFPA 20, 1987, Centrifugal Fire Pumps.	Jan. 15, 1988.
NFPA 31-1987, Oil Burning Equipment.	July 15, 1988.
NFPA 32-1985, Drycleaning Plants.	July 15, 1988.
NFPA 37-1984, Stationary Combustion Engines and Gas Turbines.	July 15, 1988.
NFPA 43A-1981, Liquid and Solid Oxidizing Materials.	Jan. 15, 1988.
NFPA 45-1986, Fire Protection for Laboratories Using Chemicals.	Open.
NFPA 46-1985, Storage of Forest Products.	July 15, 1988.
NFPA 50-1985, Bulk Oxygen Systems at Consumer Sites.	May 6, 1988.
NFPA 51B-1984, Cutting and Welding Processes.	Feb. 19, 1988.
NFPA 53M-1985, Fire Hazards in Oxygen Enriched Atmospheres.	July 15, 1988.
NFPA 59A-1985, Protection, Storage and Handling of Liquefied Natural Gas (LNG).	Feb. 11, 1988.
NFPA 71-1987, Installation, Maintenance and Use of Signaling Systems for Central Station Service.	Jan. 15, 1988.
NFPA 72A-1987, Local Protective Signaling Systems.	July 15, 1988.
NFPA 72B-1986, Auxiliary Protective Signaling Systems.	July 15, 1988.
NFPA 72C-1986, Remote Station Protective Signaling Systems.	July 15, 1988.
NFPA 72D-1986, Proprietary Protective Signaling Systems.	July 15, 1988.
NFPA 72F-1984, Emergency Voice/Alarm Communication Systems.	Jan. 1, 1988.
NFPA 75-1987, Protection of Electronic Computer/Data Processing Equipment.	Jan. 15, 1988.
NFPA 78-1986, Lightning Protection Code.	Jan. 15, 1988.
NFPA 79-1987, Industrial Machines.	Jan. 13, 1988.
NFPA 85B-1984, Prevention of Furnace Explosions in Natural Gas-Fired Multiple Burner Boiler-Furnaces.	Jan. 15, 1988.
NFPA 85D-1984, Prevention of Furnace Explosions in Fuel Oil-Fired Multiple Burner Boiler-Furnaces.	Jan. 15, 1988.
NFPA 91-1983, Blower & Exhaust Systems for Dust, Stock & Vapor Removal or Conveying.	Jan. 15, 1988.
NFPA 96-1984, Removal of Smoke & Grease-Laden Vapors from Commercial Cooking Equipment.	Jan. 13, 1988.
NFPA 99-1987, Health Care Facilities.	June 1, 1988.
NFPA 99B-1987, Hypobaric Facilities.	June 1, 1988.
Proposed NFPA 110A, Stored Energy Systems.	Jan. 15, 1988.
NFPA 123, Underground Coal Mines.	Jan. 13, 1988.
NFPA 130-1988, Fixed-Guideway Transit Systems.	June 30, 1988.
NFPA 231D-1986, Storage of Rubber Tires.	Jan. 15, 1988.
NFPA 241-1986, Safeguarding Construction & Demolition Operations.	Feb. 1, 1988.
Proposed NFPA 264, Test Methods for Heat Release Rates Using Oxygen Consumption/ Calorimeter.	July 17, 1988.
NFPA 321-1987, Basic Classification of Flammable & Combustible Liquids.	Jan. 15, 1988.
NFPA 325M-1984, Fire-Hazard Properties of Flammable Liquids, Gases and Volatile Solids.	Jan. 15, 1988.
NFPA 327-1987, Cleaning or Safeguarding Small Tanks and Containers.	July 14, 1988.

NFPA No. and Title	Prop. closing date
NFPA 328-1987, Control of Flammable & Combustible Liquids and Gases in Manholes & Sewers.	July 14, 1988.
NFPA 329-1987, Underground Leakage of Flammable & Combustible Liquids.	July 14, 1988.
NFPA 385-1985, Tank Vehicles for Flammable and Combustible Liquids.	July 15, 1988.
NFPA 386-1985, Portable Shipping Tanks.	July 15, 1988.
Proposed NFPA 497B, Classified Locations for Electrical Installation in Chemical Processing Plants.	Jan. 15, 1988.
NFPA 497M-1985, Group Classification of Flammable and Combustible Vapors and Combustible Dusts.	Jan. 15, 1988.
NFPA 501C-1986, Recreational Vehicles.	July 15, 1988.
NFPA 501D-1986, Recreational Vehicle Parks.	July 15, 1988.
NFPA 512-1984, Truck Fire Protection.	Jan. 15, 1988.
NFPA 513-1984, Motor Freight Terminals.	Jan. 15, 1988.
NFPA 650-1984, Pneumatic Conveying Systems for Handling Combustible Materials.	Jan. 15, 1988.
NFPA 704-1985, Identification of Fire Hazards of Materials.	July 15, 1988.
Proposed NFPA 852, Fire Protection for Combustion Turbine Electric Generating Facilities.	Jan. 15, 1988.
NFPA 901, Uniform Coding for Fire Protection.	July 15, 1988.
NFPA 251-1985, Fire Tests of Building Construction Materials.	July 15, 1988.
NFPA 252-1984, Fire Tests of Door Assemblies.	July 15, 1988.
NFPA 252-1984, Critical Radiant Flux Test for Floor Covering Systems.	July 15, 1988.
NFPA 255-1984, Test of Surface Burning Characteristics of Building Materials.	July 15, 1988.
NFPA 257-1985, Fire Tests of Window Assemblies.	July 15, 1988.
NFPA 258-1987, Test Method for Measuring the Smoke Generated by Solid Materials.	Jan. 15, 1988.
NFPA 260A-1986, Test Classification System for Cigarette Ignition Resistant Components of Upholstered Furniture.	Jan. 15, 1988.
NFPA 262-1985, Test for Fire and Smoke Characteristics Wires and Cables.	July 15, 1988.
NFPA 902M, Fire Reporting Field Incident Manual.	July 15, 1988.
NFPA 903M, Property Survey Manual.	July 15, 1988.
NFPA 904M, Fire Reporting Investigative Report Manual.	July 15, 1988.
NFPA 910-1985, Protection of Library Collections from Fire.	Jan. 1, 1988.
NFPA 911-1985, Protection of Museum Collections from Fire.	Jan. 1, 1988.
NFPA 1401-1983, Training Reports & Records.	Jan. 15, 1988.
Proposed NFPA 1405, Shipboard Fire Fighting for Land-Based Fire Fighters.	Jan. 15, 1988.
NFPA 1931-1984, Fire Department Ground Ladders.	Feb. 1, 1988.
NGPA 1932-1984, Service Testing of Fire Department Ground Ladders.	Feb. 1, 1988.
NFPA 1981-1987, Open Circuit Self-Contained Breathing Apparatus.	Oct. 15, 1988.

[FR Doc. 88-3840 Filed 2-23-88; 8:45 am]

BILLING CODE 3510-CN-M

National Fire Codes; Request for Comments on NFPA Technical Committee Reports

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1988 Fall Meeting. The publication of this notice by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Technical Committee Reports are available for distribution on January 29, 1988. Comments received on or before April 8, 1988, will be considered by the NFPA before final action is taken on the proposals.

ADDRESS: The 1988 Fall Technical Committee Reports are available from NFPA, Publications Department, Batterymarch Park, Quincy, Massachusetts 02269. (The single copy price is $5.00 to cover postage and handling.) Comments on the reports should be submitted to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770-3000.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal Agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Revisions of existing standards and adoption of new standards reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May of each year. The NFPA invites public comment on its Technical Committee Reports.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Commentors may use the forms provided for comments in the Technical Committee Reports. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before April 8, 1988, will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the Technical Committee Documentation by September 23, 1988, prior to the Fall Meeting.

A copy of the Technical Committee Documentation will be sent automatically to each commentor. Action on the Technical Committee Reports (adoption or rejection) will be taken at the Fall Meeting, November 14-16, 1988, in Nashville, Tennessee, by NFPA members.

Ernest Ambler,

Director.

Date: February 17, 1988.

1988 Fall Meeting Technical Committee Reports

Documents and the action proposed on each document follow:

Action Code is: C—Complete Revision: P—Partial Amendment; N—New; T—Tentative Adoption; R—Reconfirmation; and W—Withdrawal

NFPA No.	Title	Action
12	Carbon Dioxide Extinguishing Systems.	C
13	Sprinkler Systems	P
13D	Sprinkler Systems in One- and Two-Family Dwellings & Mobile Homes.	P

NFPA No.	Title	Action
13R	Installation of Sprinkler Systems in Residential Occupancies (Up to Four Stories).	N
14A	Testing, Inspection, Maintenance of Standpipe Systems.	N
50A	Gaseous Hydrogen Systems.	P
50B	Liquefied Hydrogen Systems at Consumer Sites.	P
51A	Acetylene Cylinder Charging Plants.	P
58	Liquefied Petroleum Gases, Storage and Handling of.	P
59	Liquefied Petroleum Gases at Utility Gas Plants.	P
61A	Manufacturing and Handling Starch.	P
61B	Grain Elevators and Bulk Grain Handling Facilities.	P
61C	Feed Mills, Dust Explosion Prevention.	P
61D	Milling of Agricultural Commodities.	P
74	Household Fire Warning Equipment.	P
72G	Notification Appliances for Protective Signaling Systems.	P
85H	Prevention of Combustion Hazards in Atmospheric Fluidized Bed Combustion Systems.	N
851	Stoker Operations	N
105	Smoke- and Draft-Control Door Assemblies, Installation of.	P
231E	Baled Cotton, Storage of	R
260B	Cigarette Ignition Resistance of	R
Renumbered 261	Upholstered Furniture Composites.	
302	Motor Craft	C
471	Recommended Practice for Responding to Hazardous Materials Incidents.	N
472	Standard for Professional Competence of Responders to Hazardous Materials Incidents.	N
493	Intrinsically Safe Apparatus.	W
496	Purged & Pressurized Enclosures for Electrical Equipment in Hazardous Locations.	P

[FR Doc. 88-3839 Filed 2-23-88; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will convene public meetings, March 7–11, 1988, at the Seattle Airport Hilton, 17620 Pacific Highway South, Seattle, WA, as follows:

Council—On March 8 will convene at 8 a.m., with a closed session (not open to the public), to discuss litigation, personnel, and other appropriate matters. At 8:30 a.m., the Council will convene its open session to consider salmon management issues. After receiving comments from its advisory entities and the public, the Council will define, in a preliminary fashion, management options for the 1988 ocean salmon fisheries. The Salmon Plan Development Team (SPDT) will be asked to collate and describe these options in written form for further Council review on March 9.

There will be a public comment period on March 8 at approximately 4 p.m., to hear comments on issues not on the agenda. Public comments on agenda items will be heard during the Council's discussion on each issue.

On March 9 the Council will convene at 9 a.m., to address administrative matters; it will recess until approximately 3 p.m., to review the preliminary salmon management options in written form. The Council will make any necessary adjustments to the options at this time and request the SPDT to analyze the probable impacts of the options, and report back to the Council on March 11. During the recess, the Council's Foreign Fishing and Habitat Committees will meet.

On March 10 the Council will address groundfish management and habitat matters. The Council will hear a status report from its Limited Entry Committee and provide any appropriate guidance. After receiving a report from its Foreign Fishing Committee, the Council will develop recommendations to the Federal Government concerning the allocation of Pacific whiting among foreign nations. The issue of applying gear restrictions to the whiting joint venture fishery will again be discussed, and a report from the NOAA General Counsel concerning the legality of such restrictions will be reviewed. Other groundfish items include the need for possible regulation of offshore processors and the clarification of trip limit regulations. Also on March 10 the Council will address any relevant habitat matters and take appropriate action.

On March 11 the Council will review the analysis of the SPDT and adopt 1988 salmon management alternatives for public review. In addition, the Council will address the schedule for the 1989 amendments to the Salmon Fishery Management Plan (FMP).

Scientific and Statistical Committee—Will meet at 11 a.m., on March 7 to consider matters on the Council's agenda, and will reconvene at 8 a.m., on March 8.

Salmon Advisory Subpanel—Will meet at 8 a.m., on March 7 to address salmon management issues on the Council's agenda, and will convene at 8 a.m., on March 8, 9, and 10 to complete business as necessary.

SPDT—Will meet as necessary March 7–11 to analyze the impacts of the 1988 salmon management options.

Indian Affairs Committee—Will meet March 7 from 3 p.m. to 5 p.m., to adopt operating procedures, and consider options for the 1988 treaty troll fisheries.

Limited Entry Committee—Will Meet March 8 at 1 p.m., to further consider a limited entry program for the Pacific Coast groundfish fisheries, and will reconvene at 8 a.m., March 9 and 10 to complete its business.

Budget Committee—Will meet March 9 from 7:30 a.m. to 9 a.m., to review the status of the Council's 1988 budget, and to address the funding shortfall for fishery data collection and analysis projects.

Foreign Fishing Committee—Will convene March 9 during the Council's recess (approximately 11 a.m. to 3 p.m.), to address allocation of Pacific whiting to foreign nations.

Habitat Committee—Will also convene March 9 during the Council's recess to address current habitat issues affecting fisheries under Council jurisdiction.

Detailed agendas for the above meetings will be available to the public after February 26. For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Date: February 17, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-3855 Filed 2-23-88; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Defense Intelligence Agency Scientific Advisory Committee; Closed Meetings

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of

Public Law 94–409, notice is hereby given that closed meetings of a panel of the DIA Scientific Advisory Committee have been scheduled as follows:

DATE: 10 March, 15 April, and 12 May 1988, 9:00 a.m. to 5:00 p.m. each day.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20340–1328 (202)/373–4930).

SUPPLEMENTARY INFORMATION: The entire meetings will be devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Advanced Air Defense.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 18, 1988.

[FR Doc. 88–3074 Filed 2–23–88; 8:45 am]

BILLING CODE 3810–01–M

Defense Intelligence Agency Scientific Advisory Committee; Closed Meetings

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that closed meetings of a panel of the DIA Scientific Advisory Committee have been scheduled as follows:

DATE: 11 March, 14 April, & 9 May 1988, 8:30 a.m. to 3:30 p.m. each day.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatfield, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20340–1328 (202)/373–4930).

SUPPLEMENTARY INFORMATION: The entire meetings are devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on HUMINT/Scientific and Technical Intelligence Interface.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 18, 1988.

[FR Doc. 88–3875 Filed 2–23–88; 8:45 am]

BILLING CODE 3810–01–M

Defense Intelligence Agency Scientific Advisory Committee; Closed Meetings

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that closed meetings of a panel of the DIA Scientific Advisory Committee have been scheduled as follows:

DATE: 19 April, 9 May, and 21 June 1988, 9:00 a.m. to 5:00 p.m. each day.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatfield, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meetings devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on tactical intelligence information handling systems.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 18, 1988.

[FR Doc. 88–3876 Filed 2–23–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 8 and 9 February 1988.

Time: 0800–1600 hours, each day.

Place: Society of Military Engineers Post, Alexanderia, VA.

Agenda: The Army Science Board's Ad Hoc Subgroup on Water Supply and Management on Western Installations will meet to draft their report. This meeting is open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–3913 Filed 2–23–88; 8:45 am]

BILLING CODE 3710–08–M

Notice of Intent—To Prepare a Draft Environmental Impact Statement for the U.S. Army National Training Center, Fort Irwin, for a Proposed Land Acquisition for the Army in San Bernardino County, CA

AGENCY: U.S. Army National Training Center, Fort Irwin.

ACTION: Notice of intent to prepare draft environmental statement.

SUMMARY: 1. Proposed Action. The National Training Center (NTC), Fort Irwin proposes to acquire approximately 200,000 acres of lands located east, west and south of current NTC boundaries. The mission of the National Training Center, Fort Irwin is to provide an area where a total combat environment can be simulated using contemporary criteria for weapons effectiveness. The NTC is being used by twenty two armored/mechanized brigades of the U.S. Army and elements of the U.S. Air Force training on a rotational basis. The NTC also provides maneuver and live fire ranges for Reserve and National Guard units. The NTC is uniquely equipped and organized with substantial investment in the most sophisticated instrumentation for providing realistic battalion level force-on-force and live fire manuever training opportunities. The facility is designed to maintain the forces at peak combat efficiency. The proposed land acquisition will allow the NTC to conduct brigade force-on-force manuever exercises. Currently, severe restrictions are placed on the ability of a brigade to conduct major training requirements. An example is the requirement for a battalion to participate in an envelopment or turning movement in support of the brigade. Major changes in tactical maneuver/direction of movement are also restricted. The current terrain precludes both realistic resupply activities over doctrinal distances (without interrupting maneuver training), and the emplacement of supply/staging areas at realitic distances from the maneuver areas to provide a true evaluation of resupply and time/distance factors. Consequently, it is no longer possible to portray realistically the depth of todays battlefield environment. The acquisition of the lands proposed will permit the needed space for the full range of brigade training exercises. It is imperative that the additional lands be contiguous to the present facility. The action will not require additional personnel at the installation.

2. Alternatives. When analyzing potential locations into which the maneuver areas could be expanded,

consideration will be given to the following alternatives:

a. No action.

b. Leach Lake Impact Area.

c. U.S. Naval Weapons Center, China Lake.

d. Areas contiguous to Fort Irwin on the east, south and west.

3. Scoping Process. Individuals, organizations and government agencies are invited to participate in the scoping process. This will assist the U.S. Army in identifying potential impacts on the quality of the environment resulting from acquisition and utilization of the additional lands. The date, time and place of the first scoping meetings will be announced at a later date through invitations in publications and newspapers in regular circulation in the area. Further information regarding this action may be obtained from the U.S. Army Corps of Engineers, Los Angeles District, P.O. Box 2711, Los Angeles, California 90053, telephone: (213) 894–5421 or the Public Affairs Office, National Training Center, Fort Irwin, California, 92310, telephone: (619) 386–4511.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASA (I&L).

[FR Doc. 88–3950 Filed 2–23–88; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (AS).

Dates of Meeting: 15–16 March 1988.

Time: 0830–1700 hours, 15 March 1988; 0830–1500 hours, 16 March 1988.

Place: U.S. Army Missile Command (USAMICOM), Redstone, Arsenal, Alabama.

Agenda: The Army Science Board 1988 Summer Study on Army Testing will meet for the purpose of gathering facts in the second phase of the study. The purpose of the visit to USAMICOM is to assess the adequacy and/or effectiveness of the implementation of test and evaluation policies promulgated by HQDA, OSD and Congress. The assessment will be accomplished through briefings and discussions with Program Executive Officers (PEO) and Selected Project Managers at USAMICOM. The critical items of interest for the assessment include progress in implementing T&E policies and initiatives, HQDA promulgation of policy, policy concerns, review of test planning and execution for selected systems, and possible areas for improvement. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–3909 Filed 2–23–88; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education; Closed Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: March 6, 1988 at 5:00 p.m. to March 7, 1988 at 7:00 p.m.

ADDRESS: Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Charles H. Karelis, Director, Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue SW., Room 3100, ROB #3, Washington, DC 20202 (202–245–8091).

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under section 1001 of the Higher Education Amendments of 1980, Title X (20 U.S.C. 1135a–1). The National Board of the Fund is established to "advise the Secretary and the Director of the Fund for the Improvement of Postsecondary Education * * * on the selection of projects under consideration for support by the Fund in its competitions."

The meeting of the National Board is closed to the public. The meeting is for the purpose of reviewing and evaluating grant applications submitted to the Fund under the Innovative Projects for Community Services and Student Financial Independence Program.

The meeting of the National Board will be closed to the public from 5:00 p.m., March 6 until the conclusion of the agenda, approximately 7:00 p.m., March 7. The meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 2) and under exemptions (4) and (6) of 5 U.S.C. 552b(c) (Pub. L. 94–409). The review and discussions of the applications and the qualifications of proposed staff may disclose commercial or financial information obtained from a person and privileged or confidential or which would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

The public is being given less than 15 days notice of this closed meeting due to scheduling conflicts and locating a suitable facility for the closed Board meeting. A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, Room 3100, Regional Office Building #3, 7th and D Streets SW., Washington, DC 20202 from the hours of 8:00 a.m. to 4:30 p.m.

Dated: February 18, 1988.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 88–3827 Filed 2–23–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 87–59–NG]

Loutex Energy Inc.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has

issued an order granting LOUTEX Energy Inc. (LOUTEX) blanket authorization to import natural gas. The order issued in ERA Docket No. 87–59–NG authorizes LOUTEX to import up to 182.5 Bcf of natural gas over a two-year period beginning on the date of first delivery.

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, February 18, 1988.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–3928 Filed 2–23–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ES88–28–000 et al.]

Northwestern Public Service Co. et al., Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Northwestern Public Service Company

Docket No. ES88–28–000]

February 17, 1988.

Take notice that on February 5, 1988, Northwestern Public Service Company filed an application seeking authority pursuant to Section 204 of the Federal Power Act to issue 3,838,616 shares of Common Stock in connection with a proposed two-for-one split of the Company's outstanding Common Stock, if approved by stockholders.

Comment date: March 3, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Industrial Cogenerators v. Florida Public Service Commission

Docket No. EL88–10–000]

February 17, 1988.

Take notice that on February 4, 1988, The Industrial Cogenerators tendered for filing pursuant to section 210(h) of the Public Utility Regulatory Policies Act (PURPA), section 306 of the Federal Power Act and Rules 206 and 207, a Complaint and/or Declaratory Order against the Florida Public Service Commission regarding implementation of PURPA regulations.

Comment date: March 21, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Iowa Power and Light Company

Docket No. ER88–248–000]

February 18, 1988.

Take notice that on February 12, 1988, Iowa Power and Light Company, Des Moines, Iowa, (Iowa Power) tendered for filing a Generation Services Agreement (GSA) and a Special Agency Agreement (SAA), each agreement being between Iowa Power and Union Electric Company, St. Louis, Missouri (Union Electric), and dated as of February 5, 1988, with a schedule reflecting charges for Iowa Power providing a generation service to Union Electric under the GSA, and a schedule reflecting charges for Iowa Power providing coal transportation and coal handling services under the SAA.

The GSA and SAA are proposed effective as of February 8, 1988. Waiver of the Commission's notice requirements has been requested by the parties.

Iowa Power states a complete copy of the filing has been mailed to Union Electric, the Iowa State Utilities Board, the Illinois Commerce Commission, and the Missouri Public Service Commission.

Iowa Power states that the GSA (and its Exhibits) provides that Iowa Power (during the period February 8, 1988 to December 31, 1988) will convert into electricity at the Council Bluffs Generating Stations near Council Bluffs, Iowa, operated and owned in part by Iowa Power, coal purchased by Union Electric which has been delivered to the Council Bluffs Power Station. Exhibit B to the GSA sets forth the charge for providing the generation service. Iowa Power states that the SAA (and its Exhibits) provides that Iowa Power (during the period February 8, 1988 to December 31, 1988) will provide transportation and handling of Union Electric coal from the mine of the coal supplier in the Powder River Basin in Wyoming to the Council Bluffs Generating Stations. Exhibit A to the SAA sets forth the charge for providing the services under the SAA.

Comment date: February 29, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas Power and Light Company

Docket No. ER88–249–000]

February 19, 1988.

Take notice that on February 11, 1988, Kansas Power and Light Company (KPL) tendered for filing a newly executed renewal contract dated as of January 6, 1988, with the City of Centralia, Centralia, Kansas for wholesale service to that community. KPL states that this contract permits the City of Centralia to receive service under rate schedule WSM–12/83 designated Supplement No. 9 to R.S. FERC No. 198. The proposed effective date is May 1, 1988. The proposed contract change provides essentially for the ten year extension of the original terms of the presently approved contract. In addition, KPL states that copies of the contract have been mailed to the City of Centralia and the States Corporation Commission.

Comment date: March 4, 1988, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–3849 Filed 2–23–88; 8:45 am]

BILLING CODE 6717–01–M

[P–2643–000 et al.]

Hydroelectric Application

February 19, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Filing:* Transfer of License.

b. *Project Names, Numbers, and Locations:* See Attachment.

c. *Date Filed:* December 16, 1987.

d. *Applicant:* PacifiCorp doing business as Pacific Power & Light Company (Licensee-Transferor) and PC/UP & L Merging Corp. (Transferee).

e. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

f. *Applicant Contact:* Stanley A. deSousa, Pacific Power & Light

Company, 920 SW Sixth Avenue, Portland, OR 97204, (503) 464–5343.

g. *Comment Date:* March 9, 1988.

h. *FERC Contact:* Thomas Dean, (202) 376–9275.

i. *Description of Application:* Hydropower licenses were issued to Pacific Power & Light Company, an Oregon corporation for the operation and maintenance of the projects listed on the attachment. Pacific Power & Light Company intends to merge with Utah Power & Light Company and become PC/UP&L Merging Corp. For that reason, Pacific Power & Light Company has filed a request that the project licenses be transfered.

j. *This notice also consists of the following standard paragraphs:* B & C.

ATTACHMENT.—LICENSED PROJECTS TO BE TRANSFERED

Project No.	Project name	Project location		
		River	County	State
2643-000	Bend	Deschutes	Deschutes	OR
2652-000	Big Fork	Swan	Flathead	MT
2342-001	Condit	Salmon	Skamania and Klickitat	WA
2082-006	Klamath	Klamath	Klamath Siskiyou	OR CA
935-018	Merwin	Lewis	Clark and Cowlitz	WA
2111-003	Swift No. 1	Lewis	Skamania and Cowlitz	WA
2071-004	Yale	Lewis	Clark	WA
1927-004	North Umpqua	North Umpqua	Douglas	OR
2659-003	Powerdale	Hood	Hood River	OR
2630-002	Prospect 1,2, and 4	Rogue	Jackson	OR
2377-003	Prospect No. 3	South Fork Rogue	Jackson	OR
2617-002	Walla-Walla Enterprise	(*)	Walla Walla	WA
			Umatilla	OR
			Union	OR
			Wallowa	OR
8810-001	South Bend	(*)	Deschutes	OR
308-003	Wallowa Falls	East Fk. Wallowa	Wallowa	OR

* Ordering Issuing Minor-Part License (Transmission Line) associated with Project No. 1971, consisting of the Brownlee, Oxbow, and Hells Canyon hydroelectric developments.

** Ordering Issuing Transmission Line associated with the Central Oregon Siphon Project No. 3571.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies reguired by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. Edward A. Abrams Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–3850 Filed 2–23–88; 8:45am]

BILLING CODE 6717–01–M

[P–20–006 et al.]

Hydroelectric Application

February 19, 1988.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *type of Filing:* Transfer of Licenses.

b. *Project Names, Numbers, and Locations:* See Attachment.

c. *Date Filed:* December 18, 1987.

d. *Applicant:* Utah Power and Light Company (Transferor) and PC/UP & L Merging Corp. (Transferee).

e. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

f. *Applicant Contact:*

Transferor: Ms. Jody L. williams, Attorney at Law, Utah Power and Light Company, 1407 West North Temple, Salt Lake City, UT 84140. (801) 220–2851

Transferee: Richard D. Bach, Esq., Stoel Rives Boley Jones & Grey, 900 SW Fifth Avenue, Portland, OR 97204–1268, (503) 294–9213.

g. *Comment Date:* March 2, 1988

h. *FERC Contact:* Mr. Don Wilt, (202) 376–9807.

i. *Description of Proposed Action:* Hydropower licenses were issued to Utah Power & Light Company for the operation and maintenance of the projects listed on the attachment. Utah Power & light Company intends to merge with PacifiCorp, doing business as Pacific Power and Light Company, and become PC/UP&L Merging Corp. For that reason, Utah Power & Light Company has filed a request that the project licenses be transferred.

j. *This notice also consists of the following standard paragraphs:* B & C

ATTACHMENT.—LICENSED PROJECTS TO BE TRANSFERRED

Project No.	Project name	Project location		
		River	County	State
20-006	Soda	Bear	Caribou	ID
472-007	Oneida	Bear	Franklin	ID
596-003	Olmstead	Provo	Utah	UT
597-001	Stairs	Big Cottonwood	Salt Lake	UT
696-001	Upper American Fork	American Fork	Utah	UT
1744-002	Weber	Weber	Davis, Morgan, Weber	UT
2381-003	Ashton-St. Anthony	Henry's Fork of Snake River	Fremont	ID
2401-003	Grace-Cove	Bear	Caribou	ID
2420-000	Cutler	Bear	Cache, Box Elder	UT
2722-004	Pioneer	Odgen	Weber	UT

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. Edward A. Abrams, Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–3851 Filed 2–23–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP88–227–000 et al.]

Williams Natural Gas Co. et al., Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Co.

[Docket No. CP88–227–000]

February 18, 1988.

Take notice that on February 5, 1988, Williams Natural Gas Company (Applicant), P.O. 3288, Tulsa, Oklahoma 74102, filed in Docket No. CP88–227–000 an application pursuant to section 7(c) of the Natural Gas Act for authority to utilize existing emergency and field exchange interconnects for the receipts and/or delivery of sale or transportation gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states it is now proposing certification of these existing interconnects for use as sale or transportation points, in anticipation of open access transportation points, in anticipation of open access transportation. Applicant includes a list (see attached appendix) detailing for each facility the connecting pipeline, location of the facility and the original purpose of the facility.

Comment date: March 10, 1988, in accordance with Standard Paragraph F at the end of this notice.

Appendix—Concise Description of Proposed Services

WNG proposes to certificate emergency and field exchange points currently in place on WNG's pipeline system to enable WNG to utilize the facilities for the receipt and/or delivery of gas for the sale or transportation of gas as circumstances dictate.

The facilities proposed to be certificated include:

Connecting pipeline	Location	Originally installed for
1. Arkla Gas Co	S24–T28S–R1W, Sedgwick Co., KS.	Field exchange.
2. Arkla Gas Co	S10–T18S–R8W, Rice Co., KS.	Do.
3. Arkla Gas Co	S31–T23S–R5W, Reno Co., KS.	Do.
4. Colorado Interstate Gas Co.	S1–T29S–R38W, Grant Co., KS.	Do.
5. Colorado Interstate Gas Co.	S2–T29S–R35W, Grant Co., KS.	Do.
6. Delhi Gas Pipeline Co.	S1–T22N–R15W, Major Co., OK.	Do.
7. Kansas-Nebraska Natural Gas Co.	S28–T24S–R33W, Finney Co., KS.	Exchange.
8. Kansas Power & Light Co.	S20–T23S–R5W, Reno Co., KS.	Emergency.
9. Mobil Oil Co	S28–T5N–R15W, Texas Co., KS.	Compression gas.
10. Natural Gas Pipeline Co. of America.	S22–T2S–R3W, Carter Co., OK.	Emergency.
11. Natural Gas Pipeline Co. of America.	S29–T5N–R23E, Beaver Co., OK.	Emergency.
12. Northern Natural Gas Co.	S3–T29S–R36W, Grant Co., KS.	Exchange.
13. Oklahoma Natural Gas Co.	S3–T20N–R23W, Ellis Co., OK.	Emergency.
14. Oklahoma Natural Gas Co.	S15–T14N–R2W, Oklahmoa Co., OK.	Do.
15. Oklahoma Natural Gas Co.	S33–T8N–R7W, Grady Co., OK.	Do.
16. Panhandle Eastern Pipeline Co.	S1–T29S–R36W, Grant Co., KS.	Do.

Connecting pipeline	Location	Originally installed for
17. Panhandle Eastern Pipeline Co.	S25-T18S-R19E, Franklin Co., KS.	Do.
18. Producers Gas Co.	S13-T23N-R20W, Woodward Co., OK.	Exchange.
19. Transwestern Pipeline Co.	S30-T5N-R26W, Beaver Co., OK.	Do.

2. West Texas Gathering Co.

[Docket No. CP88-212-000]

February 18, 1988.

Take notice that on January 26, 1988, West Texas Gathering Company (West Texas), 550 WestLake Park Blvd., Suite 900, Houston, Texas 77210-4544, filed in Docket No. CP88-212-000 a petition for an order disclaiming jurisdiction under Section 1(b) of the Natural Gas Act for all of its facilities in Emperor and South Kermit Fields in Winkler County, Texas.

West Texas states that it constructed a gathering system that brought natural gas from the wellhead to two processing plants located adjacent to the Emperor and South Kermit fields. It is stated that West Texas initially purchased this gas from sixteen producers and resold the gas to Pioneer Natural Gas Company (Pioneer), an intrastate pipeline, and to El Paso Natural Gas Company (El Paso), an interstate pipeline, for which it received an independent producer certificate authorizing the sale of gas to El Paso at the inlet of El Paso's proposed Keystone Plant in Winkler County, Texas. Further, various producers and other purchasers in the field subsequently executed agreements with West Texas for gathering and delivery of gas, it is indicated.

West Texas states that it constructed approximately 110 miles of 4 to 8-inch diameter pipeline for deliveries from the Emperor and South Kermit fields to Pioneer's Goldsmith processing plant which commenced in 1957. In order to connect the two fields, an 8-inch line was initiated in the Emperor field and ran 11.4 miles in a northerly direction, through the South Kermit field to an amine gas treating plant near the site of the proposed Keystone plant, it is stated. West Texas states that from the Keystone plant the 8-inch line was continued over 27-miles to the Goldsmith processing plant. West Texas indicates it augmented its system, in order to accommodate high volumes to be taken by El Paso by contructing 11.4 miles of looped 20-inch line that paralleled the segment of 8-inch line that transverse the two fields. The eleven miles of 8-inch and parallel 20-inch lines formed the spine of the gathering system into which gas production was constantly infused from the origin of those lines in the Emperor field through their passage through the South Kermit field, 2.5 miles from the Keystone plant, it is stated.

West Texas indicated that it operated as a gatherer and was regulated as a gatherer by the Commission until 1966 when the Commission reclassified West Texas as a Class A pipeline stating that West Texas engaged in the transportation of natural gas by pipeline. West Texas states its primary function was initially and continues to be the gathering of natural gas from two producing fields for delivery in raw form to two processing plants of two pipeline purchasers. Further, West Texas states that its activities have not changed from those originally contemplated in 1957, with the length of the system remaining essentially that placed in service in 1957-58 for the same two principal customers. Services performed for others have been restricted to moving gas from wells in the Emperor or South Kermit fields to the point of nearby interconnections with facilities utilized for the pipeline transportation of gas, it is stated.

West Texas states the rates it charges El Paso would not change since the existing tariff reflects the contract between the parties, which agreement would again become a jurisdictional rate schedule if the relief requested herein is granted. Also, West Texas indicates its service obligation to the interstate market would continue to be subject to the Commission's jurisdiction pursuant to authorizations granted West Texas authorizing sales for resale of natural gas in interstate commerce.

West Texas states that the primary function of its facilities is the gathering of natural gas and that its classification as a Class A interstate pipeline and the certificates relating to the operation of its facilities, were without the necessary factual or jurisdictional predicate and therefore, should be withdrawn.

Comment date: March 10, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Columbia Gas Transmission Corp.

[Docket No. CP88-222-000]

February 19, 1988.

Take notice that on February 3, 1988, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP88-222-000 an application pursuant to section 7(c) of the Natural Gas Act (NGA), for a certificate of public convenience and necessity authorizing a revised service agreement with two of Applicant's existing wholesale customers, Cincinnati Gas & Electric Company (CG&E), an Ohio corporation, and Union Light, Heat and Power Company (Union Light), a Kentucky corporation, which combines their service under Rate Schedule CDS and provides the customers with certain rights for reductions and conversions of service. In addition, pursuant to section 7(b) of the NGA, Applicant is requesting pre-granted abandonment authority of certain firm sales in the application which is on file with the Commission and open to public inspection.

In accordance with a service agreement dated October 31, 1987, between Applicant, CG&E, and Union Light, Applicant specifically proposes and seeks (1) a certificate of public convenience and necessity authorizing a revised service agreement with CG&E and Union Light which combines their contract demand of 525,290 Dth/d in Applicant's Rate Zone 3, and 91,750 Dth/d in Applicant's Rate Zone 4 under Rate Schedule CDS, and provides the customers with certain rights for reductions and conversion of service, and (2) an order pre-granting approval to abandon up to 367,040 Dth/d in contract demand under Rate Schedule CDS, and up to 35,767,000 Dth in combined seasonal entitlements to CG&E and Union Light at such times as requested and permitted under the terms of the service agreement. Applicant states that the proposed application represents a restructuring of Applicant's contractual relationship with two of its largest customers. Such restructuring, it is stated, provides CG&E and Union Light with flexibility in obtaining gas supplies and, in addition, provides Applicant with some stability to plan its gas acquisition and gas management programs and to ameliorate any cost shifts to those remaining customers that might otherwise occur.

Comment date: March 11, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. Transwestern Pipeline Company

[Docket No. CP88-224-000]

February 19, 1988.

Take notice that on February 4, 1988, Transwestern Pipeline Company (Transwestern), P.O. Box 1188, Houston, Texas, 77251 filed in Docket No. CP88-224-000 a request for authorization, pursuant to §§ 157.205 and 157.216(b) of the Regulations under the Natural Gas

Act and Transwestern's blanket certificate for routine activities issued in Docket No. CP82–534–000, to abandon certain meters previously used to serve right-of-way grantors located adjacent to Transwestern's Panhandle lateral line in the Counties of Parmer, Hansford, and Sherman, Texas, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Transwestern is requesting authorization pursuant to § 157.216(b) to abandon four farm tap meters, along with related facilities, serving fuel for irrigation to three right-of-way grantors: Gossetts, Inc. (2 meters totaling 25,300dth annually), Ronald T. Dyer (40,000dth annually) and Paul Aduddell (20,300dth annually) all of which customers have requested removal of the metering facilities.

Comment date: April 4, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public covenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–3852 Filed 2–23–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. QF88–221–000 et al.]

Alcon Laboratories, Inc., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

February 19, 1988.

Take notice that the following filings have been made with the Commission.

1. Alcon Laboratories, Inc.

[Docket No. QF88–221–000]

On January 29, 1988, Alcon Laboratories, Inc. (Applicant), of 6201 South Freeway, Fort Worth, Texas 76134, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Fort Worth, Texas. The facility will consist of a combustion turbine generating unit and a heat recovery steam generator. Thermal energy recovered from the facility will be used to produce chilled water for cooling, and steam for heating and process on the campus. The primary energy source will be natural gas. The maximum net electric power production capacity of the facility will be 2.89 MW. Installation of the facility was scheduled to begin in January, 1988.

2. Bechtel Civil, Inc.

[Docket No. QF88–38–001]

On January 22, 1988, Bechtel Civil, Inc. (Applicant), of 8618 Westwood Center Drive, Suite 300, Vienna, Virginia 22180 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Dunmore, Borough, Pennsylvania. The facility will consist of a waterwall steam generator and a steam turbine generator. The net electric power production capacity will be 25 megawatts. The primary energy sources will be biomass in the form of municipal solid waste and methane gas recovered from a sanitary landfill. No. 2 fuel oil or natural gas will be used for start-up and shut-down and for temperature control during start-up and shut-down.

3. Bio-Gas Recovery Partners, Inc.

[Docket No. QF88–222–000]

On January 29, 1988, Bio-Gas Recovery Partners, Inc. (Applicant), of 10560 Arrowhead Drive, Fairfax, Virginia 22030 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Virginia Beach, Virginia. The facility will consist of reciprocating engine generators. The electric power production capacity will be 9,000 kW. The primary energy source will be biomass in the form of methane gas which is recovered from a sanitary landfill. There is no planned usage of natural gas, oil or coal.

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 intervent. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-3853 Filed 2-23-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP81-188-008 et al.]

CNG Transmission Corp. et al.; Natural Gas Certificate Filings

February 17, 1988.

Take notice that the following filings have been made with the Commission:

1. CNG Transmission Corporation

[Docket No. CP81-188-008]

Take notice that on January 15, 1988, CNG Transmission Corporation (CNG Transmission), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP81-188-008 an application pursuant to section 7(C) of the Natural Gas Act, as amended, and the Commission's Rules and Regulations thereunder, for an order amending the certificate of public convenience and necessity previously issued in those proceedings, so as to authorize the continuation through March 31, 1989, of the transportation and delivery of natural gas to Niagara Mohawk Power Corporation (Niagara Mohawk), as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG Transmission initially received certificate authorization in this proceeding to transport and deliver gas to Niagara Mohawk by order issued August 19, 1981 (16 FERC ¶ 61,139). It is stated that the subject gas is sold by CNG Transmission to Niagara Mohawk in a direct sale, and issued by Niagara Mohawk to generate electric power at its Albany, New York, steam plant. Amendments extended services through October 31, 1986. CNG Transmission and Niagara Mohawk have agreed to extend the present contractual arrangement for an additional period (through March 31, 1989), and CNG Transmission herein seeks a like extension of the current certificate authorization.

CNG Transmission requests that the Commission reconsider its requirement that Niagara Mohawk be charged the 100% load factor Rate Schedule RQ rate, and seeks authorization to flex its rates from the 100% load factor RQ rate to the commodity portion of its RQ rate. Niagara Mohawk is an on-system resale customer of CNG Transmission, located within CNG Transmission's traditional market area in upstate New York. CNG Transmission provides or transports 100% of Niagara Mohawk's gas supply.

According to the application, the subject natural gas is and will be surplus to the needs of CNG Transmission's present customers throughout the proposed extension. CNG Transmission avers that approval of its proposal herein will help it to maintain an appropriate level of demand sufficient to promote the development of long-term gas supplies; will afford CNG Transmission needed market flexibility; will assist CNG Transmission in maintaining an appropriate level of purchases from its pipeline and producer-suppliers; and will provide Niagara Mohawk with continued supply flexibility for its Albany steam plant, to the benefit of its customers.

The application also states that the requested rate flexibility will enable CNG Transmission's system supply gas to complete with spot market gas for Niagara Mohawk. According to CNG Transmission, increased sales of system supply gas will minimize minimum commodity bill payments and take-or-pay exposure.

CNG Transmission also seeks pregranted abandonment authority. No new or additional facilities are proposed to be constructed.

It is noted that CNG Transmission filed this application within the time-frame of the open season announced by the Commission in Docket No. CP87-451-000, concerning projects to supply natural gas to the Northeast U.S.

Comment date: March 9, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Colorado Interstate Gas Company

[Docket No. CP88-220-000]

Take notice that on February 1, 1988, Colorado Interstate Gas Company ("CIG"), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP88-220-000, an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of certain transportation and exchange service rendered in connection with a Gas Purchase and Exchange Agreement ("Agreement") with Greeley Gas Company ("Greeley"), successor in interest to Northern Natural Gas Company, operating as Peoples Natural Gas Division ("Peoples"), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, CIG requests authority to abandon the transportation and exchange of natural gas for Greeley as provided in the Agreement and, in accordance therewith, notified Greeley on December 1, 1986, of its plan to terminate the Agreement effective January 1, 1988, subject to Federal Energy Regulatory Commission apporoval. CIG states that the transportation services under the Agreement was authorized by an order issued January 19, 1977, as amended September 7, 1977, in Docket No. CP76-421. It is further stated that the Agreement constitutes Rate Schedule X-16 of CIG's FERC Gas Tariff, Original Volume No. 2, which would be canceled by CIG upon receipt of the authority requested in the instant application. Finally, CIG advises that no facilities are proposed to be abandoned because CIG expects to provide a new transportation service on behalf of Greeley under section 311 of the Natural Gas Policy Act.

Comment date: March 9, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. K N Energy, Inc.

[Docket No. CP88-228-000]

Take notice that on February 8, 1988, K N Energy, Inc., P.O. Box 15265, Lakewood, Colorado 80215 (K N), filed in Docket No. CP88-228-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales taps for the delivery of natural gas to end users under the certificate authorization issued in Docket Nos. CP83-140-000, CP83-140-001, and CP83-140-002 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

K N proposes to construct and operate sales taps to provide service to various end users located along its jurisdictional pipelines as listed below. K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps would have no significant impact on K N's peak day and annual deliveries.

Customer	Estimated Volumes, Mcf		
	Location	Peak Day	Annual
Pioneer Feed Yards	Thomas Co., KS	36	[1] 1,200
Twin Cottonwood Farms, Inc.	Hamilton Co., NE	48	[1] 1,600
Brian E. Lang	Ellis Co., KS	10	[2] 600
Raymond Oil Co.	Thomas Co., KS	10	[2] 600
Reginald Dobson & Sons	Boone Co., NE	130	[3] 1,100
Clint Lawless	Wallace Co., KS	29	[1] 960
B & F Farms	Greeley Co., KS	12	[1] 400

[1] Irrigation.
[2] Small Commercial.
[3] Grain Drying.

K N states that the gas delivered and sold by K N to the various end users would be priced in accordance with the currently filed rate schedules authorized by the applicable state or local regulatory body having jurisdiction.

Comment date: April 4, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. National Fuel Gas Supply Corporation

[Docket No. CP88-225-000]

Take notice that on February 4, 1988, National Fuel Gas Supply Corporation (National Fuel), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP88-225-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited term certificate of public convenience and necessity authorizing a one-year extension, from May 1, 1988, of the interruptible transportation of up to 39,894 Mcf of natural gas per day (Mcf/d), for National Fuel Gas Distribution Corporation (Distribution) on behalf of 55 end-user customers previously authorized service in Docket No. CP87-144-000. In addition, National Fuel seeks authorization to transport up to 10,675 Mcf/d on an interruptible basis for Distribution on behalf of 33 new end-user customers for a one year term commencing May 1, 1988. National Fuel also seeks authorization to transport up to 363 Mcf/d of additional volumes on behalf of Distribution and/or modify receipt points with respect to certain end-user customers previously covered by National Fuel's certificates in Docket Nos. CP87-389-000, CP88-71-000 and CP85-608-011. In addition, National Fuel seeks authorization to add receipt and delivery points to an arrangement authorized by the Commission in Docket No. CP86-628-000, under which National Fuel is transporting, on behalf of Distribution, up to 6,000 Mcf/d intended for Distribution's system supply, all as more fully set forth in the Appendices hereto and in the application which is on file with the Commission and open to public inspection.

Appendix A attached hereto indicates the maximum daily volume to be transported for the 55 end-user customers of Distribution previously authorized service in Docket No. CP87-144-000 and seeking an extension of service herein. Appendix B indicates the maximum daily volume to be transported for the 33 end-user customers of Distribution seeking initial transportation herein and Appendix C indicates those end-user customers of Distribution for which National Fuel seeks to increase transportation and/or modify receipt points previously authorized in Docket Nos. CP87-389-000, CP88-71-000 and CP85-608-011.

National Fuel states that it would receive the subject transportation volumes at existing receipt points on its system and would deliver the volumes to Distribution at existing points of delivery. National Fuel adds that the proposed service would aid industries in western New York and western Pennsylvania in reducing energy costs and maintaining employment levels and aid Distribution in retaining its industrial markets. Authorization of the additional receipt and delivery points with respect to the transportation of Distribution's system supply, as previously authorized in Docket No. CP86-628-000, would enhance Distribution's ability to receive an important part of its gas supply.

National Fuel states that it would charge Distribution pursuant to its T-1 Rate Schedule which currently provides for a rate of 31.28 cents per Mcf and 2 percent shrinkage.

Comment date: March 9, 1988, in accordance with Standard Paragraph F at the end of this notice.

APPENDIX A—NATIONAL FUEL GAS SUPPLY CORPORATION END USER CUSTOMERS SEEKING EXTENSION OF TRANSPORTATION SERVICE AUTHORIZED IN DOCKET NO. CP87-144-000

End user	Currently authorized maximum volume (Mcf/d)	Proposed maximum volume (Mcf/d)
1. ABC Rail Corp. (FNA ABEX), Meadville, PA	500	500
2. Acme Electric Corp., Olean, NY	180	250
3. Amcast Industrial Corp., Meadville, PA	251	251
4. AMPCO-Pittsburg Corp., Buffalo Plant	900	900
Cheektowaga Plant	325	325
5. Blackstone Corp., Jamestown, NY	1,333	1,333
6. BTL Specialty Resins, Niagara Falls, NY	600	600
7. Brockway Clay Co., Brockway, PA	800	800
8. Buffalo China, Buffalo, PA	700	800
9. Buffalo Pumps, North Tonawanda, NY	125	125
10. Buffalo Sewer Authority, Buffalo, NY	2,100	2,100
11. Channellock Inc., Meadville, PA	300	300
12. Cliffstar Corp., Dunkirk, NY	375	500
13. Cummins Engine Co., Jamestown, NY	360	360
14. Cyclops Corp., Sharon, PA:		
Sawhill Tubular Div., Wheatland, PA	800	1,761
Pipe Plant	500	1,761
15. DeGraff Memorial Hospital, North Tonawanda, NY	490	490
16. E.I. DuPont:		
2251 Buffalo Ave., Niagara Falls, NY	200	200
Adams Street, Niagara Falls, NY	3,000	3,000
Sheridan Dr. & River Rd., Buffalo, NY	2,000	2,000
17. Electralloy Corp., Oil City, PA	467	467
18. Erie Press System, Erie, PA	162	200

APPENDIX A—NATIONAL FUEL GAS SUPPLY CORPORATION END USER CUSTOMERS SEEKING EXTENSION OF TRANSPORTATION SERVICE AUTHORIZED IN DOCKET NO. CP87-144-000—Continued

End user	Currently authorized maximum volume (Mcf/d)	Proposed maximum volume (Mcf/d)
19. Exotic Metals Inc., Ridgeway, PA	250	300
20. Franklin Steel, Franklin, PA	1,200	1,400
21. Fred Koch Brewery, Buffalo, NY	450	650
22. Frontier Foundries Inc. (FNA American Mailing), Niagara Falls, NY	110	110
23. General Mills Inc., Buffalo, NY	1,800	3,000
24. Greater Buffalo Press: Buffalo, NY	60	60
Hamburg, NY	90	90
Buffalo, NY(2)	200	200
25. GTE Products Corp	550	550
26. Haysite Reinforced Plastics, Erie, PA	87	87
27. Hyatt Regency, Buffalo, NY	150	150
28. Jamestown Electro Plating, Jamestown, NY	100	110
29. Joseph T Ryerson & Sons, Buffalo, NY	190	190
30. Kenmore Mercy Hospital, Kenmore, NY	300	300
31. Keystone Carbon Co., St. Marys, PA	440	440
32. Lord Corp.: Cambridge, PA	250	250
Salgertown, PA	240	240
33. Mallinckrodt Inc. (Calsicat Division), Erie, PA	305	400
34. Mayer Bros. Const., Erie, PA	170	300
35. MCR Bearings Inc.: Jamestown, NY	300	300
Falconer, NY	150	150
36. Motion Control Industries, Ridgeway, PA	600	600
37. O-AT-KA Milk Products Cooperative, Inc., Collins Center, NY	450	450
38. Oglevee-Mercer Inc., Fredonia, PA	500	500
39. Olean General Hospital, Olean, NY	141	141
40. Parker White Metal Co., Fairview, PA	535	535
41. Pennsylvania Pressed Metals, Emporium, PA	525	525
42. Reed Manufacturing Co., Erie, PA	104	125
43. Ridgeway Color Co., Ridgeway, PA	525	525
44. Riley Stoker Corp., Erie, PA	345	900
45. Rockwell Internation, DuBois, PA, Sharon, PA	375	375
46. Sharon Tube Co., Sharon, PA	1,000	1,000
47. Shenango Inc., Sharpsville, PA	700	700
48. Skinner Engine Co., 12th St., Plant, Erie, PA	138	200
Greengarden Plant, Erie, PA	138	138

APPENDIX A—NATIONAL FUEL GAS SUPPLY CORPORATION END USER CUSTOMERS SEEKING EXTENSION OF TRANSPORTATION SERVICE AUTHORIZED IN DOCKET NO. CP87-144-000—Continued

End user	Currently authorized maximum volume (Mcf/d)	Proposed maximum volume (Mcf/d)
49. The Redwing Co., Ferdonia, NY	1,700	1,700
50. Triangle Auto Spring, DuBois, PA	350	350
51. Tri-County Memorial Hospital, Gowanda, NY	35	35
52. Vac Air Alloys Corp., Frewsburg, NY (2 Plants)	100	100
53. WAC Hospital, Jamestown, NY	155	155
54. Weber Knapp Co., Jamestown, NY	200	400
55. Zurn Industries Inc., Erie, PA, Hydromechanics Div	195	195
General Air Div	70	70
Erie City Div	700	700
Corporate Headquarters	25	25
Corporate Communications	50	50
Cast Metals Div	200	200
Bay City Forge Div	200	200
Total MCF		39,894

APPENDIX B—NATIONAL FUEL GAS SUPPLY CORPORATION END USER CUSTOMERS FOR WHICH TRANSPORTATION IS BEING SOUGHT HEREIN

End user	Maximum daily volume (Mcf/d)
1. Applied Design Inc., North Tonawanda, NY	100
2. Better Baked Foods Inc., North East, PA	75
3. Brooks Memorial Hospital, Dunkirk, NY	130
4. Buffalo Board of Education: School #18	57
School #19	48
School #45	61
School #68	47
School #71	40
School #77	51
School #80	55
43 Academy	56
Bavpa	171
Bennett	177
Buffalo Traditional	108
Build Academy	68
Burgard	141
BVTC	141
Campus East	54
Campus North	54
Early Child, 255 Porter	48
1045 E. Delavan	51
Early Childhood, 126 Donaldson	58
345 Olympic	43
50 A St.	27

APPENDIX B—NATIONAL FUEL GAS SUPPLY CORPORATION END USER CUSTOMERS FOR WHICH TRANSPORTATION IS BEING SOUGHT HEREIN—Continued

End user	Maximum daily volume (Mcf/d)
Emerson Voc	149
Follow Through	61
Futures Academy	67
Grover Clev	97
Herman Badillo	51
Houghton Academy	42
Hutchinson	126
Kensington	108
Lafayette	108
Lincoln Academy	60
Lorraine Academy	75
McKinley	117
Poplar Academy	41
Red Jacket	48
Riverside	169
Riverside Academy	62
Seneca Voc	95
Service Center	107
South Park	140
Southside Elem	126
Waterfront	81
West Hertel	113
5. B & W Heat Treating Co., Inc., Tonawanda, NY	50
6. Christ The King Manor, DuBois, PA	100
7 Dahlstrom Manufacturing Inc., Jamestown, NY	400
8. Depew School Dist., Depew, NY	200
9. Electro Minerals (US) Inc., Niagara Falls, NY	545
10. Erie County Agricultural As., Orchard Park, NY	135
11. Graphic Controls, Buffalo, NY	400
12. Greenville Metals, Inc., Greenville, PA	250
13. Growers CO-Operative Grape Juice Co., Inc., Westfield, NY	670
14. Honeoye Central School Dist., Honeoye, NY	80
15. Houghton College, Houghton, NY	210
16. Keystone Corp., Buffalo, NY	125
17. McDowell Manufacturing, DuBois, PA	150
18. No. Amer. Philips Lighting Corp., Warren, PA	100
19. Pohlman Foundry Co., Buffalo, NY	240
20. PVS Chemicals, Inc., Buffalo, NY	500
21. Pyron Corp., Niagara Falls, NY	135
22. Ralston Purina, Dunkirk, NY	600
23. Rich Products, Buffalo, NY	350
24. Ridgeway Area Public Schools, Ridgeway, PA	150
25. Signore Div., American Locker Group, Ellicottville, NY	155
26. Sphar Roses, Inc., Attica, NY	150
27. St. Marys Metal Finishing Inc., St. Marys, PA	100
28. Star Linen, Buffalo, NY	55
29. Symmco Inc., Sykesville, PA	100
30. Thiel College, Greenville, PA	350
31 Town of Amherst, Amherst Wastewater Treatment Plant, Amherst, NY	200
32. Wendt's Dairy Div., Niagara Milk CO-OP, Niagara Falls, NY	60
33. W.J. Miller Greenhouses, Inc., Eden, NY	211
Total Mcf	10,675

Appendix C—National Fuel Gas Supply Corporation Schedule of End Users Seeking Modification to Authorization Granted in Docket Nos. CP87–389–000, CP88–71–000 and CP85–608–001

1. End-Users for which National Fuel seeks new receipt points.

1. Airco Carbon, St. Marys, PA
2. Airco Carbon, Niagara Falls, NY
3. American Brass, Buffalo, NY
4. American Olean Tile, Olean, NY
5. Bethlehem Steel Corp., Buffalo, NY
6. Brockway Pressed Metals Inc., Brockway, PA
7. Buffalo Crushed Stone, Buffalo, NY
   Wherlie Drive Plant
   Woodlawn Plant
   Como Park Plant
8. Canisius College, Buffalo, NY
9. Chautauqua Hardware Corp., Jamestown, NY
10. Clarion Sintered Metals, Clarion, PA
11. Ferro Corp., Buffalo, NY
12. Fisher Price Toys, East Aurora, NY
13. Gibraltar Steel Corp., Buffalo, NY
14. Goldome, Buffalo, NY
15. Goodyear Tire & Rubber, Niagara Falls, NY
16. Great Lakes Carbon Co., Niagara Falls, NY
17. Hope's Architectural Prod., Jamestown, NY
18. Hospital Shared Services of Western PA
    Andrew Kaul Memorial
    Brookville Hospital
    Bradford Hospital
    Corry Memorial Hospital
    Clarion OST. Community Hospital
    Dubois Regional (East)
    Dubois Regional (West)
    Erie County Geriatric
    Elk County General
    Franklin Regional Med.
    Greenville Regional
    Hamot Medical Center
    Millcreek Community
    Meadville Medical Center, Liberty St
    Meadville Medical Center, Grove St.
    Metro Health Center
    Oil City Area Health Center
    Shenango Valley Med. Center
    Sharon General
    St. Vincent Health Center
    Titusville Hospital
19. Jamestown Metal Manufacturing Jamestown, NY
20. Kenmore Development 104–204 Sanders, 314 Hinds St., 1975–2035 Delaware
21. McInnes Steel Co., Corry, PA
22. Morgan Services, Inc., Buffalo, NY
23. Neville-Synthese, Oil City, PA
24. Niagara Cold Drawn, Buffalo, NY
25. Pendrick Laundry, Buffalo, NY
26. Royal Bedding Co., Buffalo, NY
27. Seneca Steel, Buffalo, NY
28. Spaulding Fiber Co. Inc., Tonawanda, NY
29. St. Joseph Intercommunity Hospital, Cheektowaga, NY
30. Stackpole Corp., St. Marys, PA
31. Suny At Buffalo (Main Street Campus), Buffalo, NY
32. Tam Ceramics Inc., Niagara Falls, NY
33. Trico Prod., Buffalo, NY

2. End-Users for which National Fuel seeks to increase transportation service.

End user	Existing authorized trans. vol (Mcf/d)	Proposed maximum trans. vol (Mcf/d)
1. Clarion Sintered Metals, Clarion, PA	157	175
2. Millcreek Township School District, Erie, PA ... McDowell Intermedate School J.S. Wilson School	245	590

5. Northwest Pipeline Corporation

[Docket No. CP88–200–000]

Take notice that on January 19, 1988, Northwest Pipeline Corporation (Applicant), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP88–200–000, an application pursuant to section 7[c) of the Natural Gas Act for a Certificate of Public Convenience and Necessity amending existing Certificates to authorize an increase in the firm daily contract demand level under Rate Schedule SGS–1 in accordance with amended SGS–1 Service Agreements with two of Applicant's storage service customers and the implementation of revisions in Rate Schedule–1 which provide for certain operational changes in providing the SGS–1 storage service; all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant is a one-third owner of the Jackson Prairie storage field. As such, Applicant is a party to a Gas Storage Agreement (Storage Agreement) dated June 25, 1970, as amended, between Applicant and the other two one-third owners of the storage field, Washington Natural Gas Company (WNG) and Washington Water Power Company (WWP).

It is stated that the Jackson Prairie Management Committee (Management Committee) comprised of representatives from WWP, WNG and Applicant is responsible for monitoring the use of the storage project to ensure that the storage field is operated in the most efficient and effective manner. It is explained that studies conducted by the Management Committee indicate that the storage field has the capacity of providing additional firm deliverability of up to 50,000 Mcf/d, thus enabling an increase from the present firm level of 325,000 Mcf/d to a projected level of 375,000 Mcf/d with no additional investment in facilities. As one-third owners, WNG and WWP each have the right to 25,000 Mcf/d of this additional capacity, thus bringing the total daily withdrawal volume under the ownership of all three of the parties to 125,000 Mcf/d each, it is further stated.

Applicant, WWP, and WNG entered into an amendment to the Storage Agreement, the Fifteenth Revised Appendix C, to reflect the proposed additional daily withdrawal capacity, to modify the daily withdrawal formula based on inventory levels, to establish a working gas injection schedule and to provide for injections during the withdrawal season.[1]

Applicant currently is authorized to provide storage service under Rate Schedule SGS–1 as set forth in its FERC Gas Tariff, First Revised Volume 1 pursuant to the Commission Order dated March 21, 1980 in Docket No. CP75–287–000 modified by partial abandonment authorizations approved by orders issued June 3, 1983, and May 21, 1984, in Docket No. CP83–312–000.

To provide storage service for WNG and WWP utilizing the described additional capacity, Applicant requests the Commission to issue an order amending its existing certificates for SGS–1 service to authorize increases in firm daily contract demand under Rate Schedule SGS–1 service from 129,986 MMBtu to 156,186 MMBtu for WNG and from 41,800 MMBtu to 68,000 MMBtu for WWP in accordance with amended SGS–1 service agreements dated September 1, 1987, between Applicant, WNG and WWP.

No increase in the seasonal contract quantity under Rate Schedule SGS–1 is proposed herein. The term of service under these amended SGS–1 service agreements is unchanged and will expire on October 31, 1989.

Applicant also requests the authorization necessary to implement modifications to its currently effective Rate Schedule SGS–1 to provide for the following:

(1) A requirement that SGS–1 customers that have elected to purchase gas and have it stored for their accounts

[1] WNG filed on August 31, 1987, in Docket No. CP87–516–000 its request to operate the storage field consistent with this amendment to the Storage Agreement.

must tender such gas for injection pursuant to the following schedule:

By June 30—not less than 35% of the maximum working gas quantity required by the customer during the subsequent withdrawal season.

By August 31—not less than 80% of the maximum working gas quantity required by the customer during the subsequent withdrawal season.

By October 31—not less than 100% of the maximum working gas quantity required by the customer during the subsequent withdrawal season.

(2) A modified formula relating Applicant's daily delivery obligation to a customer to the balance of gas stored for that customer's account as follows: Applicant's daily delivery obligation shall be at 100% of customer's contract demand until 50% of customer's seasonal contract quantity is delivered. For deliveries beyond 50% of customer's seasonal contract quantity, Applicant's daily delivery obligation shall be reduced by two-third percent (2/3%) of customer's contract demand for each additional one percent (1%) of customer's seasonal contract quantity delivered beyond said 50%.

It is indicated that the increase in the daily contract demand for WNG and WWP ultimately will lower rates to Applicant's other customers due to the increased utilization of the storage field without any associated increase in facility investment or operating costs.

Upon receipt of the authorization's requested herein, Applicant will file pursuant to part 154 of the Commission's regulations the amended SGS–1 service agreements that Applicant has entered into with WNG and WWP. Applicant also will file a revised statement of Rates and SGS–1 Rate Schedule tariff sheets for insertion in its FERC Gas Tariff, First Revised Volume No. 1.

Comment date: March 9, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority continued in the subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is require by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–3933 File 2–23–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. QF88–224–000 et al.]

Brookhaven Cogeneration Corp. et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

February 17, 1988.

Take notice that the following filings have been made with the Commission.

1. Brookhaven Cogeneration Corporation

[Docket No. QF88–224–000]

On February 1, 1988, Brookhaven Cogeneration Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York, 10170 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping cycle cogeneration facility will be located in Medford, Suffolk County, New York. The major equipment will include three combustion turbine-generators, three heat recovery steam generators, and a single extraction steam turbine-generator. The facility will provide useful thermal energy to an industrial process. The net electric power production capacity will be approximately 75.5 megawatts. The primary energy source will be natural gas.

2. Burney Forest Products—Burney Facility

[Docket No. QF88–218–000]

On January 27, 1988, Burney Forest Products (Applicant), of 1900 Churn Creek Road, Suite 308, Redding, California 96002, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately 2.0 miles west of the community of Burney, in Shasta County, California. The facility will consist of two boilers and one steam turbine generator. Applicant states that the primay energy source of the facility will be biomass in the form of wood waste. The mximum net electric power production capacity of the facility will be 24.0 MW.

3. Olin Chemicals

[Docket No. QF88–220–000]

On January 28, 1988, Olin Chemicals (Applicant), of P.O. Box 2896, Lake Charles, Louisiana 70602 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located on south of interstate Highway 10, in Westlake, Louisiana. The facility will

consist of a combustion turbine generator, supplementary fired heat recovery steam generator (HRGS), and two natural gas fired booster compressors. Thermal energy recovered from the facility will be used in various process applications at the Lake Charles Manufacturing facility. Electric power production capacity of the facility will be 22 MW. The primary energy source will be natural gas. The installation of the facility is expected to commence on January 2, 1989.

4. Smithtown Cogeneration Corporation

[Docket No. QF88-225-000]

On February 1, 1988, Smithtown Cogeneration Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York, 10170 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping cycle cogeneration facility will be located in Kings Park, Suffolk County, New York. The major equipment will include three combustion turbine-generators, three heat recovery steam generators, and a single extraction steam turbine-generator. The facility will provide useful thermal energy to an industrial process. The net electric power production capacity will be approximately 75.5 megawatts. The primary energy source will be natural gas.

5. Brenton Woods Cogeneration Corporation

[Docket No. QF88-223-000]

On February 1, 1988, Brenton Woods Cogeneration Corporation (Applicant), of 420 Lexington Avenue, Suite 440, New York, New York, 10170 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping cycle cogeneration facility will be located in Great Neck, Nassau County, New York. The major equipment will include three combustion turbine-generators, three heat recovery steam generators, and a single extraction steam turbine-generator. The facility will provide useful thermal energy for heating and cooling purposes. The net electric power production capacity will be approximately 75.5 megawatts. The primary energy source will be natural gas.

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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-3934 Filed 2-23-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $1,057,703 obtained as a result of a Consent Order that the DOE entered into with World Oil Company (Case No. KEF-0005), a reseller-retailer of petroleum products located in Los Angeles, California. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should conspicuously display a reference to case number KEF-0005.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a January 19, 1984 consent order between the DOE and World Oil Company (World). That consent order settled certain disputes between the firm and the DOE concerning World's possible violations of DOE regulations in its sales of crude oil and refined petroleum products. The consent order covers the period August 20, 1973 through January 27, 1981.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account in the amount of $1,057,703, funded by World pursuant to the consent order. The DOE has proposed to divide the consent order into two pools; one relating to World's crude oil sales and the other relating to the sales of refined products. Under the proposed procedures, purchasers of World refined products may file claims for refunds from the escrow fund. The amount of the refund available to an applicant will generally be a pro rata or volumetric share of the World consent order. In order to obtain a refund, each claimant will be required to submit a schedule of its monthly purchases of covered products from World to demonstrate that it was injured by World's alleged regulatory violations. The specific requirements for proving injury are set forth in the Proposed Decision and Order.

With regard to the portion of the consent order fund attributable to World's alleged crude oil violations, the determination proposes that the money be placed into a pool of crude oil monies for distribution pursuant to the DOE's Statement of Restitutionary Policy for crude oil claims.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Such parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: February 18, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

February 18, 1988.

Name of Firm: World Oil Company.
Date of Filing: October 16, 1985.
Case Number: KEF-0005.

On October 16, 1985, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA), requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving World Oil Company (World). 10 CFR Part 205, Subpart V. This Proposed Decision sets forth the OHA's tentative plan for distributing these funds to qualified refund applicants. Section I outlines the approach to be used in the disbursement of World funds related to alleged crude oil overcharges. Information necessary to prepare refund applications based on purchases of World refined petroleum products appears at section II of this Proposed Decision. Section II(A) sets forth specific requirements applicable to each type of claimant that is likely to file an application based on purchases of World refined products. A claimant should take particular note of those requirements applicable to its particular circumstances. The specific application requirements are followed at section II(B) by a discussion of general requirements that apply to all refund applications involving refined petroleum products. Since the procedures set forth in this Decision are in proposed form, no refund applications should be filed at this time. A final determination will be issued at a later date announcing that the filing of World refund applications is authorized.

World was a "producer" of crude oil and a "refiner" as those terms are defined in 10 CFR 212.31. Between August 20, 1973 and January 27, 1981 (the consent order period), World was a "producer" of crude oil. From February 1976, the date World acquired its refining subsidiary Sunland Refining Corporation (Sunland), through the end of the consent order period, World was a "refiner" of crude oil. World was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth at 10 CFR Parts 211 and 212. The ERA conducted an extensive audit of World's operations and found in two Notices of Probable Violation that the firm had violated applicable DOE pricing and allocation regulations in its sales of crude oil and refined petroleum products during the consent order period. In order to settle all claims and disputes between World and the DOE, the two parties entered into a consent order that became final on January 19, 1984. Undr the terms of the Consent Order, World agreed to remit $1,100,000 to the DOE to settle alleged violations that occurred during the consent order period.

The Consent Order states that $900,000 of the $1,100,000 remitted by World would be disbursed to the State of California for indirect restitution.[1] After this disbursement was made, there remained $200,000 in the World Account ($1,100,000—$900,000 = $200,000). The Consent Order states that this $200,000 concerns alleged violations in World's pricing of crude oil during the consent order period.

Furthermore, in the Consent Order, World agrees to waive its right to a potential refund of $857,703 held by the DOE in escrow in a pending DOE proceeding with the Edgington Oil Company, Inc. (EDG). *See* EDG Consent Order, 44 FR 73140 (December 17, 1979). Consequently, the DOE transferred World's potential refund amount in the EDG proceeding, or $857,703, from the EDG Account to the World Account. The EDG Consent Order indicated that World was allegedly overcharged in that amount as a result of World's purchases of motor gasoline from EDG. Since World's claim in the EDG proceeding involves purchases of gasoline from EDG during the consent order period, this amount, or $857,703, concerns alleged violations in the sales of motor gasoline products during the consent order period.

Because the World Consent Order resolves alleged violations involving sales of both crude oil and refined products, we propose to divide the fund into two pools. *Standard Oil Co. (Indiana)* 10 DOE ¶ 85,048 (1982). Since $200,000 of the World fund concerns alleged violations in World's pricing of crude oil, we propose that this amount be set aside as a pool of crude oil funds available for disbursement. Furthermore, because the $857,703 transferred from the EDG Account to the World Account involves alleged violations in World's sales of refined petroleum products, we further propose that this amount be set aside as a pool of funds to be made available for distribution to claimants who demonstrate that they were injured by World's alleged overcharges in its sales of refined petroleum products.

I. Proposed Refund Procedures for Crude Oil Claims

On July 28, 1986, as a result of the court-approved Settlement Agreement in *The Department of Energy Stripper Well Exemption Litigation, In Re:* M.D.L. No. 378, the DOE issued a Modified Statement of Restitutionary Policy (MSRP) providing that crude oil overcharge revenues will be divided among the States, the United States Treasury, and eligible purchasers of crude oil and refined products. 51 FR 27899 (August 4, 1986). Up to 20 percent of the crude oil violations amounts will be reserved to satisfy claims from injured parties that purchased refined petroleum products between August 19, 1973 and January 31, 1981 (the crude oil price control period). We propose that such claims be processed through Subpart V special refund procedures. The MSRP also calls for the remaining 80 percent of the funds to be disbursed among state and federal governments for indirect restitution. Once all valid claims are paid, any remaining funds will be divided equally between the state and federal governments. The federal government's share of the unclaimed funds will ultimately be deposited into the general fund of the Treasury of the United States.

The World crude oil funds are subject to the MSRP. Therefore, we propose to institute a claims process for the $200,000 in crude oil funds involved in this processing. In the present case, we have decided to reserve the full 20 percent, or $40,000, of the alleged crude oil violations amounts, plus a proportionate share of the accrued interest, for direct restitution to claimants that purchased refined petroleum products during the crude oil price control period. The process which the OHA will use to evaluate claims based on crude oil violations will be modeled after the process the OHA has used to evaluate claims based on alleged refined product overcharges pursuant to 10 CFR Part 205, Subpart V. *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be

[1] World is a California based corporation that made virtually all of its sales in that state during the months in which the alleged violations occurred. In the Consent Order, World agreed to remit $900,000 to the State of California to fund any of the five energy conservation programs specified in the Consent Order. The DOE determined that indirect restitution through the State of California would be appropriate because it would otherwise be difficult to identify those California end-user customers who, in all likelihood, bore the ultimate burden of World's alleged pricing violations. 49 FR 2290 (January 19, 1984).

required to document their purchase volumes and to prove that they were injured by the alleged violations (i.e. that they did not pass through the alleged overcharges to their own customers). We propose to apply the standards for showing injury that the OHA has developed in analyzing non-crude oil claims. *See, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 (1986). These standards include a finding that end-users and ultimate consumers whose businesses are unrelated to the petroleum industry were injured by a consent order firm's alleged overcharges. Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the World crude oil refund pool of $200,000 by the total consumption of petroleum products in the United States during the crude oil price control period (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,867. This approach reflects the fact that crude oil overcharges were spread to every region by the Entitlements Program.[2] The volumetric amount for the crude oil pool established in this proceeding is therefore $0.000000098961 per gallon of refined products purchased ($200,000/2,020,997,335,000=$0.000000098961).

We proposed that the remaining 80 percent of the funds, or $160,000, be disbursed equally to the state and federal governments for indirect restitution. We propose to direct the DOE's Office of the Controller to separate and divide this amount, and to distribute $80,000 plus appropriate interest to the States crude oil tracking account and $80,000 plus appropriate interest to the federal government crude oil tracking account.

II. Proposed Refund Procedures for Refined Product Refund Claims

The remaining $857,703 in the World consent order fund is attributable to alleged violations involving refined products. Firms and individuals that purchased World refined products during the consent order period may file claims in this proceeding. From our experience with Subpart V refund proceedings, we believe that potential claimants will fall into the following categories: (1) End-users, i.e., consumers who used World refined products; (2) regulated non-petroleum industry entities that used World products in their businesses, or cooperatives that purchased World products for their businesses; and (3) refiners, resellers or retailers who resold World refined products.

In establishing the procedures which will govern the World Special Refund Proceeding, we propose to adopt certain presumptions that will permit claimants to participate in the refund process without incurring inordinate expense and will enable the OHA to consider refund applications in the most efficient manner possible.[3] *American Pacific International*, 14 DOE ¶ 85,158 (1986) (*API*) First, we propose to adopt a presumption that the alleged overcharges were dispersed equally in all sales of refined products made by World during the consent order period and that refunds should therefore be made on a volumetric basis. In the absence of better information, a volumetric refund assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric refund approach we propose to adopt, a claimant will be eligible to receive a refund equal to the number of gallons purchased times the per gallon refund amount, plus accrued interest. The record in the present case is inconclusive with respect to the precise volume of products sold by World. Based on our considerable experience in conducting refund proceedings, we have made a reasonable estimate and have set the per gallon refund amount at $.001 per gallon. We also recognize that some claimants may have been disproportionately overcharged. Therefore, any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *Sid Richardson Carbon and Gasoline Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

We also propose to adopt a number of injury presumptions that will simplify and streamline the refund process. These presumptions will excuse members of certain applicant categories from proving that they were injured by World's alleged overcharges. We will discuss these presumptions and the showing that each type of applicant must make in section II(A) below.

(A) Specific Application Requirements for Each Category of Refund Applicants

(1) Refund Applications of End-Users

We propose to adopt a finding that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges settled in the World Consent Order. Unlike regulated firms in the petroleum industry, end-users generally were not subject to price controls during the consent order period. Moreover, they were not required to keep records that justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) (*Texas*). Therefore, we propose that end-users of World products need only establish that they were ultimate consumers of a specific volume of World products to qualify for a refund of their full allocable share.

(2) Refund Applications of Cooperatives and Regulated Firms

We also will not require firms whose prices for goods and services are regulated by a government agency or by the terms of a cooperative agreement to demonstrate injury as a result of alleged overcharges on refined products. Although such firms, e.g., public utilities and agricultural cooperatives, generally would have passed any overcharges through to their customers, they generally would pass through any refunds as well. Therefore, we will require such applicants to certify that they will pass any refund received through to their customers, to provide us with a detailed explanation of how they plan to accomplish this restitution, and to explain how they will notify the appropriate regulatory body or membership group of their receipt of the refund money. *See Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). We note, however, that a cooperative's sales of World products to non-members will be treated in the same manner as sales by other resellers.

(3) Refund Applications of Resellers, Retailers and Refiners

a. Refiners, Resellers and Retailers Seeking Refunds of $5,000 or Less. We propose to adopt a presumption, as we have in many previous cases, that purchasers seeking small refunds were injured by World pricing practices. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,224–25 (1982) (*Uban*). We recognize

[2] The Department of Energy established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly dispersing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *See, E.g., Amber Refining, Inc.*, 13 DOE ¶ 85,217 (1985).

[3] The Subpart V regulations specifically authorize the use of presumptions in special refund proceedings. 10 CFR Part 205, Subpart V.

that the cost to the applicant of gathering evidence of injury to support a small refund claim could exceed the expected refund. consequently, without simplified procedures, some injured parties would be denied an opportunity to obtain a refund. Under the small-claims presumption, a claimant seeking total refunds of $5,000 or less will not be required to submit any evidence of injury beyond establishing the volume of World products it purchased during the settlement period. *Texas,* 12 DOE at 88,210.

b. Refiners, Resellers and Retailers Seeking Larger Refunds. Any applicant whose total allocable share is greater than $5,000 will be required to provide a detailed showing of injury. In order to show that it did not pass through the alleged overcharges to its own customers, it must demonstrate that it maintained a bank of unrecovered product costs at least equal to the amount of the refund claimed beginning with the first month of the period for which a refund is claimed through the date on which either that product was decontrolled or the banking regulations expired. In addition, a claimant must specifically show that it was unable to pass through those increased costs. Such a showing might be made though a demonstration of lowered profit margins, decreased market share, or depressed sales volume during the period of purchases from World. *API,* 14 DOE at 88,295.

(4) Applicants Seeking Refunds Based on Allocation Claims

We also recognize that we may receive claims alleging World allocation violations. Such claims would be based on the consent order firm's alleged failure to furnish petroleum products that it was obliged to supply to the claimant under the DOE allocation regulations. 10 C.F.R. Part 211. We will evaluate refund applications based on allocation claims by referring to standards such as those set forth in *OKC Corp./Town & Country Markets, Inc.,* 12 DOE ¶ 85,094 (1984), and *Aztex Energy Co.,* 12 DOE ¶ 85,116 (1984).

(B) General Refund Application Requirements

In addition to the specific requirements outlined above, all Applications for Refund must be in writing and must be signed by the applicant. An application must refer to the World Oil Company Special Refund Proceeding (Case No. KEF-0005). Each applicant must submit a monthly schedule for World refined petroleum products during the period in which the relevant product was controlled. If an applicant indirectly purchased World refined petroleum products from a reseller, it must explain why it believes that the products originated with World and must identify the reseller from which the product was purchased.

If a claimant made only sporadic purchases of significant volumes of World product, we will consider that claimant to be a spot purchaser. We will establish a rebuttable presumption that claimants who made only spot purchases from World were not injured. Spot purchasers tend to have considerable discretion in where and when to make purchases. Therefore, they generally would not have made spot market purchases from World unless they were able to pass through the full amount of any price increases to their own customers. *See Office of Enforcement,* 8 DOE ¶ 82,597 (1981). Therefore, a firm which made only spot purchases from World will not receive a refund unless it presents evidence rebutting the spot purchaser presumption and establishing the extent to which it was injured.

We will also establish a minimum amount of $15.00 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds of less than $15.00 are sought outweighs the modest benefits of restitution in those situations. *Uban,* 9 DOE at 85,222. Successful applicants will also receive a pro rata share of the interest accrued on the World escrow fund.

Applications for Refund should not be filed at this time. Detailed procedures for filing Applications for Refund will be provided in a final Decision and Order. Before distributing any portion of the consent order fund, we intend to publicize the distribution process, to solicit comments on the proposed refund procedures, and to provide an opportunity for any potential claimants to file a claim. Comments regarding the tentative distribution process set forth in this Proposed Order should be filed with the Office of Heaings and Appeals within 30 days of publication of this Proposed Order in the **Federal Register.**

(C) Distribution of the Remainder of the Consent Order Funds Attributable to World's Refined Product Sales

In the event that money remains after all refund claims from the World refined product pool have been analyzed, those funds in that refund pool will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, H.R. 5400, Title III, 99th Cong. 2d Session, Cong. Rec. H11319-21, (Daily E. October 17, 1986).

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by World Oil Company pursuant to the Consent Order finalized on January 19, 1984, will be distributed in accordance with the foregoing Decision.

[FR Doc. 88-3929 Filed 2-23-88; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 8F3579/PF-488A; FRL-3333-1]

Ecogen, Inc.; Amended Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of an amendment to pesticide petition (PP) 8F3579 for the fungicide *Pseudomonas fluorescens* by Ecogen, Inc.

ADDRESS:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TS-767C), Attention: Product Manager 21, Environmental Protection Agency, Office of Pesticide Programs, 401 M St. SW., Washington, DC 20460

In person contact: Lois Rossi (PM 21), Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA has received an amendment to PP 8F3579 from Ecogen, Inc., 2005 Cabot Blvd., West Langhorne, PA 19047–1810, proposing to amend 40 CFR Part 180 by establishing a regulation to exempt from the requirement of a tolerance the residues of the fungicide *Pseudomonas fluorescens* in or on the raw agricultural commodities cottonseed and cotton forage. The original notice of PP 8F3579 appeared in the **Federal Register** of December 16, 1987 (52 FR 47754), and specified cotton. The amended petition adds cottonseed and cotton forage.

Authority: 21 U.S.C. 346a

Dated: February 17, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88–3903 Filed 2–23–88; 8:45 am]

BILLING CODE 6560–50–M

[OPP–240076; FRL–3333–3]

EPA Denial of Application for Federal Registration for Certain Intrastate Pesticide Products; Chevron Chemical Co. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of denial.

SUMMARY: EPA is denying registration of the products listed herein because the producers have not provided information required to register their products under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

EFFECTIVE DATE: February 24, 1988.

ADDRESS: Requests for a hearing, identified by the document number [OPP–240076], must be submitted to:

Hearing Clerk (A–110), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring requests to: Environmental Protection Agency, Rm. 3708–M, Waterside Mall, 401 M Street SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

By mail: Lynn M. Bradley, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 716, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–7700.

SUPPLEMENTARY INFORMATION: Instrate products, as described in 40 CFR 162.17, are products which were temporarily exempted from complying with the registration requirements of FIFRA because they had been registered prior to 1975 under State registration laws. Such intrastate products could legally be shipped or distributed for sale solely within a single State. The exemption for intrastate products normally remains in effect pending a final Agency decision either to approve or to deny an application for Federal registration.

To qualify for the intrastate exemption, the producers of such products were required to submit a notice of intent to apply for Federal registration in accordance with section 3 of FIFRA. The Agency has now sent notices to producers of intrastate products calling in full applications for Federal registration under FIFRA section 3(c) as provided by 40 CFR 162.17. These notices were sent in conjunction with the Registration Standards program and provided a 90-day period in which the producers were required to respond.

Each of the firms listed below failed to respond to the notice within the appropriate 90 day period. Accordingly, the firms have not provided the information required to register their products pursuant to section 3 of FIFRA. The Agency has also determined that the information submitted by each of these intrastate registrants in 1975 is inadequate to support an application for registration under FIFRA section 3. Therefore, the Agency notified each of these intrastate registrants of its intent to deny their applications and terminate the exemption from registration provided under 40 CFR 162.17. The intrastate registrants listed below also failed to respond to this Notice of Intent to Deny. In accordance with the terms of the Notice of Intent, EPA is hereby denying the Notice of Application for Federal Registration of an Intrastate Pesticide Product filed in 1975 for each of the following products:

Company	Product	EPA accession No.
Chevron Chem. Co., Ortho Agricultural Chemicals Div., 940 Hensley St., Richmond, CA 94804.	Monitor 4 Spray	239–4172 (AZ)
	Orthocide PCNB 10–20 Dust	239–8631 (CA)
	Orthocide 15 Dust	239–4217 (CA)
	Orthocide 10 Dust	239–4200 (CA)
	Orthocide 50 Wettable	239–4199 (CA)
	Orthocide 50 Wettable	239–4173 (CA)
	Orthocide Sulfur 10–50	239–4162 (CA)
Stauffer Chemical Co., 1200 S. 47th St., Richmond, CA 94804	Dyfonate 4–EC	476–4093 (CA)
	Dyfonate 10–G (476–1995)	476–4094 (CA)
	Dyfonate 10–G (476–1995)	476–4095 (CA)
Van Water & Rogers, 2256 Junction Ave., San Jose, CA 95131	Namco Pathofume 57/43	550–4772 (CA)
	Namco Pathofume B	550–4773 (CA)
	Namco Pathofume 75/25	550–4781 (CA)
ChemTech Resources, Inc., P.O. Box 24440, Dallas, TX 75224	POW Weed Killer	603–6600 (TX)
Woods Industries, Inc., P.O. Box 1016, Yakima, WA 98907	Crop King Tyon NAA–W	682–5251 (WA)
	Crop King Tyon NAA–W	682–5587 (ID)
	Crop King Tyon NAA–200	682–5592 (WA)
	Crop King Technical Naled 4% Dust	682–5250 (ID)
	Crop King Technical Naled 4% Dipel 120 Dust	682–5586 (ID)
	Crop King Technical Naled 4% Dust	682–5594 (WA)
Rohm & Haas Co., P.O. Box 1348, Philadelphia, PA 19105	Kerb 50–W	707–4594 (KS)
	Kerb 50–W	707–4595 (CA)
	Kerb 50–W	707–4596 (WA)
	Kerb 50–W	707–6619 (NM)
	Kerb 50–W	707–7623 (AZ)
Southern Agricultural Insecticides, Inc., Box 218, Palmetto, FL 33561	SA–50 Brand Flea and Tick Dust or Spray	829–6770 (FL)
Bonded Chemicals Corp., P.O. Box 1870, Lima, OH 45802	Dcath Diet Rat & Mouse Killer	850–10204 (OH)
Cooke Laboratory Products, a Subsidiary of the Chas. H. Lilly Co., 7737 NE.	Cooke Slug-N-Snail Granules	909–4704 (CA)

Company	Product	EPA accession No.
Killingsworth, Portland, OR 97218	Rosedale's Snail-A-Tac Granules	909-4712 (CA)
	Cooke Termite Barrier	909-6415 (CA)
	Cooke Drat	909-4645 (CA)
Century Chemical Products Co., Inc., 821 Wanda Ave., Ferndale, MI 48220.	Century No. 11150, Winter-Pruf	1560-8665 (MI)
	Sani-Quat Century Disinfectant and Sanitizer No. 2017	1560-8667 (MI)
Mobil Chemical Co., Crop Chemicals Group, P.O. Box 26683, Richmond, VA 23261.	Mocap 10% Granular Nematicide Insecticide	2224-5641 (FL)
	Mocap 10% Granular Nematicide Insecticide	2224-5642 (SC)
	Mocap EC	2224-5643 (MS)
	Mocap EC	2224-5646 (LA)
	Mocap 10% Granular Nematicide-Insecticide	2224-5647 (AL)
	Mocap Plus	2224-5648 (VA)
	Mocap Plus	2224-5649 (DE)
	Mocap Plus	2224-5640 (MD)
	Modown Herbicide Emulsifiable Concentrate	2224-5644 (TX)
	Modown Herbicide 80% Wettable Powder	2224-5645 (TX)
	Modown Herbicide 80% Wettable Powder	2224-5651 (TX)
	Modown Herbicide Emulsifiable Concentrate	2224-5652 (TX)
	Modown Herbicide Emulsifiable Concentrate	2224-5653 (MS)
	Modown Herbicide 80% Wettable Powder	2224-5654 (MS)
	Modown Herbicide 80% Wettable Powder	2224-5655 (AR)
	Modown Herbicide 10% Granular Dust	2224-5656 (MS)
	Modown Herbicide 10% Granular Dust	2224-5657 (AR)
	Modown Herbicide Emulsifiable Concentrate	2224-5666 (AR)
Buhl Chemical, 601-A Brookhaven Drive, Orlando, FL 32803	Buhl's Outdoor Flea Dust	2553-4508 (FL)
A-1 Pest Control Service, 484 Union Ave., Brooklyn, NY 11211	Formula A-4 Rat & Mouse Killer	2281-10126 (NY)
Sprayall Products Co., 30 Kirkwood Rd., Port Washington, NY 11050	Prolin Ready to use Bait	2510-4449 (NY)
	Warfarin Ready to use Bait	2510-4450 (NY)
Superior Fertilizer and Chemical Co., P.O. Box 1021, Tampa, FL 33601.	Superior Thiodan 2-E	3122-7191 (FL)
	Superior Parathion 8-E	3122-7193 (FL)
	Superior Parathion 6-E	3122-7194 (FL)
	Superior Thiodan 50-WP	3122-7198 (FL)
	Superior Parathion 10 Granular	3122-7201 (FL)
	Tobacco Dust 1% Parathion-3% Thiodan-6.5% Dithane Z-78	3122-7540 (FL)
	Tobacco Dust 1% Parathion-3% Thiodan-7.50% Dithane Z-78	3122-7541 (FL)
	Tobacco Dust 1% Parathion-3% Thiodan-15% Dithane Z-78	3122-7542 (FL)
	Tobacco Dust 2% Parathion-4%	3122-7543 (FL)
	Southern Tobacco Dust 2% Parathion-3% Thiodan-13.50% Dithane Z-78.	3122-7544 (FL)
	Tobacco Dust 2% Parathion-3% Thiodan-6.50% Dithane Z-78	3122-7545 (FL)
	Tobacco Dust 2% Parathion-4% Thiodan-13.5% Dithane Z-78	3122-7546 (FL)
	Southern Tobacco Dust 2% Parathion 3% Thiodan-15% Dithane Z-78.	3122-7547 (FL)
	2% Parathion-80% Sulphur Dust	3122-7549 (FL)
	2% Parathion-4% Thiodan-10% Zineb Dust	3122-7550 (FL)
	Superior's Extra Value Parathion-Sulphur 1-80 Dust	3122-7552 (FL)
	Superior's 2% Parathion-6.50% Zineb Dust	3122-7553 (FL)
	Superior Parathion 4-E	3122-7570 (FL)
	Superior Ethion 4 EC	3122-7189 (FL)
	Superior's Extra Value Ethion-Soluble Oil Combination	3122-7566 (FL)
	Superior's Extra Trithion-Sulphur 2-80 Dust	3122-7557 (FL)
	Superior's Extra Value Trithion-Sulphur 2-85 Dust	3122-7558 (FL)
	Superior Bromide Soil Fumigant	3122-7560 (FL)
	Superior Bromide-90 Soil Fumigant	3122-7561 (FL)
	Superior Brozone Soil Fumigant	3122-7562 (FL)
	Superior MC-33 Soil Fumigant	3122-7563 (FL)
	Superior Sevin 5 Dust	3122-7554 (FL)
	Superior's Extra Value Sevin 10% Dust	3122-7555 (FL)
	10% Sevin-10% Dithane Z-78 Dust	3122-7556 (FL)
	Bulk Fertilizer Mixture W/1.00% Sevin	3122-8829 (FL)
	Bulk Fertilizer Mixture W/1.00% Sevin	3122-8850 (FL)
Chemgro Agricultural Div., Mobay Chem. Corp., P.O. Box 4913, Kansas City, MO 64120.	Dasanit 15% Granular	3125-7828 (WA)
	Dasanit 15% Granular	3125-7834 (ID)
	Dasanit Spray Concentrate	3125-7836 (GA)
	Dasanit 15% Granular	3125-7859 (OR)
The Staffel Co., 4410 Dividend, San Antonio, TX 78219	Staffel's Root Stop	3286-8041 (TX)
	Staffel's Bluestone-Copper Sulfate	3286-8093 (TX)
	Staffel's Rats-N-Mice Killer	3286-8054 (TX)
	Staffel's Rats-N-Mice Killer	3286-8079 (TX)
	Staffel's Sevin 50 Wettable	3286-8040 (TX)
	Sevin 5% Dust-Staffel's	3286-8048 (TX)
	Staffel's Special Vegetable Dust	3286-8062 (TX)
	Staffel's Tick and Flea Powder	3286-8077 (TX)
	Staffel's Push Button Tick and Flea Sprary-Aerosol	3286-8088 (TX)
	Staffel's New BugBait	3286-8092 (TX)
	Staffel's 25% Sevin-Emulsifiable Concentrate	3286-8102 (TX)
	Staffel's Sevin 10 dust	3286-80105 (TX)

Company	Product	EPA accession No.
Brewer Chemical Corp., P.O. Box 48, Honolulu, HI 96810	Ultraqu	3579-10569 (HI)
	Ultrasan	3579-10570 (HI)
American Celcure Wood Preserving Corp., 1074 East 8th St., Jacksonville, FL 32206.	Celcure Wood Preservative	3992-3315 (FL)
Chemex Chemicals and Coatings Co., Inc., P.O. Box 5072, Tampa, FL 33605.	Chemex Scento-Mint	4450-3308 (FL)
McCrary Chemicals, P.O. Box 64, Weatherby, MO 64497	Old Mac's Warfarin Rat and Mouse Killer	5396-5610 (MO)
Universal Manufacturing and Supply Co., 4887 Victor St., Jacksonville, FL 32207.	Weed Killer No. 50	5799-3208 (FL)
Helena Chemical Co., 32000 Clark Tower, 5100 Poplar Ave., Memphis, TN 38137	Helena Brand 15% Parathion Granules	5905-3082 (FL)
	Helena Brand 15% Parathion Granules	5905-7860 (FL)
	Malathion Parathion Wettable	5905-7950 (CA)
Wakefield Kennel Supplies, 251 West 27th St., Hialeah, FL 33010	Wakefields Flea & Tick Powder	6015-8265 (FL)
Tyler Products, 4525 5th St., NE., Puyallup, WA 98371	Tyler's Zinc Phosphide	6311-3779 (WA)
	Tylers Field Rodent Bait	6311-3824 (WA)
Tide Products, Inc., Box 1020, Edinburg, TX 78539	Tide Early Harvest With Dylonate	6735-4811 (TX)
	Tide Telone II	6735-5393 (TX)
	Tide Weed & Feed for Rice With Carbofuran (Contains 1.5% Ordram and .25% Carbofuran).	6735-4433 (LA)
	Tide Rice Topper (Contains .25% Carbofuran)	6735-4750 (LA)
	Tide Cane Grower (Contains 2.35% Carbofuran)	6735-4815 (TX)
	Tide Cane Grower (Contains 1% Carbofuran)	6735-4819 (TX)
	Tide Weed & Feed for Rice with Carbofuran (Contains 1.67% Ordram and .33% Carbofuran).	6735-4824 (TX)
	Tide Weed & Feed for Rice with Carboguran (contains 1.5% Ordram and .25% Carbofuran).	6735-4825 (TX)
	Tide Rice Topper (Contains .33% Carbofuran)	6735-4826 (TX)
	Tide Rice Topper (Contains .5% Carbofuran)	6735-4845 (TX)
	Tide Rice Topper (Contains .33% Carbofuran)	6735-4846 (TX)
	Tide Rice Topper (Contains .25% Carbofuran)	6735-4847 (TX)
	Tide Rice Topper (Contains .5% Carbofuran)	6735-4848 (TX)
	Tide Tobacco Special (Contains 1.33% Dasanit and 0.6% Di-Syston)	6735-8175 (TX)
	Tide Tobacco Special (Contains 1.33% Dasanit)	6735-8177 (TX)
	Tide Red Bait	6735-4807 (TX)
	Tide Weed & Feed For Corn	6735-5532 (TX)
	Tide Tree paint	6735-4808 (TX)
Industrias Nacionales, Inc., Calle Jordan 704-Parada 26½, Bo Obrero Box 7866, Santurce, PR 00916.	Masacre con Warfarina	6957-10259 (PR)
Soil Service, Inc., P.O. Box 3650, Salinas, CA 93912	Soilserv Thiodan 2 Bait	6973-3549 (CA)
	Soilserv Simazine Granular	6973-4607 (CA)
California Liquid Fertilizer Co., Bin #50, Arroyo Annex, Pasadena, CA 91109.	Calico Brand Eptam 5 Granular	7421-5829 (CA)
Aggie Chemical Industry, P.O. Box 8335, San Antonio, TX 78208	Rat and Mouse Killer	8127-5566 (TX)
	Sevin-M-Dust Livestock Dust	8127-3265 (TX)
	Wettable Chinch Bug Spray	8127-5561 (TX)
	Spread On	8127-5568 (TX)
	80% Sevin Sprayable Insecticide	8127-5569 (TX)
	50% Sevin Wettable Powder	8127-5570 (TX)
	10% Sevin	8127-5571 (TX)
	5% Sevin Vegetable & Garden Dust	8127-5572 (TX)
Fresno Chemical Corp., 2600 South Loop West, #300, Houston, TX 7705.	Pioneer Tick, Flea, and Lice Powder for Dogs	8242-5609 (TX)
Metro Biological Lab, 8241 Gay St., Cypress, CA 90639	Metro (Tested) Granular Fungicide	8278-9247 (CA)
Plantation Garden Co., 4858 West Ave., San Antonio, TX 78213	Plantation Lawn Fungus Cure	8449-7414 (TX)
B&G Co., 10539 Maybank Dr., P.O. Box 20372, Dallas, TX 75220	BGS-5 Dust	8612-3914 (TX)
	BGS-10 Dust	8612-3924 (TX)
	Blue Allrat	8612-3919 (TX)
	Green Allrat	8612-3923 (TX)
Textilana Corp., 12607 Cerise Ave., Hawthorne, CA 90250	Quatrene MB-50	8707-10091 (CA)
	Quatrene MB-80	8707-10092 (CA)
Uni Chemical Corp., 6333 Sidney St., Houston, TX 77021	Septol	8713-3702 (TX)
	Tergisan	8713-3703 (TX)
	Algaecide	8713-3704 (TX)
American Fertilizer and Chemical Co., P.O. Box 98, Henderson, CO 80604.	Parathion 8	8773-8972 (CO)
	Parathion 6-3	8773-4621 (CO)
J.R. Simplot Co., d/b/a Sim-Chem Minerals and Chemicals Div., Box 912, Pocatello, ID 83201.	Omite 4% Dust	8917-5585 (ID)
Sun Ray Chemical Co., 115 West Jackson, Phoenix, AZ 25003	Hammond's Xtra All Purpose Cleaner	9115-3073 (AZ)
Mixon Milling Co., Box 118, Cairo, GA 31728	Pest-A-Way Rat Killer	9327-8664 (GA)
Xterma Pest Control, P.O. Box 281, Albany, OR 97321	Xterma Rat & Mouse Killer Bait Prolin Concentrate	9392-7437 (OR)
Woodbury Chemical Co. of Homestead, 13610 SW. 248th, P.O. Box 4319, Princeton, FL 33032.	Captan 22.5 Dust	9782-6191 (FL)
Fontana Products Co., P.O. Box 622, Shelby, NC 28150	Red Torpedo Use-As-Is Rat Killer	9892-3507 (NC)
Foster-Gardner, Inc., 1577 First St., Coachella, CA 92236	Methyl Parathion 5E	10017-8194 (CA)
Gowan Co., P.O. Box 5696, Yuma, AZ 85364	Methyl Parathion 5E	10163-3047 (CA)
	Prokil Simazine 80W	10163-6399 (AZ)
Rockwood Chem. Co., Box 34, Brawley, CA 92227	Rockwood Brand Ethyl Methyl Parathion 4-4	10226-3764 (CA)

Company	Product	EPA accession No.
Professional Chemical Co., Inc., 4517 Yale St., P.O. Box 94071, Houston, TX 77018.	Deep South Puffy Powder	10290-4935 (TX)
Advance Chemical Co., 301 Zell Dr., Orlando, FL 3282	Advance Formula 600	10757-7426 (FL)
Industrial Solvents, P.O. Box 312, San Marcos, TX 78666	Ind-Tex Semi-Sterilant Grass and Weed Killer	10827-3425 (TX)
Hygin Sanitary Supply Co., 6500 Avalon Boulevard, Los Angeles, CA 90003.	Nice Air Sanitizer	10845-10076 (CA)
	HS-18 Cleaner-Disinfectant	10845-10079 (CA)
Feed Service, Inc., P.O. Box 430, Caldwell, ID 83605	Telone C	10914-9328 (ID)
B.F. Chemical Co., 11609 S. Hereford Rd., Los Banos, CA 93635	Vidden D	10938-5528 (CA)
	Telone	10938-5529 (CA)
Calaveras County Agricultural Commissioner, El Dorado Rd., San Andreas, CA 95249.	1080 Squirrel Poison Grain Bait	10963-5324 (CA)
California State Dept. of Food and Agriculture, Pesticide Registration Branch, 1220 N St. (Rm. A-400), Sacramento, CA 95814.	Any Appropriate Product (Use Variance #157-75)	10965-9895(CA)
Castle Vegtech, Inc., 190 Mast St., P.O. Box 1208, Morgan Hill, CA 95037.	Castle Brand Dorma-Phos	10972-6551(CA)
El Dorado County Agricultural Commissioner, 311 Fair Lane, Placerville, CA 95667	Rodent Bait Containing Warfarin	11009-6296(CA)
	Zinc Phosphide Rodent Bait	11009-8111(CA)
Imperial County Agricultural Commissioner, County Services Bldg., 940 West Main, El Centro, CA 92243.	Zinc Phosphide Poison Grain Bait	11053-3465(CA)
	Warfarin Rat and Mouse Bait	11053-4631(CA)
Lake County Agricultural Commissioner, Rte. 1, Box 315-C, Kelseyville, CA 95451.	Grasshopper Bait	11074-9528(CA)
	Poisoned Oats	11074-8899(CA)
Mendocino County Agricultural Commissioner, Court House, Ukiah, CA 95482.	Zinc Phosphide Poison Grain Bait	11100-6322(CA)
Panoche Chemical & Supply Co., 40109 West Bullard Ave., Firebauch, CA 93622.	Panoche Parathion 5	11124-9000(CA)
Peroxide & Specialities Co., 8400 Enterprise Dr., Newark, CA 94560	A Quat	11133-9210(CA)
San Benito County Agricultural Commissioner, P.O. Box 699, Hollister, CA 95023.	Fumarin Ready-to-Use Rat and Mouse Bait	11165-5680(CA)
	Zinc Phosphide Poison Grain Bait	11165-5681(CA)
Santa Cruz County Agricultural Commissioner, 1430 Freedom Boulevard, Watsonville, CA 95076.	Compound 1080 Poison Grain Bait	11179-6694(CA)
	Compound 1080 Poison Grain Bait	11179-8655(CA)
Santa Clara County Agricultural Commissioner, 1555 Berger Drive, San Jose, CA 95112.	Warfarin Bait	11182-6027(CA)
Solano County Agricultural Commissioner, 2000 West Texas, Fairfield, CA 94533.	Zinc Phosphide Rodent Poison Grain Bait	11197-7075(CA)
	Zinc Phosphide Poison Grain Bait	11197-7077(CA)
Sutter County Agricultural Commissioner, 142 Garden Highway, Yuba City, CA 95991.	Grasshopper and Earwig Bait	11208-4574(CA)
	Fumarin Rat and Mouse Bait	11208-4578(CA)
	Muskrat and Lollipops and Bait Blocks	11208-4579 (CA)
Tulare County Agricultural Commissioner, County Civic Center, Corner of Main & Woodland, Visalia, CA 93277.	Zinc Phosphide Grain Bait	11224-8507(CA)
Amador County Agricultural Commissioner, 108 Court St., Jackson, CA 95642.	Rat and Mouse Bait	11361-9134 (CA)
Bakersfield Ag-Chem, Inc., Rt. #1, Box 858, Bakersfield, CA 93308	Botran 6 Captan 10 Sulphur 30	11369-8783 (CA)
	BAC Captan 50W	11369-8773 (CA)
	BAC Captan 10% Dust	11369-8772 (CA)
	BAC Captan 10% Sulphur 25 Dust	11369-8760 (CA)
	BAC Parathion 25W	11369-7387 (CA)
	BAC Parathion 8E	11369-8799 (CA)
	BAC Parathion 25W	11369-8811 (CA)
Monterey County Agricultural Commissioner, P.O. Box 1370, Salinas, CA 93901.	Zinc Phosphide Spot Poison Grain Bait	11418-8693 (CA)
	Zinc Phosphide Spot Poison Grain Bait	11418-8694 (CA)
HGP, Inc., 2305-B Kamehameha Highway, P.O. Box 31003, Honolulu, HI 96820.	Ratafin	11464-7444 (HI)
Pan American Chemical Co., P.O. Box 01-6168, Miami, FL 33101	Vitazone	11589-7397 (FL)
Smith Supply Co., Inc., 5433 S. Congress, Austin, TX 78745	Fresh Lemon Disinfectant	11790-3140 (TX)
Sun Sanitary Supplies, Inc., 3301 Tyrone Blvd., St. Petersburg, FL 33710.	Sun's Algicide	12226-7302 (FL)
	Sun's 3D-Lemon	12226-7305 (FL)
	Sun's Mint-San	12226-7308 (FL)
	Sun's Ster-ol Disinfectant and Sanitizer	12226-7311 (FL)
Bahcall Chemical & Supply, Inc., P.O. Box 66098, Baton Rouge, LA 70896.	Lemonize	12307-9332 (LA)
Do-It-Yourself Pest Control, Inc., 201 N. 37th St., Birmingham, AL 35222.	Professional Mice and Rat Control	13283-3269 (AL)
Du Cor Chemical Co., P.O. Box 13298, 1011 Lancaster Rd., Orlando, FL 32809.	Du Cor Formula 72 Weed Killer	13437-3526 (FL)
Anchor Chemical Products, 501 Walbridge, Kalamazoo, MI 49006	Anchor #420 Detergent Sanitizer	13730-5977 (MI)
Southland Agricultural Chemical Co., P.O. Box 6207, Montgomery, AL 36106.	Parathion 10 Granular	15575-5332 (AL)
	Southland Fume D Soil Fumigant	15575-5335 (AL)
	Methyl Parathion 4 Emulsive	15575-5327 (AL)
	M-M 4-4	15575-5328 (AL)

Company	Product	EPA accession No.
	Super Kill 4-2	15575-5331 (AL)
	Guthion-MP .75-3 EC	15575-5336 (AL)
	Methyl Parathion 7.5	15575-5338 (AL)
Agricultural Chemicals of Dallas, 3707 East Kiest Blvd., Dallas, TX 75203.	HI Brand 5% Sevin Dust	15887-4988 (TX)
	Hi Brand 10% Sevin Dust	15887-4989 (TX)
Sandhills Pest Control Service, Inc., 225-C, South Hancock St., Rockingham, NC 28379.	Tox-A-Rat	21345-3706 (NC)
Plummer Termite Control, 4323 Ave. S., Galveston, TX 77550	Sevin Dust	22025-10555 (TX)
Stoller Chemical Co., Inc., 8582 Katy Freeway, #200, Houston, TX 77024.	Top Cop With Sulfur	22555-6370 (UT)
	Top Cop With Sulfur	22555-6373 (TX)
Orkin Exterminating Co., 106-01—101st Ave., Ozone Park, New York, NY 11416.	CE CO Death Meal for Rats and Mice	22842-7122 (NY)
Amerigo, Inc., P.O. Box 12433, St. Louis, MO 63132	Non Selective Weed, Grass, and Brush Killer	22890-9518 (MO)
Cobra International Inc., P.O. Box 985, Bayamon, PR 00619	Cobra Rats and Mice Killer	22950-10252 (PR)
Copper State Chemical Co., P.O. Box 1110, Tucson, AZ 85702	Cosco-San Pine Odored Disinfectant	26494-5597 (AZ)
	Cosco Algae 40	26494-8658 (AZ)
Hurt, Inc., P.O. Drawer 353, Odessa, TX 79760	Old Pro Fruit Tree Spray	29356-3710 (TX)
Owyhee Rodent Exterminator District, Box 400, Marsing, ID 83639	1.82% Zinc Phosphide Treated Grain Bait	30949-5267 (ID)
Webb Wright Corp., P.O. Box 1572, Fort Meyers, FL 33902	Hexaphene-LV	30573-7438 (FL)
Tex-Ag Co., P.O. Box 633, Mission, TX 78572	Ethion	33722-3278 (TX)
Buncombe County Health Center, Environmental Health Div., P.O. Box 7607, Asheville, NC 28807.	Rat Bait	33913-3435 (NC)
Stoller Chemical Co. of Florida, P.O. Box 1227, Eustis, FL 32726	Top Cop With Sulfur	33914-8109 (FL)
Antonio Muniz Marrero, Buzon 743 Quebrada Grande, Mayaguez, PR 00708.	Mata Ratones	34103-10255 (PR)
American Refining and Manufacturing Co., P.O. Box 402948, Miami, FL 33140.	Aqua Quat	34164-9251 (FL)
	Hosp-Aseptic	34164-9298 (FL)
	Sani-Bol Toilet Bowl Cleaner	34164-9532 (FL)
Agricultural Commissioner, Orange County Dept. of Agriculture, 1010 S. Harbor Blvd., Anaheim, CA 92805.	Ten-Eighty Squirrel Poison	34481-3239 (CA)
Agricultural Commissioner, Plumas Co. Dept. of Agriculture, Rt. #1, Box 230-A, Quincy, CA 95971.	1.5 Ounce 1080 Squirrel Oats	34482-6707 (CA)
	Zinc Phosphide Poison Grain Bait (For Broadcast Baiting)	34482-6706 (CA)
	Zinc Phosphide Poison Grain Bait	34482-6708 (CA)
Platte Chemical Co., P.O. Box 667, Greely, CO 80632	Dot-Son Brand Thimet Stand-Aid	34704-7053 (CA)
Hoenigs Pharmacy, 524 North Sequoia, Columbia, MO 65201	Cenol Prolin Bait Preparation	34905-7229 (MO)
Dickersons Ups & Downs, P.O. Box 216, Bloomingdale, MI 49026	Dickerson's Mouse Bait 2	34926-9384 (MI)
FI-MST, Inc., P.O. Box 58, Holtville, CA 92250	Beet Pulp Bait-5% Sevin Bait	35042-6796 (CA)
Penn Treaty Chemical Corp, 115 West Girard Ave., Philadelphia, PA 19123.	Rat and Mouse Bait With Prolin	35072-10348 (PA)
End-O-Pest Exterminators, Inc., 913 W. 34th St., Houston, TX 77018	End-O-Pest 74% Chlordane	35081-10586 (TX)
Laboratorio Rivera, Calle Lippit 526, Bo. Obrero, Santurce, PR 00915	Rata Calin	35212-7625 (PR)
Southern Chemicals, Inc., 204 N. Elm Ave., Box 1480, Sanford, FL 32771.	Captan 7.5 Dust	35222-7167 (FL)
	Southern's Parathion 8-E	35222-7151 (FL)
	Parathion 2 Bait	35222-7158 (FL)
	Southern's M-E 63	35222-7164 (FL)
	Southern M-E 44	35222-7165 (FL)
Burson Feed and Seed, Inc., 124 Rome St., Box 547, Carrollton, GA 30117.	Proline Concentrate	35232-10386 (GA)
Agra Chem Sales Co., P.O. Box 1356, Avon Park, FL 33825	Liquid Sevin	35253-6040 (FL)
District Health Dept., P.O. Box 237, Yanceyville, NC 27379	Rax Powder (Warfarin)	35277-6097 (NC)
	Anti-Coagulant Rat Bait	35277-6232 (NC)
Toxo-Spray Dust, Inc., 12651 E. Los Nietos Rd., Santa Fe Springs, CA 90670.	Captan 10 Dust	35296-5816 (CA)
	Captan Sulphur 10-50 Dust	35296-5820 (CA)
	Toxo Parathion Dust No. 2	35296-5805 (CA)
	Toxo Parathion 25 WP	35296-5823 (CA)
Mecklenburg Co., Health Dept., 1200 Blythe Rd., Charlotte, NC 28203	Anti-Coagulant Rat Bait	35413-5457 (NC)
Rite Job Exterminators, Inc., 2098 Coney Island Ave., Brooklyn, NY 11230.	Warfarin	35417-9215 (NY)
Central Exterminating, 186 Maine St., Dexter, ME 35478	Rat & Mouse Bait (With Fumarin)	35478-4364 (ME)
Nexus AG Chemicals, Inc., Box 67, Quincy WA 98848	Telone C	35552-7433 (WA)
Certified Exterminating Co., 359 East 161st St., Bronx, NY 10451	Certified Rat and Mouse Exterminator	35668-8609 (NY)
Wyoming Dept. of Agriculture, Pesticides Office, 2219 Carey Ave., Cheyenne, WY 82202.	Zinc Phosphide	35978-8692 (WY)
International Exterminator Corp., 155 W. Magnolia Ave., Fort Worth, TX 76104.	Red Seal Sevin 5% Dust	36007-3949 (TX)
Willo Spring Farm, P.O. Box 104, Haslet, TX 76052	Joe Lindsey's Dated Rat Control Bait	36018-5941 (TX)
Durham Co. Health Dept., 414 E. Main St., Durham, NC 27701	Anti-Coagulant Rat Bait	36250-3154 (NC)
	Anti-Coagulant Rat Bait	36250-6315 (NC)
	Anti-Coagulant Rat Bait	36250-10512 (NC)
Ford's Chemical and Service, Inc., 2739 Pasadena Blvd., Pasadena, TX 77502.	Aspon 6E	36402-4321(TX)
Big-Bee Chemical & Supply Co., 104 S. Berry St., Stockbridge, GA 30281.	Quick-Kil Liquid Weed Killer	36688-8200(GA)

Company	Product	EPA accession No.
Zero Pest Control Supply, 1500 Mahoning Ave., Youngstown, OH 44590.	Zero Pest Control Supply Rat Poison	37344-10553(OH)
Uni-Chem Corp. of Florida, P.O. Box 6336, Fort Lauderdale, FL 33310	Stem-Sect Granular	37347-10563(FL)
Chapman Grain, Inc., 1206 Ave. M., Hondo, TX 78861	Sevin Dust	37803-8401(TX)
Rathbun Chemicals, Inc., Box 91, Yuma, AZ 85364	Parathion 2 Dust	37832-8353(AZ)
	Parathion-Sulfur 2-50 Dust	37832-8357(AZ)
	Yuma Chemical Biotrol-Parathion 2-2	37832-8366(AZ)
	Parathion-Cryolite 2-40 Dust	37832-8447(AZ)
	Sevin Sulfur 7.5-50	37832-8352(AZ)
	Sevin Sulfur 7.5 Dust	37832-8446(AZ)
Environmental Laboratories, P.O. Box 14, Kill Devil Hills, NC 27948	Anti-Coagulant Rat Bait	37849-8314(NC)
Timely Pest Control Service, Inc., 418 Tompkins Ave., Brooklyn, NY 11216.	Formula G W-12 Rat and Mouse Killer	37920-9422(NY)
Rogers Brothers, Inc., 122 Pine St., Blakely, GA 31723	Rogers Home Made Warfarin Bait for Rats and Mice	37936-9406(GA)
Hayesville Feed Co., Rt. 30A, Hayesville, OH 44838	Hanx Feeds Rat Poison Prolin	38068-9570(OH)
Pest Control Kits, 8928 W. 24th St., Los Angeles, CA 90034	S-C-P Insect Powder With Hydrated Amorphous Silica Jel	38072-9565(CA)
Soil & Crop Service, Inc., P.O. Drawer 490, Othello, WA 99344	Telone	38100-9414(WA)
Pineapple Growers Assn. of Hawaii, P.O. Box 3829, Honolulu, HI 96812.	Sodium Alpha-Naphthaleneacetic Acid (SNA)	34812-10073(IH)
Heart of Maine Exterminating Service, R.F.D. #3, Dexter, ME 04930	Killer King	38525-10223(ME)
N.Y.S. College of Agriculture & Life Sciences, Chemicals-Pesticides Program, Dept. of Entomology, Cornell University, 5123 Comstock Hall, Ithaca, NY 14853.	Carbaryl	38655-10429(NY)
	Carbaryl III	38655-10439(NY)
	Carbaryl II	38655-10440(NY)
	Carbaryl	38655-10468(NY)
	NYS-Dewey-Methyl Parathion (% and form not specified)	38655-10417(NY)
	NYS-Dewey Captan	38655-10455(NY)
	NYS-Dewey-EPTC	38655-10445(NY)
	NYS-Dewey-Amitrole	38655-10449(NY)
	NYS-Dewey Dimethoate (Cygon)	38655-10423(NY)
	NYS-Dewey-Dimethoate II	38655-10437(NY)
	NYS-Dimethoate	38655-10465(NY)
	NYS-Dewey-Phosalone (Zolone)	38655-10415(NY)
	NYS-Dewey Dylow (Trichlorfon)	38655-10422(NY)
	NYS-Dewey-Carbofuran	38655-10428(NY)
	NYS-Dewey-Simazine	38655-10442(NY)
	NYS-Dewey-Simazine & Diphenamid	38655-10444(NY)
	NYS-Dewey-Endosulfan (Thiodan) [% and form not specified]	38655-10421(NY)
	NYS-Dewey-Endosulfan [% and form not specified]	38655-10436(NY)
	NYS-Dewey-Demeton (Systox)	38655-10426(NY)
Alabama Agricultural Services, Inc., P.O. Box 187, Loxley, LA 36551	Bama Brand Methyl Parathion 4EC	39297-10584(AL)
Morgro Chemical & Energy Corp., P.O. Box 151048, 145 W. Central Ave., Salt Lake City, UT 84115.	Brown's Formula "E"	42057-5784(UT)

The Agncy has determined that the subject products may no longer be distributed, sold, offered for sale, held for sale, shipped, delivered for shipment, received or (having so received) delivered or offered to deliver in intrastate or interstate commerce.

Procedural Matters

The denial of the applications for Federal registration of the pesticide products identified in the Notice will become final and effective by operation of FIFRA sections 3(c)(6) and 6(b) within 30 days of the applicant's receipt of this Notice or within 30 days of its publication in the **Federal Register**, whichever occurs later, unless within that time an applicant or other interested person with the concurrence of the applicant properly requests a hearing to contest denial.

Each person who requests a hearing must file the request in accordance with the procedures established by FIFRA and the Agency's Rules of Practice Governing Hearings (40 CFR Part 164). These Procedures require, among other things, that (1) each request must identify the EPA assigned accession (product) number for the specific application(s) for which a hearing is requested, (2) each request must be accompanied by specific objections to the Agency's action in this notice and must state the factual basis for each such objection and, (3) each request must be received by the Hearing Clerk within the applicable 30-day period. The only basis for objection to the action taken in this notice is an allegation that the information submitted in support of registration of the enumerated products is adequate to fully comply with the standards set forth in FIFRA and the Agency's regulations concerning application for registration. Failure to comply with these requirements will result in denial of the request for a hearing.

Requests for a hearing must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Consequences of filing a timely and effective hearing request. If a hearing on any action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by the Agency's Rules of Practice for Hearings under FIFRA section 6 (40 CFR 164). In the event of a hearing, each denial of registration which is the subject of the hearing will not become effective except pursuant to a final order by the Administrator or his Judicial Officer. The hearing will be limited to the specific applications for which the hearing is requested.

Consequences of failure to file in a timely and effective manner. If a hearing is not requested regarding a specific application for registration, denial of that application will become final and effective 30 days after publication of this Notice, or receipt by the affected applicant, whichever comes later.

Dated: February 12, 1988.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 88-3904 Filed 2-23-88; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180758; FRL-3332-2]

Delaware Department of Agricultural; Receipt of Applications for Emergency Exemptions to Use (±)-2-[4,5-Dihydro-4-Methyl-4-(1-Methylethyl)-5-Oxo-1H-Imidazol-2-YL]-5-Ethyl-3-Pyridinecarboxylic Acid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUBJECT: EPA has received specific exemption requests from the Delaware Department of Agriculture (hereafter referred to as the "Applicant") to use the active ingredient (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (Pursuit™) to control boardleaf weeds on 12,000 acres of lima beans, 3,000 acres of snap beans, and 8,000 acres on green peas in Delaware. Pursuant™ contains an unregistered active ingredient and, therefore, in accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant these exemptions.

DATE: Comments must be received on or before February 29, 1988.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP- 180758" should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Room 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Forrest, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue specific exemptions to permit the use of an unregistered herbicide, (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (CAS 81335-77-5), manufactured as Pursuit™, by American Cyanamid Company, on lima beans, snap beans, and green peas in Delaware. Information in accordance with 40 CFR Part 166 was submitted as part of these requests.

Late in 1986 all labeled uses of the herbicide dinoseb were suspended. According to the Applicant, dinoseb was used to control annual broadleaf weeds on almost all the acreages of lima beans, snap beans, and green peas grown in Delaware. The Applicant states that other products that are labeled either do not control a broad spectrum of broadleaf weeds consistently or cannot be used in Delaware without causing crop injury.

The Applicant indicates that weeds in bean and pea fields reduce yields by competing with the crop and cause additional problems. Weeds reduce harvest efficiency and result in field abandonment when weed problems are servere. Weeds interfere with insecticide applications and may result in increased insect problems or additional insecticide applications.

The Applicant indicates that without adequate control a 25% yield loss of beans and peas due to weeds will occur. According to the Applicant this would amount to a total loss of approximately 1.4 million dollars.

Pursuant™ will be applied preplant or preemergence to the crop at a maximum rate of 0.03125 pounds active ingredient per acre. A single application will be made sometime between March 1, and September 30, 1988 to approximately 3,000 acres of snap beans, 12,000 acres of lima beans, and 8,000 acres of green peas.

This notice does not constitute a decision by EPA on the applications themselves. The regulations governing section 18 require publication of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for the opportunity for public comment on the application. An expedited comment period of five days is provided to facilitate decision making on the specific exemption requests within the required use period (40 CFR 166.24(c)).

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Delaware Department of Agriculture.

Dated: February 8, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-3778 Filed 2-23-88; 8:45 am]

BILLING CODE 6560-50-M

[PP 7G3479/T553; FRL-3330-9]

Rohm and Haas Co.; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the fungicide myclobutanil and its metabolites in or on certain raw agricultural commodities. These temporary tolerances were requested by Rohm and Haas Co.

DATE: These temporary tolerances expire February 28, 1988.

FOR FURTHER INFORMATION CONTACT:

By mail:

Lois Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1900).

SUPPLEMENTARY INFORMATION: Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, has requested in pesticide petition PP 7G3479 the

establishment of temporary tolerances for residues of the fungicide myclobutanil, alpha-butyl-alpha-(4-chlorophenyl)-1 H-1,2,4-triazole-1-propanenitrile, and its metabolites containing both the chlorophenyl and triazole rings in or on the raw agricultural commodities meat, fat and meat byproducts (except liver) of cattle, goats, hogs, and horses and sheep at 0.04 part per million (ppm); liver of cattle, goats, hogs, horses and sheep at 0.2 ppm; meat, fat and meat byproducts of poultry, eggs and milk at 0.02 ppm. (EPA issued a related food additive regulation (21 CFR 193.477) for myclobutanil in or on raisins and a feed additive regulation (21 CFR 561.443) for myclobutanil in or on raisin waste, apple pomace, and grape pomace, published in the **Federal Register** of January 4, 1988 (53 FR 20).)

These temporary tolerances will permit the marketing of the above raw agricultural commodites when treated in accordance with the provisions of the experimental use permit 707-EUP-105, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Rohm and Haas Co., must immediately notify the EPA of any findings for the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire February 28, 1988. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(21 U.S.C. 346a(j)).

Dated: February 8, 1988.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 88-3562 Filed 2-23-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-40017; FRL-3332-9]

Tertiary Amines and Brominated Flame Retardants To Be Reviewed by the Toxic Substances Control Act Interagency Testing Committee; Request for Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) hereby announces a new list of chemicals selected for review by the ITC. The public is invited to submit to the ITC written comments and technical data on the listed chemicals. The chemicals on the list are candidates for possible recommendation to the Administrator of the U.S. Environmental Protection Agency (EPA), to be given priority consideration for the promulgation of testing rules pursuant to section 4(a) of TSCA.

DATE: Written comments, data, and information should be sent to the Executive Secretary, ITC, no later than May 24, 1988.

ADDRESS: Written comments and information by mail to: Robert Brink, Executive Secretary, TSCA Interagency Testing Committee (TS-792), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert Brink, (202) 382-3820.

SUPPLEMENTARY INFORMATION:

I. Background

The Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.* (TSCA), authorizes the Administrator of the Environmental Protection Agency to require testing of chemicals in commerce if the Administrator makes certain findings that are set forth in section 4(a) of TSCA. Section 4(e) established the TSCA Interagency Testing Committee. The ITC is charged with recommending to the EPA Administrator chemical substances or mixtures (chemicals) to whcih EPA should give priority consideration for promulgating health and environmental effects testing rules under section 4(a) of TSCA. The EPA Administrator must respond to the ITC recommendations by initating a proceeding under section 4(a) of TSCA for the recommended chemicals or publishing in the **Federal Register** the reasons for not doing so.

Eight Federal agencies are specified in section 4(e)(2)(A)of TSCA as statutory members of ITC. The agencies are: Council on Environmental Quality, Department of Commerce, Environmental Protection Agency, Natiohnal Cancer Institute, National Institute of Environmental Health Sciences, National Institute for Occupational Safety and Health, National Science Foundation, and Occupational Safety and Health Administration.

The ITC has invited six other Federal agencies and one national program, with activities related to the control of toxic substances, to participate in a liaison capacity. They are: Consumer Product Safety Commission, Department of Agriculture, Department of Defense, Department of the Interior, Food and Drug Administration, National Library of Medicine, and National Toxicology Program. Staff support is provided by the Environmental Protection Agency.

In developing its recommendation the ITC is directed by section 4(e)(1)(A) of TSCA to consider, together with all other relevant information, the following priority factors with respect to chemicals under consideration:

1. Quantities that are or will be manufactured.

2. Quantities which are entering or will enter the enviornment.

3. Occupational exposure.

4. Non-occupational human exposure.

5. Similarity in chemical structure to other substances which are known to present an unreasonable risk of injury to health or the environment.

6. Existence of data concerning health and environmental effects.

7. The extent to which testing will develop useful data on the risk of injury to health or the environment.

8. The reasonably foreseeable availability of testing facilities and personnel.

The ITC is also directed by section 4(e)(1)(A) of TSCA to give priority attention, in establishing its list of recommended chemicals, to those chemicals which are known to cause or contribute to or which are suspected of causing or contributing to cancer, gene mutations or birth defects.

Section 4(e) requires that the ITC revise its list of recommended chemicals as necessary at least once every 6 months. The initial report of the ITC to the EPA Administrator was published in the **Federal Register** of October 12, 1977 (42 FR 55026). This report contains a description of the Committee's scoring and review processes, together with the initial list of recommended chemicals. Twenty subsequent reports have been issued by the ITC.

The ITC has decided to conduct detailed reviews on certain tertiary amines and brominated flame retardants. The chemicals are listed in the following Table:

List of Tertiary Amines and Brominated Flame Retardants Selected for Review by TSCA Interagency Testing Committee

CAS No.	Chemical name
	Brominated flame retardants:
74975	Bromochloromethane.
87843	Pentabromochlorocyclohexane.
1163195	Decabromodiphenyl oxide.
3194556	Hexabromocyclododecane.
32534819	Pentabromodiphenyl oxide.
32536520	Octabromodiphenyl oxide.
37853591	1,2-Bis(2,4,6-tribromophenoxy)-ethane.
	Tertiary amines:
112185	1-Dodecanamine, *N,N*-dimethyl-.
112696	1-Hexadecanamine, *N,N*-dimethyl-.
112754	1-Tetradecanamine, *N,N*-dimethyl-.
121448	Ethanamine, *N,N*-diethyl-.
124287	1-Octadecanamine, *N,N*-dimethyl-.

II. Request for Comments

Interested persons are invited to present comments on the chemicals listed in the above Table. Comments and information may be submitted in writing to the Executive Secretary, TSCA Interagency Testing Committee, at the address shown at the beginning of this notice. The kinds of information that would be most helpful to the ITC in assessing the need for testing are those related to the eight priority factors listed in unit I and those noted in the following:

1. Technical bulletins.

2. Material safety data sheets.

3. Current annual production data and trends.

4. Number of workers exposed, concentrations, controls, use of open versus closed systems, etc.

5. Use data (types of uses, percent of production by use, etc.).

6. Environmental release data (waste control procedures, pollution potential, fraction released to the environment, route of environmental entry).

7. Chemical fate data such as water solubility, vapor pressure, density, melting/boiling point, octanol/water partition coefficient, potential transformation processes and rates.

8. Toxicological data (for example, metabolism and toxicokinetics, acute effects, oncogenicity, neurotoxicity, epidemiology).

9. Ecological effect data (for example, acute, subchronic and chronic effects on non-human biota, behavioral effects, ecosystem processes effects, bioconcentration and food-chain transport).

The ITC would appreciate receiving notification if a listed chemical is no longer being manufactured or distributed.

The information submitted will become part of the public record of the ITC review process unless it is clearly designated as Confidential Business Information (CBI). Submitters should separate CBI from other information and mark such information clearly as "TSCA–CBI." It will be treated in accordance with procedures outlined in the "TSCA Confidential Business Information Security Manual."

Written comments, data, and information on chemicals should be submitted to the Executive Secretary, ITC, not later than May 24, 1988, in order to be assured timely review by the ITC.

Dated: February 11, 1988.

James K. Selkirk,

Chairman, TSCA Interagency Testing Committee.

[FR Doc. 88–3906 Filed 2–23–88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee On Advanced Television Service; Planning Subcommittee

1. The Planning Subcommittee will hold its third meeting on: March 9, 1988, 9:30 a.m. 1919 M Street, NW., Washington, DC 20554, Room 856.

2. The purpose of this meeting is to receive progress reports from the various working parties and discuss the schedule of upcoming activities.

3. The agenda of the meeting is as follows.

a. Call to order by the Chairman.
b. Adoption of the minutes of the second meeting.
c. Reports by the Chairmen of Working Parties 1 through 6 and Advisory Groups 1 and 2.
d. Schedule of future activities.
e. Other business.
f. Date and location of next meeting.
g. Adjournment.

4. This meeting is open to the public.

5. Parties may submit written statements prior to or at the time of the meeting. Oral statements and discussion will be permitted under the direction of the Chairman.

6. For further information please contact: Chairman J.A. Flaherty (212) 975–2213 William Hassinger (202) 632–6460.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–3869 Filed 2–23–88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. W-34]

Window Notice for the Filing of FM Broadcast Applications

Released: February 12, 1988.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed below may be submitted for filing during the period beginning February 12, 1988 and ending March 24, 1988 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel—256 A	
Edmonton	KY
Buchanan	MI
Campwood	TX
Gloucester	VA
Channel—254 C2	
Pensacola	FL
Channel—291 A	
Tallahassee	FL
Oregon	IL
Newburgh	IN
Irvine	KY
Charleston	MO
Kershaw	SC

Laredo	TX
Exmore	VA
Saltville	VA

Channel—291 C2

Carlsbad	NM
Gallup	NM

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-3868 Filed 2-23-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224-200089.

Title: Commonwealth Ports Authority Lease Agreement.

Parties:

Commonwealth Ports Authority

Rota Terminal and Transfer Co., Inc. (ROTA)

Synopsis: The proposed agreement provides for Rota's exclusive use of the ground floor of the warehouse facility at West Dock, Rota, Mariana Islands (West Dock) and the exclusive right to conduct a terminal warehouse and stevedoring business at the West Dock. Rota is also granted the non-exclusive use of certain space and facilities at West Dock and adjacent to the warehouse.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: February 19, 1988.

[FR Doc. 88-3895 Filed 2-23-88; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 83N-0363]

Biological Products; Monoclonal Antibody Products for Human Use; Availability of Draft Criteria for New Technologies; Request for Comments

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised document entitled "Points to Consider in Manufacture and Testing of Monoclonal Antibody Products for Human Use (1987)." The revised draft criteria is intended to assist manufacturers in developing and submitting to FDA applications for approval of monoclonal antibody products for investigation or marketing. FDA is also requesting comments on the document to assist the agency in the continuing development of the draft criteria.

ADDRESSES: Requests for single copies of the draft document to Legislative, Professional, and Consumer Affairs Branch (HFN-365), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. A copy of the draft document is also on display at Dockets Management Branch.

FOR FURTHER INFORMATION CONTACT:

Regarding this notice: Steven Falter, Center for Biologics Evaluation and Research (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

Regarding the draft criteria: Thomas Hoffman, Center for Biologics Evaluation and Research (HFN-830), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-496-4538.

SUPPLEMENTARY INFORMATION: Biological monoclonal antibody products intended for human use, prepared by hybridoma technology, present a potential for major advances in medical diagnosis and therapy. This new technology poses unique quality control and safety problems that must be thoroughly considered and overcome before any such product is licensed and commercially marketed. In the **Federal Register** of January 9, 1984 (49 FR 1138), FDA announced the availability of draft criteria to assist manufacturers in the development and evaluation of such products and in submitting to FDA applications for approval of the products for investigation and marketing. FDA also invited public comment on the document. In response to the comments of the public and with added experience in the evaluation of monoclonal antibody products, FDA's Center for Biologics Evaluation and Research has revised the draft criteria. FDA is offering the revised draft criteria to the public and inviting public comment. FDA will again consider the received comments when revising the draft criteria.

Interested persons may submit written comments on the documents to the Dockets Management Branch. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 16, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-3945 Filed 2-23-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88M-0020]

Weck Surgical Systems; Premarket Approval of Weck Model BL-12 Nd: YAG Ophthalmic Laser

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Weck Surgical Systems, Hauppauge, NY, for premarket approval, under the Medical Device Amendments of 1976, of the Weck Model BL-12 Nd: YAG Ophthalmic Laser. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by March 25, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert A. Phillips, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757

Georgia Ave., Silver Spring, MD 20910, 301–427–8221.

SUPPLEMENTARY INFORMATION: On May 21, 1987, Weck Surgical Systems, Hauppauge, NY 11788, submitted to CDRH an application for premarket approval of the Weck Model BL–12 Nd: YAG Ophthalmic Laser. The Weck Model BL–12 Nd: YAG Ophthalmic Laser is a neodymium:yttrium-aluminum-garnet (Nd:YAG) ophtahlmic laser that is indicated for discission of the posterior capsule of eye (posterior capsulotomy and discission of pupillary membranes (pupillary membranectomy) in aphakic and pseudophkic eyes.

On July 23, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On December 31, 1987 CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Robert A. Phillips (HFZ–460) address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 25, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 16, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88–3858 Filed 2–23–88; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 87D–0403]

Biocompatibility (Toxicity Testing) Guidance for Medical Devices; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Tripartite Biocompatibility Guidance for Medical Devices—September 1986." The guidance document, which is being made available by FDA's Center for Devices and Radiological Health (CFRH), was developed by a toxicology subgroup of the Tripartite Subcommittee on Medical Devices (the United Kingdom, Canada, and the United States). The guidance document is intended to assist manufacturers of medical devices and government health authorities in anticipating the kinds of information needed to evaluate the biocompatibility of medical devices, particularly medical devices containing polymers.

DATE: Comments by April 25, 1988.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Submit written requests for single copies of the guidance document to the contact person below. The guidance document is on file, and available for review, at the Dockets Management Branch.

FOR FURTHER INFORMATION CONTACT: James E. Lucas, Jr., Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: The Tripartite Group, a semiformal organization of representatives from the United Kingdom (Department of Health and Social Security and the Department of Agriculture, Fisheries, and Food); Canada (Department of Health and Welfare, Health Protection Branch); and the United States (FDA and the Centers for Disease Control), meets annually to discuss mutual problems in the regulation of foods, drugs, medical devices, and other regulated products.

During the September 1984 meeting of the Tripartite Subcommittee on Medical Devices, a toxicology subgroup was established to work toward a goal of developing a common approach in evaluating the biocompatibility of devices. A guidance document entitled "Tripartite Biocompatibility Guidance for Medical Devices—September 1986" developed by the subgroup has been distributed to device officials of each of the three countries with the understanding that (1) it would not constitute a set of regulatory requirements, and (2) it would be made available for comment and use "as appropriate." Because of the differences among the three countries in the regulatory approaches used for devices, the Medical Devices Subcommittee determined that, if any person needed more specific guidance on toxicity testing than that contained in the guidance document, such person should contact the responsible authorities of the respective country involved. FDA is making this guidance document available as a guideline under 21 CFR 10.90. This document covers only toxicity testing of medical devices and does not cover other aspects of material science associated with the term biocompatibility.

Organization of the Guidance Document

The guidance document is divided into the following sections:

Section I—Introduction contains an explanation of its purpose and a list of fundamental principles for evaluating the toxicity of devices.

Section II—Device Categories groups devices based on the nature of a device's contact with the body (i.e.,

noncontact devices, external contact devices, externally communicating devices, and internal devices).

Section III—Biological Tests describes the types of tests that may be used to evaluate the various aspects of the toxicity of device materials in general. Although the suggested tests are not exclusive, the tests may help relate the toxicity of a device material in general, and a material made of polymers in particular, to the nature and duration of the contact between the material and the body.

A table correlates the device categories in section II with the representative tests in section III. The table is intended to apply only to polymer materials.

In the future, CDRH may develop and make available a similar toxicity testing table for each of several other categories of device materials, such as metals, ceramics, biological materials, etc.

Interested persons may, on or before April 25, 1988, submit to the Dockets Management Branch (address above) written comments regarding this document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 16, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-3946 Filed 2-23-88; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Health Resources and Services Administration; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of January 29, 1988, by the Secretary of Health and Human Services to the Assistant Secretary for Health (53 FR 3791), the Assistant Secretary of Health has delegated to the Administrator, Health Resources and Services Administration, with authority to redelegate, the authorities under section 1921 of the Social Security Act, Information Concerning Sanctions Taken by State Licensing Authorities Against Health Care Practitioners and Providers, as amended, excluding the authorities to issue guidelines or regulations and submit reports to Congress.

This delegation was effective on February 17, 1988.

Dated: February 17, 1988.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 88-3866 Filed 2-23-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Use Council; Meeting

As required by the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96-487, dated December 2, 1980, Section 1201, Paragraph (h), the Alaska Land Use Council will meet at 9:00 a.m., Wednesday, March 16, 1988, in Centennial Hall, 101 Egan Drive, Juneau, Alaska.

At 9:00 a.m., the Alaska Land Use Council will meet in joint session with the Council's Land Use Advisors Committee. The regularly scheduled quarterly meeting of the Council will begin immediately after the joint session with the Advisors Committee is concluded.

The tentative agenda for the Council meeting will include consideration of:

—Draft ROD for the U.S. Fish and Wildlife Service Comprehensive Conservation Plans for the Yukon Delta NWR.
—Status Report on the Council's Work Program
—Wilderness Review Guide
—Nonrenewable Resource Inventory
—Economic Impacts of ANILCA
—Public Access
—Guidelines for the Collection, Analysis, and Presentation of Subsistence Use Data
—Council call for new items for the 1988-1999 Work Program
—Other items as may be appropriately considered by the Council.

Any individual desiring to appear before the Council to address any of the above matters or matters of general concern to the Council should contact either Cochairman's office before the close of business Tuesday, March 1, 1988.

FOR FURTHER INFORMATION CONTACT:

Alaska Land Use Council Office of the Federal Cochairman 1689 C Street, Suite 100 Anchorage, Alaska 99501 (907) 272-3422 (FTS) 271-5485

Alaska Land Use Council Office of the State Cochairman Designee P.O. Box AW Juneau, Alaska 99811 (907) 465-3562

or

2600 Denali St, Suite 700 Anchorage, Alaska 99503 (907) 274-3528

The public is invited to attend:

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

February 18, 1988.

[FR Doc. 88-3867 Filed 2-23-88; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[NV-930-08-4131-08]

Clark County Management Framework Plan; Public Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Public Meeting on a Draft Amendment to the Clark County Management Framework Plan (MFP).

SUMMARY: This notice announces an informal public meeting to be held at 7 p.m. on Wednesday, March 23, 1988 at the BLM's Las Vegas District Office conference room at 4765 West Vegas Drive, Las Vegas, Nevada. The meeting has been scheduled to provide information concerning a Draft Plan Amendment and Environmental Assessment for the Clark County Management Framework Plan (MFP), released to the public in the summer, 1987. BLM policy and regulations concerning sand and gravel leasing will be discussed.

The Draft Plan Amendment and Environmental Assessment analyzes six alternatives pertaining to lease applications filed prior to the revocation of 43 CFR 3563.2 and renewal of existing leases for sand and gravel on lands within the boundaries of the Las Vegas Valley Sub-Unit. The six alternatives analyzed include: (1) Modified renewal, deny lease applications (Preferred Alternative); (2) Renew leases for one more five year period, deny lease applications; (3) Renew leases indefinitely, approve lease applications; (4) Renew leases until Bonanza Materials is moved to an alternative site, deny lease applications; (5) Partial renewal of lease Nev-057863, let both leases expire in 1988, deny lease applications; and (6) Let both leases expire according to the Clark County Management Framework Plan, deny lease applications (No Action Alternative).

FOR FURTHER INFORMATION CONTACT: Joseph Ross, Assistant District Manager, Division of Resource Management, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126, tel. (702) 388–6403.

Date: February 16, 1988.

Ben F. Collins,

District Manager, Las Vegas.

[FR Doc. 88–3832 Filed 2–23–88; 8:45 am]

BILLING CODE 4310–HC–M

[CO–942–08–4520–12]

Colorado; Filing of Plats of Survey

February 12, 1988.

The plats of survey of the following described land, was officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., February 12, 1988.

The supplemental plat creating lot 16 in section 23, T. 6 S., R. 70 W., Sixth Principal Meridian, Colorado was accepted February 5, 1988.

The supplemental plat creating lot 4 in section 10 and lot 3 in section 11, T. 6 N., R. 70 W., Sixth Principal Meridian, Colorado, was accepted February 5, 1988.

The plat respresenting the retracement of the south ½ mile of the north and south center line of section 14, T. 36 N., R. 1 W., New Mexico Principal Meridian, Colorado, Group No. 868, was accepted February 3, 1988.

The plat representing the dependent resurvey of a portion of the south and east boundaries, subdivisional lines, and the survey of the subdivision of certain sections, T. 6 S., R. 102 W., Sixth Principal Meridian, Colorado for Group No. 810, was accepted February 5, 1988.

The plat representing a metes-and-bounds survey in section 8, T. 35 N., R. 13 W., New Mexico Principal Meridian, Colorado for Group No. 847, was accepted February 3, 1988.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 88–3833 Filed 2–23–88; 8:45 am]

BILLING CODE 4310–JB–M

Minerals Management Service

[Des 88–9]

Atlantic Outer Continental Shelf Region; Availability of the Draft Environmental Impact Statement Regarding Proposed Lease Sale 96 in the North Atlantic Planning Area

The Minerals Management Service (MMS) has prepared a draft Environmental Impact Statement (EIS) relating to proposed 1989 Outer Continental Shelf (OCS) Oil and Gas Lease Sale 96 in the North Atlantic Planning Area. The proposed sale will offer for lease approximately 5.5 million acres. Single copies of the draft EIS can be obtained from the Regional Director, Atlantic OCS Region, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180.

Copies of the draft EIS are available for review at the following libraries: Ellsworth Public Library, 46 State Street, Ellsworth, Maine 04605; Lithgow Library, 1 Winthrop Street, Augusta, Maine 04330; Portland Public Library, 5 Monument Square, Portland, Maine 04101; Concord Public Library, 45 Green Street, Concord, New Hampshire 03301; Portsmouth Public Library, 8 Yslington Street, Portsmouth, New Hampshire 03801; Christian Science Monitor, 1 Norway Street, Boston, Massachusetts 02115; Boston Public Library, Copley Square, Boston, Massachusetts 02117; Russel Memorial Library, 11 North Street, Plymouth, Massachusetts 02360; Provincetown Public Library, 330 Commercial Street, Provincetown, Massachusetts 02657; Hyannis Public Library, 401 Main Street, Hyannis, Massachusetts 02601; Falmouth Public Library, 123 Katharine Lee Bates Road, Falmouth, Massachusetts 02540; Fall River Public Library, 104 North Main Street, Fall River, Massachusetts 02720; Edgartown Free Public Library, North Water Street, P.O. Box 36, Edgartown, Massachusetts 02537; Newport Public Library, Aquidneck Park, Newport, Rhode Island 02840; Providence Public Library, 500 Main Street, Hartford, Rhode Island 02903; Hartford Public Library 500 Main Street, Hartford, Connecticut 06103; Public Library of New London, 63 Huntington Street, New London, Connecticut 06320; Cross' Mills Public Library, Old Post Road, Charleston, Rhode Island 02813; New Haven Free Public Library, 133 Elm Street, New Haven, Connecticut 06510; Bridgeport Public Library, 925 Broad Street, Bridgeport, Connecticut 06603; New York Public Library, 5th Avenue and 42nd Street, New York, New York 10018; Riverhead Free Library, 330 Court Street, Riverhead, New York 11901; Suffolk Cooperative Library System, 627 North Sunrise Service Road, P.O. Box 1872, Bellport, New York 11713; Nassau Library System; Reference Division, 900 Jerusalem Avenue, Uniondale, New York 11553; Albany Public Library, Harmans Bleeker Building, 19 Dova Street, Albany, New York 12210; New Jersey State Library, 185 W. State Street, Trenton, New Jersey 08625; Atlantic City Free Public Library, Illinois and Pacific Avenues, Atlantic City, New Jersey 08401; Long Branch Public Library, 328 Broadway, Long Branch, New Jersey 07740; Wilmington Institute Free Library and Newcastle County Free Library, 10th and Market Streets, Wilmington, Delaware 19801; Rehoboth Beach Public Library, Municipal Center, Rehoboth Avenue, Rehoboth Beach, Delaware 19971; and Free Library of Philadelphia, Logan Circle, Philadelphia, Pennsylvania 19141.

In accordance with 30 CFR 256.26, public hearings are tentatively scheduled to be held in Boston, Massachusetts, and Providence, Rhode Island, during the last week of March 1988 for the purpose of receiving comments and suggestions relating to the draft EIS. The exact locations and dates of these hearings will be announced at a later date. Comments concerning the EIS will be accepted until April 19, 1988, and should be sent to the Regional Director, Atlantic OCS Region, Minerals Management Service, at the above address. After the public hearings are held and comments are received and considered, a final EIS will be prepared.

Date: February 18, 1988.

John B. Rigg,

Associate Director for Offshore Minerals Management.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 88–3848 Filed 2–23–88; 8:45 am]

BILLING CODE 4320–MR

National Park Service

Appalachian National Scenic Trail; Relocation of Right-of-Way

AGENCY: National Park Service, Interior.

ACTION: Notice of relocation.

SUMMARY: The proposed relocation set forth below is deemed necessary to preserve the purpose for which the Appalachian National Scenic Trail was established. As a part of the program to protect and establish an Appalachian Trail corridor, the Department of the Interior, in consultation with affected

landowners, trail clubs and State and Federal Government representatives, has determined that where the Trail is now along roads, close to houses or otherwise poorly located, the National Park Service will seek an alternative location. When necessary, an alternative Trail route will be located outside the existing right-of-way pursuant to section 7 of the National Trails System Act, which established a process for necessary relocations after publication of notice in the **Federal Register** and appropriate consultation.

DATES: Written comments, suggestions or objections will be accepted on or before March 25, 1988.

ADDRESS: Comments should be directed to: Project Manager, Appalachian Trail Project Office, Harpers Ferry, West Virginia 25425.

FOR FURTHER INFORMATION CONTACT: Charles R. Rinaldi, Acting Manager, Appalachian Trail Project, Telephone (304) 535–2346.

SUPPLEMENTARY INFORMATION:

Background

The National Trails System Act became law on October 2, 1968. The Act created a system to identify and establish a National Trails System. It also established the Pacific Crest Trail and the Appalachian Trail as the initial national Scenic Trails.

Section 7 of the National Trails System Act created a process for the administration and development of National Scenic Trails. This process included the responsibility to select an initial right-of-way for the National Science Trails and to publish a Notice of this right-of-way in the **Federal Register** together with appropriate maps and descriptions. In selecting this right-of-way, the Secretary was required to obtain the advice and assistance of the States, local governments, private organizations, landowners, and land users concerned. For a two-year period after selection, he was alos required to withold Federal action and to encourage the states or local governments involved (1) to enter into written cooperative agreements with landowners, private organizations and individuals to provide the necessary Trail right-of-way, or (2) to acquire such lands or interests therein to be utilized as segments of the National Scenic Trail. These responsibilities for the Appalachian Trail have been completed. A preliminary right-of-way and Trail route was selected after compliance with the consultation requirements of the Act and published in the **Federal Register**, Vol. 36, No. 197, Saturday, October 9, 1971. The states and local governments have subsequently had the opportunity to act to protect the Trail.

Changes in the Trail route within the previously established right-of-way are routinely made. Section 7 also established a process for necessary relocations of the right-of-way after publication of a Notice in the **Federal Register**. This process includes the responsibility to relocate segments of a National Scenic Trail right-of-way if such a relocation is necessary to preserve the purpose for which the Trail was established.

On March 21, 1978, Pub. L. 95–248 was enacted amending the original national Trails System Act. The thrust of this amendment was to further the Federal protection efforts under the original legislation, calling for an immediate Federal land acquisition program.

The original Act was further amended by Pub. L. 95–625 dated November 10, 1978. This Act eliminated the requirement for the Federal Government to wait two years after notice of selection of the right-of-way before acquisition could be initiated. We are kept advised on any action by states or localities to protect the Trail where relocations are involved.

As a part of this program to protect and establish an Appalachian Trail cooridor, the Department of the Interior, in consultation with landowners, trail clubs, and government representatives, has determined that where the Trail is along roads, close to houses or otherwise poorly located, the National Park Service will seek an alternative location, wherever possible, either pursuant to a change in Trail route, if feasible, within the existing right-of-way, or pursuant to the process outlined above by publishing a Notice of right-of-way relocation in the **Federal Register** after appropriate consultation.

Consistent with this decision, the right-of-way for the following section of the Appalachian National Scenic Trail will be relocated outside of the originally designated right-of-way to facilitate a revised Trail route that takes advantage of the terrain and environment so that this portion of the Trail meets the criteria and the purpose for which this Trail was established.

New York

Beginning between Highland Road and Canopus Hill Road in the Town of Putnam Valley, New York, and proceeding in a southwesterly direction ending near the junction of U.S. Route 9 and State Highway 403 as indicated in panels 313 and 314.

Appropriate map changes, as designated above, are provided as an appendix to this Notice to indicate the revised right-of-way and the Trail route within this right-of-way. This change is in compliance with provisions of section 7 of the National Trails System Act, as amended, as discussed above.

Affected landowners have been contacted and afforded an opportunity to provide us their advice and assistance in selection of this revised right-of-way and the Trail routes within this right-of-way. In addition, the right-of-way and Trail route have been selected in consultation with members of the Advisory Council for the Appalachian National Scenic Trail and with state and local officials.

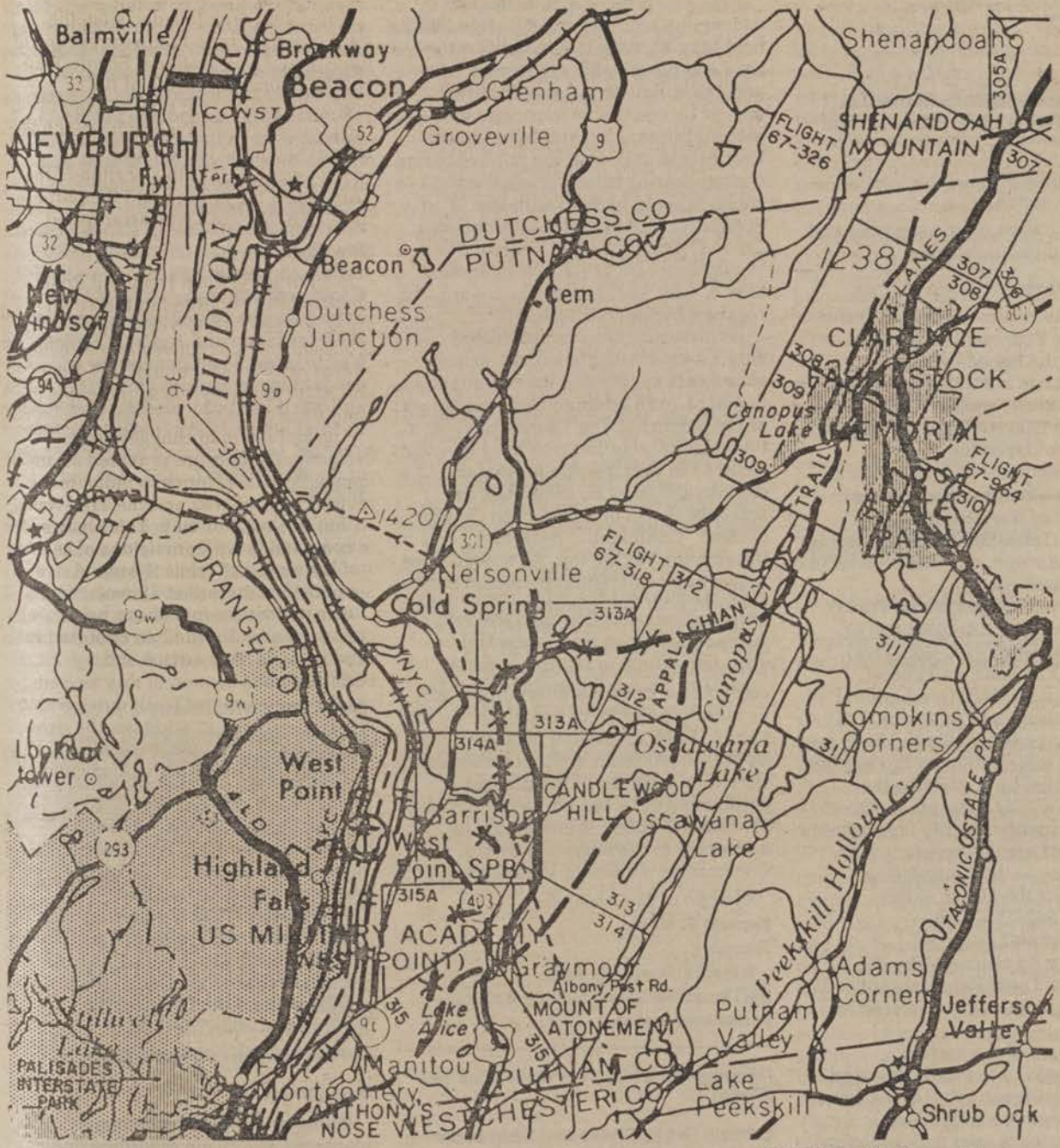
The purpose of this Notice is to request further public comment in the proposed relocation of the Trail right-of-way and Trail route. An environmental assessment report relating to this relocation is on file in the Project Manager's Office, Appalachian Trail Project Office, Harpers Ferry, West Virginia 25425. Comments concerning his relocation may also be provided to the Project Manager on or before March 25, 1988.

Following review of comments on this relocation, a decision regarding findings of signficant impact pertaining to this relocation and its implementations will be published.

Denis P. Galvin,

Acting Director, National Park Service.

BILLING CODE 4310-70-M



[FR Doc. 88-3917 Filed 2-23-88; 8:45 am]

BILLING CODE 4310-70-C

INTERNATIONAL TRADE COMMISSION

[332-253]

Competitive Conditions in the U.S. Market for Asparagus, Broccoli, and Cauliflower

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: February 18, 1988.

SUMMARY: As requested by the United States Trade Representative, at the direction of the President, the Commission has instituted investigation No. 332-253 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purpose of reporting on the significant competitive, technological, and economic factors affecting the performance of the California and Arizona vegetable industries producing asparagus, broccoli, and cauliflower, in major U.S. markets.

FOR FURTHER INFORMATION CONTACT: David L. Ingersoll (202-252-1309) or Timothy P. McCarty (202-252-1324), Agriculture, Fisheries, and Forest Products Division, U.S. International Trade Commission, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

Background and Scope of Investigation: As requested by the United States Trade Representative, the Commission in its report will seek to cover:

(A) Measures of the current competitiveness of the California and Arizona industries in the U.S. market.

(B) Comparative strengths of California, Arizona, and major foreign competitors in the U.S. market.

(C) Nature and source of the main competitive problems facing the California and Arizona industries.

(D) Nature of Federal and State government programs available to growers, processors, or marketers of the specified vegetables in the United States and Mexico.

(E) Competitive strengths: what steps or actions the respective industries are taking to increase their competitiveness.

The USTR requested that the Commission report the results of its investigation within 12 months of receipt of the request, or by November 16, 1988.

Public Hearing: A public hearing in connection with the investigation will be held May 17, 1988, in California, at a time and place to be announced. All persons will have the opportunity to appear by counsel or in person, to present information and to be heard. Requests to appear at the public hearing and prehearing briefs (original and 14 copies) should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, not later than May 6, 1988. Post-hearing briefs are required by May 31, 1988.

Written submissions: Interested persons are invited to submit written statements concerning the investigation, in lieu of, or in addition to, appearances at the public hearing. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of §201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by the public. To be assured of consideration by the Commission, written statements should be received at the earliest practicable date, but not later than May 31, 1988. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: February 19, 1988.

[FR Doc 88-3918 Filed 2-23-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-379 and 380 (Final)]

Certain Brass Sheet and Strip From Japan and the Netherlands

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations./

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-379 (Final) (Japan) and 731-TA-380 (Final) (Netherlands) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan and the Netherlands of certain brass sheet and strip, [1] provided for in item 612.39 of the Tariff Schedules of the United States, that have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless the investigations are extended, Commerce will make its final LTFV determinations on or before April 11, 1988, for Japan and April 18, 1988, for the Netherlands. The Commission will conduct investigations Nos. 731-TA-379 and 380 (Final) concurrently and make its final injury determinations by May 31, 1988, (see sections 735(a) and 735(b) of the Act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (205-252-1181), Office of Investigations, U.S. International Trade Commission, 500 E. Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the

[1] For purposes of these investigations the term "certain brass sheet and strip" refers to brass sheet and strip, other than leaded brass and tin brass sheet and strip, of solid rectangular cross section over 0.006 inch but not over 0.188 inch in thickness, in coils or cut to length, whether or not corrugated or crimped, but not cut, pressed, or stamped to nonrectangular shape, provided for in items 612.3960, 612.3982, and 612.3986 of the *Tariff Schedules of the United States Annotated* (TSUSA). The chemical compositions of the products under investigation are currently defined in the Copper Development Association (CDA) 200 series or the Unified Numbering System (UNS) C20000 series. Products whose chemical compositions are defined by other CDA or UNS series are not covered by these investigations.

Department of Commerce that imports of certain brass sheet and strip from Japan and the Netherlands are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in petitions filed on July 20, 1987, by counsel on behalf of American Brass, Buffalo, NY; Bridgeport Brass Corp., Indianapolis, IN; Chase Brass & Copper Co., Solon, OH; Hussey Copper, Ltd., Leetsdale, PA; The Miller Company, Meriden, CT; Olin Corp.—Brass Group, East Alton, IL; and Revere Copper Products, Inc., Rome, NY; domestic producers of brass sheet and strip, and on behalf of International Association of Machinists and Aerospace Workers, Washington, DC; International Union, Allied Industrial Workers of America (AFL–CIO), Milwaukee, WI; Mechanics Educational Society of America (Local 56), Rome, NY; and United Steelworkers of America (AFL–CIO/CLC), Pittsburgh, PA. In response to those petitions the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (52 FR 34324, September 10, 1987).

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report.—A public version of the prehearing staff report in these investigations will be placed in the public record on April 15, 1988, pursuant to § 207.21 of the Commission's rules (19 CFR § 207.21).

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on April 28, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 14, 1988. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on April 21, 1988, in room 101 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs in April 25, 1988.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201:6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on May 4, 1988. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before May 4, 1988.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6)

Authority. These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: February 17, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–3919 Filed 2–23–88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31226]

Virginia and North Carolina Railroad Co., Inc.; Merger Exemption

The Virginia & North Carolina Railroad Company, Inc. (the Virginia Railroad) and North Carolina & Virginia Railroad Company, Inc. (the North Carolina Railroad), have filed a notice of exemption to merge North Carolina into Virginia on February 1, 1988.

This is a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). The Virginia Railroad and the North Carolina Railroad, as well as four other rail carriers are commonly controlled by Railtex, Inc., (Railtex). The proposed transaction will not result in adverse changes in service levels, signficiant operational changes, or a change in the competitive balance with carriers outside the corporate family. The proposed transaction will be effected by merger of the North Carolina Railroad into the Virginia Railroad, with the Virginia Railroad, which is incorporated under the laws of the State of Virginia, being the surviver. On the effective date of the merger, the name of the Virginia Railroad shall be changed to the "North Carolina & Virginia Railroad Company, Inc."

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Mark M. Levin, Weiner, McCaffrey, Brodsky & Kaplan, P.C., 1350 New York Avenue, NW, Suite 800, Washington, DC 20005–4797.

Decided: February 8, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–3274 Filed 2–23–88; 8:45 am]

BILLING CODE 7035–0–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Mentor Corp.

In accordance with Departmental policy set forth at, 28 CFR 50.7 notice is hereby given that on February 10, 1988, a proposed consent decree was lodged with the United States District Court for the District of Colorado in *United States* v. *Mentor Corporation,* Civil Action No. 88 M 223. The proposed consent decree addresses contamination resulting from radium and its decay products at Operable Unit X of the Denver Radium Site located at 1314 West Evans Avenue, Denver, Colorado (the "Site"). The decree requires defendant Mentor Corporation to provide a temporary storage facility for radium-contaminated soils on its property.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. 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* v. *Mentor Corporation,* DJ Ref. 90–11–3–262.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Colorado Federal Office Building, 1961 Stout Street, Denver, Colorado, and at the Region VIII office of the Environmental Protection Agency, 999 18th Street, Denver, Colorado. Copies of the consent decree may be examined at the offices of the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check or money order in the amount of $6.40 (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. 88–3835 Filed 2–23–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act; Semford Construction, Inc. and Newly Weds Food, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 4, 1988, a proposed consent decree in *United States* v. *Semford Construction, Inc., and Newly Weds Foods, Inc.,* Civil Action Number *88 C 0478* was lodged with the United States District Court for the Northern District of Illinois. The complaint filed by the United States alleged violations of the Clean Air Act and the National Emissions Standards for Hazardous Air Pollutants for asbestos. Defendants were the owners and operators of a renovation operation which involved the removal of asbestos-containing materials from pipes. Defendants violated the Clean Air Act and the regulations passed thereunder by failing to notify the State of Illinois prior to the commencement of the renovation operation at 2501 North Keeler Avenue, Chicago, Illinois, and by failing to follow proper procedures during the removal of the asbestos-containing material.

The consent decree provides that defendants shall pay a civil penalty of $14,500.00 and be subject to an injunction requiring compliance with the asbestos regulations.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice 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* v. *Semford Construction, Inc. and Newly Weds Foods, Inc.,* D.J. No. 90–5–2–1–1146.

The proposed consent decree may be examined at the Office of the United States Attorney, Room 1500 S, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois, at the Region V office of the Environmental Protection Agency, Third Floor, 111 West Jackson Street, Chicago, Illinois, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy 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 refer to *United States* v. *Semford Construction, Inc. and Newly Weds Foods, Inc.,* D.J. No. 90–5–2–1–1146, and include a check for $1.90 (10 cents per page reproduction charge) payable to the United States Treasury.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–3836 Filed 2–23–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Amended Consent Decree Pursuant to the Clean Air Act; USX Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 9, 1988, a proposed Amended Consent Decree was lodged in *United States of America, et al.* v.*USX Corporation,* Civil Action No. 79–709. The proposed Amended Consent Decree concerns primarily defendant's coke making facilities at Clairton, Pennsylvania, and to a lesser extent the basic oxygen process ("BOP") shop at defendant's Edgar Thomson Works, as well as a blast furnace there.

The Amended Consent Decree contains the following major provisions:

1. A requirement that USX install over a 14-year period new, functional emission controls to replace defective controls for its coke oven pushing operations;

2. A requirement that USX post bonds to ensure that USX installs the replacement pushing controls on schedule or shuts down batteries where installation has been delayed;

3. The addition of numerous stipulated penalties to the Decree;

4. A requirement for USX to pay $375,000 in civil penalties for past violations of the relevant State Implementation Plan ("SIP");

5. The incorporation of SIP standards (including Lowest Achievable Emission Requirements ["LAER"], where applicable) into the Amended Decree for all coke oven battery ("COB") emission sources on all Clairton batteries;

6. Self-monitoring requirements at the COBs;

7. Requirements that USX report to the Allegheny County Health Department data generated by continuous emission monitors for Clairton's two boilers;

8. A requirement that USX use interim pushing emission controls and employ interim cokemaking practices while the new, permanent pushing controls are being installed at the Clairton COBs;

9. The imposition of stiff stipulated penalties if USX shuts down certain COBs without constructing complying pushing controls for the batteries, with such stipulated penalties to be escrowed until mid-1993 of until USX completes installation of the replacement pushing controls, whichever comes first;

10. A requirement that a blast furnace, idle since 1979, at the Edgar Thomson Works be equipped prior to any start-up with pollution control equipment sufficient to achieve compliance with the SIP;

11. A requirement that USX conduct and pass a compliance demonstration for fugitive emissions at the BOP shop at the Edgar Thomson Works and, should it fail the demonstration conduct a study to investigate any violations of the SIP and implement the necessary remedies to achieve compliance;

The Department of Justice will receive for a period of thrity (30) days from the date of this publication comments relating to the proposed Amended 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, et al.* v. *USX Corporation*, C.A. No. 79–709 (W.D. Pa.), D.J. Ref. No. 90–5–2–3–1034(B).

Copies of the proposed Amended Consent Decree may be examined: at the Office of the United States Attorney, 633 U.S. Post Office and Courthouse Building, 7th & Grant Streets, Pittsburgh, Pennsylvania 15219; at the Region III office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107; and at the Enviornmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Amended 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 $17.10 (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. 88–3837 Filed 2–23–88;8:45am]

BILLING CODE 4410–01–M

Bureau of Prisons

National Institute of Corrections Advisory Board; Meeting

Notice is hereby given that the National Institute of Corrections Advisory Board will meet March 28, 1988, beginning at 8:00 a.m. at the Sheraton National Hotel, Columbia Pike and Washington, Blvd., Arlington, Virginia, 22204. At this meeting (one of the regularly scheduled triannual meetings of the Advisory Board), the Board will receive its subcommittees' reports and recommendations as to future thrusts of the Institute.

Raymond C. Brown,

Director.

[FR Doc. 88–3843 Filed 2–23–88; 8:45 am]

BILLING CODE 4410–36–M

Office of the Secretary

Information Collection(s) Under Review

February 19, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The name and telephone number of the Department's Clearance Officer from whom a copy of the form and/or supporting documentation is available; (2) the office, board or division of the Department of Justice issuing the form or administering the collection; (3) the title of the form/collection; (4) the agency form number, if any; (5) how often the report must be filled out or the information is to be collected; (6) who will be asked or required to respond, as well as a brief abstract; (7) an estimate of the total number of respondents; (8) an estimate of the total public burden hours associated with the collection; (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies; and, (10) the name and telephone number of the person or office responsible for the OMB review. Comments and/or questions regarding the item(s) contained in this notice should be directed to the OMB reviewer listed at the end of each entry *AND* to the Department's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so advise the OMB reviewer *AND* the Department's Clearance Officer of your intent as early as posible.

The Department of Justice Clearance Officer is : LARRY E. MIESSE and can be reached on (202) 633–4312.

New Collections

(1) Larry E. Miesse, (202) 633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) APPLICATION FOR WAIVER OF REQUIREMENT TO FILE JOINT PETITION FOR REMOVAL OF CONDITIONS
(4) I–752
(5) One time
(6) Individuals or households. Application to be filed by alien who is unable to file the I–751 petition required by the Marriage Fraud Amendments to seek waiver of filing requirement.
(7) 10,000 annual responses, .5 hours burden per response.
(8) 5,000 estimated public burden hours.
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340

(1) Larry E. Miesse, (202) 633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) JOINT PETITION TO REMOVE THE CONDITIONAL BASIS OF ALIEN'S PERMANENT RESIDENT STATUS
(4) I–751
(5) One time, two years after acquiring residency
(6) Individuals or households. In accordance with the Marriage Fraud Amendments, the petition must be filed before the 2d anniversary of the date on which the alien acquired status under Section 216 of the Immigration and Nationality Act.
(7) 125,000 annual responses, .25 hours burden per response.
(8) 31,250 estimated total public burden hours.
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Larry E. Miesse, (202) 633–4312
(2) Civil Division, Department of Justice

(3) CLAIM FOR DAMAGE, INJURY OR DEATH
(4) SF 95
(5) On occasion
(6) Businesses or other for-profit, small businesses or organizations, individuals or households, state or local governments, non-profit institutions. This form is utilized by those persons making a claim against the United States Government under the Torts Claims Act.
(7) 400,000 annual responses, .25 hours burden per response.
(8) 100,000 estimated total public burden hours.
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340

(1) Larry E. Miesse, (202) 633–4312
(2) Corrections Program Branch, Bureau of Justice Statistics, Department of Justice
(3) NATIONAL PRISONER STATISTICS
(4) NCRP–1A, 1B, 1C
(5) Annually
(6) State or local governments, Federal agencies or employees. Used to enumerate and describe annual movements of adult and youthful offenders through State and Federal correctional systems.
(7) 605,000 annual responses, .0020 hours burden per response.
(8) 1,210 estimated public burden hours.
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340

Revision of a Currently Approved Collection

(1) Larry E. Miesse, (202) 633–4312
(2) Office of Attorney Personnel Management, Justice Management Division, Department of Justice
(3) APPLICATION BOOKLETS—ATTORNEY GENERAL'S HONOR PROGRAM, SUMMER LAW INTERN PROGRAM, LAW STUDENT PROGRAM
(4) No form numbers.
(5) On occasion.
(6) Individuals or households. The Department of Justice's Honor Program is its vehicle for hiring graduating law students and judicial law clerks. The application booklets describes program criteria and solicits information from the applicant which facilitates interviewing and hiring decisions.
(7) 3,750 annual responses, .5 hours burden per response.
(8) 1,875 estimated public burden hours.
(9) Not applicable under 3504(h).
(10) Robert Fishman, (202) 395–7340

Larry E. Miesse,
Department Clearance Officer.
[FR Doc. 88–3941 Filed 2–23–88; 8:45 am]
BILLING CODE 4410–10–M

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 22, 1988, Stepan Chemical Company, Natural Products Department, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as an importer of coca leaves (9040), a basic class controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than March 25, 1988.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: February 18, 1988.

Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.
[FR Doc. 88–3915 Filed 2–23–88; 8:45 am]
BILLING CODE 4410–09–M

Importation of Controlled Substances; Application of Mallinckrodt, Inc.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 13, 1988, Mallinckrodt, Inc., Department CB, Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Raw opium (9600)	II
Opium plant form (9650)	II
Concentrate of poppy straw (9670)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than March 25, 1988.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR

1311.42(b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e) and (f) are satisfied.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: February 18, 1988.

[FR Doc. 88–3844 Filed 2–23–88; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application of Mallinckrodt, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 13, 1988, Mallinckrodt, Inc., Department C.B., Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine hydrochloride (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane (9254).	II
Bulk dextropropoxyphene (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extracts (9620)	II
Tincture of opium (9630)	II
Powdered opium (9639)	II
Granulated opium (9640)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than March 25, 1988.

Dated: February 17, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88–3845 Filed 2–23–88; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances, Application of Stepan Chemical Co.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 22, 1988, Stepan Chemical Company, Natural Products Department, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than March 25, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: February 17, 1988.

[FR Doc. 88–3846 Filed 2–23–88; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application of Sterling Drug, Inc.,

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 14, 1988, Sterling Drug, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance pethidine (meperidine) (9230).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than March 25, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: February 17, 1988.

[FR Doc. 88–3847 Filed 2–23–88; 8:45 am]

BILLING CODE 4410–09–M

Immigration and Naturalization Service

[INS Number: 1104–88]

Direct Mail of Applications and Petitions to the Regional Service Center in San Ysidro, CA

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of change of location where applications and petitions are filed.

SUMMARY: Applications and petitions for benefits under the Immigration and Nationality Act are currently being filed at district offices within the Western Region. This notice establishes the Regional Service Center in San Ysidro, California as the one approved filing location for the applications and petitions described in this notice.

EFFECTIVE DATE: April 1, 1988.

FOR FURTHER INFORMATION CONTACT: Lloyd Sutherland, Senior Immigration

Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633–3946.

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service has four Regional Service Centers (RSC). The three Service Centers located at St. Albans, Vermont, Dallas, Texas and Lincoln, Nebraska have already implemented direct mail of selected petitions and applications. This notice extends the direct mail procedure to the Regional Service Center in San Ysidro, California.

Effective April 1, 1988, except in cases of genuine emergency, the following petitions and applications shall no longer be filed at districts within the Western Region, but shall be mailed directly to the Western Regional Service Center, P.O. Box 73016, San Ysidro, California 92073. (For operational efficiency, include in the address the type of application or petition being filed using the INS Form number). For example: Western Regional Service Center, I–130 Unit, P.O. Box 73016, San Ysidro, California 92073.

APPLICATIONS AND PETITIONS INCLUDED IN THIS DIRECT MAIL NOTICE

Form Nos.	Form titles
I–129 B	Temporary worker petition.
I–129 L	Temporary worker petition.
I–129S	Temporary worker petition.
I–140	Petition for third or sixth preference classification (except when Form I–140 is filed with an I–485, Application for Adjustment of Status).
I–506	Application for Change of Nonimmigrant Status (when changing to H or L).
IL–539	Application for Extension of Stay (when filed for an extension of H or L classification).
I–130	Relative Visa Petition (except when Form I–130 is filed with an I–485, Apoplication for Adjustment of Status).

The following district offices are included in this new procedure. One exception is noted for the district office in Honolulu, Hawaii.

District Offices

Los Angeles, California

Jurisdiction over the following counties in the State of California: Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura.

San Diego, California

Jurisdiction over the following counties in the State of California: Imperial and San Diego.

San Francisco, California

Jurisdiction over the counties in California which are not listed under the district of Los Angeles or San Diego.

Phoenix, Arizona

Jurisdiction over the States of Arizona and Nevada.

Honolulu, Hawaii

Jurisdication over the State of Hawaii, Guam and Mariana Islands. For administrative efficiency, all petitions and applications from Guam and the Mariana Islands will continue to be filed at the present locations.

This notice constitutes authority for the Western Regional Service Center Director to accept filing fees for the petitions and applications listed above.

Dated: February 17, 1988.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 88–3871 Filed 2–23–88; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group of Access To Health Care of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 1:30 p.m., Thursday, March 24, 1988, in Room N–5437B, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This eight member work group was formed by the Advisory Council to study issues relating to access to health care.

The purpose of the March 24 meeting is to identify the health care access issues on which the work group should focus its efforts. The work group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before March 17, 1988 to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before March 17, 1988.

David M. Walker,

CPA, Assistant Secretary for Pension and Welfare Benefits Administration.

Signed at Washington, DC this 19th day of February, 1988.

[FR Doc. 88–3829 Filed 2–23–88; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council of Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, a meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Friday, March 25, 1988, in Room S–4215C, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC.

The purpose of the meeting, which will begin at 9:30 a.m., is to consider items listed below and to invite public comment on any aspect of the administration of ERISA:

1. General Business of the Advisory Council,
2. Status report of the Portability & Preservation of Pension Work Group,
3. Status report of the Reporting & Disclosure Work Group,
4. Status report of the Access To Health Work Group,
5. Status report of the Retiree Health Work Group,
6. Discussion of Issues Relating to the Workforce 2000,
7. Statements from the Public.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before March 18, 1988, to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Individuals wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202/523–8753). Oral presentations will be limited to ten minutes, but an extended

statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before March 18, 1988.

David M. Walker,

CPA, Assistant Secretary for Pension and Welfare Benefits Administration.

Signed at Washington, DC, this 10th day of February 1988.

[FR Doc. 88-3830 Filed 2-23-88; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[88-20]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team for Rotorcraft Powertrain and Propulsion.

DATE AND TIME: March 17, 1988, 9 a.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 647, Federal Office Building 10B, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Reck, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2847.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams were formed to address specific topics. The Ad Hoc Review Team for Rotorcraft Powertrain and Propulsion, chaired by Dr. F. Blake Wallace, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

March 17, 9188

9 a.m.—Introduction of Members, Discussion of Charter and Objectives.

10:30 a.m.—Ongoing NASA Program Reviews.

2:30 p.m.—Discussion of Assessment plan of Attack and Resources Available.

4:30 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

February 18, 1988.

[FR Doc. 88-3890 Filed 2-23-88; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-13]

Environmental Assessment and Finding of No Significant Impact Regarding Termination of Operating License No. CX-10; Babcock and Wilcox Critical Experiment Facility

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Order Terminating Facility Operating License No. CX-10 for the Babcock and Wilcox Critical Experiment Facility located in Lynchburgh, Campbell County, Virginia, in accordance with the application dated August 7, 1984, as supplemented.

Environmental Assessment

Identification of Proposed Action: By application dated August 7, 1984 as supplemented, Babcock & Wilcox company (B&W) requested authorization to decontaminate and dismantle its critical experiment facility, to dispose of its components parts in accordance with the proposed dismantling plan, and to terminate Facility Operating License No. CX-10. Following the reactor shutdown the fuel was removed from the core tank and shipped to an authorized Department of Energy facility.

Opportunity for hearing was afforded by the "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" published in the **Federal Register** on September 18, 1984 (49 FR 36579).

Following the Order Authorizing Dismantling of Facility and Disposition of Component Parts, dated April 4, 1985, B&W completed the dismantlement and submitted a final survey report in June 1986. Region II completed a final radiation survey in September 1987. The staff agrees with the analyses and the conclusions in the B&W final survey report, as supplemented.

Need for Proposed Action: In order to release the facility for unrestricted access and use, Operating License No. CX-10 must be terminated.

Environmental Impact of the Proposed Action: The B&W Final Survey Report, as supplemented, indicates that the residual contamination is less than the requirements of Regulatory Guide 1.86, Table I, and that maximum exposure rates are less than 5uR/hr above background at one meter from the surface of interest. These measurements have been verified by the NRC and allow unrestricted use of the facility.

Alternative Use of Resources: Since the reactor and component parts have been dismantled and disposed of in accordance with NRC regulations and guidelines, there is no alternative to termination of Operating License No. CX-10.

Agencies and Persons Consulted: The Region II final survey was conducted by the staff of the Oak Ridge Associated Universities under contract to the Nuclear Regulatory Commission.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the application for dismantling, decontamination and license termination dated August 7, 1984, as supplemented. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 18th day of February 1988.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-3891 Filed 2-23-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published January 19, 1988 (53 FR 1423). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 am. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the March 1988 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634–3265, ATTN: Barbara Jo White) between 7:30 am. and 4:15 pm., Eastern Time.

ACRS Subcommittee Meetings

Reliability Assurance, March 7 and 8, 1988, Washington, DC. The Subcommittee will discuss: (1) Valve reliability, including valve testing schemes by Liberty Technical Center, Limitorque, MOVATS, and Oak Ridge National Laboratory; (2) RES plans for MOV and check valve related work; (3) valve testing insights from Peter Wohld; (4) incidents related to valves (German hydrogen explosion in PORV and TVA MOV interchangeability problem); and (5) status reports from industry organizations on valve related programs.

Auxiliary Systems, March 9, 1988, Washington, DC. The Subcommittee will discuss the results of the Fire Risk Scoping Study performed by Sandia National Laboratories for the NRC. A portion of the meeting will be closed to discuss proprietary information relating to fire protection provisions at foreign nuclear power plants.

Metal Components, March 15, 1988 (tentative), Charlotte, NC. The Subcommittee will review the status of the NDE of cast stainless steel piping and other topics related to Subcommittee activities.

Waste Management, March 17 and 18, 1988, Washington, DC. The Subcommittee will review the final draft of the Q-List GTP prior to its submission to the Commissioners by the end of March and other pertinent radioactive waste management topics to be determined in the near future.

Occupational and Environmental Protection Systems, March 22 and 23, 1988, Washington, DC. The Subcommittee will review: (1) The "hot particle" issues, (2) monitoring the quality and quantity of airborne radionuclides in/out of containment following an accident, (3) the emergency planning rule, (4) the control room habitability report by ANL, and (5) other related matters to be determined in the near future.

Instrumentation and Control Systems, March 24, 1988, Washington, DC. The Subcommittee will review the NRC Staff's analysis and study to limit the scope of USI A–47, "Safety Implications of Control Systems."

Human Factors March 28, 1988, Washington, DC. The Subcommittee will be briefed and review: (1) The Human Factors Research Program plan, (2) the Fitness for Duty Rule, and (3) Policy Statement on Training and Qualification.

Structural Engineering, March 29 and 30, 1988, Los Angeles, CA. The Subcommittee will review the Piping and Fitting Reliability Program.

Babcock & Wilcox Reactor Plants, March 30 and 31, 1988, Washington, DC. The Subcommittee will continue its review of the long-term safety review of B&W reactors. This effort was begun during the summer of 1986; initial Committee comments offered on July 16, 1986 in a letter to V. Stello, EDO.

Auxiliary Systems, April 6, 1988, Washington, DC. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC Staff to review the Chilled Water Systems design.

Thermal Hydraulic Phenomena, April 12, 1988, Idaho Falls, ID. The Subcommittee will review the draft Models and Correlations Document for the RELAP/5 thermal hydraulic code.

Thermal Hydraulic Phenomena, April 20, 1988 (a.m.), Washington, DC. The Subcommittee will discuss a proposed report on thermal hydraulic research for consideration by the ACRS.

Reliability Assurance, April 21, 1988, Washington, DC. The Subcommittee will be briefed on the final outcome of the Equipment Qualification-Risk Scoping Study.

Thermal Hydraulic Phenomena, May 18, 1988, Washington, DC. The Subcommittee will review the revised W ECCS Model for 2-loop Upper Plenum Injection (UPI) Plants.

Regional Programs, May 24, 1988, Atlanta, GA. The Subcommittee will review the activities under the control of the NRC Region II Office.

Improved LWRs, May 25, 1988, Washington, DC. The Subcommittee will discuss Chapters 3, 4, and 5 of the EPRI ALWR Requirements document.

Thermal Hydraulic Phenomena, June 21, 1988 (tentative), Location to be determined. The Subcommittee will review the status of the MIST Phase III and IV Programs and the proposed OTSG Follow-on Program.

Advanced Pressurized Water Reactors, Date to be determined (March/April), Washington, DC. The Subcommittee will discuss and hear presentations from Westinghouse representatives and the NRC Staff regarding the PRA for WAPWR (RESAR SP/90) design.

Severe Accidents, Date to be determined (March/April), Washington, DC. The Subcommittee will review the hydrogen control measures for BWRs and Ice Condenser PWRs (USI A–48). The Subcommittee may also review the final version of the NRC Staff's proposed generic letter on Individual Plant Examinations (IPEs).

Containment Requirements, Date to be determined (April), Washington, DC. The Subcommittee will review the NRC Staff's document on containment performance and improvements (all containment types).

Advanced Pressurized Water Reactors, Date to be determined (April), Washington, DC. The Subcommittee will review the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis report-design certification (CESSAR–DC).

Thermal Hydraulic Phenomena, Date to be determined (April/May), Washington, DC. The Subcommittee will review the final version of the proposed ECCS Rule.

Safety Philosophy, Technology and Criteria, Date to be determined (April/May), Washington, DC. The Subcommittee will review the status of NUREG–1251 (Implications of Chernobyl) and the NRC Staff's program (at BNL) to address the implications of

Chernobyl in regard to severe reactivity transients.

Advanced Pressurized Water Reactors, Date to be determined (May), Washington, DC. The Subcommittee will discuss the comparison of WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

Decay Heat Removal Systems, Date to be determined (mid-May), Washington, DC. The Subcommittee will continue its review of the NRC Staff's resolution position for USI A–45.

Advanced Pressurized Water Reactors, Date to be determined (May/June), Washington, DC. The Subcommittee will review the draft SER in regard to the reactor, reactor coolant system, and regulatory conformance for the WAPWR (RESAR SP/90) design.

Thermal Hydraulic Phenomena, Date and location to be derermined (June/July). The Subcommittee will review the status of the MIST Phase III and IV Programs and the proposed OTSG Follow-on Program.

Decay Heat Removal Systems, Date to be determined (June/July), Washington, DC. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Failures," and Generic Issue 99, "Loss of RHR Capability in PWRs."

Decay Heat Removal Systems, Date to be determined, Washington, DC. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Systematic Assessment of Experience, Date to be determined, Washington, DC. The Subcommittee will review the Diagnostic Evaluation Program and other related staff plant review efforts.

Thermal Hydraulic Phenomena, Date to be determined, Washington, DC. The Subcommittee will discuss the status of Industry best-estimate ECCS Model submittals for use with the revised ECCS Rule.

ACRS Full Committee Meeting

March 10–12, 1988–Items are tentatively scheduled.

*A. *Quantitative Safety Goals (Open)*—Briefing and discussion of proposed implementation plan for NRC quantitative safety goals.

*B. *Operating Incidents and Events (Open)*—Briefing and discussion regarding recent operating events and transients in nuclear power stations.

*C. *Advanced Reactors (Open)*—Briefing by and discussion with DOE and NRC representatives regarding the DOE Advanced Reactor Severe Accident Program.

*D. *ACRS Subcommittee Activities (Open)*—Reports of designated subcommittee activities regarding safety related matters such as thermal hydraulic phenomena, decay heat, removal systems, containment performance, nuclear power plant core reactivity control and seismic design of the Diablo Canyon nuclear station.

*E. *Generic Issues (Open)*—Discuss effectiveness of NRC process for identification and resolution of safety related generic issues.

*F. *Safety Related Issues (Open)*—Discuss proposed hierarchical structure for important safety related issues.

*G. *Radiation Embrittlement of Reactor Pressure Vessel Materials (Open)*—Review and comment on proposed Regulatory Guide 1.99, Radiation Embrittlement of Reactor Pressure Vessel Materials.

*H. *Training and Qualification of NRC Technical Personnel (Open)*—Briefing and discussion regarding proposed changes in NRC program for training and qualification of NRC technical personnel.

*I. *Human Factors (Open)*—Briefing regarding National Academy of Sciences report by NAS Panel Chairman regarding research needed.

*J. *Future Activities (Open)*—Discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

K. *New ACRS Members (Closed)*—Discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

*L. *Radiation Damage to Structure Materials (Open)*—Briefing and discussion of NRC's proposed resolution of potential radiation damage to nuclear power plants structural materials.

*M. *TVA Nuclear Power Stations (Open)*—Briefing and discussion regarding resolution of technical issues.

April 7–9, 1988—Agenda to be announced.

May 5–7, 1988—Agenda to be announced.

Dated: February 18, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–3943 Filed 2–23–88; 8:45 am]

BILLING CODE 7590–01–M

Reporting of Safeguards Events; Availability

On June 9, 1987, the Nuclear Regulatory Commission published a final rule on reporting of safeguards events (10 CFR 73.71). On September 14, 1987, the NRC held a workshop in Bethesda, MD to answer affected licensees' questions about the final rule. The Commission has now published NUREG–1304, "Reporting of Safeguards Events" which documents questions discussed at the workshop, reflects completed staff review of the answers and supersedes previous oral comment on the topics covered.

Copies of NUREG–1304 may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Washington, DC, this 19 day of February 1988.

For the Nuclear Regulatory Commission.

James G. Partlow,

Director, Division of Reactor Inspection and Safeguards, Office of Nuclear Reactor Regulation.

[FR Doc. 88–3892 Filed 2–23–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–325/324]

Carolina Power & Light Co., Brunswick Steam Electric Plant, Units 1 and 2; Exemption

I.

Carolina Power & Light Company (the licensee) is the holder of Facility Operating License Nos. DPR–71 and DPR–62, which authorize operation of the Brunswick Steam Electric Plant, Units 1 and 2. The licenses provide, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities are General Electric boiling water reactors located at the licensee's site in Southport, North Carolina.

II.

Paragraph III.A.3 of Appendix J to 10 CFR Part 50 requires that all Type A Containment Integrated Leak Rate tests be performed in accordance with American National Standard Institute (ANSI) N45.4–1972, "Leakage Rate

Testing of Containment Structures for Nuclear Reactors." ANSI N45.4 requires that leakage calculations be performed using the Total Time method or the Point-to-Point method.

By letter dated August 5, 1987, the licensee requested an exemption from 10 CFR Part 50, Appendix J, Paragraph III.A.3, regarding Type A Containment Integrated Leak Rate Test calculations. Specifically, the licensee requested an exemption to permit the use of the Mass-Point method (as provided in ASSI/ANS 56.8–1981, paragraph 5), rather than the Total Time method described in ANSI N45.4–1972, paragraph 7.9. In support of its request, the licensee notes that the Mass-Point method is a newer and more accurate method of calculating containment leakage. The licensee also notes that utilizing the Total Time method produces results that are less reliable than results by the Mass-Point method. The licensee has, therefore, requested the Exemption to enable use of the Mass-Point method.

The acceptability of the exemption request is addressed below. More details are contained in the Commission's related Safety Evaluation issued concurrently with this Exemption.

III.

The licensee's exemption request under consideration involves the Type A testing requirements of Appendix J for containments. As indicated in the licensee's letter of August 5, 1987, until about 1976 containment leakage rate calculations were performed using only the Point-to-Point or the Total Time methods in accordance with ANSI N45.4–1972. In 1976, the NRC staff unofficially recognized the merits of a newer method, known as the Mass-Point method. ANSI N45.4–1972 has since been revised to incorporate the Mass-Point method into ANSI/ANS 56.8–1981. The staff anticipates publishing for comment in the near future a proposed amendment to Appendix J that would permit the use of the Mass-Point method.

The licensee submits that the more accurate technique provides increased confidence in the integrity of the containment.

In addition, the licensee provided a determination that special circumstances exist under 10 CFR 50.12(a). The rule specifies particular methods for calculating leakage to assure that accurate and conservative methods are used to assess the results of containment leak rate tests. As discussed above, the licensee has determined that this underlying purpose is achieved with use of the more accurate Mass-Point method. Therefore, they concluded that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule. The staff agrees with the licensee's conclusion and has determined that, under 10 CFR 50.12(a)(2)(ii), special circumstances exist. Based on the above discussion, the licensee's request for exemption (allowing the Mass-Point technique for calculating containment leakage rate) from the requirements of Appendix J is granted for Brunswick Units 1 and 2, with the condition that the test be conducted over a period of at least 24 hours.

IV.

The Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present, justifying the Exemption. Namely, application of the regulation in the particular circumstances is not necessary to achieve its underlying purpose, which is to ensure that accurate and conservative methods are used to assess the results of containment leak rate tests. The Mass-Point method, which provides accurate results, has been a widely used method of performing leak rate calculations and satisfies the underlying purpose of the rule.

Accordingly, the Commission hereby grants an Exemption from Paragraph III.A.3 of Appendix J to 10 CFR Part 50 to allow use of the Mass-Point method in performing leakage rate calculations associated with containment integrated leakage rate tests, provided that the minimum test duration is 24 hours. Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (51 FR 18296).

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I–II, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland, this 17th day of February 1988.

[FR Doc. 88–3893 Filed 2–23–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–334]

Duquesne Light Co. et al.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commisson (the Commission) has granted the request of Duquesne Light Company (the licensee) to withdraw a portion of its February 10, 1987 application for proposed amendment to Facility Operating License No. DPR–66 for the Beaver Valley Power Station, Unit No. 1, located in Shippingport, Beaver County, Pennsylvania.

Parts of amendment would have revised the setpoints for two radiation monitors (RM–RM–219 and RM–GW–109) as a result of the licensee's proposed reduction in the value of the atmospheric dispersion factor.

The Commission has issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 8, 1987 (52 FR 11362). By letter dated August 27, 1987, the staff issued Amendment No. 113 to Operating License DPR–66, which granted some of the changes requested by the licensee. By letter dated September 14, 1987, the licensee withdrew the proposed change regarding the above-mentioned radiation monitors.

For further details with respect to this action, see the application for amendment dated February 10, 1987, the staff's letter dated August 27, 1987 and the licensee's letter dated September 14, 1987, withdrawing parts of the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania.

Dated at Rockville, Maryland, this 9th day of February 1988.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Project Manager, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88–3894 Filed 2–23–88; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised

section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 1, 1988 through February 11, 1988. The last biweekly notice was published on February 10, 1988 (53 FR 3951).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 25, 1988 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so

inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station Plymouth County Massachusetts

Date of amendment request: December 1, 1986, and September 18, 1987

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the Pilgrim Nuclear Power Station to reflect recent changes to that regulation. The proposed amendment would modify paragraph 3G of Facility Operating License No. DPR-35, to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 1, 1986, and September 18, 1987 to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving singificant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Richard H. Wessman

Boston Edison Company Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: January 14, 1988

Description of amendment request: The proposed amendment would revise Section 6.9.c. of the Technical Specifications (TS) to allow a supplement to the January Semi-Annual Radioactive Effluent Release Report to be submitted 90 days after January 1 each year. The supplement is a portion of the original report and would contain the dose and meteorological summary report. Additional changes are administrative and consist of renumbering sections and pagination changes for consistency within the TS. One change eliminates a numbering error. The Offsite Dose Calculation Manual (ODCM) is presently listed as section 6.9.C.3, as is "Special Reports" on page 224. The change consists of renumbering the ODCM section to 6.9.C.1.b and retitling section 6.9.C.1 as "Semi-Annual Radioactive Effluent Release Report". Also, on page 223a, the portion of the last paragraph of section 6.9.C.2 "Annual Radiological Environmental Monitoring Report" is being moved to page 223, allowing the elimination of page 223a.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has examined the licensee's proposal with regard to the three part criteria and found that the proposed changes do not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated because revising page numbers, establishing consistency and changing a submittal date for a portion of a report does not change the probability or consequences of accidents previously evaluated since they are administrative changes.

(2) create the possibility of a new or different kind of accident from any previously evaluated because there are no changes in plant design or operation, inclusion of the proposed changes in the technical specifications would not create the possibility of a new or different kind of accident from any previously evaluated.

(3) involve a significant reduction in a margin of safety because for the reasons stated in one and two, adoption of the proposed change would not involve a significant reduction in a safety margin for the plant.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Richard H. Wessman, Acting Director

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: March 5, 1986, as supplemented by submittal dated December 17, 1987

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) for Brunswick Steam Electric Plant, Units 1 and 2, by modifying the schedule in Table 4.4.6.1.3-1 for the withdrawal of reactor vessel material specimens from the reactor vessel for fracture toughness surveillance. Currently, the TS require that one capsule be removed at the end of 10 years and another at the end of 20 years. A third capsule is to be kept in reserve. The proposed schedule change for Unit 1 is to remove the first capsule from the unit at the end of 8 effective full power years (EFPY). The proposed schedule change for Unit 2 is to remove the first capsule at the end of 10 EFPY. A proposed schedule for the removal of the second and third capsules would be based upon the evaluation of the results of the first capsule from each unit. In addition, a requirement would be added to TS Section 4.4.6.1.3 to determine the cumulative EFPY at least once every 18 months to suppport the reactor vessel material surveillance schedule.

The initial application for amendment dated March 5, 1986, was noticed on May 21, 1986 (51 FR 18677). The difference between the March 5, 1986 application and the December 17, 1987 supplement is the proposed schedule for removing the second and third capsules from Units 1 and 2. The current proposal would base that schedule on the evaluation of the results of the first capsule from each Unit.

Basis for proposed no significant hazard consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The Carolina Power & Light Company (CP&L) has reviewed the proposed change to TS Table 4.4.6.1.3-1 and has determined that the requested amendment:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes to TS Table 4.4.6.1.3-1 enhance the previously submitted schedule since they provide the mechanism for assuring the maximization of data from reactor vessel surveillance specimens. These changes do not affect previously analyzed events or any parameters associated with plant operation. Therefore, it is concluded that the changes proposed in this request will not increase the probability of occurrence or the consequences of any accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident than previously evaluated because the proposed changes to TS Table 4.4.6.1.3-1 do not adversely affect the operability of safety-related equipment. It is concluded that the probability or consequences of equipment important to safety malfunctioning will not be increased. Therefore, the proposed changes do not create the possibility of a new or different kind of accident than already evaluated.

3. Does not involve a significant reduction in a margin of safety because predictions of neutron radiation effects on pressure vessel steel were considered in the design of Brunswick's nuclear power reactors. This proposed surveillance capsule withdrawal schedule permits more accurate monitoring of long-term effects. Testing of the surveillance capsules will permit verification of the adequacy and conservatism of Brunswick's reactor vessel/temperature operational limits. The proposed surveillance capsule withdrawal schedule does not affect plant operation. It is intended to verify initial predictions of the surveillance material response to the actual radiation environment. Therefore, there is no significant reduction in a margin of safety as a result of this revision.

For the reasons stated above, CP&L has determined that the proposed amendment to TS Table 4.4.6.1.3-1 does not involve a significant hazards consideration.

The staff has reviewed the CP&L determinations and is in agreement with them. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: March 2, 1987, as supplemented by submittals dated September 2, 1987, and November 30, 1987

Description of amendment request: On March 2, 1987, an amendment was proposed for the Brunswick Steam Electric Plant, Units 1 and 2, which would change the definition of operable in Technical Specification (TS) Sections 1.0, 3.0.3, 3.0.5, and 3.8.1.1. This proposed change was noticed in the April 8, 1987 **Federal Register** (52 FR 11355). On March 27, 1987, the NRC issued Amendments 104 and 134 to the BSEP-1 and BSEP-2 Technical Specifications, respectively. These amendments included changes to TS 3.8.1.1 and 4.8.1.1 so the amendment request proposed on March 2, 1987 no longer represented the current TS. On July 30, 1987 the NRC requested additional information concerning the part of the March 2, 1987 submittal that addressed the proposed changes to TS 3.8.1.1. The licensee responded with submittal dated September 2, 1987. The September 2 submittal revised the March 2 submittal to incorporate into the proposed amendment request the changes resulting from the issuance of Amendments 104 and 134, and revised the action statements of TS 3.8.1.1. Specifically, the March 2 submittal proposed that TS action statements a.2 and b.2 of TS 3.8.1.1 require verification within 2 hours that all redundant systems, sub-systems, trains, components, and devices required to be operable, that depend on the remaining offsite circuit as a source of power, are operable. If this cannot be verified, the Unit is required to be in hot shutdown within the next 12 hours and in cold shutdown within the following 24 hours. In the September 2, 1987 submittal, a.2 and b.2 were modified such that verification is to occur within 2 hours that all redundant systems, subsystems, trains, components, and devices required to be operable are also operable. As in the March 2 submittal, the Unit would be required to be in hot shutdown within the next 12 hours and in cold shutdown within the following 24 hours if such a verification did not result in the systems, etc., being declared operable. The incorporation of action statements a.2 and b.2 is intended to address two conditions of TS 3.0.5 that must be met in order to declare equipment inoperable solely due to a

loss of its emergency or normal power source. These conditions are that the corresponding normal or emergency power source must be operable and that all redundant systems, subsystems, trains, components, and devices must be operable. Merging the actions required, in the event of an inoperable emergency power source, into the action statements dealing with this situation prevents the possible oversight of the TS 3.0.5 requirements. As stated in the original **Federal Register** Notice of this proposed amendment request, the intent of the change, to allow a 2 hour verification, is to ensure a sufficient time to verify that the required equipment is operable and provide for a more orderly shutdown should it be required.

The September 2 submittal also revised action statement a.3 from that presented in the March 2 submittal. In the March 2 submittal, it was stated that any diesel generator not currently running was to demonstrate operability by having certain surveillance tests performed. In the September 2 submittal this action statement was modified to indicate that operability had to be demonstrated on those diesels not already operating. This change was proposed to clarify a concern of the NRC that the March 2 submittal seemed to imply that operability must be demonstrated on only one of the non-operating diesel generators. Demonstrating the operability of only the diesel generators which are not operating is appropriate. The operating diesel generator is running and supplying power to the emergency bus thereby demonstrating its operability by performing its design function. Securing that diesel generator in order to perform a surveillance test would necessitate causing a blackout on the emergency bus.

In an October 16, 1987 letter, the NRC requested additional information concerning the September 2 submittal. On November 30, 1987, the licensee responded to this request. One of these responses corrected a typographical error in the proposed action statement a.4 of Unit 2 TS 3.8.1.1 where the term "diesel generator" should have actually been "offsite circuit".

Basis for proposed no significant hazard consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. Revised ACTION statements a.2 and b.2 of TS 3.8.1.1 ensure that upon loss of a power source, the alternate power supply is operable and that the redundant equipment is operable. As such, this change does not affect the redundancy of required safety systems and, therefore, does not increase the probability or consequences of an accident previously evaluated. Incorporation of the requirements of TS 3.0.5 into the ACTION statements for TS 3.8.1.1 reduces the possibility that they will be overlooked should a diesel generator or an off-site power source become inoperable and, as such, reduces the possibility of operating outside the limits of the TS. The revised schedule proposed in ACTION a.2 and b.2 ensure redundant equipment is OPERABLE and provides for a more orderly shutdown should it be required. These factors increase operational flexibility and reduce the chances of operating the unit in a degraded condition, thereby reducing the probability and consequences of previously evaluated accidents.

Other changes made in this amendment are administrative in nature and, therefore, cannot result in an increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident than from any accident previously evaluated because the changes do not affect the method in which any equipment performs its intended safety function. The requirements of TS 3.0.5 associated with inoperable normal or emergency power sources have been incorporated into ACTION statements a.2 and b.2 of TS 3.8.1.1. Therefore, deleting the reference to normal and emergency power from the definition of OPERABLE power does not affect the redundancy of required safety systems. Demonstration of the OPERABILITY of only the nonoperating diesel generators at the expense of including the operating diesel generators avoids causing a blackout on the emergency bus which would result if the operating diesel generator had to be secured. Other changes made in this amendment are administrative in nature and, therefore, cannot create the possibility of a new or different kind of accident than any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The revisions result in: (1) increased operational safety and flexibility, (2) a reduction in the possibility of operating the plant in a degraded condition due to missed action requirements, and (3) a simplification of the specification through merging of action requirements and reformatting, thereby reducing the possibility of operator confusion. As such, this revision does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: January 20, 1988

Description of amendment request: The proposed change involves an increase in the Plant Nuclear Safety Committee quorum requirements from the chairman and three members to the chairman and four members. In addition, the proposed change would include two references to the position of "Vice President-Robinson" which were inadvertently omitted from a recently approved Technical Specifications change request (Amendment 114).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In addressing each of the above standards, the licensee proposed that the change involving an increase in the Plant Nuclear Safety Committee (PNSC) quorum does not constitute a significant hazards consideration. The staff has

reviewed the licensee's submittal and finds the following:

1. The proposed increase of the PNSC quorum requirements would not involve a significant increase in the probability or consequences of an accident previously analyzed because it imposes more restrictive control upon PNSC activities by increasing the minimum number of individuals who must review and approve PNSC actions. This proposed change does not affect systems or plant operations that were considered in previously evaluated accidents.

2. The proposed increase in the PNSC quorum requirements would not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change only imposes more restrictive controls on PNSC activities and does not affect any systems or plant operations that are used to prevent or mitigate accidents.

3. The proposed increase of the PNSC quorum requirements would not involve a significant reduction in a margin of safety because it imposes more restrictive controls upon the PNSC activities. The increase in the minimum number of individuals who must review and approve PNSC actions should have a positive effect upon PNSC activities and should enhance overall plant safety.

Based on the above, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

In addition, the proposed correction in the references to the position of "Vice President-Robinson" which were inadvertently omitted in a previously granted amendment is merely an editorial correction. The no significant hazards determination associated with that amendment was noticed in **Federal Register** on April 22, 1987 (52 FR 1333).

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551 Raleigh, North Carolina 27602 Street, NW., Washington, DC 20037

NRC Project Director: Elinor G. Adensam

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: November 19, 1987

Description of amendment request: The proposed change revises Table 4.2-1, "Minimum Frequencies for Testing, Calibrating and/or Checking Instrument Channels", such that the daily heat balance calibration of the nuclear instruments is not required when the power range channels have been adjusted to maintain a 9 percent margin to the overpower trip setpoint during steady-state reduced power operation.

Basis for proposed no significant hazards consideration determination: The proposed change will delete the requirement to do a daily heat balance calibration of the nuclear instruments when the plant is operated at steady-state reduced power and the power channels have been adjusted to maintain a 9 percent margin to the overpower trip. Additionally, when in this condition the licensee will continue to perform on a daily basis a heat balance to verify that the power is 9 percent or more below the selective overpower trip setpoint.

CYAPCO has reviewed the proposed changes in accordance with 10 CFR 50.92 and has concluded that they do not involve a significant hazards consideration. The licensee's basis for this conclusion is that the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the Safety Analysis Report is not increased since the proposed change would require that the 9 percent margin be verified at the same frequency at which the calibration would have been performed. The net effect of maintaining the 9 percent margin during reduced power operation is the same or more conservative as calibrating the power range channels with respect to the protective function.

2. Create the possibility of a new or different kind of accident from any previously evaluated. The possibility for an accident or malfunction of a different type than any evaluated previously in the Safety Analysis Report is not created since the change and/or failure modes associated with the change do not modify the plant response to the point where it can be considered a new accident.

Since no physical plant changes are planned and since the RPS performance will not be adversely affected, there is no adverse effect on plant response. The proposed change, in fact, is intended to ensure that the plant can adequately mitigate reactivity transients initiated at intermediate power levels.

There are no failure modes associated with the proposed change which could represent a new unanalyzed accident. The proposed change does not adversely impact the probability of any accident.

The only effect of the proposed change is to improve the capability of the RPS to mitigate reactivity transients initiated from intermediate power levels.

3. Involve a significant reduction in a margin of safety. The margin of safety, as defined in the basis for any Technical Specifications is not reduced since the proposed change does not have any adverse impact on the protective boundaries for any design basis accident. Additionally, as discussed earlier, the proposed change doe not adversely affect the RPS overpower trip. Therefore, there is no adverse impact on the RPS and there can be no adverse impact on the consequences of any accident. Therefore, it does not adversely impact the basis of the Technical Specifications.

The staff has reviewed the licensee's determination that the proposed license amendment involves no significant hazards consideration and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06456.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: January 29, 1988

Description of amendment request: The proposed amendment would modify the Fermi-2 Technical Specifications to add isolation valves for the primary containment radiation monitor.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has made a determination that the proposed amendment involves no significant hazards consideration based on the following considerations:

(1) The proposed change to incorporate the four Primary Containment Radiation Monitoring System (PCRMS) automatic isolation valves into Table 3.6.3-1 does not involve a significant increase in the probability or consequences of an accident previously evaluated. This change involves a modification that upgrades the PCRMS isolation design to the standards set forth in 10 CFR 50, Appendix A, General Design Criterion (GDC 56). The modification will, in fact,

decrease the consequences of an accident previously evaluated because the modification provides two redundant and divisional automatic isolation valves on the inlet line and two redundant and divisional automatic isolation valves on the outlet line of the PCRMS. The automatic control logic for each division provides a diverse valve trip/closure signal resulting from high drywell pressure and low reactor water level.

(2) The proposed change to incorporate the four PCRMS automatic isolation valves into Table 3.6.3-1 does not create the possibility of a new or different kind of accident from any accident previously evaluated. As discussed in (1) above, this change is a change that constitutes additional limitations to ensure adequate primary containment isolation that is not presently included in the Technical Specifications. The change does not result in or create any new accident modes.

(3) The proposed change to incorporate the four PCRMS automatic isolation valves into Table 3.6.3-1 does not involve a significant reduction in a margin of safety. In fact, the margin of safety has been increased by the additional limitations to ensure adequate primary containment isolation.

Based on the above, the Commission's staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 49226.

NRC Project Director: Martin J. Virgilio

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: December 2, 1986 and September 25, 1987

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the McGuire Nuclear Station, Units 1 and 2, to reflect recent changes to that regulation. The proposed amendments would modify paragraphs 2.E. of Facility Operating Licenses NPF-9 and NPF-17 to require compliance with the revised plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on December 2, 1986, and September 25, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a signifcant hazards consideration exists by providing certain examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards consideration is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.' The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Kahthan N. Jabbour, Acting Director

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: January 20, 1988

Description of amendment request: The amendment would increase the maximum U-235 enrichment contained in unirradiated fuel stored in the new fuel storage racks from 4.0 to 4.5 weight percent.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis.

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

FPL has identified a fuel assembly drop as a potential accident scenario whose consequences would be affected by the proposed change. For this type of accident, the criticality acceptance criterion is not violated. Based on the above, it is concluded that the proposed amendment will not result in an increase of the probability or consequences of accidents previously evaluated.

In connection with the second standard, the licensee stated:

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The requested change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the plant configuration and the manner in which it is operated remain the same. The proposed change does not constitute any change in the procedures for plant operation or hardware. In addition, FPL has evaluated the proposed technical specification change in accordance with the appropriate Industry Codes and Standards and, based on this evaluation, FPL finds that the proposed technical specification change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

With regard to the third standard, the licensee provided the following rationale:

Use of the modified specification would not involve a significant reduction in a margin of safety.

The proposed change does not involve a significant reduction in a margin of safety. The new fuel storage rack calculated keff of

0.974 (95% confidence level) is lower than the established acceptance criteria of [less than or equal to] 0.98 keff. The 0.929 keff (95% confidence level) calculated for the fuel handling structures is also considerably lower than the established acceptance criteria of [less than or equal to] 0.95 keff. The above calculated neutron multiplication factors include all the necessary biases and uncertainties.

As noted above, the required acceptance criteria ([less than or equal to] 0.98 keff under optimum moderation conditions and [less than or equal to] 0.95 under fully flooded conditions for the new fuel storage racks, and [less than or equal to] 0.95 keff for the fuel handling structures) have been adhered to in the criticality analysis performed in support of this proposed technical specification change. Specifically, the 0.02 keff and 0.05 keff criticality margin of safety required for the new fuel storage area under optimum moderation and fully flooded conditions respectively, and 0.05 keff criticality margin of safety required for the fuel handling structures have been maintained.

Based on the previous discussion, the proposed amendment to increase the allowable fuel U-235 enrichment in the new fuel storage racks and fuel handling equipment will not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff believes that the licensee has met the three standards, since the licensee evaluated the change using the staff's Standard Review Plan and acceptance criteria contained therein.

Based upon the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

General Public Utilities Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station Unit 2 (TMI-2), Dauphin County, Pennsylvania

Date of amendment request: April 23, 1987, revised October 26, 1987, November 9, 1987, and December 4, 1987.

Description of amendment request: On January 13, 1988 a complete description of the amendment request, including the basis for a proposed no significant hazards consideration determination, was published in the **Federal Register** (53 FR 823). The original notice of the amendment request failed to incorporate the licensee's October 26, 1987 revision to their original submittal. The October 26, 1987 revision requested the deletion of Technical Specification 6.8.2.2. The current TMI-2 Technical Specifications require NRC review and approval of all procedures and changes thereto which alter the distribution or processing of a quantity of radioactive material the release of which could cause the magnitude of radiological releases to exceed 10 CFR 50 Appendix I limits. The licensee proposed to delete this requirement and NRC pre-approval of procedures, with one exception, would no longer be required. Section 3.9.13 of the Appendix A Technical Specification would require NRC pre-approval of those procedures relating directly and only to the disposal of the TMI-2 Accident Generated Water.

The NRC staff would continue to review the adequacy of all licensee procedures and the licensee's compliance with regulatory requirements through the routine NRC inspection program. This includes onsite inspection of licensee activities, and periodic technical review and audit of licensee procedures.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

TMI-2 is in a long-term cold shutdown for accident recovery. Short-lived fission products which make up the preponderance of the source term for operating reactors have decayed to negligible levels. The decay heat produced by the core has now dropped to less than 10 kilowatts and forced cooling of the core has not been required or used since 1981. Consequently, in previous license amendments, the staff has determined that the potential accidents analyzed for TMI-2 in the current mode are bounded in scope and severity by the range of accidents originally analyzed in the facility FSAR.

The change proposed by the licensee is a change to the Appendix A Technical Specification. The change consists of deleting the requirement for NRC pre-approval of certain plant procedures. The proposed change does not significantly increase the probability or consequences of an accident previously evaluated because the change does not change any safety systems or setpoints. Furthermore, no changes are proposed to prepare, implement and maintain written procedures for the control of facility activities.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because no new modes of operation or new equipment are being introduced by the proposed change. Additionally, postulated accident consequences are evaluated in NRC staff safety evaluations of proposed licensee activities irrespective of staff involvement in the review and approval of licensee procedures.

The proposed change does not involve a significant reduction in a margin of safety because, as mentioned previously, no active components are required to maintain the current safe shutdown of TMI-2 and the proposed change does not reduce the level of required procedural and administrative controls over plant activities.

Based on the above considerations, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: State Library of Pennsylvania Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: William D. Travers.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: January 28, 1988

Description of amendment request: The proposed change would revise Technical Specifications 3.9.8.1 and 3.9.8.2, Refueling Operations - Shutdown Cooling and Coolant Circulation, to allow a further reduction in shutdown cooling (SDC) flow during Mode 6 to 2000 gpm, 375 hours after reactor shutdown.

The impetus for the proposed change was the Waterford 3 review of Generic Letter 87-12, "Loss of Residual Heat Removal (RHR) while the Reactor Coolant System (RCS) is Partially Filled". The Generic Letter, and previous

industry and NRC publications, noted the effect of SDC flow rate upon the potential for vortexing at the connection of the SDC suction line to the RCS when the RCS is partially drained. In general, as the SDC flow rate increases, the potential for vortexing (and subsequent loss of SDC through air-binding the SDC pump) also increases.

The need to reduce SDC flow to avoid vortexing is balanced by the SDC System design basis to remove decay heat. As noted in the Technical Specification Bases, SDC flow serves two purposes: (1) sufficient cooling capacity is available to remove decay heat and maintain the water in the reactor pressure vessel below 140° F during Mode 6, and (2) sufficient coolant circulation is maintained through the reactor core to minimize the effects of a boron dilution incident and prevent boron stratification.

In response to Generic Letter 87-12, Waterford 3 committed to reduce the potential for vortexing by conducting analyses to determine the minimum acceptable SDC flow rate.

Analyses were performed to determine the SDC flow rates required to remove decay heat during Mode 6, at several different times following reactor shutdown. A heat balance was performed on the SDC System heat exchanger under steady-state RCS and SDC System conditions to determine the heat exchanger power (heat removal rate) at various SDC flow rates. Decay heat curves were then used to identify the times after reactor shutdown when the decay heat rate equaled heat exchanger power for the selected SDC flow rates.

Certain conservatisms were assumed in the analyses. The design value for the overall heat transfer coefficient was reduced for flow rates lower than design. Decay heat curves, which contain a 10% conservatism, were used from NUREG-0800, Branch Technical Position ASB 9-2, Revision 2. Heat losses from the RCS and SDC System piping were neglected.

The licensee's analyses resulted in various flow reductions at specific times after shutdown, including the proposed change of 2000 gpm, 375 hours after shutdown.

The boron dilution analysis for Waterford 3 is described in Section 15.4.1.4 of the FSAR. In reviewing the potential effect of reduced SDC flow on the boron dilution event, the primary concern is that the flow rate be large enough to avoid boron stratification which could lead to reduced times to criticality.

Adequate boron mixing (i.e., no boron stratification) will occur if the flow in the RCS cold leg is turbulent and the fluid loop transit time through the RCS and SDC System is less than the calculated time to criticality for the dilution event. Therefore, calculations were performed to determine the degree of turbulence and loop transit time for a reduced SDC flow rate of 2000 gpm.

For a flow rate of 1000 gpm in each RCS cold leg of the operating SDC train (a total SDC flow rate of 2000 gpm), the Reynolds number value is well into the turbulent flow regime. The fluid loop transit time is less than half of the minimum time to criticality for the most limiting boron dilution event (Mode 5 drained). Therefore, SDC flow rates at 2000 gpm and greater will ensure negligible impact on the boron dilution analyses.

Basis for proposed no significant hazards consideration determination: The NRC staff proposes that the proposed changes do not involve a significant hazards consideration because, as required by the criteria of 10 CFR 50.92(c), operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in the margin of safety. The basis for this proposed finding is given below.

(1) The purpose of the proposed change is to reduce the potential for an inadvertent loss of SDC due to vortexing during Mode 6 operation. The reduction in SDC flow rate has been shown to have no adverse effect on RCS mixing while maintaining sufficient flow to remove core decay heat. Therefore, the proposed change will not increase the probability or consequence of any accident previously evaluated.

(2) The proposed change affects only the SDC flow rate during Mode 6. No new equipment, connections, modes of operation, etc., have been introduced through the change. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) In the context of the proposed change, margin of safety is defined by the SDC System design bases - i.e., to ensure sufficient cooling capacity to remove decay heat and prevent boron stratification. Analyses have demonstrated that the proposed reduction in SDC flow preserves the design bases. The margin of safety to a loss of SDC flow event is increased due to lowering the potential for vortexing. Therefore, the proposed change will not involve a reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration analysis. Based on the review and above discussions the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: January 21, 1988

Description of amendment request: The licensee provided, in part, the following description of the change to the Technical Specifications:

The proposed Technical Specification amendment revises Table 3.2.7 regarding Reactor Coolant System Isolation Valves. The proposed revision deletes the Main Steam Warmup Valves from the Table. This change is consistent with plans to remove these valves and associated piping during the 1988 refueling and maintenance outage.

The Main Steam Warmup Valves were originally designed to equalize temperature and pressure around the outboard Main Steam Isolation Valves during startup. After pressures and temperatures were equal, the outboard Main Steam Isolation Valves could be opened without causing a pressure transient downstream. Nine Mile Point Unit 1 performs startups with all four Main Steam Isolation Valves open. This procedure warms up the steam lines as the reactor heats up. Thus, the warmup valves are not required.

The warmup valves were also designed to equalize pressure and temperature when bringing the reactor from the hot standby condition (reactor critical, pressure less than 600 psig and Main Steam Isolation Valves closed) to full power. At Nine Mile Point Unit 1, this operation is performed by fully opening the outboard air-operated isolation valves and partially opening the inboard electrically-operated isolation valves. When the pressures and temperatures are equal, the inboard valves are fully opened.

Basis for proposed no significant hazards consideration determination:

The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided, in part, the following analysis:

1. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequence of an accident previously evaluated. The proposed change does not affect the probability or consequences of an accident previously evaluated. The warmup valves are not used during plant operation and have no role in accident mitigation.

2. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change does not affect the operation of any safety system. The Main Steam Isolation Valves will still close when required. There are no analyzed accidents that require the Main Steam Isolation Valves to be reopened. However, the Main Steam Isolation Valves could still be reopened to provide an alternate means of heat removal if necessary.

3. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in the margin of safety. The proposed change eliminates two potential containment leakage paths. Release limits are not increased by this change and plant safety systems are not affected. Consequently, there will be no reduction in the margin of safety.

Based on the above, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra, Director

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: December 23, 1987

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) Table 3.9-1, "Access Doors to Spent Fuel Pool Area," to reflect the installation of a new access door to the spent fuel pool area at Millstone Unit 2.

Basis for proposed no significant hazards consideration determination: Table 3.9-1 of the TS contains a list of access doors to the spent fuel pool area which are subject to the Limiting Conditions for Operation (LCO) and Surveillance Requirements (SR) of TS 3/4.9.14, "Storage Pool Area Ventilation System - Fuel Movement." The licensee proposes to amend the list of doors in TS Table 3.9-1 by adding Door 274 which is a single door located in the area below the mezzanine in the auxiliary building.

Door 274 was installed in a manner which maintains the structural integrity of the auxiliary building walls. In addition, Door 274 is of the same design, including provisions for fire protection, as doors already incorporated in TS Table 3.9-1.

The proposed change to TS Table 3.9-l does not involve a significant increase in the probability or consequences of an accident previously analyzed. During fuel movement, or movement of loads over the spent fuel pool, TS 3.9.14 requires the access doors in TS Table 3.9-l to be closed and the Enclosure Building Filtration System, operating in the auxiliary exhaust mode, to be in operation. Thus, in the event of a fuel or heavy load accident in the spent fuel pool, any air leakage due to Door 274 would be into the spent fuel pool area thus preventing an unfiltered release. The proposed change to the TS does not create the possibility of a new or different kind of accident from any accident previously evaluated in that no new or different plant operating modes are involved. Finally, the proposed change to the TS does not involve any reduction in safety margins. Door 274 was designed and installed so as to retain the original structural design margins for the auxiliary building.

Based upon the above, the Commission proposes to determine that the proposed change to TS Table 3.9-1, which would add Door 274 to the LCO and SR of TS 3/4.9.14, involves no significant hazards consideration.

Local Public Document Room Location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: February 3, 1988

Description of amendment request: By application for license amendment dated February 3, 1988, Northeast Nuclear Energy Company et al. (the licensee), requested changes to the Technical Specifications (TS) for Millstone Unit 2. The proposed change to the TS would delete TS 3/4.3.3.6, "Chlorine Detection System". The associated TS Basis would also be deleted.

Basis for proposed no significant hazards consideration determination: Millstone Unit 2 TS 3/4.3.3.6 contains Limiting Conditions for Operation (LCOs) and Surveillance Requirements (SR) for the control room chlorine detection system. Section 9.9.10.2 of the Millstone Unit 2 Final Safety Analysis (FSAR) indicates that redundant chlorine monitors in the fresh air intakes will isolate the control room ventilation system within 8 seconds when a chlorine concentration in excess of 10.0ppm is detected. In addition to the isolation function, the chlorine monitors provide an alarm in the control room in the event that a chlorine concentration in excess of 5ppm is detected. The application dated February 3, 1988 requests deletion of TS 3/4.3.3.6 since all on-site and off-site sources of chlorine, that could be a hazard to control room personnel, have been eliminated.

With regard to onsite sources of chlorine, the licensee had utilized gaseous chlorine for biofouling control at Millstone Units 1, 2, and 3. The onsite chlorine supply, which had been stored in liquid form, has been eliminated and replaced by an anti-biofouling system which uses industrial strength sodium hypochloride. Sodium hypochloride is a stable material which does not readily release gaseous chlorine. The licensee has evaluated both off-site industrial users of chlorine and near-site chlorine shipment patterns and concludes that no potentially hazardous conditions exist as defined by Regulatory Guide 1.78, "Assumptions for Evaluating the Habitability of a Nuclear Power Plant Control Room During a Postulated Hazardous Chemical Release."

Based upon the above, we conclude that the proposed change to the TS does not involve a significant increase in the probability or consequences of an accident previously evaluated. The lack of a chlorine detection capability is independent of the probability of a potential accident which may release chlorine. Moreover, the lack of significant on-site or off-site chlorine sources indicates that the potential consequences of accidents involving the release of chlorine would not be significant. The proposed change to the TS would not create the possibility of a new or different type of accident from any previously evaluated. The chlorine monitors only function to detect chlorine and thus their removal or inoperability cannot effect any other type of accident. Finally, the proposed change to the TS does not involve a significant reduction in a margin of safety. The chlorine monitors have no post-accident mitigating feature considering the lack of significant chlorine sources on, or in the vacinity of, the Millstone site.

Based upon the above, the Commission proposes to determine that the proposed change to the TS, which would delete TS 3/4.3.3.6 and the associated Bases, involves no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

NRC Project Director: John F. Stolz

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: November 21, 1986 as supplemented September 24, 1987

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensees submitted an amendment to the Physical Security Plan for the Susquehanna Steam Electric Station, Units 1 and 2 to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.D of Facility Operating Licenses Nos. NPF-14 and NPF-22 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on November 21, 1986 as supplemented September 24, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Walter R. Butler

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: November 13, 1987

Description of amendment request: The proposed amendment would revise Trojan Technical Specification (TS) Section 3/4.10.1, "Special Test Exception Shutdown Margin" by extending the surveillance time period for verifying control rod insertability during control rod worth and shutdown margin tests.

Technical Specification 3.10.1 presently allows the shutdown margin to be reduced to less than the normal operating shutdown margin requirement during low power physics testing provided that certain conditions are satisfied. One of these conditions (Surveillance Requirement 4.10.1.2) stipulates that all control rods not fully inserted in the core be shown to be capable of full insertion when tripped within 24 hours prior to reducing the shutdown margin to less than normal operating requirements. The requested revision would allow this surveillance to be performed within 7 days of the shutdown margin reduction instead of within 24 hours as presently required.

Implementation of this change would permit the hot condition rod drop time measurements that precede the reload physics testing program to satisfy the requirements of TS 4.10.1.2. Also, the personnel safety hazard associated with pulling the rod movable gripper power fuses will be eliminated.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined that the amendment:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The previously analyzed accidents which could be affected by this proposed change are those which involve overcooling of the Reactor Coolant System (RCS). Because of the negative moderator temperature coefficient, RCS cooldown results in an increase in core reactivity. Thus, a post-trip return to power could be experienced during events involving overcooling of the RCS if insufficient negative reactivity is inserted by the control rods. As stated in the Bases for Specification 3/4.1.1.1:

SHUTDOWN MARGIN requirements vary throughout core life. . . The most restrictive condition. . . is associated with (a) postulated

steam line break accident and resulting uncontrolled RCS cool-down. . . Accordingly, the SHUTDOWN MARGIN requirement is based upon this limiting condition and is consistent with FSAR accident analysis assumptions.

Section 15.1.5.2 in the Trojan Updated Final Safety Analysis Report (UFSAR) analyzes the rupture of the main steam line with subsequent control rod failure.

Since measurement of control rod worth inherently requires that shutdown margin be reduced, Surveillance Requirement 4.10.1.2 provides added assurance that an adequate amount of negative reactivity is available for insertion should a reactor trip occur. Extending the surveillance time period for verifying control rod insertion capability could increase the probability of a control rod failure (ie., stuck control rod cluster). However, the impact on the probability of the previously analyzed accidents due to the increase in probability of a stuck control rod cluster is considered insignificant based upon the fact that the configuration of the components which are used in control rod cluster insertion will not change over the 7-day period. The components considered include the fuel assembly (including foreign material buildup in the gap between the absorber rods and the guide plates within the guide tube assembly of the guide thimbles within the core region), the drive rod assembly, and the control rod drive mechanism. Also, since the control rod clusters will insert by gravity upon loss of power, the probability of a stuck control rod cluster is not increased due to an electrical malfunction, if one were to occur during rod worth testing.

Since the system design and installation, operating modes or safety system setpoints have not been changed, the consequences of any previously unanalyzed accident will not be increased.

2. Would not create the possibility of a new or different kind of accident from any previously evaluated.

This proposed change does not create the possibility of a new or different kind of accident occurring, since the UFSAR already assumes a hypothetical overcooling event combined with a stuck control rod cluster and since the proposed change does not result in any change to the facility.

3. Would not involve a significant reduction in the margin of safety.

A significant reduction in the margin of safety will not result from the proposed change, since the affected TS 3/4.10.1 provides that a minimum amount of control rod worth is immediately available when tests are performed for rod worth measurement.

The staff has reviewed the licensee's no significant hazards analysis and concurs with their conclusions. Therefore, the staff proposes to determine that the requested change does not involve a significant hazards consideration.

Local Public Document Room location: Portland State University Library, 731 S. W. Harrison St., Portland Oregon 97207

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S. W. Salmon Street, Portland, Oregon 97204

NRC Project Director: George W. Knighton

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: November 20, 1987

Description of amendment request: The proposed amendment would permit the use of fuel assemblies which incorporate certain features of the Westinghouse Vantage 5 Fuel. These fuel assemblies would incorporate reconstitutable fuel assembly top nozzles and axial fuel blankets. The use of extended fuel burnup to approximately 60,000 MWd/MTU and higher nuclear peaking factors would also be permitted.

The Overpower and Overtemperature delta-T reactor trip setpoints would be revised accordingly to accommodate the new core limits in order to retain the original safety margins. The applicable Technical Specifications and their Bases would also be revised to reflect these proposed changes.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

1. The proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes to the nuclear fuel design, ie., the removable fuel assembly top nozzle and the axial fuel blanket, are not involved in accident initiation and have been analyzed and determined to have no adverse affect on the consequences of an accident. The changes to power peaking limits also have no effect on accident initiation. They could, however, have some effect on the consequences of an accident. The possible accident consequence changes have been evaluated by reanalyzing the Loss-of-Coolant Accident (LOCA) and the Departure from Nucleate Boiling Ratio (DNBR) margin. The results of these analyses demonstrate that the existing limits remain applicable, and there are no significant changes in the accident consequences due to the changes in the power peaking factor limits.

Changes to reactor trip setpoints for Overtemperature and Overpower delta-T were made to retain the DNBR protection provided by these trips and thus do not increase the probability or consequences of an accident.

Additional changes concern the fuel design description to allow substitution of non-fuel rods or vacancies in fuel assemblies to facilitate fuel assembly reconstitution. The details of such substitutions will be evaluated as part of the reload safety evaluation when specific changes are proposed.

2. The proposed changes would not create the possibility of a new or different kind of accident from any previously evaluated.

The changes do not affect components, systems or structures that have the capability of causing accidents. The power peaking factor changes affect normal operating limits that are routinely evaluated for reload cores. New or different accident situations are not created by small changes in these limits.

Any consequence of the misloading of Vantage 5 fuel assemblies through the interchanging of enriched fuel and natural uranium blanket fuel pellets are bounded by the analysis described in the Updated Final Safety Analysis Report (UFSAR) Section 15.4.7, "Inadvertent Loading and Operation of a Fuel Assembly in an Improper Position."

3. The proposed changes would not involve a significant reduction in a margin of safety.

The DNBR accident analysis safety limits have been changed to account for the higher power peaking factors. These safety limits continue to meet the required design limits (with margin). The changes to the Overpower and Overtemperature delta-T setpoints to accommodate the new core limits utilize the previously used methodology and retain the margin originally included. The LOCA analysis demonstrates that

the Emergency Core Cooling System (ECCS) acceptance criteria of 10 CFR 50.46 continue to be met.

The staff has reviewed the licensee's no significant hazards analysis and concurs with their conclusions. As such, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Portland State University Library, 731 S. W. Harrison St., Portland, Oregon 97207

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S. W. Salmon Street, Portland, Oregon 97204

NRC Project Director: George W. Knighton

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: December 18, 1987

Description of amendment request: The proposed amendment would revise Table 4.3-1 to Technical Specification (TS) Section 3/4.3.1, Reactor Trip System Instrumentation, by specifying that the surveillance testing of source range neutron instrumentation would be accomplished by obtaining source range detector bias curves rather than detector high-voltage plateau curves. This proposed change would make the TS consistent with the manufacturer's recommendation for determining degradation of the low-noise source range preamplifier.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety.

The licensee has provided the following evaluation of the proposed amendment against the standards of 10 CFR 50.92:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident?

The functions of the source range instrumentation are not being changed or degraded as a result of this change. This change is administrative in that it involves incorporating the vendor recommendations for obtaining data which is used to determine if source range detector degradation is occurring. Therefore, this change does not involve an increase in the probability or consequences of an accident.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The source-range instrumentation monitors neutron flux during shutdown and low-power operations and provides high-neutron flux trip input to the Reactor Protection System. No changes are proposed to the operational characteristics of the source range instrumentation nor in the manner in which the system operates. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

There are no changes being made to the source range instruments or in the manner in which the system is operated. The automatic actions, response times, setpoints and alarms of the source range neutron instrumentation are not affected by this change. Therefore, the proposed amendment does not involve a reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards analysis and concurs with their conclusions. As such, the staff proposes to determine that the requested change does not involve a significant hazards consideration.

Local Public Document Room location: Portland State University Library, 731 S. W. Harrison St., Portland, Oregon 97207

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S. W. Salmon Street, Portland, Oregon 97204

NRC Project Director: George W. Knighton

Rochester Gas and Electric Corporation, Docket No. 50-244 R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: November 21, 1986 and August 18, 1987

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensee submitted an amendment to the Physical Security Plan for the R. E. Ginna Nuclear Power Plant to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.E of Facility Operating License No. DPR-18 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on November 21, 1986 and August 18, 1987, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations and examples of actions involving significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards consideration is example (vii) "a change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Harry Voigt, Le Boeuf, Lamb, Leiby and McRae, Suite 1100, 1133 New Hampshire Avenue, NW., Washington, DC 20036.

NRC Project Director: Richard H. Wessman

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: March 31, 1987, as supplemented by submittal dated December 21, 1987

Description of amendment request: On March 31, 1987, an amendment was proposed to remove all fire protection requirements from the Technical Specifications (TS). In addition, it was proposed that TS 6.5.1.6, "Plant Safety Review Committee (PSRC) Responsibilities," be revised to include the fire protection program and its revisions. Finally, a requirement was to be added to license condition 2.C(18) that would allow the licensee to make changes to the fire protection program only if the changes did not adversely affect the capability of the plant to achieve and maintain safe shutdown in the event of a fire. These changes were proposed as a result of the issuance of NRC Generic Letter 86-10, "Implementation of Fire Protection Requirements," and were noticed in the **Federal Register** on July 29, 1987 (52 FR 28388).

On November 9, 1987, the staff provided comments on license condition 2.C(18) and on December 21, 1987, the licensee modified their proposed wording of the license condition.

The wording was modified to state that the fire protection program in effect is that described in the Summer Final Safety Analysis Report, approved in the NRC staff SER (NUREG-0717) and its Supplements and that approved in various NRC safety evaluations.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has determined that the requested amendment: (1) would not involve a significant increase in the probability or consequences of an accident previously evaluated because no changes to the fire protection program are being made, and (2) would not create the possibility of a new or different kind of accident from any accident previously evaluated because no physical plant changes are made by this amendment. Also, the amendment (3) would not involve a significant reduction in the margin of safety because any change to the fire protection program will still be subject to a controlled review process.

Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

South Carolina Electric and Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of amendment request: December 22, 1987

Description of amendment request: The purpose of Technical Specifications Section 3/4/.7.11, "Area Temperature Monitoring" is to ensure that safety-related equipment is maintained in an environment which will not degrade the equipment and result in a loss of its operability. Two relevant pieces of equipment, the service water pump motors and the traveling screen drive motors, pertain to Item 25, "Service Water Pump/Screen Room", in Table 3.7-7 of Section 3/4.7.11. Qualification programs for both of these pieces of equipment support the proposed temperature increase. The original Technical Specification value was a conservative figure based on the most limiting equipment which was located in the Service Water Switchgear Rooms (Items 26-28) and is limited to 102° F. However, increasing the allowable temperature limit for the pump room would not affect the limits in other rooms.

According to qualification test reports for the service water pump motors, these motors have a measured temperature rise above ambient of 37.2° C. The motors are rated at 115° C above ambient. Assuming original ambient conditions of 40° C, the total temperature allowable for the motor is 155° C (115° C + 40° C). Therefore, the motor has an approximate 77° C margin in the ambient rise motor temperature (115° C - 37.2° C = 77° C). Increasing the allowable ambient temperature limit to approximately 48° C (=118° F) from 40° C (104° F) has negligible impact on the service life of the motors. This assumption was verified by SCE&G by extrapolating the service life versus temperature curve found in the qualification report for the pump motors and reading that the service life is significantly greater than 40 years even at a temperature of 50° C.

The traveling screen drive motors are also located in the Service Water Pump Room. Qualification programs reports indicate the maximum temperature for these motors is 130° C. Qualification programs were based on area ambient temperatures from -29° to 49° C (-20° F to 120° F) to support the maximum qualification number. Increasing the Technical Specification limit to 49° C (118° F) continues to support the qualification reports and also allows for instrument inaccuracies.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed temperature increase does not significantly decrease the margin of service life of the motors. The service life of the motors will still exceed the licensed 40 years of plant life and therefore accident evaluations will not be affected by the proposed change.

2. The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the service life of the motors will still exceed 40 years, and the equipment will continue to be available for the licensed life of the plant.

3. The proposed amendment does not involve a significant reduction in a margin of safety. The proposed allowable temperature increase may slightly decrease the overall service lives of the motors in the area; however, the motors will continue to remain environmentally qualified for at least 40 years. Therefore, no margins of safety are reduced.

Based on the above reasoning the licensee has determined that the proposed changes involve no significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

Accordingly, the Commission proposes to determine that these changes do not involve significant hazards considerations.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric and Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: September 17, 1987

Description of amendment request: The proposed amendment responds to guidance provided in the staff's Generic Letter 87-09 dated June 4, 1987. Specifically, the proposed amendment would modify the general limiting conditions for operation (LCO) to allow entry into an operational condition under certain circumstances when compliance with the LCO's related Action Statements would allow continued operation for an unlimited period of time. The general surveillance requirements would also be modified to clarify the time at which Action Statement time limits begin relative to failure to perform a surveillance requirement and to allow for a delay of the Action Statement requirements for up to 24 hours to complete the surveillance if the allowable time is less than 24 hours. It would also clarify that restrictions on entry into Operational Conditions based on failure to comply with surveillance requirements shall not prevent passage into or through Operational Conditions as required by Action Statements. The related bases have also been changed to reflect the proposed changes to the Technical Specifications (TS).

In addition, the amendment deletes numerous TS statements which presently take exception to the provisions of Technical Specification 3.0.4.

Basis for proposed no significant hazards consideration determination: On June 4, 1987, the staff issued Generic Letter 87-09, Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the applicability of limiting conditions for operation and surveillance requirements. That letter contained guidance for improvement of Sections 3.0 and 4.0 of the STS consistent with the recommendations of NUREG-1024, "Technical Specifications - Enhancing the Safety Impact," and the Commission's Policy Statement on Technical Specification Improvements. The licensees' submittal conforms to the staff's guidance.

The licensee has provided an analysis as to whether the proposed amendments involve a significant hazards consideration. The licensee's analysis is summarized as follows:

The standards used to arrive at a determination that a request for amendment requires no significant hazards consideration are included in the Commission's Regulations, 10 CFR 50.92, which state that the operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The changes being proposed are administrative in nature and are being made to correct inconsistencies in the present wording of the general Sections 3.0 and 4.0 of the Technical Specifications. As such, the proposed changes do not affect any evaluated accident.

The proposed changes do not create the possibility of a new or different kind of accident. As stated above, the proposed changes are administrative changes which do not create the possibility of any new accident.

The proposed changes do not involve a significant reduction in the margin of safety. The changes to Section 3.0.4 allow startups under conditions whereby conformance to the Action Requirements establishes an acceptable level of safety for unlimited continued operation of the facility, while delaying a return to power operation when the facility is required to be shut down as a consequence of an Action Requirement. The change to Section 4.0.3 allows appropriate time for performing a missed surveillance before shutdown requirements apply to permit the performance of the missed surveillances based on consideration of plant conditions, adequate planning, availability of personnel, and the time to perform the surveillance. The NRC staff stated in the Generic Letter that it is overly conservative to assume that systems or components are inoperable when a surveillance has not been performed.

Therefore, allowing sufficient time to perform the surveillance does not significantly reduce the margins of safety. The final change to Section 4.0.4 is a clarification to permit passage through or to operational modes as required to comply with Action Requirements even though a surveillance requirement has not been performed. To not permit this would increase the potential for plant upsets, and would challenge safety systems. The revision would also permit mode changes when a surveillance requirement has not been met, and can only be completed after entering into a mode or specific condition. This condition does not significantly reduce the margin of safety, but in fact potentially increases the margin of safety, by permitting entry into lower modes of operation more quickly. Thus, there is not a significant reduction in the margin of safety.

The staff has reviewed the licensees' submittal and their significant hazards analysis and has determined that the proposed Technical Specifications conform to the staff guidance contained in Generic Letter 87-09. Further, the staff concurs with the licensees' determination as to whether the proposed amendment involves a significant hazards consideration.

Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Kenneth E. Perkins.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: January 19, 1988.

Description of amendments request: The proposed amendments to the Technical Specifications (TS) consist of administrative changes to numerous TS. Each of the administrative changes was briefly discussed in the licensee's application.

Change 1 would revise the description of the subcooling monitor instrumentation in the Basis of TS 15.3.5 to provide a more complete and

accurate description of the various methods available to assess subcooling margin. The methodology of calculating subcooling margin is not changed by the proposed amendments.

Change 2 would revise the wording of TS Table 15.3.5-1, Item 5, Setting Limit to be consistent with the wording contained in Item 6 of the same table. The setting limit itself is not changed by the proposed amendments.

Changes 3 through 5 and Change 10 would correct the spelling of certain words.

Change 6 would delete the reference to "Appendix A" of 10 CFR Part 55 in TS 15.6.4.1 reflecting the recent reorganization and reissuance of Part 55 (52 FR 9453), in which "Appendix A" was removed.

Change 7 would change the numeric designation of TS 15.6.5.3, 15.6.5.4, and 15.6.5.5 to establish sequential numbering of TS Section 15.6.5.

Change 8 would replace the word "audit" with "review" in TS 15.6.5.5. This is to attain consistency with the wording of 10 CFR 50.54(t).

Change 9 would revise Reference 2 to TS 15.7.5 to read "FSAR, Section 2" to reflect the deletion of Appendix 2A from the FSAR.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the criteria by providing examples of actions not likely to involve significant hazards considerations (51 FR 7751). One of these examples, (i), of actions not likely to involve significant hazards considerations is an administrative change to technical specifications. The proposed amendments match the Commission's example and on this basis, a proposed determination of no significant hazards consideration is made.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Kenneth E. Perkins.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: January 13, 1988

Brief Description of amendment request: The proposed amendment would revise the Technical Specifications to incorporate a temporary change to relax the required number of incore detector thimbles from 75% to 50% for the remainder of Cycle 1.

Date of publication of individual notice in **Federal Register:** January 25, 1988 (53 FR 1968)

Expiration date of individual notice: February 24, 1988

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: January 20, 1988

Brief description of amendment: The amendment would permit an extension of the due date for surveillance testing to demonstrate the operability of the required independent circuits between the offsite transmission network and the onsite Class 1E distribution system by automatically and manually transferring the unit power supply to each of the 345 KV transmission lines.

Date of publication of individual notice in **Federal Register:** January 27, 1988 (53 FR 2303).

Expiration date of individual notice: February 26, 1987.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC,

and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Commonwealth Edison Company, Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: December 3, 1987

Brief description of amendments: These amendments approve changes to the Technical Specifications that modify the D.C. system to address operation of the D.C. crosstie between units for the following two situations:

(1) With both units operating and one battery charger fails, the D.C. crosstie may be used for up to 24 hours to maintain the D.C. bus in an operable status while the battery charger is being repaired.

(2) With one unit operating and the other unit shutdown with a battery and its associated battery charger out of service, the D.C. crosstie may be used for up to 7 days to maintain the D.C. bus in an operable status.

Date of issuance: January 27, 1988

Effective date: January 27, 1988

Amendment Nos.: 5

Facility Operating License Nos. NPF-72 and NPF-75. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 2, 1987 (52 FR 45890). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 27, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, La Salle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: September 4, 1987, and December 4, 1987

Brief description of amendments: The amendments revise the LaSalle County Station, Units 1 and 2 Operating Licenses to permit the use of the remaining channels of the Traversing Incore Probe system when one or more channels are inoperable.

Date of issuance: February 10, 1988

Effective date: Forty-five days following date of issuance.

Amendment Nos. 53 and 35

Facility Operating License Nos. NPF-11 and NPF-18. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 8, 1987 (52 FR 46542). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 10, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois, Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

Commonwealth Edison Company, Docket Nos. STN 50-254 and STN 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: October 6, 1987 as supplemented by November 24, 1987

Brief description of amendments: TS 3.5.G was revised to allow using passive head of the Contaminated Condensate Storage Tanks to maintain the discharge lines of High Pressure Core Injection and Reactor Core Isolation Cooling Systems filled rather than relying on an active fill system pump.

Date of issuance: February 3, 1988

Effective date: February 3, 1988

Amendment Nos. 100 and 104

Facility Operating License Nos. DPR-29 and DPR-30. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 21, 1987 (52 FR 39297). Re-noticed on December 16, 1987 (52 FR 47781). The Commissions's related evaluation of the amendments is contained in a Safety Evaluation dated February 3, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Commonwealth Edison Company, Docket No. 50-295, Zion Nuclear Power Station, Unit No. 1, Lake County, Illinois

Date of application for amendment: September 22, 1987, amended by letter dated October 27, 1987.

Brief description of amendment: This amendment involves the one-time alteration of the allowable snubber inspection periods. Unit 1's inspection will be delayed by approximately 30 days. This alteration will prevent a forced shutdown of Zion Unit 1.

Date of issuance: February 5, 1988

Effective date: February 5, 1988

Amendment No.: 108

Facility Operating License No. DPR-39. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1987 (52 FR 49222). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 5, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: September 8, 1987

Brief description of amendments: The amendments modified the Technical Specification 5.3.1 "Fuel Assemblies" by increasing the maximum allowable fuel enrichment to 4.0 weight per cent (w/o) U-235 from the previous value of 3.5 w/o U-235.

Date of issuance: January 19, 1988

Effective date: January 19, 1988

Amendment Nos.: 38 and 30

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 16, 1987 (52 FR 47783) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 19, 1988

No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: February 24, 1987

Brief description of amendment: This amendment provided Technical Specifications for the chlorine detection system. The chlorine detection system provides protection for control room operators against the effects of accidental release of chlorine.

Date of Issuance: January 14, 1988

Effective date: January 14, 1988

Amendment No.: 136

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 22, 1987 (52 FR 13338) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 14, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania, 17126

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket No. 50-498, South Texas Project, Unit 1, Matagorda County, Texas

Date of amendment request: November 12, 1987 as supplemented December 9, 1987.

Brief description of amendment: The amendment changed the Appendix A Technical Specifications by increasing the allowable response times for overtemperature delta-T and overpower delta-T instrumentation from 6.5 seconds to 8.0 seconds.

Date of issuance: February 8, 1988

Effective date: February 8, 1988

Amendment No.: 1

Facility Operating License No. NPF-71. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 21, 1987 (52 FR 48350) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 8, 1988.

No significant hazards consideration comments received: No.

Local Public Document Rooms location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 28, 1987.

Brief description of amendment: The amendment revised the Technical Specifications by adding operability and surveillance requirements for newly-installed fire suppression equipment for the charcoal adsorber system.

Date of issuance: February 9, 1988.

Effective date: February 9, 1988.

Amendment No.: 28

Facility Operating License No. NPF-71. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 7, 1987 (52 FR 37547). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 28, 1987.

Brief description of amendment: The amendment revised the Technical Specifications by adding Limiting Conditions for Operation for as-built primary and backup overcurrent protection devices used to protect the polar crane's containment electrical penetration.

Date of issuance: February 9, 1988

Effective date: February 9, 1988

Amendment No.: 29

Facility Operating License No. NPF-71. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 18, 1987 (52 FR 44245). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: July 30, 1987.

Brief Description of amendment: This amendment modifies the Maine Yankee Technical Specifications to reflect revised LOCA Monitoring Limits which could be used when the Incore Monitoring System is inoperable.

Date of issuance: February 9, 1988

Effective date: 60 days from date of issuance

Amendment No.: 102

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 26, 1987 (52 FR 33203). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: October 8, 1986, as supplemented December 13, 1986 and April 1, October 8, October 26 and November 13, 1987.

Brief description of amendment: The amendment changed the Technical Specifications by adding criteria to reflect the addition of two diesel generators and the associated modifications to the emergency electrical distribution system.

Date of issuance: February 9, 1988

Effective date: February 9, 1988

Amendment No.: 94

Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 22, 1987 (52 FR 13348) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: May 15, 1987 (TS 230)

Brief description of amendments: The amendments make two changes to the Technical Specification (TS). The first change involves deleting the option in the TS to perform a reduced pressure test method for the integrated leak rate test. The second change involves a correction of the acceptable leak rate limit of the drywell atmosphere to the suppression chamber with a one psi differential pressure.

Date of issuance: February 3, 1988

Effective date: February 3, 1988, and shall be implemented within 60 days

Amendments Nos.: 141, 137, 112

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1987 (52 FR 49231) The Commission's related

evaluation of the amendments is contained in a Safety Evaluation dated February 3, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: July 2, 1987 (TS 87-26)

Brief description of amendments: The amendments modify Technical Specification Section 3/4.7.11, Fire Suppression Systems, to reflect changes in the minimum flow and pressure requirements for the High Pressure Fire Protection System.

Date of issuance: January 25, 1988

Effective date: January 25, 1988

Amendment Nos.: 66, 58

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 4, 1987 (52 FR 42370) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 25, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: September 10, 1987.

Brief description of amendment: The amendment deleted Item 1.a from Table 4.3-3 of the Technical Specifications that was inadvertently omitted in the licensee's December 30, 1986 amendment request and it revised Section 4.11.2.5 of the Technical Specifications to correct an administrative oversight that referenced the wrong specification for Table 3.1-13.

Date of issuance: January 27, 1988

Effective date: January 27, 1988

Amendment No.: 31

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 2, 1987 (52 FR 45889) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: October 13, 1987.

Brief description of amendments: The amendments deleted Technical Specification 15.5.3.A.8, which specifies a limiting quantity of fissionable material in the form of fabricated neutron flux detectors. In the application, the licensee stated that the failure to delete this specification with the issuance of Amendment 15 to DPR-24 and Amendment 20 to DPR-27 was an oversight.

Date of Issuance: February 3, 1988

Effective date: February 3, 1988

Amendment Nos.: 111 and 114

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 30, 1987 (52 FR 49235) The Commissions's related evaluation of the amendments is contained in a Safety Evaluation dated February 3, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these

amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By March 25, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-White Flint, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: January 19, 1988

Brief description of amendment: This amendment deletes the secondary water chemistry limits and surveillance requirements from the Technical Specifications for the plant and replaces them with program requirements for secondary water chemistry in the administrative section of the Technical Specifications, Section 6.

Date of issuance: February 1, 1988

Effective date: February 1, 1988

Amendment No.: 110

Provisional Operating License No. DPR-20. The amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes, in the **St. Joseph Herald Paladium**, St. Joseph, Michigan.

Comments received: No.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final finding of no significant hazards consideration are contained in a Safety Evaluation dated February 1, 1988.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

NRC Project Director: Martin J. Virgilio.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station Unit No. 3, Town of Waterford, Connecticut

Date of application for amendment: November 19, 1987 as supplemented November 24, December 11 and 24, 1987.

Brief description of amendment: The amendment revised the Technical Specification Section 4.8.4.1.a.2 to permit surveillance testing of the instantaneous trip elements of molded case circuit breakers and unitized starters at -25% to +40% of the instantaneous trip current range.

Date of issuance: January 20, 1988

Effective date: January 20, 1988

Amendment No.: 13

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes, published in the **Federal Register** on December 30, 1987 (52 FR 49229).

Comments Received: No

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated January 20, 1988

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

NRC Project Director: John F. Stolz

Dated at Rockville, Maryland, this 18th day of February, 1988.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director

Division of Reactor Projects-I/II

Office of Nuclear Reactor Regulation

[Doc. 88-3762 Filed 2-23-88; 8:45 am]

BILLING CODE 7590-01-D

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Generalized System of Preferences (GSP) Subcommittee Notice of Withdrawal of Petition Under the 1987 Annual Review

This publication serves notice that Kenner Parker Toys, Inc. and Mattel, Inc. have withdrawn their petition (Case numbers 87-58 through 87-68 and 87-HS-65 through 87-HS-68) concerning TSUS items 735.09, 735.10, 735.11, 735.12, 737.07, 737.14, 737.16, 737.80, 737.93, 737.96, and 737.98 and proposed Harmonized System subheadings 9503.90.40, 9506.62.80, 9506.69.40, 9506.69.60. These cases were under consideration in the 1987 Annual Review of the GSP. The Trade Policy Staff Committee (TPSC) had formally initiated the review of these cases in a notice of August 4, 1987 (52 FR 28896). The GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461-2465).

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 88-3920 Filed 2-23-88; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25358; File No. SR-Amex-88-4]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Submission of "blue sheet information"

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 19, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange is proposing to require its members and member organizations to submit in automated form the customer and proprietary trading data that it routinely requests in connection with its market surveillance inquiries in an automated format.[1]

The text of the proposed rule change is available at the Office of the Secretary, American Stock Exchange, Inc. and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange is proposing to require its members and member organizations to submit the customer and proprietary trading data that it routinely requests in connection with its market surveillance inquiries (commonly referred to as "blue sheet information" [2])in the universal automated format developed by the Intermarket Surveillance Group and the Securities Industry Association at the request of the Securities and Exchange Commission ("SEC"). The Exchange anticipates that implementation of the automated "blue sheet" format will significantly enhance its regulatory and surveillance capabilities.

The Exchange's review of "blue sheet information" is currently complicated by two factors. First, member organizations often do not submit the information on a timely basis, thus delaying the Exchange's investigation. Second, in the usual course of an investigation, a market surveillance analyst manually reviews trading runs submitted by several different firms, each of which may follow a different format and contain somewhat different information. Such a review is time consuming and difficult, particularly where a large number of transactions, firms and accounts are involved in the suspect trading.

The automated format will enable market surveillance analysts to evaluate

[1] The New York Stock Exchange, Inc. ("NYSE") has submitted a similar proposed rule change (File No. SR-NYSE-87-23). Notice of the proposed rule change was published in the **Federal Register.** *See* Securities Exchange Act Release No. 24852, August 25, 1987, 52 FR 33309.

[2] The term "blue sheet information" is derived from the blue SEC form, which was used by broker-dealers to respond to SEC requests for trading data prior to the widespread use of computers.

"blue sheet information" quickly and comprehensively, at their individual computer work stations. For example, trading data could be sorted alphabetically (to detect trading by particular individuals or families), geographically (to detect concentrations in certain locations), by size (to identify transactions meriting special attention), chronologically, by price, or in any other manner desired. Information from several members also could be analyzed simultaneously to uncover violative conduct occurring among firms. As an additional benefit, the submission of "blue sheet information" in the automated format may expedite member firm responses to information requests, since they will not longer need to produce potentially voluminous "hard copy" records.

The new rule should not impose a significant additional regulatory burden on members. While some firms may have to make initial changes to comply with the rule, ultimately they will be able to make a more cost-effective use of their resources by eliminating an otherwise time-consuming, labor intensive task. In addition, since most member organizations will have to develop automated "blue sheet" capabilities to comply with a similar rule proposed by the NYSE, [3] they could utilize the same systems to comply with the Amex rule. In recognition of the burden that may be imposed on smaller member organizations, however, paragraph (d) of the proposed rule authorizes the Exchange to grant exceptions on a case-by-case basis to the automated reporting requirement where appropriate.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)5 in particular in that it will improve the Exchange's regulatory and surveillance capabilities, enabling it to provide increased investor protection, assist in the prevention of fraudulent and manipulative acts and practices, and promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

[3] *See* note 1, *supra*.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change. However, a number of large member organizations have tested the automated "blue sheet" system, and have had generally favorable comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-88-4 and should be submitted by March 16, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 17, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-3880 Filed 2-23-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25371; File No. SR-MCC-88-1]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

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 February 5, 1988 the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the Revised Fee Schedule for Midwest Clearing Corporation effective January 1, 1988.

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. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The MCC Revised Fee Schedule, effective January 1, 1988, more accurately reflects the cost of providing the various services to MCC's Participants.

The Revised Fee Schedule is consistent with Section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MCC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(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 foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

All submissions should refer to the file number SR–MCC–88–1 and should be submitted by March 16, 1988.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Dated: February 18, 1988.

Shirley E. Hollis,

Assistant Secretary.

Exhibit A—MST System, Administrative Bulletin

December 23, 1987.

To: All Participants

Attention: Operations Manager/Head Cashier

Subject: MCC/MSTC Fee Changes

MCC/MSTC reviews its fee schedules each year and attempts to ensure that fees appropriately represent the cost of services. As a result of changes to the computer facilities supporting depository services, the fixed overhead costs for account maintenance have risen.

The computer facility changes were made as a result of our analysis of the events on October 19, 1987. We believe that as the number of participants has grown, the need to anticipate unusual volume swings such as those experienced during the week of October 19 will require increased computer capacity. While we were able to handle the increased volume at that time, the potential volume represented by additional participants makes the increase in computer capacity prudent.

In order to cover these increased costs, an increase of 8% in the Account Maintenance fee will be implemented, effective January 1, 1988. The new fee will be $270.00 per month.

Monthly account service	1987 fee	1988 fee
Account Maintenance	$250.00	$270.00
Equity/Corp. Service	75.00	75.00
Municipal Bond Service	75.00	75.00

In addition, several other fee changes will also be implemented beginning January 1, 1988:

* MSTC's Underwriting Service fee schedule will be as follows:

Certificated Issuance—$400.00 plus $2.00 per million of par value

Non-Certificated or Global Book-entry Issuance—$400.00 per issue

The fees for the Syndicate Managers CUSIP positions and delivery DDI's will remain at current levels. Any unusual or out-of-pocket expenses incurred by MSTC will be billed to the Syndicate Manager.

* A Security Masterfile Change Report will be available on a *subscription basis only.* The charge for the service will be $25.00 per month. Subscription requests should be submitted in writing to your Participant Services Representative.

* A Dial-up service for *report retrieval only* will begin January 1, 1988. The fee for this service will be $100.00 per month with the first symbol free. Additional symbols will cost $25.00 each.

Questions regarding this above information may be directed to your Participant Services Representative.

John M. Lofgren,

Senior Vice President, MCC/MSTC.

[FR Doc. 88–3930 Filed 2–23–88; 8:45am]

BILLING CODE 8010–01–M

[Release No. 34–25370; File No. SR–MSTC–88–1]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change; Midwest Securities Trust Co.

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 February 5, 1988 the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the Revised Fee Schedule for Midwest Securities Trust Company effective January 1, 1988.

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. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The MSTC Revised Fee Schedule, effective January 1, 1988, more accurately reflects the cost of providing the various services of MSTC's Participants.

The Revised Fee Schedule is consistent with section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MSTC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Securities Trust Company does not believe that any burdens will be placed on competition as a result of the proposed rule change

(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 foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of the Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

All submissions should refer to the file number SR–MSTC–88–1 and should be submitted by March 16, 1988.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Dated: February 18, 1988.

Shirley E. Hollis,

Assistant Secretary.

Exhibit A—MST System, Administrative Bulletin

December 23, 1987.

To: All Participants

Attention: Operations Manager/Head Cashier

Subject: MCC/MSTC Fee Changes

MCC/MSTC reviews its fee schedules each year and attempts to ensure that fees appropriately represent the costs of services. As a result of changes to the computer facilities supporting depository services, the fixed overhead costs for account maintenance have risen.

The computer facility changes were made as a result of our analysis of the events on October 19, 1987. We believe that as the number of participants has grown, the need to anticipate unusual volume swings such as those experienced during the week of October 19 will require increased computer capacity. While we were able to handle the increased volume at that time, the potential volume represented by additional participants makes the increase in computer capacity prudent.

In order to cover these increased costs, an increase of 8% in the Account Maintenance fee will be implemented, effective January 1, 1988. The new fee will be $270.00 per month.

Monthly account service	*1987 fee*	*1988 fee*
Account Maintenance	$250.00	$270.00
Equity/Corp. Service	75.00	75.00
Municipal Bond Service	75.00	75.00

In addition, several other fee changes will also be implemented beginning January 1, 1988:

*MSTC's Underwriting Service fee schedule will be as follows:

Certificated Issuance—$400.00 plus $2.00 per million of par value

Non-Certificated or Global Book-entry Issuance—$400.00 per issue

The fees for the Syndicate Managers CUSIP positions and delivery DDI's will remain at current levels. Any unusual or out-of-pocket expenses incurred by MSTC will be billed to the Syndicate Manager.

*A Security Masterfile Change Report will be available on a *subscription basis only.* The charge for the service will be $25.00 per month. Subscription requests should be submitted in writing to your Participant Services Representative.

*A Dial-up service for *report retrieval only* will begin January 1, 1988. The fee for this service will be $100.00 per month with the first symbol free. Additional symbols will cost $25.00 each.

Questions regarding this above information may be directed to your Participant Services Representative.

John M. Lofgren,

Senior Vice President, MCC/MSTC.

[FR Doc. 88–3931 Filed 2–23–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25359; File No. SR–MSTC–88–2]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Securities Trust Company; Notice of Filing and Immediate Effectiveness

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 February 5, 1988, the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached as Exhibit A is the text of a proposed Midwest Securities Trust Company ("MSTC") Administrative Bulletin regarding procedures for the assessment of penalties against Participants for the failure to eliminate negative balances.

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. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to an earlier amendment to MSTC Article II, Rule 1, Section 1, MSTC is authorized to charge a Participant for the failure to eliminate any negative balance remaining in a Participant's account, twenty-four hours after notification by MSTC of the existence of the negative balance. In connection with this new rule, MSTC has adopted the proposed procedures which allow MSTC to assess a one-time charge of 130% of the face value of a bearer municipal bond when a Participant fails to eliminate a negative position. MSTC will notify the Participant via written letter that a

negative position was created on the Participant's Activity Report and the reason for the position charge. MSTC will then debit the Participant's position 130% of the value of the position 24 hours after the negative position was created.

MSTC believes that the proposed rule change is necessary to clarify its procedures regarding the charging of Participants' Accounts with negative balances. MSTC also believes that the proposed rule change will encourage Participants to promptly eliminate negative balances. In addition, the rule change will increase protection to MSTC should the Participant become insolvent with negative balances outstanding.

The proposed rule change is consistent with the Securities Exchange Act of 1934 in that it facilitates the prompt and accurate clearance and settlement of securities transactions, as well as the safeguarding of securities and funds within MSTC's control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR–MSTC–88–2 and should be submitted by March 16, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 18, 1988.

Jonathan G. Katz,

Secretary.

Exhibit A

January 8, 1988.

To: All Participants
Attention: Operations Manager/Head Cashier
Subject: Approval of Amendment to MSTC Article II, Rule I, Section 1

The Securities and Exchange Commission recently approved a rule change allowing Midwest Securities Trust Company (MSTC) to assess a penalty against a participant for its failure to eliminate a negative balance with respect to securities. (Refer to Administrative Bulletin B–87/7014 dated 10/30/87.) Pursuant to that rule, MSTC will assess a one-time charge of 130% of the face value of a bearer municipal bond where a participant carries a negative position on MSTC records.

MSTC will adhere to the following procedure in complying with this change.

- MSTC will notify the participant via written letter that a negative position was created on the participant's Activity Report and the reason for the position charge.
- MSTC will debit the participant's position 130% of the value of the position 24 hours after the negative position was created.
- MSTC will continue to follow-up with the participant both verbally and by letter until the negative position is resolved.
- MSTC will credit the participants account the value of the position the same day that the bond(s) are returned in good delivery form accompanied by a copy of MSTC's original written notification of the short position.
- If the bonds are deposited without the notification letter, MSTC will credit the participants account for the value of the position the following day.

If you have any questions regarding this procedure, please call either Emma Johnson, Municipal Bond Reconciliation Department Supervisor, at (312) 663–2763 or the undersigned at (312) 663–2434.

Lou Viola,

Vice President, MCC/MSTC.

[FR Doc. 88–3881 Filed 2–23–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25351; File No. PHLX 87–41]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.

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 November 17, 1987 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or the "Exchange") pursuant to Rule 19b–4, hereby proposes the following rule change: (Brackets indicate deletions, italics indicate additions.)

Election of Chairman and Vice-Chairman of the Board

Sec. 4–2. The Chairman of the Board of Governors and the Vice Chairmen of the Board, to be eligible for nomination, must each have been a member of the Corporation or a general partner or an executive officer (vice president or above) of a member organization for a cumulative period of at least three years immediately preceding the day his term of office commences. Any lapses in such continuous membership or association which total thirty days or less will not disqualify a candidate who has otherwise been a member or so associated for three years immediately preceding the day his term of office commences. In addition, one Vice Chairman and the organization with which he is associated shall conduct primarily a non-member public customer business; and the other Vice Chairman shall spend the major portion of his time on the trading floor of the Exchange or be associated with an organization the primary portion of whose business is conducted on such trading floor.

The Chairman of the Board and the Vice Chairmen of the Board shall each be elected by the membership of the Corporation at the annual meeting. The

Chairman shall be elected for a term of two years and until his successor is elected and qualifies. Each Vice Chairman shall be elected for a term of one year and until his successor is elected and qualifies.

[After serving two consecutive two-year terms to which he has been elected by the membership, the Chairman shall be ineligible for further service in such office until after an interval of at least one year.

After serving four consecutive one-year terms to which he has been elected by the membership, a Vice Chairman shall be ineligible for further service in such office until after an interval of at least one year.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to remove any limitation on the number of terms that the Chairman or Vice Chairmen of the Board can be elected. In accordance with Exchange By-Law Article XXII Section 22–2, this By-Law amendment was announced to the membership by Circular No. 76–87 attached herein. A timely request for a special meeting of the membership of the Exchange pursuant to By-Law Article XXII Section 22–2 was not made and at its November 4, 1987 meeting the Board determined to adopt the proposed amendment.

The proposed rule change is consistent with section 6(b)(5) of the Exchange Act. The proposal will permit, where appropriate, added continuity in the governance of the Exchange, and thereby will protect investors and promote the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

By Circular No. 76–87 the Exchange membership was notified of the proposed By-Law Amendment. No written comments were received pursuant to PHLX By-Law Article XXII, Section 22–2.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. 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 File Number SR–PHLX–87–41 and should be submitted by March 16, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: February 12, 1988.

[FR Doc. 88–3882 Filed 2–23–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

February 18, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Businessland, Inc.
Common Stock, No Par Value (File No. 7–3048)

IBP, Inc.
Common Stock, $.05 Par Value (File No. 7–3049)

Jan Bell Marketing
Common Stock, $.001 Par Value (File No. 7–3050)

Columbia Pictures Entertainment
Common Stock, $.01 Par Value (File No. 7–3051)

KV Pharmaceuticals Co.
Common Stock, $.05 Par Value (File No. 7–3052)

Lands' End, Inc.
Common Stock, $.01 Par Value (File No. 7–3053)

Dreyfus Strategic Municipals, Inc.
Common Stock, $.001 Par Value (File No. 7–3054)

Liggett Group, Inc.
Common Stock, $1.00 Par Value (File No. 7–3055)

MSF Government Markets Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7–3056)

Millpore Corporation
Common Stock, $1.00 Par Value (File No. 7–3057)

Nuveen California Municipal Value Fund
Common Stock, $.01 Par Value (File No. 7–3058)

Saatchi & Saatchi Co. PLC
ADR's, No Par Value (File No. 7–3059)

Triton Group, Ltd.
Common Stock, $1.00 Par Value (File No. 7–3060)

Union Texas Petroleum Holdings, Inc.
Common Stock, $.05 Par Value (File No. 7–3061)

High Income Advantage Trust
Shares of Beneficial Interest, No Par Value (File No. 7–3062)

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 March 10, 1988, 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. 88-3883 Filed 2-23-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

February 18, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Baltimore Bancorporation
Common Stock, $5.00 Par Value (File No. 7-3020)
Cycare Systems, Incorporated
Common Stock, $.01 Par Value (File No. 7-3021)
Gundle Environmental Systems
Common Stock, $.01 Par Value (File No. 7-3022)
Trans Technology Corporation
Common Stock, $.01 Par Value (File No. 7-3023)
Citicorp Foreign Exchange
Warrants expiration date July 1, 1992 (File No. 7-3024)

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 March 10, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make writen comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are 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. 88-3884 Filed 2-23-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

February 18, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Businessland Inc.
Common Stock, No Par Value (File No. 7-3030)
Coastal Carribean Oil & Minerals Ltd.
Common Stock, $.12 Par Value (File No. 7-3031)
Ford Motor Credit
Warrants, Expiration Date January 1, 1998 (File No. 7-3032)
ACM Government Securities Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-3033)
IMC Fertilizer Group, Inc.
Common Stock, $1.00 Par Value (File 7-3034)
Ransburg Corporation
Common Stock, $.15 Par Value (File No. 7-3035)
Xerox Credit
Warrants, Expiration Date July 1, 1992 (File No. 7-3036)
Columbia Pictures Entertainment, Inc.
Common Stock, $.01 Par Value (File No. 7-3037)
Matrix Medica, Inc.
Common Stock, $.02 Par Value (File No. 7-3038)

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 March 10, 1988, 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. 88-3885 Filed 2-23-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

February 18, 1988.

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:

AAR Corporation
Common Stock, $1.00 Par Value (File No. 7-3025)
The Brooklyn Union Gas Company
Common Stock, $1.00 Par Value (File No. 7-3026)
Burlington Coat Factory Warehouse Corporation
Common Stock, $1.00 Par Value (File No. 7-3027)
Equifax Inc.
Common Stock, $2.50 Par Value (File No. 7-3028)
Essex Chemical Corporation
Common Stock, $1.00 Par Value (File No. 7-3029)

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 March 10, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available

to it, that the extensions of unlisted trading privileges pursuant to such applications are 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. 88-3886 Filed 2-23-88; 8:45am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

February 18, 1988.

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:

General Development Corporation
Common Stock, $1.00 Par Value (File No. 7-3039)
Leggett & Platt, Inc.
Common Stock, $1.00 Par Value (File No. 7-3040)
Lomas & Nettleton Mortgage Investors
Shares of Beneficial Interest (File No. 7-3041)
New Jersey Resources Corporation
Common Stock, $5.00 Par Value (File No. 7-3042)
The Quick & Reilly Group, Inc.
Common Stock, $0.10 Par Value (File No. 7-3043)
Valero Natural Gas Partners, L.P.
Preference Units (File No. 7-3044)
Zero Corporation
Common Stock, $1.00 Par Value (File No. 7-3045)
Rochester Telephone Corporation
Common Stock, $2.50 Par Value (File No. 7-3046)
Sun Energy Partners, L.P.
Depositary Units (File No. 7-3047)

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 March 10, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are 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. 88-3887 Filed 2-23-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16278; 812-6800]

Colonial Value Investing Portfolios-Income Portfolio, et al.; Application

February 18, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Colonial Value Investing Portfolios-Income Portfolio (the "Income Trust"), Colonial Value Investing Portfolios-Equity Portfolio (the "Equity Trust") (collectively, "Trusts") and Colonial Investment Services, Inc. (the "Distributor").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 19(f)(1), 18(g), 22(c) and 22(d) of the 1940 Act and Rule 22c-1 thereunder.

Summary of Application: Applicants seek an order permitting the Income Trust and the Equity Trust to assess and waive contingent deferred sales charges on shares of their existing and future series, and to permit the Income Trust to issue two classes of shares of beneficial interest in each of its existing and future series.

Filing Date: The application was filed on July 22, 1987 and amended on November 3, 1987, December 30, 1987, January 14, 1988, January 21, 1988, February 1, 1988, February 3, 1988, February 9, 1988, February 12, 1988 and February 16, 1988.

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 March 14, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant 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 5th Street NW., Washington, DC 20549. Applicants, One Financial Center, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney (202) 272-3046, or Curtis R. Hilliard, Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

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 who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Trusts are registered, open-end, series, management investment companies organized as business trusts, under the laws of The Commonwealth of Massachusetts. Colonial Management Associates, Inc. (the "Adviser") will act as the Trusts' investor adviser, and Colonial Investment Services, Inc. (the "Distributor") will act as the Trusts' principal underwriter. The Applicants request that the exemptive relief granted to each Trust extend not only to that Trust's existing series (each a "Fund" and collectively the "Funds"), but also to any additional series or classes of shares of a Trust that may at any time hereafter be offered on substantially the same basis as are shares of the Funds.

2. The Trusts propose to offer their shares without an initial sales charge, so that investors will have the entire amount of their purchase payments fully invested when the purchase is made. However, they propose to impose a contingent deferred sales charge on the proceeds of certain redemptions of the shares. In no event would the amount of such charge exceed 5% of the aggregate purchase payments made by the investor.

3. The Trusts reserve the right to waive any contingent deferred sales charge on redemptions from the accounts of: (i) Current and retired trustees of the Trusts or current and retired trustees or directors of other registered management investment companies for which the Adviser acts as investment adviser or the Distributor acts as principal underwriter, (ii)

directors, officers and employees of the Adviser, the Distributor and other companies affiliated with the Adviser, (iii) registered representatives and employees of broker-dealers that are parties to dealer agreements with the Distributor and (iv) all such persons' spouses and children and to beneficial accounts of any of the foregoing persons. The Trusts will provide prospective investors with adequate information concerning the elimination of the contingent deferred sales charges in the case of redemptions from the accounts of persons in the foregoing categories as required by Rule 22d–1 under the 1940 Act, and will comply with all the conditions set forth in rule 22d–1 in all other respects.

4. Each Fund of the Income Trust ("Income Funds") will be divided into two classes of shares, Class A and Class B, which differ from each other only in the rate of the distribution fee payable by the Trust to the Distributor pursuant to the distribution plan ("Plan") relating to such Fund, and in the rate of dividends payable in respect of each class, which dividend rates will differ because of the differing distribution fee rates. Each Income Fund will be the subject of a separate Plan, and the Plan relating to each Income Fund will be idential to the Plan relating to the other Funds. In general, Class A shares will be subject to a distribution fee at the annual rate of 1.25% of the net asset value of such shares, consisting of a basic .25% fee applicable to all shares and an additional 1% fee applicable only to Class A shares; Class B shares will be the subject only to the basic distribution fee at the annual rate of .25% of net asset value. Each Income Fund has an investment objective that includes seeking current income or yield.

5. The daily net asset value of all outstanding Class A shares and Class B shares representing interests in the same Income Fund will be computed on the same day and at the same time by adding the value of all portfolio securities and other assets belonging to that Fund, subtracting the liabilities charged to such Fund and dividing the result by the number of such outstanding Class A and Class B shares. Further, the gross income of each Income Fund will be allocated on a pro rata basis to each outstanding share of the Fund regardless of class, and all expenses incurred by the Fund will be borne on a pro rata basis by all shares regardless of class, except that Class A shares will bear the additional distribution fee under the Plans which Class B shares will not bear. Because of the additional distribution fee, the net income of and dividends payable to Class A shares would be somewhat lower than those paid on the Class B shares of the same Fund. Dividends and other distributions paid to each class of shares of a Fund will, however, be declared on the same days and at the same times and, except for the effect of the additional distribution fee to which Class A shares are subject, will be determined in the same manner and paid in the same amounts.

6. After such time as the Income Fund in question has Class B. shares outstanding, if the amount of daily net investment income (before accrual of the additional distribution fee) attributable to the Fund's Class A shares is insufficient to make provision for the daily increment of the additional distribution fee at the annual rate of 1% of the average daily new assets attributable to such shares, the Income Fund will be obligated to pay for that day as such additional distribution fee only the amount of such net investment income (before such accural) which is attributable to Class A shares, and the amount not so accrued will not be payable to the Distributor in any circumstances or at any time.

7. Only Class A shares will be offered for sale to the public. Class A shares will automatically convert to Class B shares approximately six years after purchase. Class B shares consist only of Class A shares that have converted to Class B status, and shares purchased by holders of outstanding Class B shares through the reinvestment of dividends and distributions paid on outstanding Class B shares.

8. The purpose of the two-class structure is to compensate the Distributor, for its expenses incurred in connection with the distribution of Income Trust shares, out of the assets attributable to recently-sold (Class A) shares, while releiving the holders of shares that have been outstanding for a period of time sufficient for the Distributor to have been compensated for related distribution expenses (Class B shares) from most of the burden of the Income Trust's distribution-related expenses.

9. Shares purchased through the reinvestment of dividends and other distributions paid on Class A shares will be treated as Class A shares for purposes of the 1/12 of 1% monthly distribution fee (1% annually). However, for purposes of conversion to Class B, such shares will be considered to be held in a separate sub-account. Each time any Class A shares in the shareholder's Trust account convert to Class B, an equal pro rata portion of the Class A shares in the sub-account will also convert to Class B.

10. The conversion of Class A shares to Class B shares is subject to the continuing effectiveness of a ruling of the Internal Revenue Service to the effect that the assessment of the additional distribution fee with respect to Class A shares does not result in any Fund's dividends or distributions constituting "preferential dividends" under the Internal Revenue Code of 1986, as amended, and to the continuing availability of an opinion of counsel to the effect that the conversion of shares does not constitute a taxable event under federal income tax law. The conversion of Class A shares to Class B shares may be suspended if such a ruling is no longer effective or such an opinion is no longer available. In that event, no further conversions of Class A shares would occur, and shares might continue to be subject to the additional monthly distribution fee for an indefinite period which may exceed the applicable conversion period.

11. No sales charge is deducted at the time an investor purchases shares of any Fund of either Trust; the full amount of the purchase payment will be invested in Fund shares at the net asset value next determined. A contingent deferred sales charge will be imposed if a shaeholder redeems an amount from a Fund that causes the current value of the shareholder's account in such Fund (the "Account Balance") to fall below the "Base Amount." "Base Amount" refers to the total dollar amount of the shareholder's purchase payments for shares of such Fund during the period beginning six years before the beginning of the calendar month in which the redemption occurs, not including purchases through the reinvestment of dividends and capital gains distributions and less: (1) The amount of any redemptions of shares purchased during the six-year period as to which the shareholder previously paid a contingent deferred sales charge and (2) the amount of any exempt redemptions by a shareholder pursuant to a systematic withdrawal plan described in the application. A contingent deferred sales charge will also be imposed on any redemption the shareholder makes when the Account Balance is less than the Base Amount. In each case, the charge will be deducted from the shareholder's redemption proceeds. The amount of the contingent deferred sales charge will depend on the number of years since the last day of the calendar month of the acceptance by the Trust of the order to purchase the shares from which an amount is being redeemed.

12. In determining whether a contingent deferred sales charge is payable and, if so, the percentage charge applicable, it will be assumed that the redemption is being made first from any excess of the Account Balance over the Base Amount and then from the amount of the earliest purchase (other than through reinvestment of dividends or distributions) from which a redemption of the full amount of such purchase has not already been effected.[1]

13. If the value of a shareholder's account has fallen below the Base Amount, due to a decline in net asset value per share, the amount of the contingent deferred sales charge on a redemption will be based on a percentage of the Base Amount, rather than of the amount the shareholder is redeeming. Specifically, the charge imposed in such circumstances will equal (A) the applicable percentage for the year of redemption, times (B) the percentage of the current Account Balance which the shareholder is redeeming (calculated by excluding from both the Account Balance and the amount being redeemed any shares attributable to reinvestments of dividends or capital gains distributions), times (C) the Base Amount. In such circumstances, the amount of the contingent deferred sales charge as a percentage of the amount redeemed will be higher than the applicable percentage for the year of the redemption, because the contingent deferred sales charge is based on the Base Amount, rather than on the lesser amount remaining in the account at the time of the redemption.

14. When a shareholder of any Fund transfers shares of such Fund to another individual or entity (defined as a transfer to another related party, by absolute assignment, gift or bequest, not involving, directly or indirectly, a public sale), the transferring shareholder will pay no contingent deferred sales charge in respect of the transfer. The transferred shares held by the transferee shareholders, will remain subject to the contingent deferred sales charge if he or she redeems the transferred shares before six years after the end of the calendar month in which the transferring shareholder's order to purchase them was accepted. Such charges will be calculated as if the transferee shareholder had acquired the transferred shares in the same manner and at the same time as the transferring shareholder. Where the transferring shareholder transfers less than all of his or her shares of a Fund, he or she will be deemed to have transferred proportionate amounts of all the shares of the Fund owned at the time of the transfer, in proportion to the number of shares of the Fund: (i) Owned for longer than the period beginning six years prior to the beginning of the calendar month of the transfer or acquired through the reinvestment of dividends and distributions and (ii) purchased (other than through reinvestments of dividends and distributions) in each year of such period of approximately six years preceding the transfer.

15. All shareholders will be permitted to exchange shares of one Fund for shares of another without paying a contingent deferred sales charge (though a service charge, currently expected to be $5.00 per exchange, will be deducted from the amount being invested in the Fund into which the shareholder is exchanging). When a shareholder redeems shares acquired through an exchange, he or she will be treated as if no exchange had taken place, for purposes of the contingent deferred sales charge. Where less than all of a shareholder's shares of a particular Fund are exchanged, he or she will be deemed to have exchanged proportionate amounts of all the shares of that Fund owned at the time of the exchange, in the same manner as set forth in paragraph 15 above.

Applicants' Arguments and Conclusions of Law

1. The imposition of the contingent deferred sales charges described above is fair and is in the best interests of the Trusts' shareholders. Shareholders will have the advantage of a larger investment working for them from the time of their purchase of Trust shares than would be the case if a "front-end" sales charge were imposed. Shareholders who maintain their shareholdings in the Trusts for the full period of approximately six years after purchase will pay no sales charge at all, deferred or otherwise (though such shareholders will be subject to the distribution fees described above payable under the Plans). Moreover, the contingent deferred sales charges will not be applied to amounts attributable to increases in the value of a shareholder's account through increases in net asset value per share, to shares acquired through the reinvestment of dividends and distributions or to redemptions effected by any shareholder pursuant to a systematic withdrawal plan.

2. The waiver of the contingent deferred sales charges is appropriate, because of the absence of selling expenses incurred by the Trusts, in the case of redemptions from the accounts of those categories of investors set forth above.

3. It is beneficial to the shareholders of the Income Trust for the compensation payments to the Distributor to be borne by the shares in connection with which expenses were incurred (Class A shares), and not to be borne by the holders of shares in respect of the distribution of which the Distributor has already been compensated (Class B shares, which include only: (1) Shares as to which the additional distribution fee has been collected for a period generally lasting approximately six years and (2) shares issued in payment of dividends or distributions on other Class B shares).[2]

4. The proposed allocation of expenses relating to the Plans in the manner described is equitable and would not discriminate against any group of shareholders. The Income Trust will take appropriate steps to ensure that the respective total returns to shareholders on the Class A and Class B shares are fairly disclosed in its prospectus and shareholder reports. In this regard, the total return on each class of shares would be posted separately in the Trust's prospectus and reports, and would reflect the effect of the different distribution fees borne by each class under the Plans.[3]

5. The proposed arrangement does not involve borrowings, and does not affect the Income Trust's assets and reserves or increase the speculative character of

[1] Specifically, in response to a redemption request, shares of a Fund will be redeemed from a shareholder's account as follows: First, in the case of an Income Fund, any Class B shares in the shareholder's Fund account will be redeemed. Then, shares purchased through the reinvestment of dividends and other distributions will be redeemed, followed by other shares in amounts attributable to appreciation in account value (in proportion to the number of shares purchased in each of the approximately six years preceeding the redemption) and then, if necessary, out of the earliest-purchased shares still remaining in the shareholder's Fund Account.

[2] The basic .25% distribution fee under the Plans is payable by the Income Trust with respect to all shares of each Fund, regardless of class, because such fee is expected to be used by the Distributor primarily for the payment of "trail commissions," which are payable by the Trust to dealers in respect of all outstanding shares of the Trust regardless of class or how long they have been outstanding.

[3] Since under the proposed arrangement the only active solicitation of new investments in the Income Trust would be made with respect to Class A shares, all advertising and sale literature would be directed exclusively to prospective investors in Class A shares. Therefore, advertising and sales literature for the Income Trust will reflect only the total return, including the effect of the additional distribution fee, on the Class A shares, so that potential investors will not be misled about the performance potential of those shares in which they are entitled to invest.

the shares of any Fund. All shares will participate pro rata in all of the Fund's income and all of the Fund's expenses (with the sole exception of the proposed additional distribution fee payable only in respect of Class A shares). Mutuality of risk will be preserved with respect to both the Class A and the Class B shares of each Fund; each class of a Fund will represent, on a per share basis, an equal pro rata interest in the same investment portfolio and will be subject to the same investment risk as the other classes of shares of the same Fund. Since both Class A and Class B shares will be redeemable at all times, neither class will have any preference or priority over the other class of the Fund in the usual sense. The concern that complex capital structures may facilitate control without equity or other investment and may make it difficult for investors to value the securities of the Income Trust are not present under the proposed arrangement. The classes of securities that were present in the capital structures that prompted the Commission to recommend the adoption of section 18 of the 1940 Act (*i.e.*, funded debt, preference stocks and convertible securities) are not present in the proposed arrangement.

Applicants' Conditions

Applicants expressly agree that the proposed transactions will conform to the following conditions:

A. General Conditions

1. The Trusts will implement any waiver of the contingent deferred sales charges in accordance with the terms of Rule 22d–1 under the 1940 Act.

2. The Trusts will comply with the provisions of proposed Rule 11a–3 under the 1940 Act if and when it is adopted by the Commission.

3. The Trusts will comply with the provisions of Rule 12b–1 under the 1940 Act in its present form and as the rule may be revised by the Commission in the future.

B. Conditions Relating to Issuance of Multiple Classes of Shares by the Income Trust

1. The only differences between the Class A and Class B shares representing interests in the same Income Fund will relate solely to priority with respect to the payment of dividends, and such priority will reflect only the effect of the different distribution fees payable by each class.[4]

2. The Plans and all payments thereunder will be approved and reviewed by the Income Trust's Board of Trustees in accordance with the procedures set forth in Rule 12b–1 under the 1940 Act and, in addition, each Plan will be approved by the shareholders of the Income Fund to which it relates in accordance with such Rule. In addition, the Board of Trustees, in approving and reviewing payments pursuant to each Plan, will conclude in good faith based on information available to them that such expenditures are competitive with those offered in the industry.

3. Dividends paid by each Income Fund with respect to its Class A and Class B shares will be calculated in the same manner and will be in the same amount except that the expenses of the additional distribution fee payable in respect of the Calss A shares under the Plan relating to such Income Fund will be borne exclusively by that class.

The Income Trust will operate each Income Fund that has both Class A and Class B shares outstanding only when and for so long as such Income Fund declares a daily dividend, accrues its additional distribution fee payable in respect of Class A shares daily, and has received an undertaking from any person entitled to receive any portion of such additional distribution fee waiving such portion of any such payment to the extent necessary to assure that the additional distribution fee requried to be accrued by any Income Fund on any day does not exceed the income to be accrued to the Class A shares of such Income Fund on that day. In this manner the net asset value per share for all shares of an Income Fund will remain the same.

5. For the purpose of preventing unfair discrimination against the beneficial owners of shares of any Income Fund issuing Class A and Class B shares, each institutional investor acquiring shares of either class of such Income Fund will be required to represent on its application with the Income Trust that it will not impose a fee or fees upon the beneficial owners of such shares with respect to investment in such shares, for automatically investing such beneficial owners' assets in such shares, in an amount which exceeds .50% (on an annualized basis) of the average daily asset value of the shares of such Income Fund benefically owned by such beneficial owners.

6. The Income Trust's prospectus will describe the services rendered by the Distributor and its compensation under the Plans and the fees payable by the Income Trust under the Plans for such services.

7. The Income Trust acknowledges that the grant of the exemptive order requested by this Application will not imply Commission approval, authorization or aquiescence in any particular level of payments that the Income Trust may make to dealers pursuant to the Plans or otherwise in reliance on the exemptive order.

8. If the requested order is granted, the Income Trust will comply with the provisions of any Rules adopted under Section 18 of the Investment Company Act of 1940, and will comply with all positions of the Divsiion of Investment Management and the Commission with respect to the offering of dual classes of shares by mutual funds set forth in Commission releases, including accounting rules and notices issued with respect to exemptive applications, and the Income Trust will immediately take the steps necessary to comply, to the extent applicable.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–3888 Filed 2–23–88; 8:45 am]

BILLING CODE 8010–01–M

[4] Also, the designation of each class of shares of the Fund (i.e., as "Class A" and "Class B") will be different, and the Trust will be governed, as to matters of shareholder voting, by Rule 18f–2 under the 1940 Act.

[Release No. IC–16276, File No. 812–6948]

National Integrity Life Insurance Co.; Application

Date: February 18, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act")

Applicants: National Integrity Life Insurance Company ("National Integrity"), Integrity Life Insurance Company ("Integrity"), Separate Account ANA of National Integrity ("Separate Account ANA"), and Separate Account AIA of Integrity ("Separate Account AIA").

Relevant 1940 Act sections: Exemptions requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: The application refers to "Insurer" and "Separate Account" as both: (i) National Integrity and its Separate Account ANA, respectively, and (ii) Integrity and its Separate Account AIA, respectively, unless the context specifically indicates otherwise. Applicants seek an order to permit the Insurer to deduct from the Separate Account the mortality and

expense risk charges imposed under group and individual variable annuity contracts and certificates (the "Contracts") issued by the Insurer.

Filing Dates: The application was filed on December 30, 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 March 14, 1988. 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 5th Street NW., Washington, DC 20549. Applicants, c/o Franklin Maisano, 1350 Avenue of the Americas, 20th Floor, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Nancy M. Rappa, at (202) 272–2058 or Special Counsel Lewis B. Reich, at (202) 272–2061 (Office of Insurance Products and Legal Compliance).

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 (800) 231–3282 (in Maryland (301) 253–4300).

Applicants' Representations

1. Separate Account ANA was established by National Integrity pursuant to the insurance laws of the State of New York and Separate Account AIA was established by Integrity pursuant to the insurance laws of the State of Arizona to fund the Contracts. A Registration Statement on Form N–4 under the Securities Act of 1933 and under the 1940 Act and a Notification of Registration on Form N–8A under the 1940 Act have been filed on behalf of the Insurer and the Separate Account. The Separate Account presently consists of seven Investment Divisions: The Money Market Portfolio, the Growth Portfolio, the Growth and Income Portfolio, Managed Income Portfolio, High Yield Portfolio, Total Return Portfolio, and International Portfolio. Each invests solely in the shares of a corresponding portfolio of Alliance Variable Products Series Fund, Inc., a diversified, open-end investment management company registered under the 1940 Act. National Integrity is the depositor/sponsor of Separate Account ANA. Alliance Capital Management Corporation, a wholly owned subsidiary of Equitable Investment Corporation, will serve as investment adviser to the Fund.

2. For certain administrative services, the insurer makes a daily charge of the Separate Account equal to .15% on an annual basis of the current value of its assets. In addition, for assuming certain risks under the Contracts, the Insurer imposes a daily mortality and expense risk charge equal to an effective annual rate of 1.20% of the value of each Investment Division of the Separate Account. Of that charge, .85% is for assuming the expense risk and .35% is for assuming the mortality risks under the Contracts. The mortality risk assumed by the insurer is that annuitants may live for a longer period of time than estimated. The Insurer assumes this risk by promising to pay annuitants according to the annuity rates set forth in the Contracts, without regard to the annuitant's own longevity or any improvement in life expectancy of the general population. The expense risk assumed by the insurer is the risk that actual expenses of administering the contracts will exceed the proceeds of the administrative and expense charges under the Contracts. Applicants represent that although the relative proportion of the mortality and expense risk charges may be modified, the total effective annual risk charge of 1.20% may not be increased by the Insurer. The Insurer may realize a gain from these daily charges to the extent they are not needed to meet the actual expenses incurred. If there is a gain, part of these charges may also be considered to be an indirect reimbursement for sales and promotional expenses.

3. Applicants represent that the mortality and expense risk charges are reasonable in relation to the risks assumed by the Insurer under the Contracts.

4. Applicants further represent that the mortality and expense risk charges are within the range of industry practice with respect to comparable annuity products. This representation is based upon the Insurers' analysis of publicly available information about similar industry products, taking into consideration such factors as the manner of distribution, the degree of investment flexibility, current charge levels, the existence of guaranteed expense charges and guaranteed annuity rates.

5. Applicants also represent that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and the contractowners.

6. The insurer acknowledges that the contingent deferred withdrawal charges under the contracts may be insufficient to cover distribution costs and that any shortfall would be absorbed by the insurer's general acocunt.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. The Insurer will maintain at its administrative office, and make available to the Commission upon request, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of its comparative survey.

2. The Insurer will maintain at its administrative office and make available to the Commission upon request a memorandum setting forth the basis for the conclusion that the Separate Account's distribution financing arrangements will benefit the Separate Account and the owners of the Contracts.

3. The Separate Account will invest only in open-end management investment companies which undertake to have a board of directors (or trustees), a majority of whom are not interested persons of such open-end management company, formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

For the Commisison, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–3889 Filed 2–23–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24581]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

February 18, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through

the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 14, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

General Public Utilities Corporation (70–7473)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, has filed a post-effective amendment to its application-declaration pursuant to Sections 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

By order dated December 29, 1987 (HCAR No. 24550), the Commission authorized GPU to repurchase from time to time through December 31, 1989 up to 2 million shares of its common stock, par value $2.50 per share. The timing of such repurchases will depend upon existing market conditions and the anticipated capital needs of GPU and its subsidiaries. GPU now proposes: (a) To increase to 5 million the total number of shares of common stock it may repurchase, (b) to extend the period during which such repurchases may be made to December 31, 1991 and (c) to make such repurchases in the open market, through one or more odd-lot tender offers to holders of 99 or fewer shares of GPU common stock, and/or from shares held under GPU's Tax Reduction Act Employee Stock Ownership Plans upon termination of those plans. Tender offers will be made to shareholders as of a specified date(s), and the price will be the closing price of GPU common stock on the business day on which the stock certificates and related documentation are tendered by the shareholder. GPU may also pay a premium price not to exceed $1 per share.

Allegheny Power System (70–7492)

Allegheny Power System, Inc. ("Company"), 320 Park Avenue, New York, New York 10022, a registered holding company, has filed a declaration pursuant to Sections 6(a), 7, and 12(e) of the Act and Rules 62 to 65 thereunder.

The Company proposes to amend its Charter to limit the personal liability of Company directors and officers for monetary damages to the company or its shareholders to the fullest extent permitted by the Annotated Code of Maryland, and to solicit proxies from its shareholders for approval of such amendment at its Annual Meeting on May 12, 1988. The amendment requires the affirmative vote of a majority of all votes entitled to be cast.

Alabama Power Company (70–7505)

Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, a wholly owned subsidiary of The Southern Company, a registered holding company, has filed a declaration pursuant to Section 12(d) of the Act and Rule 44 thereunder.

Alabama proposes to sell 1,485 of its distribution line poles to Oneonta Telephone Company, an independent telephone company, by a bill of sale for a cash sale price of $273,583. The conveyance includes a Trustee's release of the equipment from Alabama's mortgage indenture lien.

The Southern Company (70–7506)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has filed a declaration pursuant to Section 12(b) of the Act and Rule 45 thereunder.

Southern proposes to make capital contributions to its wholly owned operating companies, Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company, in amounts not exceeding $130, $210, $40 and $20 million, respectively, during the period from April 1, 1988 through March 31, 1989.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–3932 Filed 2–23–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/1165]

U.S. Organizations for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group C; Meeting

The Department of State announces that an Ad Hoc Group of Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on February 29, 1988 from 9:00 a.m.–11:30 a.m. and from 1:00–5:00 p.m. in Room 1207, Department of State, 2201 C Street NW., Washington, DC.

The purpose of the meeting will be to discuss issues related to the work of CCITT Study Group II. The meeting will address Issuer Identifier Code Administration and Assignment procedures for Automated International Telephone Credit Cards within the U.S.A. and preparations for the initial World Numbering Zone 1 Committee Meeting. The meeting may also consider other issues related to U.S. Study Group "C".

Members of the general public may attend the meeting and join in the discussion, subject to the 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 and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 653–6102. All attendees must use the C Street entrance to the building.

Date: February 2, 1988.

Earl S. Barbely,

Director, Office of Technical Standards and Development, Chairman, U.S. CCITT National Committee.

[FR Doc. 88–3910 Filed 2–23–88; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1166]

U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group C; Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on March 21, 1988 at 9:00 a.m. at the Marriott Hotel at the Newark Airport.

The purpose of the meeting will be:

Discussion of any contributions received from other Administrations including: an Italian Contribution on G.6xx regarding Dispersion Shifted Fiber.

Discussion of Delayed Contributions from the U.S. including:

(a) Potential contribution on chromatic dispersion (shifted) specification to be discussed at February EIA meeting.

(b) "Test Methods for Geometric Parameters Using White Light"—to be drafted by Bill Gardner.

(c) "Abnormal Cut-off Wavelength Behavior of Dispersion—Shifted Single Mode Fiber"—prepared by Peter Kaiser.

Review of Draft Recommendation G.6YY on 155 nm loss minimized single-mode fiber.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Prior to the meeting, persons who plan to attend should so advise Ms. Cindy Perfumo, (201) 234–4047.

Date: February 9, 1988.

Earl S. Barbely,

Director, Office of Technical Standards and Development, Chairman, U.S. CCITT National Committee.

[FR Doc 88–3911 Filed 2–23–88; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1164]

Shipping Coordinating Commission; Meeting

The Shipping Coordinating Committee is holding a series of meetings to consider U.S. policy with respect to an upcoming review and possible revision of international law concerning liability and compensation for damage caused by the maritime carriage of Hazardous and Noxious Substances (HNS). This subject will be considered by the Legal Committee of the International Maritime Organization (IMO) at its 59th Session in April 1988. The third Shipping Coordinating Committee meeting in preparation for the 59th Session will be held at 1330 on Monday, 29 February 1988, in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, and continue at 0900 on Tuesday, 1 March 1988. A fourth Shipping Coordinating Committee meeting will be held at 1230 on 8 March 1988, in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, and continue at 0900 on 9 March 1988, in room 6332 of the Department of Transportation Building, 400 Seventh Street SW., Washington, DC.

At the first Shipping Coordinating Committee meeting HNS held on 12 January 1988 the following preliminary questions were discussed:

1. Assuming that an international HNS regime for liability/compensation is developed, what general scheme would best serve U.S. interests (e.g., shipowner-only, shared shipowner-cargo, or other)?

2. How should liability/compensation be structured?

3. Should packaged HNS be covered?

4. What principles should guide the formation of the list of covered HNS, and how should this list be developed?

5. What types of HNS incidents/hazards (e.g., fire and explosion, toxicity, pollution, and unladen tankers), and what types of potential HNS damage should be covered (e.g., personal injury, property damage, economic losses, environmental cleanup costs, etc.)?

6. Approximately what specific monetary limits of liability/compensation should be considered?

7. What are the insurance implications of the development of the HNS liability/compensation scheme?

8. In view of the benefits which may be obtained for U.S. interests from an international HNS regime, on what basis may agreement be reached among U.S. public and private sector interests on the subject of federal and state remedy preemption, a foreseeable element of such a regime?

9. What U.S. interests here and abroad will be impacted by the implementation of an HNS liability/compensation scheme?

10. What information is available concerning the number and severity (actual or potential) of marine or other HNS mishaps or near mishaps over the past several decades?

As a result of the meeting it was agreed that detailed discussion of these questions should continue at subsequent SHC meetings.

As previously announced in the **Federal Register**, the second Shipping Coordinating Committee meeting on HNS will be held on 17 and 18 February 1988. Special attention will be given to the particular issues associated with questions 1, 5, and 8. The specific focus of discussions at the third and fourth Shipping Coordinating Committee meetings will be decided at the 17–18 February meeting.

Members of the public are invited to attend the meeting, up to the seating capacity of the room.

For further information pertaining to the special HNS meeting, or the issues to be discussed at the 16 and 17 February public meeting, please contact Captain Frederick F. Burgess, Jr., or Lieutenant Commander Frederick M. Rosa, Jr., Maritime and International Law Division, U.S. Coast Guard (G–LMI), Washington, DC, 20593, telephone (202) 267–1527.

Date: February 1, 1988.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 88–3912 Filed 2–23–88; 8:45 am]

BILLING CODE 4710–07–M

VETERANS ADMINISTRATION

Medical Research Service Merit Review Boards; Meetings

The Veterans Administration gives notice under the Federal Advisory Committee Act of the meetings of the following Federal Advisory Committees.

Merit Review Board for—	Date	Time	Location
Oncology	Mar. 14, 1988	7 p.m. to 10 p.m.	Vista Hotel.[1]
Do	Mar. 15, 1988	8 a.m. to 5 p.m.	Do.
Basic Sciences	Mar. 17, 1988	..... do	Room 119, VA Central Office.[2]
Do	Mar. 18, 1988	..... do	Do.
Endocrinology	Mar. 21, 1988	..... do	Room 119, VA Central Office.
Do	Mar. 22, 1988	..... do	Do.
Nephrology	Mar. 28, 1988	..... do	Radisson Park Terrance Hotel.[3]
Do	Mar. 29, 1988	..... do	Do.
Immunology	Mar. 30, 1988	..... do	Holiday Inn.[4]
Do	Mar. 31, 1988	..... do	Do.
Hematology	Mar. 31, 1988	..... do	Radisson Park Terrace Hotel.

Merit Review Board for—	Date	Time	Location
Alcoholism and Drug Dependence	Apr. 7, 1988	.....do	Do.
Respiration	Apr. 10, 1988	7 p.m. to 10 p.m.	Holiday Inn.
Do	Apr. 11, 1988	8 a.m. to 5 p.m.	Do.
Surgery	Apr. 11, 1988	.....do	Do.
Infectious Diseases	Apr. 12, 1988	.....do	Do.
Do	Apr. 13, 1988	.....do	Do.
Mental Health and Behavioral Sciences	Apr. 18, 1988	.....do	Do.
Do	Apr. 19, 1988	.....do	Do.
Gastroenterology	Apr. 18, 1988	.....do	Hotel Washington.[5]
Do	Apr. 19, 1988	.....do	Do.
Cardiovascular Studies	Apr. 21, 1988	.....do	Holiday Inn.
Do	Apr. 22, 1988	.....do	Do.
Neurobiology	Apr. 25, 1988	8 a.m. to 5 p.m.	Holiday Inn.
Do	Apr. 26, 1988	.....do	Do.

[1] Vista International Hotel, 1400 M Street, NW., Washington, DC 20005.
[2] Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.
[3] Radisson Park Terrace Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.
[4] Holiday Inn, 1501 Rhode Island Avenue, NW., Washington, DC 20005.
[5] Hotel Washington, 15th and Pennsylvania Avenue, NW., Washington, DC 20004.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Veterans Administration investigators working in Veterans Administration Medical Centers and clinics.

The meetings will be open to the pubic up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial, and renewal research projects.

The closed portion of the meeting involves: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute of clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing portions of these meetings is in accordance with 5 U.S.C., 552(b) (6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. Arlene E. Mitchell, Chief, Program Review Division, Medical Research Services, Veterans Administration, Washington, DC, (202 233–5065 at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Boards may be obtained from this source.

Dated: February 12, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88–3831 Filed 2–23–88; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 36
Wednesday, February 24, 1988

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 COMMUNICATIONS COMMISSION

February 18, 1988.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, February 25, 1988, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: In the Matter of Technical Flexibility in the Mobile Communications Services. Amendments to Equipment Authorization Rules in Parts 2, 22, 74, and 90. Summary: The FCC will consider the adoption of a Further Notice of Proposed Rule Making regarding an equipment testing and authorization procedure called alternative type acceptance.

General—2—Title: Amendment of the Commission's Rules Relative to Allocation of the 849–851/894–896 MHz Bands. Summary: In this proceeding, the Commission considers a proposal to reallocate the 849–851/894–896 MHz bands and to establish other rules and policies pertaining to use of these bands.

General—3—Title: Inquiry into Scrambling of Satellite Television Signals and Access to those Signals by Owners of Home Satellite Dish Antennas. Summary: The Commission will consider whether to adopt a Second Report in this proceeding.

Private Radio—1—Title: Amendment of Parts 2, 22 and 94 of the rules regarding use of the 928–960 MHz band for point-to-multipoint operations. Summary: The Commission will consider whether to adopt a Report and Order revising the rules governing point-to-multipoint operations in the 928–960 MHz band.

Private Radio—2—Title: Amendment of Part 90, Subparts M and S of the Commission's Rules. PR Docket No. 86–404. Summary: The Commission will consider whether to adopt a Report a..d Order revising in this proceeding which addresses the elimination of Subpart M and the modification of Subpart S as it applies to trunked Specialized Mobile Radio (SMR) systems.

Common Carrier—1—Title: Refinement of Procedures and Methodologies for Represcribing Interstate Rates of Return for AT&T Communications and Local Exchange Carriers. Summary: The FCC will consider procedures and methodologies for the rate of return prescription for 1989–90.

Common Carrier—2—Title: In the Matter of Regulatory Policies and International Telecommunications. CC Docket No. 86–494. Summary: The Commission will consider whether the public interest requires Commission consideration of the telecommunications policies of foreign governments in the formulation of U.S. regulatory policies.

Mass Media—1—Title: Domestic implementation of broadcasting in the 1605–1705 kHz band. Summary: The Commission will consider whether to commence an inquiry in order to develop a record for the domestic implementation of broadcasting in the expanded band.

Mass Media—2—Title: Short-Spaced FM Broadcasting Transmitter Sites and Directional Antennas. Summary: The Commission will consider the adoption of a Notice of Proposal Rule Making permitting short-spaced transmitter sites of commercial FM broadcast stations and the use of directional antenna systems for that purpose.

Mass Media—3—Title: License Renewal Applications of certain broadcast stations serving various communities in the states of North Carolina and South Carolina and a Petition to Deny those applications. Summary: The Commission considers a petition to deny filed by the National Black Media Coalition alleging that the licensees have not complied with the Commission's EEO rule.

Mass Media—4—Title: License Renewal Applications of certain broadcast stations serving various communities in the states of North Carolina and South Carolina and an Informal Objection to those applications. Summary: The Commission considers an informal objection filed by the National Black Media Coalition alleging that the licensee has not complied with the Commission's EEO rule.

Mass Media—5—Title: License Renewal Application of National Capital Christian Broadcasting, Inc., for Station WTKK (TV), Manassas, Virginia. Summary: The Commission considers a petition to deny filed by the National Black Media Coalition alleging that the licensees have not complied with the Commission's EEO rule.

Mass Media—6—Title: License Renewal Application of certain broadcast stations serving various communities in the State of Florida. Summary: The Commission considers a petition to deny filed by the National Black Media Coalition and the NAACP alleging that the licensees have not complied with the Commission's EEO rule.

Mass Media—7—Title: License Renewal Application of certain broadcast stations serving various communities in the State of Arkansas and Louisiana. Summary: The Commission considers a petition filed by the National Black Media Coalition and others alleging that the licensees have not complied with the Commission's EEO rule.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632–5050.

Issued: February 18, 1988.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–3980 Filed 2–22–88; 11:05 am]

BILLING CODE 6712-01-M

FEDERAL TRADE COMMISSION

TIME AND DATE: 3:00 p.m., Wednesday, March 2, 1988.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Consideration of proposal to standardize staff comments on regulations governing lawyer solicitation.

CONTACT PERSON FOR MORE INFORMATION: Susuan B. Ticknor, Office of Public Affairs: (202) 326–2179; Recorded Message: (202) 326–2711.

Emily H. Rock,

Secretary.

[FR Doc. 88–4048 Filed 2–22–88; 3:33 pm]

BILLING CODE 6750-01-M

NATIONAL LABOR RELATIONS BOARD

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 9:30 a.m., Friday, 26 February 1988.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. section 552b(c)(2) (internal personnel rules and practices and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, NLRB, Washington DC 20570, Telephone: (202) 254–9430.

Dated, Washington, DC, 22 February 1988.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 88-3957 Filed 2-22-88; 10:50 am]

BILLING CODE 7545-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, March 1, 1988.

PLACE: Board Room (812A), Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Safety Study: Lap/Shoulder Belt.
2. Followup Letters to Recipients of Lapbelt Safety Study Recommendations.
3. Recommendation to FAA re Engine Stoppage Due to Water in the Fuel in Beech 19, 23, 24 Series Airplanes. (Calendared by Member Nall)
4. Recommendation to FAA re Inadvertent Opening Inflight of Baggage Doors Installed on Money M20 Series Airplanes, Broomfield, Colorado, June 14, 1987. (Calendared by Chairman Burnett)

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

February 19, 1988.

[FR Doc. 88-3940 Filed 2-19-88; 4:59 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 22, 29, March 7, and 14, 1988.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 22

Wednesday, February 24

10:00 a.m.
Briefing on the Status of Near Term Operating Licenses (NTOLs) (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Reconsideration of Enforcement Policy Provision Involving Reopening Closed Cases (Tentative)

Week of February 29—Tentative

Monday, February 29

2:00 p.m.
Briefing on Status of Proposed Rulemaking on Basic QA in Radiation Therapy and Related Activities (Public Meeting)

Thursday, March 3

2:30 p.m.
Classified Security Briefing (Closed—Ex. 1)

2:45 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, March 4

9:30 a.m.
Briefing on Sequoyah Restart (Public Meeting)

Week of March 7—Tentative

Thursday, March 10

9:30 a.m.
Discussion/Possible Vote on Full Power Operating License for South Texas (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, March 11

10:30 a.m.
Discussion/Possible Vote on Rancho Seco Restart (Public Meeting)

Week of March 14—Tentative

Monday, March 14

2:00 p.m.
Briefing on the Status of Efforts to Develop a DeMinimis Policy (Public Meeting)

Thursday, March 17

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Braidwood-2 (Public Meeting)

2:00 p.m.
Briefing on Status of TMI-2 (Public Meeting)

3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, March 18

10:00 a.m.
NRC Participation in International Agreements and Research Programs (Public Meeting)

ADDITIONAL INFORMATION: Briefing on Static Elimination Device Problems (Public Meeting) was held on February 18.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: William Hill (202) 634-1410.

William M. Hill, Jr.,

Office of the Secretary.

February 18, 1988.

[FR Doc. 88-3942 Filed 2-19-88; 4:59 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 53, No. 36
Wednesday, February 24, 1988

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.

DEPARTMENT OF JUSTICE

28 CFR Part 42

[Atty. Gen. Order No. 1249-88]

Enforcement of Nondiscrimination on the Basis of Handicap in Department of Justice Federally Assisted Programs or Activities

Correction

In rule document 88-2262 beginning on page 3203 in the issue of Thursday, February 4, 1988, make the following corrections:

1. On page 3205, in the second column, in the first line, "260°" should read "360°".

2. On the same page, in the same column, in the third complete paragraph, in the last line, "4.1(9)(c)" should read "4.1.4(9)(c)".

3. On the same page, in the same column, in the seventh line from the bottom, "alteration" should read "alterations".

4. On the same page, in the third column, in the second line from the bottom, insert "(" before "46".

5. On page 3206, in the first column, there were ommissions in the heading for Part 42. The heading should read as set forth below:

PART 42--NONDISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY; POLICIES AND PROCEDURES

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-10]

Alteration of VOR Federal Airways; Expanded East Coast Plan; Phase II

Correction

In rule document 88-1436 beginning on page 2007 in the issue of Tuesday, January 26, 1988, make the following correction:

§ 71.123 [Corrected]

On page 2008, in the third column, in § 71.123, under "V-39", in the fourth line, "2126°" should read "216°".

BILLING CODE 1505-01-D

federal register

Wednesday
February 24, 1988

Part II

Environmental Protection Agency

Pentachlorophenol Products; Amendment of Notice of Intent To Cancel Registrations of Products for Non-Wood Biocide Uses; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/30E; FRL-3332-5]

Pentachlorophenol Products; Amendment of Notice of Intent To Cancel Registrations of Products for Non-Wood Biocide Uses

AGENCY: Environmental Protection Agency (EPA, Agency).

ACTION: Amendment of Notice of Intent To Cancel.

SUMMARY: This document amends the Notice of Intent to Cancel the registrations of pesticide products containing pentachlorophenol, including, but not limited to its salts and esters, for non-wood uses published in the **Federal Register** of January 21, 1987 (52 FR 2282), with respect to certain biocide uses. The amendments either (1) clarify provisions of the January 21, 1987 Notice, (2) reclassify the status of certain registrations, or (3) impose conditions for continued registration. The registrations of pentachlorophenol pesticide products not explicitly addressed in this Notice are unaffected by this Notice.

DATES: Hearing requests must be filed on or before March 25, 1988; for registrants or applicants, the hearing requests must be filed by March 25, 1988, or within 30 days from receipt of this Notice, whichever date occurs later. Any adversely affected party who filed a hearing request in response to the January 21, 1987, Notice must file amended objections or otherwise affirm its previously filed hearing request according to the above schedule in order to avoid dismissal of its hearing request.

ADDRESSES: Applications to amend the confidential statement of formulas, labeling modifications and sampling and analytical procedures must be submitted to:

Jeff Kempter, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office Location and telephone number: Room 711, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-3964).

Requests for a hearing and hearing request amendments should be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Spencer L. Duffy, Special Review Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office Location and telephone number: Room 1006F, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1529).

SUPPLEMENTARY INFORMATION: This document amends the Notice of Intent to Cancel the registrations of pesticide products containing pentachlorophenol, including, but not limited to the salts and esters, for non-wood uses.

This Notice is organized into eight units. Unit I is the introduction. Unit II is a general discussion of the legal/regulatory framework within which this action is taken. Unit III provides complete descriptions of the registrations covered by this Notice. Unit IV discusses the rationale for the modifications to the January 21, 1987 Notice that are included in this Notice, and Unit V discusses the contaminant limitations for the retained registrations. Unit VI summarizes EPA's current regulatory position on all non-wood pentachlorophenol registrations. Unit VII details the compliance procedures for the contaminant limitations and the existing stocks provisions for products affected by this Notice. Unit VIII provides a brief discussion of the procedures that will be followed in implementing the regulatory actions announced in this Notice.

I. Introduction

In the **Federal Register** of January 21, 1987 (52 FR 2282), EPA issued a Notice of Intent to Cancel and Deny Applications for Registrations of Pesticide Products Containing Pentachlorophenol, including, but not limited to its salts and esters for Non-Wood Uses ("January 21, 1987 Notice"), pursuant to section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The January 21, 1987 Notice concluded the Special Review (previously called Rebuttable Presumption Against Registration) process for the non-wood registrations of pentachlorophenol products, and announced the cancellation of most of these registrations. Only registrations for pentachlorophenol products used as biocides in pulp/paper mills, oil well operations, and cooling towers were exempt from cancellation, pending receipt and evaluation of additional information. The retained registrations were made subject to the same limitations on hexachlorodibenzo-p-dioxin (HxCDD) and other contaminants that had been imposed on the registrations of pentachlorophenol wood preservative products through a cancellation notice amendment published in the **Federal Register** of January 2, 1987 (52 FR 140). The bases for EPA's action regarding the non-wood registrations of pentachlorophenol products were discussed in detail in the January 21, 1987 Notice and the November 1984 Special Review Position Document 2/3 for Non-Wood Uses of Pentachlorophenol.

Since publication of the January 21, 1987 Notice, numerous questions have arisen regarding the scope of the notice as it relates to the definition and categorization of certain uses, and applicability of the contaminant limitation requirements to the non-wood registrations of pentachlorophenol products. In addition, as a result of its January 21, 1987 Notice, and actions taken under section 3(c)(2)(B) of FIFRA, EPA has received additional information on certain non-wood uses of pentachlorophenol products. Based on these factors, EPA concluded that a reassessment of its January 21, 1987 Notice, as it relates to certain pentachlorophenol products registrations for biocide uses, was appropriate.

In light of EPA's reassessment, several modifications to and clarifications of the provisions of the January 21, 1987 Notice are being made through this Notice. Specifically, EPA is revising its positions regarding certain registrations of biocide products containing pentachlorophenol as follows:

(1) Cancellation of all registrations for pentachlorophenol products used in paper mills in the wet end of the paper making process. These uses were previously included among the retained registrations.

(2) Cancellation of any of the retained registrations for pentachlorophenol products unless the registrations are amended to comply with the following terms and conditions:

(a) Compliance with the HxCDD and other contaminant limitations set out in the January 2, 1987 Notice and repeated in Units V and VII of this Notice, with new dates applicable only to the products subject to this Notice.

(b) Labeling of all end-use products to require use of either single, treatment-sized water soluble bags or closed system metering devices.

(3) Clarification of definitions of the retained pentachlorophenol biocide registrations.

The relevant portions of existing stocks provisions originally included in the January 2, 1987 Notice are reiterated in this Notice. The one-year existing stocks period commences on the date of publication of this Notice in the **Federal Register** for products cancelled by this Notice.

II. Legal Background

Before a pesticide product may be lawfully sold or distributed in either intrastate or interstate commerce, the product must be registered by EPA (FIFRA sections 3(a) and 12(a)(1)). A registration is a license allowing a pesticide product to be sold and distributed for specified uses in accordance with specified use instructions, precautions, and other terms and conditions.

In order to obtain a registration for a pesticide under FIFRA, an applicant for registration must demonstrate that the pesticide satisfies the statutory standard for registration. The standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment" [FIFRA section 3(c)(5)]. The term "unreasonable adverse effects on the environment" is defined in FIFRA section 2(bb) as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." This standard requires a finding that the benefits of the use of the pesticide exceed the risks of use, when the pesticide is used in compliance with the terms and conditions of registration or in accordance with commonly recognized practices.

The burden of proving that a pesticide satisfies the statutory standard is on the proponents of registration and continues as long as the registration remains in effect. Under FIFRA section 6, the Administrator may issue a Notice of Intent to Cancel the registration of a pesticide product whenever it is determined that the pesticide causes unreasonable adverse effects on the environment. The Agency created the Special Review process to facilitate the identification of pesticide uses which may not satisfy the statutory requirements for registration and to provide an informal procedure to gather and evaluate information about the risks and benefits of these uses.

A Special Review is initiated if a pesticide meets or exceeds risk criteria set out in the regulations at 40 CFR Part 154. The Agency announces that a Special Review is initiated by issuing a notice for publication in the **Federal Register**. Registrants and other interested persons are invited to review the data upon which the Special Review is based and to submit data and information to rebut the Agency's conclusions by showing that the Agency's initial determination was in error, or by showing that use of the pesticide is not likely to result in any significant risk to human health or the environment. In addition to submitting evidence to rebut the Agency's initial determinatinon, commenters may submit relevant information to aid in the determination of whether the economic, social, and environmental benefits of the use of the pesticide outweigh the risks of use. After reviewing the comments received and other relevant material obtained during the Special Review process, the Agency will make a decision on the future status of registrations of the pesticide.

The Special Review process may be culminated in several ways depending upon the outcome of the Agency's risk/benefit assessment. If the Agency concludes that all of its risk concerns have been adequately rebutted, the pesticide registration will be maintained unchanged. If, however, all risk concerns are not rebutted, the Agency will proceed to a full risk/benefit assessment. In determining whether the use of a pesticide poses risks which are greater than its benefits, the Agency considers possible changes to the terms and conditions of registration which can reduce risks, and the impacts of such modifications on the benefits of use. If the Agency determines that such changes reduce risks to the level where the benefits outweigh the risks, it may require that such changes be made in the terms and conditions of the registration. Alternatively, the Agency may determine that no changes in the terms and conditions of a registration will adequately assure that use of the pesticide will not pose any unreasonable adverse effects. If the Agency makes such a determination, it may seek cancellation, and, if necessary, suspension. In either case, the Agency may issue a Notice of Intent to Cancel the registrations. If the notice requires changes in the terms and conditions of registration, cancellation may be avoided by making the specified changes or corrections set forth in the Notice, if possible. Adversely affected persons, including the registrants and applicants for registration, may also request a hearing on the cancellation of a specified registration and use, and if they do so in a legally effective manner, that registration and use will be continued pending a decision at the close of an administrative hearing.

As noted above, no pesticide may be lawfully sold in either interstate or intrastate commerce unless it is registered by EPA. However, under 40 CFR 162.17, the Agency has permitted certain products previously registered under State law to continue to be sold and distributed solely in intrastate commerce, pending a final decision concerning Federal registration. In each instance, the State registrant was required to submit a "Notice of Application" for Federal registration and to agree to submit the balance of the application upon request by the Agency. Depending on the circumstances, when the Agency announces its intent to cancel Federal registrations for a pesticide, it may either instruct intrastate applicants for similar products to submit a full application for Federal registration conforming to appropriate terms and conditions, or notify the intrastate applicant that it intends to deny the application.

III. Definitions

As indicated above, since issuance of the January 21, 1987 Notice, it has become apparent to the Agency that there is some uncertainty regarding the definitions and categorizations of uses covered by that notice. As a result, there may be some confusion regarding the Agency's regulatory position on certain non-wood pentachlorophenol product registrations. This confusion can be explained in part by the bifurcation of the Agency's review of pentachlorophenol product registrations into wood and non-wood uses. In order to avoid perpetuating this confusion, this Unit describes in detail the uses and registrations covered by this Notice.

1. The term "non-wood uses" applies to any use of products containing pentachlorophenol as a pesticide that is not a wood preservative use.

2. The term "cooling tower uses" applies to the use of pentachlorophenol as a biocide in the following cooling systems: cooling towers, evaporative condensers, air washers, and fluid coolers.

a. An "air washer" is a device used to remove foreign and particulate matter from a moving stream of air by forcing the air through a chamber that is saturated with water from a series of nozzles.

b. A "cooling tower" is a device used to remove heat from water by forcing the heated water to flow over a series of grid decks or baffles (called "fill") usually made of wood. The streams of water falling over the fill break up into droplets resulting in a more efficient transfer of heat to the atmosphere.

c. An "evaporative condenser" is a device for removing heat from an industrial process through the transfer of heat to a process coolant circulating within a series of coils in a loop. The evaporation of water flowing over the coils cools the heated coolant within the

coils. The coolant is then returned to the heat source.

d. A "fluid cooler" or evaporative cooler is a heat exchanger very similar in principle to the evaporative condenser. In the evaporative or fluid cooler, the heated process fluid or liquid (as opposed to a process coolant in the evaporative condenser) is circulated within the coils and cooled through the evaporation of water flowing over the coils.

3. The term "oil well operation uses" applies to the use of pentachlorophenol as a biocide in drilling fluids or muds, packers fluids, and oil well flood waters (during enhanced or secondary oil recovery).

a. "Drilling fluids or drilling muds" are fluids that circulate through the borehole during rotary drilling and workover operations to cool the drilling bit and bring up cuttings out of the wellbore as the drilling progresses. The cuttings are removed from the fluid and the fluid is recirculated into the wellbore.

b. "Oil well flood waters" are waters, from whatever source, that are injected into the well to force the petroleum out of the well when internal well pressure is insufficient to force the crude oil to the surface. Oil well flooding is referred to as enhanced or secondary oil recovery, whereas the free emergence of the petroleum is referred to as primary oil recovery.

c. "Packer fluids" are essentially drilling muds injected into the well casing to act as a spacer. Packer fluids stay in place within the well casing and should remain in a fluid or pumpable condition.

4. The term "paper mill uses" applies to the use of pentachlorophenol as a biocide in the dry end of paper production. Although pentachlorophenol has been used in both the wet end (e.g., pulp slurry, wet lap), and the dry end (e.g., coatings, sizings, adhesives and printing inks) of the paper making process, for the purposes of this amendment, the term paper mill uses pertains only to the dry end of the paper making process. Because there is no use of pentachlorophenol in the wet end of the paper making process, the wet end uses of pentachlorophenol are being cancelled by this Notice (see Unit IV.A. of this Notice).

IV. Modifications to the January 21, 1987, Notice

The January 21, 1987, Notice announced that the Agency would allow the continued registration of pentachlorophenol products for use as biocides in cooling towers, pulp/paper mills, and oil well operations. All other pentachlorophenol registrations for products for non-wood uses were to be cancelled. The Agency's action was based in large part on the comments of the FIFRA Scientific Advisory Panel (SAP) regarding the adequacy of the Agency's analyses of these uses. Specifically, the SAP supported the Agency's proposal to cancel registrations for all non-wood pentachlorophenol products except those used in pulp/paper mills and oil well operations. SAP did not believe that the Agency had sufficient ecological data to justify cancellation of these latter registrations, and that more exposure data were needed to assess the human and environmental risks associated with these uses of pentachlorophenol.

Also at the SAP meeting, the Agency's conclusion that pentachlorophenol was no longer used as a biocide in cooling towers was severely challenged by a major registrant, as were the Agency's applicator exposure estimates for these uses. In response, in the January 21, 1987, Notice the Agency announced that cooling tower uses would be included among the retained registrations, and that additional use and exposure data had been required from the registrants.

Following issuance of the January 21, 1987, Notice, the Agency received questions regarding the specific uses covered by the January 21, 1987, Notice and the categorization of these uses. In addition, in response to the SAP comments, under authority of FIFRA section 3(c)(2)(B), the Agency required site-specific use, exposure, and ecological data for the retained uses. Currently, some of these data have been received and evaluated; other data are not yet due to be submitted.

In light of the possible uncertainty in the January 21, 1987, Notice and additional data evaluated, the Agency has decided to amend the January 21, 1987, Notice regarding the retained registrations of pentachlorophenol products for use as biocides in cooling towers, paper mills, and oil well operations. The modifications to the terms and conditions of the retained registrations as set out in this Notice are the result of the Agency's recent reassessment, and are based primarily on information received subsequent to publication of the January 21, 1987, Notice.

A Cancellation of Paper Pulp Registrations

At the time of publication of the January 21, 1987, Notice, the Agency believed that most of the pentachlorophenol used in paper mills was used in the paper pulp slurry or wet end of the paper making process. However, information provided by registrants since publication of the January 21, 1987, Notice indicates that pentachlorophenol is no longer used in the wet end of the paper making process. Instead, pentachlorophenol is used as a biocide at the dry end of the process in coatings and sizings, adhesives, and printing inks. Because there is no use of pentachlorophenol in the wet end of the paper making process, the registrations for that use are non-functional and there is no evidence of any benefits associated with that use pattern. Accordingly, the Agency has decided to cancel all registrations of pentachlorophenol for use in the wet end of paper production, since any risks associated with this use pattern would outweigh the benefits.

B. Categorization of Retained Registrations

Clarifications and modifications regarding the categorization of the cooling tower, paper mill, and oil well operation uses of pentachlorophenol shall apply as follows:

1. *Cooling towers.* The cooling tower uses shall include the use of pentachlorophenol as a biocide in cooling towers, evaporative condensers, air washers, and fluid coolers. Previously, air washers and evaporative condensers were included among the cancelled uses.

Rationale: The Agency reassessed the use patterns and exposure characteristics of the cooling tower uses following receipt and evaluation of additional data, and has concluded that these uses are sufficiently similar to be treated in the same manner. Therefore, registrations for products for these uses will be retained pending receipt and evaluation of additional information.

2. *Paper mills.* The paper mill uses shall include the use of pentachlorophenol as a biocide in printing inks, coatings and sizings, and adhesives in the dry end of the paper making process. In the January 21, 1987, Notice, these uses were included among the cancelled uses. As indicated above, this category does not include the use of pentachlorophenol in the wet end of the paper making process.

Rationale: Although the Agency has received some additional information on the use of pentachlorophenol in the dry end of paper making, enough information has not been received to allow the Agency to complete its reassessment of these uses as recommended by the SAP. Accordingly, registrations of pentachlorophenol products for use in the dry end of the paper making process in coatings and

sizings, adhesives, and printing inks will be retained pending receipt and evaluation of additional information.

3. *Oil well operations.* The oil well operations uses shall encompass pentachlorophenol use as a biocide in packer fluids, as well as in drilling muds and oil well recovery waters.

Rationale: The January 21, 1987 Notice did not identify the specific uses of pentachlorophenol in oil well operations that were being retained. Since that time, the Agency has acquired additional information on these uses. Packer fluids are essentially the same as drilling muds, the difference being in how they are used. When drilling muds are used in the wellbore as a spacer, they are called packer fluids. Because the use and potential exposure patterns of pentachlorophenol in drilling muds, packer fluids, and oil well recovery water have significant similarity, the Agency believes that they should be regulated in the same manner. Therefore, registrations for these uses shall be retained pending receipt and evaluation of additional information.

C. Exposure Reduction Measures

Based on data available within the Agency and on additional information received subsequent to publication of the January 21, 1987 Notice, the Agency continues to believe that the risks associated with the use of pentachlorophenol in cooling towers, paper mills, and oil well operations are equal to or greater than the risk levels cited in the January 21, 1987 Notice. For applicators (including mixer/loaders), the highest risk group identified thus far, some of these uses result in exposures that equate to cancer risk estimates of 10^{-1} to 10^{-3}. The margins-of-safety (MOSs) for some applicators are less than 10 for reproductive effects. Applicators who handle the pesticide when preparing working solutions are at the greatest risk.

Additional information obtained from the May 30, 1986 Data Call-in Notice for certain pentachlorophenol non-wood uses indicates that applicators handling pentachlorophenol in connection with its use in cooling towers, paper mills, and oil well operations can potentially be exposed to levels of pentachlorophenol which are of concern. Mixing, measuring, and adding pentachlorophenol to the various working solutions for the above uses are all potential sources of exposure. Preliminary analysis of this information indicates that batches of pentachlorophenol prepared for use in cooling towers, paper mills and oil well operations are sometimes handled manually, creating a condition for possible inhalation and dermal exposure. Based on this information, the Agency believes the potential exposures for applicators of the above uses are equal to or greater than the exposure estimates articulated in the January 21, 1987 Notice.

Also during the period since publication of the January 21, 1987 Notice, the Agency has learned that at least one major registrant of pentachlorophenol for non-wood uses is willing to provide some or all of its product in water soluble bags. The use of water soluble bags for dry products and a closed system metering device for liquid formulations will significantly limit handling of products containing pentachlorophenol and is an effective measure for reducing applicator exposure and may actually eliminate some source of exposure.

Therefore, in order to provide a significant measure of protection to applicators, the following label modification is required for all end use products containing pentachlorophenol for use in cooling towers, paper mills, and oil well operations:

Granular and Other Dry Products

This product has been packaged in premeasured, single treatment-sized water soluble bags and must be used only as packaged. DO NOT OPEN THE BAGS.

Liquid Products

This product is to be applied only through the use of a closed-system metering device.

These labeling requirements will essentially eliminate applicator exposure. The packaging of the pesticide in water soluble bags will prevent contact with the pesticide by the applicator. Similarly, the addition of the pesticide in a closed-metering system is automatic, except for the initial step of attaching (hooking up) the metering device. Appropriate protective clothing for the hook-up step is already a standard label requirement.

The above labeling modifications must comply with the time requirements stipulated in Unit VIII.B. of this Notice.

The Agency believes the risk reduction that will be achieved through this label requirement outweighs any additional cost that may be associated with its imposition.

The Agency is aware, however, that other workers at the site may be exposed to residues of the pesticide after application. The Agency may require exposure data, in such instances, where it believes exposure could be significant.

V. Contaminant Limitations

Under the January 21, 1987 Notice, certain limitations on HxCDD and other contaminant levels were made applicable to the retained registrations of non-wood pentachlorophenol products. These conditions are the same as those imposed on registrations of pentachlorophenol wood preservative products as published in the **Federal Register** of January 2, 1987. Because of these actions, all pentachlorophenol pesticide products on the market will contain increasingly lower levels of HxCDD and other contaminants. In order to insure compliance, registrants must closely monitor the contaminant levels and provide regular reports to the Agency, as set forth in Unit VII of this Notice. These requirements are consistent with the repeated recommendation of the FIFRA Scientific Advisory Panel that EPA should require industry to reduce the dioxin content of pentachlorophenol products to as low a level as is technologically possible and economically feasible.

The January 21, 1987 Notice did not include any discussion of the specific terms included in the January 2, 1987 Notice, but instead only referred to the January 2, 1987 Notice and the contaminant limitations. This has led to some confusion regarding applicability to non-wood pentachlorophenol products of the limitations and their specific details. To avoid such confusion in the future, the major provisions of the contaminant limitation scheme from the January 2, 1987 Notice are set out below, and the entire text of relevant portions of the "Compliance Procedures for Certified Limits for HxCDD and Other Contaminants in Pentachlorophenol Wood Preservatives Products" ("Compliance Procedures") that appeared in the January 2, 1987 Notice (52 FR 142–148) is set out in Unit VII of this Notice. The dates listed below in Unit V.A. 1., 2., and 3. are those which apply to the pentachlorophenol products subject to this Notice.

A. Manufacturing-Use Pentachlorophenol Products

The Agency has determined that any registrant of a pentachlorophenol (or its derivatives, including but not limited to salts and esters) manufacturing-use product, as defined in the Compliance Procedures must, within the time permitted by Unit VIII of this Notice, amend the Confidential Statement of Formula for that product to state as follows:

1. During the time period which runs until February 2, 1988, each batch of

pentachlorophenol manufacturing-use product or portion thereof released for shipment will contain no more than 15 ppm HxCDD. This reduction in HxCDD content must be achieved without increasing the amount of hexachlorobenzene (HCB) beyond 75 parts per million (ppm).

2. During the time period which runs from February 2, 1988 to February 2, 1989, each batch of pentachlorophenol manufacturing-use product or portion thereof released for shipment will contain no more than 6 ppm HxCDD, and the average of all batches released for shipment in any calendar month will not exceed 3 ppm. This reduction in HxCDD content must be achieved without increasing the amount of HCB beyond 75 ppm.

3. After February 2, 1989, each batch of pentachlorophenol manufacturing-use product or portion thereof released for shipment will contain no more than 4 ppm HxCDD, and the average of all batches released for shipment in any calendar month will not exceed 2 ppm HxCDD. This reduction in HxCDD content must be achieved without increasing the amount of HCB beyond 75 ppm.

4. The manufacturing-use pentachlorophenol products do not contain any 2,3,7,8-TCDD at a limit of detection of no higher than 1 part per billion (ppb).

5. The "Compliance Procedures for Contaminant Limitations" as presented in Unit VII of this Notice, provide the mechanisms by which compliance with the certified limits for HxCDD, HCB, 2,3,7,8-TCDD and other contaminants will be measured, monitored, and enforced.

B. End-Use Pentachlorophenol Products

The Agency has determined that any registrant of an end-use product containing pentachlorophenol (or its derivatives, including but not limited to, its salts and esters), must, within the time permitted by Unit VIII of this Notice, amend the Confidential Statement of Formula for that product to state as follows:

1. The presence of any quantity of pentachlorophenol in any quantity of the end-use product which is sold or distributed after March 25, 1988, is attributed solely to manufacture or formulation of the end-use product from manufacturing-use pentachlorophenol containing no more than the applicable certified limit of HxCDD and other contaminants specified in Unit V.A. of this Notice. This requirement applies both to end-use products formulated exclusively from purchased, registered manufacturing-use pentachlorophenol and to end-use products which are not formulated exclusively from purchased, registered manufacturing-use pentachlorophenol.

2. For end-use products which are formulated exclusively from purchased, registered pentachlorophenol manufacturing use-products, the composition statement for the end-use product must state that the end-use product will not contain any quantity of any pentachlorophenol manufacturing-use product which the registrant or manufacturer of the end-use product knows, or has been informed, was not manufactured, sampled, analyzed, or labeled in accordance with the terms and conditions of registration set forth in this Notice.

3. For those end-use products not formulated exclusively from purchased, registered pentachlorophenol manufacturing-use products, the registrant must comply with the same requirements and conditions for registration relating to sampling, analysis, and sample collection and retention for the end-use product as for manufacturing-use pentachlorophenol products, as specified in the Compliance Procedures. In the alternative, registrants of these end-use pentachlorophenol products may elect to fulfill these requirements through sampling and analysis of the parent manufacturing-use product instead of the end-use product, subject to the conditions specified in the Compliance Procedures.

4. The "Compliance Procedures for Contaminant Limitations" as presented in Unit VII of this Notice, provide the mechanisms by which compliance with the certified limits for HxCDD, HCB, 2,3,7,8–TCDD, and other contaminants will be measured, monitored, and enforced.

VI. Regulatory Status of Non-Wood Pentachlorophenol Registrations

The following summarizes the Agency's current regulatory position on all non-wood pentachlorophenol registrations, as set forth in the January 21, 1987 Notice and amended by this Notice.

1. Cancellation and denial of applications for registrations of pentachlorophenol products for biocide use in cooling towers, paper mills, and oil well operations, as defined in Unit III of this Notice, unless the registrations are amended to comply with the following terms and conditions:

a. Limitation of the levels of HxCDD and other contaminants, as detailed in Unit V of this Notice.

b. Labeling of all end-use products to require use of either single application-size, water soluble bags or closed system metering devices.

2. Except as provided above, cancellation and denial of applications for all registrations of pentachlorophenol products for non-wood uses. This was implemented by the January 21, 1987 Notice.

3. Authorization for the distribution and sale of existing stocks of cancelled pentachlorophenol non-wood products for up to one year after publication of the applicable cancellation notice in the **Federal Register.** Existing stocks provisions for those products cancelled by the January 21, 1987 Notice were set forth in that notice (52 FR 2289) and are not changed by this Notice. Provisions for products cancelled by this Notice are set forth in Unit VII of this Notice.

4. The Agency is continuing its review of the retained non-wood uses (cooling tower, paper mill and oil well operations) of pentachlorophenol. Accordingly, the Agency has required certain data relative to the use of pentachlorophenol in cooling towers, paper mills and oil well operations. Upon receipt and evaluation of these data and any other data required to fully assess the risk associated with the above uses, the Agency will make a final determination as to whether or not the registration of these uses should be continued.

VII. Compliance Procedures for Contaminant Limitations and Existing Stocks Provisions

A. Preface

1. *Overview.* The primary objective of this Unit is to establish reliable and enforceable methods for implementing certified limits for certain contaminants in registered pentachlorophenol products. Accordingly, this Unit sets forth the mechanisms by which compliance with certified limits for hexachlorodibenzo-p-dioxin (HxCDD), hexachlorobenzene (HCB), and 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD) in pentachlorophenol products will be measured, monitored, and enforced. Mechanisms for achieving compliance with the certified limits for the various categories of manufacturing-use and end-use products are included.

The particular contaminant limits chosen have been arrived at after due consideration of potential risks, technical and economic feasibility, and overall practicability. The procedures set out in this Unit call for a three-phase reduction scheme for HxCDD in pentachlorophenol manufacturing-use products, arriving at an average concentration of 2 ppm or less in 2

years. The reduction in HxCDD content must be achieved without increasing the amount of HCB currently found in pentachlorophenol products. In addition, although available information does not indicate that 2,3,7,8-TCDD is a contaminant in pentachlorophenol products registered for use in the United States, the Agency must be confident that the HxCDD reduction methods used do not result in the production of detectable amounts of 2,3,7,8-TCDD. Accordingly, registrants of pentachlorophenol products must certify that their products do not contain any 2,3,7,8-TCDD at a limit of detection no higher than 1 ppb.

In order to ensure that monitoring and enforcement of compliance with the new certified limits will be as practicable as possible, these procedures provide that every batch of manufacturing-use product containing a technical pentachlorophenol active ingredient must be sampled and analyzed for HxCDD content prior to incorporation in end-use products (except that where a single product is produced by the same registrant as both a manufacturing-use and end-use product, it will be sampled and analyzed before packaging, mixing with other batches, or formulation, as if it were a manufacturing-use product only); analysis for HCB and 2,3,7,8-TCDD must be performed monthly. The sampling and analytical methods used by each registrant of a manufacturing-use product must be reviewed and approved by EPA. A portion of each sample analyzed must be retained and records of the results of each analysis must be kept. Where manufacturing-use products are formulated exclusively from purchased, registered products, registrants of those products may rely upon the certification of the earlier registrants.

Registrants of end-use products must either certify that their products are formulated exclusively from purchased, registered pentachlorophenol products or provide the Agency with the necessary means to verify that their products conform to the maximum certified limits for HxCDD and other contaminants. Registrants of end-use products are also subject to certain reporting and record retention requirements.

Registrants are also required to measure and report levels of other dioxin and furan contaminants in pentachlorophenol products on a regular basis in order to allow the Agency to monitor levels of these substances in current products. Based on this information, the Agency will determine whether further regulatory action related to these pentachlorophenol contaminants is necessary or appropriate.

Any pentachlorophenol product that has not been manufactured, sampled, analyzed, packaged, and labeled in accordance with the terms and conditions of its registration, as approved pursuant to the Amended Notice of Intent to Cancel implementing these compliance procedures, will be subject to a stop sale, use, or removal order, or to seizure under section 13 of FIFRA. In addition, any person who sells or distributes any pentachlorophenol product which does not comply with the terms and conditions of its registration, as approved pursuant to the Amended Notice of Intent to Cancel implementing these compliance procedures, will be subject to civil or criminal penalties under section 14 of FIFRA.

2. *Definitions.* For purposes of this unit, the following terms are defined as set forth below:

a. The term "Amended Notice" means the amended notice of intent to cancel issued for publication in the **Federal Register** by the Agency that encompasses the terms of these compliance procedures and announces the Agency's regulatory intent to make the terms binding on all remaining pentachlorophenol non-wood registrations.

b. The term "average", when used to describe the monthly limitation for HxCDD, means a weighted average. Therefore, in calculating the monthly average ppm HxCDD (in pentachlorophenol equivalents), weight assigned to each batch of product shall be proportional to the pentachlorophenol equivalent of that batch.

c. The term "code", as used in Unit VII.D. of this Notice, means an identification system that an end-use registrant may include on its labels to indicate the source of the manufacturing-use product used, without specifically naming the source on the label. The key to the code must be provided to the Agency in the composition statement for the end-use product.

d. The term "composition statement" is used to encompass the statement required in connection with the registration of a pesticide under FIFRA section 3 and all of the supporting data and information necessary to verify the accuracy of the contents of the statement. In determining the adequacy of the statement, the Agency will consider the statement and its supporting documentation as a unit.

e. The term "distribute or sell" means to sell, offer for sale, hold for sale, distribute, release for shipment, deliver for shipment, or ship.

f. The term "penta" means technical grade pentachlorophenol.

g. The term "pentachlorophenol" means only the chlorinated phenol, C_6HCl_5O.

h. The term "pentachlorophenol equivalent" (or "p.e.") means the amount of pentachlorophenol that would be present in a product if all the pentachlorophenol were in the penta form and if no diluent ingredients were added. The amount of pentachlorophenol equivalent in a product is related to the amount of penta derivative in that product by the ratio of the respective molecular weights (MW): pure pentachlorophenol molecular weight/pure pentachlorophenol derivative molecular weight. The pentachlorophenol equivalent HxCDD concentration is expressed as the weight of HxCDD per weight of pentachlorophenol equivalent:

$$\frac{\text{mg HxCDD}}{\text{(kg penta derivative)}\ \dfrac{\text{pentachlorophenol MW}}{\text{pentachlorophenol derivative MW}}} = \text{ppm HxCDD (p.e.)}$$

However, where the penta contains less than 85 percent pentachlorophenol or the penta derivative is derived from penta containing less than 85 percent pentachlorophenol, the HxCDD

concentration must be corrected for percent pentachlorophenol.

i. The term "penat derivative" means the technical grade of a penta derivative, including but not limited to metal salts and esters.

j. The term "pentachlorophenol end-use product" (or "pentachlorophenol EP") means any pentachlorophenol product that bears label instructions for, or is intended for use as a biocide in cooling towers, paper mills, and oil well operations.

k. The term "pentachlorophenol manufacturing-use product" (or "pentachlorophenol MP") means all other pentachlorophenol products that are not pentachlorophenol EPs, including any product which bears label instructions for, or is intended for use in manufacture or formulation of end-use products for use as biocide in cooling towers, paper mills, and oil well operations.

l. The term "pentachlorophenol products" means any pesticide containing pentachlorophenol or any pentachlorophenol derivative, including but not limited to metal salts of pentachlorophenol and pentachlorophenol esters, that is used as a biocides in cooling towers, paper mills, and oil well operations.

m. The term "purchased" means bought from another producer, provided the other producer does not share ownership with the purchaser.

n. A product is "released for shipment", in accordance with the definition of "released for shipment" set forth in EPA Policy and Criteria Notice Number 2030.1, when the producer manifests an intent to introduce the product into United States commerce.

o. The term "technical grade" means a substance that contains an active ingredient in the purest form attained during manufacture and that contains no inert ingredients which have been intentionally added for any purpose other than synthesis or purification of the active ingredient.

Terms defined in FIFRA and not explicitly defined above are used in this document with the meaning given to them in FIFRA.

B. Registration of Pentachlorophenol Pesticides

No person shall sell, offer for sale, hold for sale, distribute, release for shipment, deliver for shipment, or ship (hereafterr "distribute or sell") in any State any quantity of any pesticide containing pentachlorophenol or any pentachlorophenol derivative, (hereafter "pentachlorophenol products"), including but not limited to metal salts of pentachlorophenol and pentachlorophenol esters, unless such pesticide is registered pursuant to section 3 of the Federal Insecticide, Fugicide, and Rodenticide Act or is intended solely for export pursuant to section 17(a) of FIFRA. Any pentachlorophenol product which bears label instructions for, or in intended for use as a biocide in cooling towers, paper mills, and oil well operations, shall be classified as a pentachlorophenol end-use product (EP). Any other pentachlorophenol product, including any product which bears label instructions for, or is intended for use in manufacture or formulation of end-use products for the above uses, shall be classified as a pentachlorophenol manufacturing-use product (MP). Nothing in these Compliance Procedures precludes a single product from being both an MP and an EP. However, for purposes of the procedures set forth herein, such a product shall be considered an MP as to the registrant/producer of the product.

After the effective date of the amended notice of intent to cancel implementing these compliance procedures, no application for registration or amended registration of any pentachlorophenol product shall be approved unless, in addition to any other requirements for registration, the applicant has satisfied all requirements for registration of a pentachlorophenol manufacturing-use product established by Unit VII.C. or all requirements for registration of a pentachlorophenol end-use product established by Unit VII.D. of this Notice.

C. Requirements Concerning Manufacturing-Use Products

1. *Application for amended registration.* After the effective date of the amended notice of intent to cancel implementing these compliance procedures, no registrant of a pentachlorophenol MP shall distribute or sell in any State any quantity of such product unless the registration for such product has been amended to conform to the criteria specified in Unit VII.C.2.

2. *Approval of registration*—a. *Types of manufacturing-use products.* No application for registration or amended registration of a pentachlorophenol MP shall be approved unless the MP consists of or is formulated from a technical-grade pentachlorophenol or pentachlorophenol derivative. Each such pentachlorophenol MP shall be classified as follows:

(1) Each MP consisting of technical-grade pentachlorophenol shall be classifed as a "Type 1 MP."

(2) Each MP consisting of a technical-grade pentachlorophenol derivative shall be classified as a "Type 2 MP." Type 2A MPs consist of Type 2 MPs derived exclusively from purchased, registered Type 1 MPs; Type 2B consist of all other Type 2 MPs.

(3) Each MP consisting of a mixture formulated from a technical-grade pentachlorophenol or pentachlorophenol derivative and other ingredients shall be clsassifed as a "Type 3 MP." Type 3A MPs consist of Type 3 MPs in which all the pentachlorophenol in the product is derived exclusively from purchased, registered Type 1 or Type 2 MPs; Type 3B MPs consist of all other Type 3 MPs.

b. *Composition statement*—(1) *Certified limited for HxCDD.* No application for registration or amended registration of a pentachlorophenol MP shall be approved unless the composition statement for the product includes a certification that each batch of the product or portion therof that the registrant releases for shipment complies with the following limits for HxCDD. Compliance with the HxCDD certified limit will be enforced according to the procedures set out in Unit VII.C.2.

(A) *Phase 1.* Each current batch of pentachlorophenol product or portion thereof will contain no more than 15 ppm HxCDD (p.e. basis);

(B) *Phase 2.* During the time period between February 2, 1988 and February 2, 1989, each batch of pentachlorophenol product or portion thereof will contain no more than 6 ppm HxCDD (p.e.), and the average of all batches released for shipment in any calendar month will not exceed 3 ppm (p.e.); and

(C) *Phase 3.* After February 2, 1989, each batch of pentachlorophenol product or portion thereof will contain no more than 4 ppm HxCDD (p.e.), and the average of all batches released for shipment in any calendar month will not exceed 2 ppm (p.e.).

In calculating the monthly average ppm HxCDD (p.e.), the mathematical weight assigned to each batch shall be proportional to the pentachlorophenol equivalent of that batch.

The certified limit for HxCDD shall be attained without exceeding the following contaminant limitations for hexachlorobenzene (HCB), and 2,3,7,8,-tetrachlordibenzo-p-dioxin (2,3,7,8–TCDD) in pentachlorophenol MPs on a pentachlorophenol equivalent basis: 75 ppm HCM and no detectable 2,3,7,8–TCDD at a limit of detection no higher than 1 ppb.

(2) *Type 1, Type 2B, and Type 3B MPs.*—(A) *Sampling method*—(i) *Description of method.* No application for registration or amended registration of a pentachlorophenol Type 1, Type 2B, or Type 3B MP shall be approved unless

the composition statement for the product describes a method for sampling the product to determine HxCDD content which has been reviewed and approved by EPA. Each application for registration or amended registration of a pentachlorophenol Type 1, Type 2B, or Type 3B MP shall contain a written description of the proposed sampling method for the product, including all handling steps from sample selection to storage and all data evaluation steps. EPA will review the proposed sampling method, and all subsequent proposed revisions, thereof, for conformity to the basic criteria specified in Unit VII.C.2.b.(2)(A)(ii) within 90 days following receipt of a proposed sampling method. EPA will either approve the method, notify the applicant that the method is unsatisfactory or incomplete, or acknowledge receipt of the method with a brief explanation of factors requiring further review. If EPA determines that a proposed sampling method is unsatisfactory or incomplete, the applicant may consult with EPA concerning appropriate modifications of the proposed method.

(ii) *Criteria for approval of method.* The sampling method for each pentachlorophenol Type 1, Type 2B, or Type 3B MP shall be consistent with sound statistical and sampling techniques. The sampling method shall be designed to provide a high degree of reliability so that analysis of samples collected by the method will demonstrate whether or not each individual batch of the MP, and any portion thereof which is distributed or sold, or used in the manufacture or formulation of other products, meets the stated certified limit for HxCDD. The sampling method shall include a complete description of the criteria which will define a "batch" of the MP. Every batch of the MP shall be sampled and analyzed for HxCDD content. At least one representative sample (may be composite) of not less than 75 grams on a pentachlorophenol equivalent basis shall be taken from each batch of MP.

The sampling method shall provide for additional sampling for process monitoring or additional analyses at any time if EPA determines that these additional steps are necessary to assure compliance with the HxCDD limitation. The basis for such a determination is whether the sampling method continues to provide a high degree of reliability so that analysis of samples collected by the method will demonstrate that the MP meets the stated certified limit for HxCDD.

(B) *Analytical method.* No application for registration or amended registration of a pentachlorophenol Type 1, Type 2B, or Type 3B MP shall be approved unless the composition statement for the product describes or cites a method for analysis of the product to determine HxCDD content which has been reviewed and approved by EPA. Each application for registration or amended registration of a Type 1, Type 2B, or Type 3B MP shall either contain a written description of a proposed analytical method for the product or cite an appropriate method from among the EPA-approved methods. (Copies of EPA-approved methods are available from the Agency.) All proposed analytical methods other than those already approved will be reviewed by EPA for conformity to basic criteria for acceptable analytical methods including adequacy of the method (i) to extract or partition HxCDD from pentachlorophenol products; (ii) to separate HxCDD from any interferences present in the extract; and (iii) to separate and quantify HxCDD using an appropriate detection method that has sufficient sensitivity and selectivity to achieve the desired limits of detection. Within 90 days following receipt of a proposed analytical method, EPA will either approve the method, notify the applicant that the method is unsatisfactory or incomplete, or acknowledge receipt of the method with a brief explanation of factors requiring further review. If EPA determines that a proposed analytical method is unsatisfactory or incomplete, the applicant may consult with EPA concerning appropriate modifications of the proposed method.

(C) *Use of approved methods.* No application for registration or amended registration of a pentachlorophenol Type 1, Type 2B, or Type 3B MP shall be approved unless the composition statement for the product states that each batch of the MP will be sampled and analyzed, utilizing the sampling method and the analytical method described in the composition statement, to establish compliance with the certified limit for HxCDD specified in Unit VII.C.2.b.(1).

(D) *Other required analyses.* Periodically, but at least once a month or after the production of 120 batches, whichever occurs earlier, each pentachlorophenol Type 1, Type 2B, or Type 3B MP shall be analyzed for HCB, 2,3,7,8-TCDD, total tetra, penta, and heptachlorinated dibenzo-p-dioxins (PCDDs), and tetra, penta, hexa, and heptachlorinated dibenzofurans (PCDFs). Analyses for the PCDDs and PCDFs shall, at a minimum, provide information on the total concentration of each individual homologue; however, isomeric analyses will be acceptable so long as the total concentration of the homologue can be determined from the results. If the analytical method for 2,3,7,8-TCDD is not isomer specific, any TCDD detected will be assumed to be 2,3,7,8-TCDD.

Samples used for these analyses shall also be analyzed for HxCDD, and for purposes of the required records, a complete contaminant level profile (i.e., concentrations of HxCDD, HCB, TCDD, PeCDD, HpCDD, TCDF, PeCDF, HxCDF, HpCDF, and 2,3,7,8-TCDD) shall be reported for the same sample.

Records for these analyses shall be maintained and made available for inspection as described in Unit VII.C.2.c.(1)(A) of this Notice. Samples shall be maintained as described in Unit VII.C.2.c.(1)(B) of this Notice.

(3) *Type 3B MP option.* In lieu of providing analytical information on the mixture, registrants of Type 3B MPs may elect to provide the required information on the parent Type 1 or Type 2 MP used to formulate the Type 3B MP. Selection of this option is possible only if the registrant agrees to all of the following conditions:

(i) Samples of and records for the parent Type 1 or Type 2 MP will be obtained, analyzed, and maintained as described in Unit VII.C.2.b.(2)(A) through (D) and 2.c.(1)(A) through (D) of this Notice;

(ii) Records correlating individual batches of Type 3B MP with the specific batch(es) of Type 1 or Type 2 MP used to make the Type 3B MP are maintained;

(iii) EPA has determined that formulation of the Type 3B MP would not be expected to result in additional HxCDD, and that the HxCDD content of the Type 3B MP on a pentachlorophenol equivalent basis is readily ascertainable from the required records; and

(iv) Duly authorized inspectors will be allowed to collect samples of the parent Type 1 or Type 2 MP used to make the Type 3B MP under the same conditions that they would be allowed to sample the Type 3B MP. All other conditions and requirements for registration set forth in this document for Type 3B MPs would be effective as written.

(4) *Type 2A and Type 3A MPs*—(A) *Use of conforming MP.*

No application for registration or amended registration of pentachlorophenol Type 2A or type 3A MP shall be approved unless the composition statement for the product states that the presence of any form of pentachlorophenol in any quantity of the Type 2A or Type 3A MP which the registrant distributes or sells shall be

attributable solely to formulation of the Type 2A or Type 3A MP from one or more specified, purchased, registered pentachlorophenol Type 1 or Type 2 MPs which have been certified to meet the limits for HxCDD specified in Unit VII.C.2.b.(1) of this Notice.

(B) *HxCDD formation.* No application for registration or amended registration of a pentachlorophenol Type 2A or Type 3A MP shall be approved unless EPA determines that formulation of the Type 2A or Type 3A MP would not be expected to result in the presence of additional HxCDD.

(c) *Agreed conditions*—(1) *Type 1, Type 2B, and Type 3B MPs*—(A) *Required records*—(i) *Reporting requirements.* No application for registration or amended registration of a pentachlorophenol Type 1, Type 2B, or Type 3B MP shall be approved unless the applicant agrees, as a condition of registration, to provide the Agency by the 15th day of the month the results of the analyses of HxCDD of all Type 1, Type 2B, or Type 3B MPs distributed or sold during the preceding calendar month. The monthly report must, at a minimum, include information, identified by batch number, on the HxCDD content of every batch (or portion thereof) of Type 1, Type 2B, or Type 3B MP distributed or sold, and the average HxCDD content of all batches (or portions thereof) distributed or sold during the reporting month.

(ii) *Retention requirements.* No application for registration or amended registration of a pentachlorophenol Type 1, Type 2B or Type 3A MP shall be approved unless the applicant agrees, as a condition of registration, that records of the results of each analysis of the MP performed to establish compliance with the certified limit of HxCDD specified in Unit VII.C.2.b.(1) of this Notice will be maintained at specified locations for 10 years after the date of analysis. For each sample analyzed, the records shall include the sample number, the batch number, the batch weight, the date of analysis for HxCDD content, the approved analytical method used, the limit of detection, the concentration of HxCDD detected, the percent recovery, the calculated HxCDD concentration (pentachlorophenol equivalent basis), the name and address of the analytical laboratory, and the signature of the analyst.

(B) *Retention of samples.* No application for registration or amended registration of a pentachlorophenol Type 1, Type 2B, and Type 3B MP shall be approved unless the applicant agrees, as a condition of registration, that a representative portion of each sample of the MP that is analyzed to establish compliance with the certified limit for HxCDD specified in Unit VII.C.2.b.(1) of this Notice, will be retained at specified locations for 5 years after the date of analysis. Each sample retained shall contain at least 50 grams on a pentachlorophenol equivalent basis or a sufficient amount to enable at least two subsequent analyses of the sample by the approved analytical method for the product, whichever is greater. Each sample shall be clearly identified as to batch number, date of manufacture, and date of analysis, stored securely, and adequately protected from light, high temperatures, and other conditions which might cause degradation.

(C) *Collection of samples.* No application for registration or amended registration of a pentachlorophenol Type 1, Type 2B or Type 3B MP shall be approved unless the applicant agrees, as a condition of registration, that samples of the MP retained pursuant to Unit VII.C.2.c.(1)(A) of this Notice, will be made available at the specified location for collection at any reasonable time by any officer or employee of the Environmental Protection Agency or of any State or political subdivision, duly designated by the Administrator, upon the presentation of appropriate credentials. For any given sample, the officer or employee may collect an aliquot no larger than one-half of the total sample or an amount sufficient for analysis, whichever is greater, and shall provide a written receipt describing the sample(s) collected. If any sample so collected is analyzed, a copy of the results of such analysis shall be furnished promptly to the registrant.

(D) *Compliance with HxCDD certified limit*—(i) *Batch limitation.* The HxCDD batch limitation for pentachlorophenol MPs described in Unit VII.C.2.b. of this Notice shall be strictly enforced. Violations of the HxCDD batch limitation shall be enforced through stop sale orders or any other appropriate actions under FIFRA.

(ii) *Monthly average limitation.* No application for registration or amended registration of a pentachlorophenol Type 1, Type 2B, or Type 3B MP shall be approved unless the applicant agrees, as a condition of registration, to abide by the procedures set forth in this paragraph for ensuring compliance with the monthly average limitation for HxCDD described in Unit VII.C.2.b. Any registrant reporting a monthly average greater than 3.0 ppm HxCDD (p.e.) during Phase 2 or 2.0 ppm HxCDD (p.e.) thereafter in Phase 3, but less than or equal to 3.1 ppm (Phase 2) or 2.1 ppm (Phase 3) for 2 consecutive months, or any registrant reporting a monthly average greater than 3.2 ppm (Phase 2) or 2.2 ppm (Phase 3) for any 1 month shall not thereafter distribute or sell any batch of pentachlorophenol product that contains greater than 3.0 ppm (Phase 2) or 2.0 ppm (Phase 3) HxCDD until it can be matched with one or more batches containing less than 3.0 ppm (Phase 2) or 2.0 ppm (Phase 3), such that the average of the matched batches is equal to or less than 3.0 ppm (Phase 2) or 2.0 ppm (Phase 3) ppm. (No low batch may be used for matching purposes more than once.) Such matching provision shall be in effect until the registrant adequately demonstrates to the Agency that a monthly average equal to or less than 3.0 ppm (Phase 2) or 2.0 ppm (Phase 3) HxCDD (p.e.) has been maintained for at least 1 month.

(2) *Type 2A and 3A MPs—Required Records.* No application for registration or amended registration of a pentachlorophenol Type 2A or Type 3A MP shall be approved unless the applicant agrees, as a condition of registration, to maintain records for each batch of the Type 2A or Type 3A MP, stating:

(i) The date each such batch or portion thereof, is released for shipment;

(ii) The registration number of the Type 1 or Type 2 MP used to formulate each such batch; and

(iii) The batch number(s) for each such registered Type 1 or Type 2 MP. The applicant shall also agree, as a condition of registration, to maintain all such records at specified locations for ten years beginning on the date of release for shipment.

(3) *All MPs*—(A) *Inspection of Records.* No application for registration or amended registration of a pentachlorophenol MP shall be approved unless the applicant agrees, as a condition of registration, that all records maintained pursuant to Unit VII.C.2.c.(1)(A), 2.c.(2) and 2.b.(2)(D) of this Notice will be made available at the specified location for inspection and copying at any reasonable time by any officer or employee of the Environmental Protection Agency or of any State or political subdivision, duly designated by the Administrator, upon the presentation of appropriate credentials.

(B) *Acknowledgment.* No application for registration or amended registration of a pentachlorophenol MP shall be approved unless the applicant acknowledges as a condition of registration, that any failure by the applicant or any of its employees, agents, or contractors to conform to the composition statement or labeling submitted for the product, or to comply with any of the terms and conditions of

the registration for such product set forth in this document shall constitute a violation of FIFRA section 12(a)(1)(C) or 12(a)(1)(E).

d. *Label requirements*—No application for registration or amended registration of a pentachlorophenol MP shall be approved unless the labeling submitted for the product conforms to the following requirements:

(1) *Batch number.* The label or package for each packaging unit of the pentachlorophenol MP which is distributed or sold shall bear the batch number(s) of the penta product contained therein. In lieu of using the batch number(s), a lot number may be used; however, records that specifically identify particular batches with an individual lot must be maintained and made available as described in Unit VII.C.2.c.(1)(A), 2.c.(2) and 2.c.(3)(A) of this Notice.

(2) *Statement of compliance.* The label on each packaging unit of the pentachlorophenol MP which is distributed or sold shall state, "The registrant has complied with all terms and conditions of the registration governing the composition of this product as approved by the United States Environmental Protection Agency under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act."

D. Requirements Concerning End-Use Products

1. *Application for amended registration.* After the effective date of the amended notice of intent to cancel implementing these compliance procedures, no registrant of a pentachlorophenol EP shall distribute or sell in any State any quantity of such product unless the registration for such product has been amended to conform to the criteria specified in Unit VII.D.2. of this Notice.

2. *Approval of registration*—a. *Composition Statement*—(1) *Certified limit for HxCDD.* No application for registration or amended registration of a pentachlorophenol EP shall be approved unless the composition statement for the product states that the presence of any quantity of pentachlorophenol in any quantity of the EP which the registrant distributes or sells after the effective date of the amended notice of intent to cancel implementing these compliance procedures, shall be attributable solely to manufacture or formulation of the EP from a batch(es) of pentachlorophenol MP which, pursuant to Unit VII.C.2.b.(1) of this Notice, contains no more than the applicable certified batch limit of HxCDD (p.e.).

(2) *Identification of MP.* No application for registration or amended registration of a pentachlorophenol EP shall be approved unless the composition statement for the product identifies each pentachlorophenol MP which the EP may legally contain, along with a code identifying each such MP as described in Unit VII.C.2.a. of this Notice.

(3) *Use of conforming MP*—(A) *EPs from purchased, registered MPs.* No application for registration or amended registration of a pentachlorophenol EP formulated exclusively from purchased, registered pentachlorophenol MPs shall be approved unless the composition statement for the product states that the EP will not contain any quantity of any pentachlorophenol MP which the registrant or manufacturer of the EP knows, or has been informed, was not manufactured, sampled, analyzed, or labeled in accordance with the terms and conditions of its registration, as described in Unit VII. C.2. of this Notice.

(B) *All other EPs.* No application for registration or amended registration of a pentachlorophenol EP not formulated exclusively from purchased, registered pentachlorophenol MPs shall be approved unless the applicant complies with the same requirements and conditions for registration relating to sampling, analysis, and sample collection and retention for the EP as for Type 1, Type 2B, and Type 3B MPs, as specified in Unit VII.C.2.b.(2) and 2.c.(1) of this Notice. In the alternative, registrants of these EPs may elect to fulfill these requirements through sampling and analysis of the parent MP instead of the EP. Selection of this option is possible only if the registrant agrees to all of the following conditions:

(i) Samples of the parent MP will be obtained, analyzed, and retained as described in Unit VII.C.2.b.(2)(A) through (D) and 2.c.(1)(B) of this Notice;

(ii) Duly authorized inspectors will be allowed to collect samples of the parent MP used to make the EP, as described in Unit VII.C.2.c.(1)(D) of this Notice, under the same conditions that they would be allowed to sample the EP; and

(iii) The companion recordkeeping option described in Unit VII.D.2.b.(2) of this Notice, is selected. All other conditions and requirements for registration set forth in this document for EPs would be effective as written.

(b) *Records*—(1) *EPs from purchased, registered MPs*—(A) *Required records.* No application for registration or amended registration of a pentachlorophenol EP formulated exclusively from purchased, registered MPs shall be approved unless the applicant agrees, as a condition of registration, to maintain records for each lot, batch, or other production unit for the EP, stating:

(i) The date each such lot, batch, or other production unit, or portion thereof, is released for shipment;

(ii) The registration number of the MP used to manufacture or formulate each lot, batch, or other production unit;

(iii) The batch number(s) for each such MP.

Each applicant shall also agree, as a condition of registration, to maintain all such records at specified locations for 10 years after the date of release for shipment.

(B) *Inspection of records.* No application for registration or amended registration of a pentachlorophenol EP formulated exclusively from purchased, registered MPs shall be approved unless the applicant agrees, as a condition of registration, that all records maintained pursuant to Unit VII.D.2.b.(1)(A) of this Notice, will be made available at the specified location for inspection and copying at any reasonable time by any officer or employee of the Environmental Protection Agency or of any State or political subdivision, duly designated by the Administrator, upon the presentation of appropriate credentials.

(2) *All other EPs.* No application for registration or amended registration of a pentachlorophenol EP not forumulated exclusively from purchased, registered pentachlorophenol MPs shall be approved unless the applicant complies with the same requirements and conditions for registration relating to record collection, retention, reporting, and inspection for the EP as for Type 1, Type 2B, and Type 3B MPs, as specified in Unit VII.C.2.c.(1)(A) and 2.c.(4)(A) of this Notice. Except that registrants of these EPs may elect to fulfill these requirements through appropriate recordkeeping on the parent MP instead of the EP. Selection of this option is possible only if the registrant agrees to all of the following options:

(i) Records on the parent MP will be collected, retained, and reported as described in Unit VII.C.2.c.(1)(A) of this Notice;

(ii) Records correlating individual batches of EP with the specific batch(es) of MP used to make the EP, as described in Unit VII.D.2.b.(1)(A)of this Notice, will be maintained;

(iii) Duly authorized inspectors will be allowed to inspect the records on the parent MP used to make the EP, as described in Unit VII.C.2.c.(3)(A) of this Notice, under the same conditions they would be allowed to inspect the records on the EP; and

(iv) The companion sampling option described in Unit VII.D.2.a.(3)(B) of this Notice, is selected.

All other conditions and requirements for registration set forth in this document for EPs would be effective as written.

c. *Label requirements.* No application for registration or amended registration of a pentachlorophenol EP shall be approved unless the labeling submitted for the product conforms to the following requirements:

(1) *Commercial lot information.* The label or package for each packaging unit of the pentachlorophenol EP which is distributed or sold shall bear:

(A) A commercial lot, batch, or production unit number;

(B) The code, as listed in the composition statement for the EP, which identifies the pentachlorophenol MP(s) used to manufacture or formulate the lot, batch, or production unit to which the packaging unit belongs; and

(C) the date such lot, batch, or production unit was packaged.

(2) *Statement of compliance.* The label on each packaging unit of pentachlorophenol EP which is distributed or sold shall state, "The registrant has complied with all terms and conditions of the registration governing the composition of this product as approved by the United States Environmental Protection Agency under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act."

(3) *Permissible use.* The label on each package unit of pentachlorophenol EP which is distributed or sold shall state that the use of the EP for any purpose other than those stated on the label, including use of the EP in manufacture or formulation of other pesticide products or in repackaging of the product, is prohibited.

d. *Exception for existing stocks.* None of the requirements for registration of a pentachlorophenol EP established by Unit VII.D.2.a through c. of this Notice, shall apply to EPs manufactured or formulated as provided in Unit VII.E.1. of this Notice from existing stocks of MPs as defined in Unit VII. E.1. of this Notice, or to existing stocks of EPs as defined in Unit VII.E.2. of this Notice.

E. Existing Stocks Provisions

1. *Use of existing manufacturing-use products.* Each registrant of a pentachlorophenol EP(s) who held on or before the publication date of the amended notice of intent to cancel implementing these compliance procedures any existing stocks of a pentachlorophenol MP purchased after February 1, 1987, may distribute or sell for up to 1 year after the date of publication of the Amended Notice any quantity of such registered pentachlorophenol EP(s) manufactured or formulated before or after the effective date of the Amended Notice from such existing stocks.

2. *Sale and distribution of existing end-use products.* Each registrant of a pentachlorophenol EP(s) who holds any existing stocks of such registered pentachlorophenol EP(s) manufactured or formulated on or before the publication date of the amended notice of intent to cancel implementing these compliance procedures may distribute or sell such existing stocks for up to 1 year after the date of publication of the Amended Notice.

3. *Existing Stocks.* Existing stocks of pesticide products containing pentachlorophenol cancelled by this Notice may be distributed or sold for 1 year after the published date of this amendment.

VIII. Procedural Matters

This Notice amends the Janaury 21, 1987 Notice of Intent to Cancel and Deny Applications for Registrations of Pesticide Products Containing Pentachlorophenol (Including But Not Limited to Its Salts and Esters) for Non-Wood Uses. This Notice and the procedural matters set forth below only address pentachlorophenol products registered for use as biocides in cooling towers, paper mills, and oil well operations. Other cancellations implemented by the January 21, 1987 Notice are not affected by this Notice and no new hearing rights related to those registrants arise under this Notice.

This action is taken pursuant to the authority granted by section 6(v) of FIFRA. Under FIFRA section 6(b)(1) and 3(c)(6), applicants, registrants, and certain other adversely affected parties may request a hearing on the cancellation and denial actions that this Notice initiates. Any hearing concerning cancellation or denial of registration for any pesticide product containing pentachlorophenol for non-wood use will be in accordance with FIFRA section 6(d). Alternatively certain registrants may apply to amend the product registration in accordance with the terms and conditions set forth in this Notice. Unless a hearing or amended registration is properly requested with regard to a particular registration or application, the registration will be cancelled or the application denied. This unit of the Notice explains how such persons may either request a hearing or amend their registrations in accordance with the procedures specified in the Notice, and the consequences of requesting or failing to request a hearing of submitting or failing to submit an amended registration.

A. Procedures for Requesting a Hearing

To contest the regulatory action initiated by this Notice any applicant or registrant whose application or registration is affected by this Notice (including intrastate applicants who have previously marketed such products pursuant to 40 CFR 162.17), may request a hearing within 30 days of receipt of this Notice, or within 30 days from the publication of this Notice in the **Federal Register**, whichever occurs later. Any other persons adversely affected by the cancellation action described in this Notice, or any interested persons with the concurrence of an applicant whose application for registration has been denied, may request a hearing within 30 days of publication of this Notice in the **Federal Register**. Applicants, registrants, or other adversely affected parties who filed hearing requests in response to the January 21, 1987 Notice must file amended objections or otherwise affirm their previously filed hearing requests according to the above schedules in order to avoid dismissal of hearing requests.

All registrants, applicants, and other adversely affected persons who request a hearing must file the request in accordance with the procedures established by FIFRA and the Agency's Rules of Practice Governing Hearings (40 CFR Part 164). These procedures require that all requests must identify the specific registration(s) by Registration Number(s) and the specific use(s) for which a hearing is requested, and must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requirements will result in denial of the request for a hearing. Requests, for a hearing should also be accompanied by objections that are specific for each use of the pesticide product for which a hearing is requested.

Requests for a hearing must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M. St. SW., Washington, DC 20460.

1. *Consequences of filing a timely and effective hearing request.* If a hearing on any action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by the Agency's Rules of Practice Governing Hearings under FIFRA section 6 (40 CFR Part 164). In the event of a hearing, each cancellation action concerning the specific use or uses of the specific registered product which is the subject of the hearing will not

become effective except pursuant to an order by the Administrator at the conclusion of the hearing. Similarly, in the event of a hearing, each denial of registration which is a subject of the hearing will not become effective prior to the final order of the Administrator at the conclusion of the hearing.

The hearing will be limited to the specific registrations or applications for which the hearing is requested.

2. *Consequences of failure to file in a timely and effective manner.* If a hearing concerning the cancellation or denial of registration of a specific pentachlorophenol product subject to this Notice is not requested in a timely and effective manner by the end of the applicable 30-days period, registration of that product will be cancelled, or the denial will be effective.

B. Amendment of Registration or Application

Certain registrants of pentachlorophenol products who are affected by this Notice may avoid cancellation of their registration, without requesting a hearing, by filing an application for an amended registration that either (i) deletes pentachlorophenol from the formulation, or (ii) where applicable, contains the label modifications detailed in this Notice. Applications containing the label modifications required by this Notice must include a proposed label. The approved label must be affixed to all end use products distributed or sold August 24, 1988. All registrations or application for registration must be amended to comply with the requirements of 40 CFR 162.10 and PR Notices issued by EPA. This application must be filed within 30 days of receipt of this Notice, or within 30 days of publication of this Notice, whichever occurs later. Similarly, applicants for a registration that is subject to this Notice must file an amended application for registration within the applicable 30-days period to avoid denial of the application.

Registrants of pentachlorophenol biocide products whose registrations are retained by this Notice but inadvertently cancelled solely because of the limited definition of the cooling tower uses as described in the January 21, 1987 Notice of Intent to Cancel (52 FR 2282) may submit a written request to the Agency for consideration of reinstatement of their registrations. Such requests for reinstatement must be received by the Agency within 30 days after publication whichever is later.

C. Procedures for Intrastate Products

Under 40 CFR 162.17, the Agency has permitted certain pentachlorophenol products previously registered under State law to continue to be sold and distributed solely in intrastate commerce, pending a final decision concerning Federal registration. In the January 21, 1987 Notice, the Agency notified producers and distributors of such products that they were required to submit a complete application for Federal registration within 30 days of the date of publication or receipt of the January 21, 1987 Notice, whichever occurs later. The application was required to include all the supporting data prescribed by the provisions of section 3 of FIFRA, 40 CFR Part 162, and PR Notice 83–4 and 83–4a. Failure to submit a timely complete application would result in the Agency considering the producer's Notice of Intent to Apply as an application for Federal registration.

In light of the regulatory decision set forth in this Notice, the Agency hereby notifies all producers of products for the cancelled uses that this Notice is a denial of their applications. Producers of products for the retained uses are hereby notified that, within 30 days of publication or receipt of this Notice, whichever occurs later, their applications for Federal registration must now be amended to comply with the terms and conditions of registration set forth in this Notice. Failure to make the necessary changes in a timely manner will result in denial of the application.

Under FIFRA section 3(c)(6), the issuance of a denial notice entitles an applicant, or other interested person with the concurrence of the applicant, to request a hearing to challenge the denial decision. The procedures for requesting a hearing and the consequences of not filing a request are discussed above in Unit VI.A. of this Notice.

D. Separation of Functions

The Agency's rules of practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of his/her representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff of the Agency in any administrative hearing on this Notice of Intent to Cancel: The Office of Administrative Law Judge, the Office of the Judicial Officer, the Deputy Administrator and the members of the staff in the immediate office of the Deputy Administrator, the Administrator and the members of the staff in the immediate office of the Administrator. None of the persons designated as the judicial staff may have any *ex parte* communication with the trial staff or any other interested persons not employed by EPA on the merits of any of the issues involved in these proceedings, without fully complying with the applicable regulations.

Dated: February 9, 1988.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88–3777 Filed 2–23–88; 8:45 am]

BILLING CODE 6560–50–M

federal register

Wednesday
February 24, 1988

Part III

Department of Transportation

Research and Special Programs Administration

City of New York Regulations Governing Transportation of Hazardous Materials; Invitation to Comment on Appeal of IR-22; Public Notice and Invitation to Comment

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Appeal of Inconsistency Ruling No. IR-22; Docket No. IRA-40A]

City of New York Regulations Governing Transportation of Hazardous Materials; Invitation to Comment on Appeal of IR-22

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The City of New York (the City) has appealed to the Administrator of the Research and Special Programs Administration (RSPA) the December 2, 1987 decision of the Director, Office of Hazardous Materials Transportation (IR-22; 52 FR 46574, Dec. 8, 1987; correction 52 FR 49107, Dec. 29, 1987), finding the City's regulatory permitting system for the transportation of certain hazardous materials inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) adopted thereunder. Comments are invited on the merits of the appeal.

DATES: Comments received on or before March 25, 1988 and rebuttal comments received on or before April 25, 1988 will be considered before an administrative ruling is issued by the Administrator. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The appeal and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8426, Nassif Building, 400 Seventh Street SW., Washington, DC. Comments and rebuttal comments must be submitted to the Dockets Unit at the above address and include the Docket Number IRA-40B. Three copies are requested. A copy of each comment and rebuttal comment also must be sent to Clifford J. Harvison, President, NTTC, 2200 Mill Road, Alexandria, Virginia 22314; Daniel R. Barney, Director, ATA Litigation Center, 2200 Mill Road, Alexandria, Virginia 22314; and Doron Gopstein, Esq., Acting Corporation Counsel, City of New York, 100 Church Street, Room 6C-37, N.Y., NY 1007 (Attn: Grace Goodman, Esq., Assistant Corporation Counsel); and that fact certified to at the time the comment is submitted to the Dockets Unit. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Harvison, Barney, and Gopstein at the addresses specified in the **Federal Register.**")

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590, telephone 202-366-4362.

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA at section 112(a) (49 App. U.S.C. 1811(a)) expressly preempts any requirement of a State or political subdivision thereof which is inconsistent with any requirement of the HMTA or the HMR. Section 107.209(c) of Title 49, CFR, sets forth the following factors which are considered in determining whether a State or political subdivision requirement is inconsistent: (1) Whether compliance with both the State or poltical subdivision requirement and the HMTA or HMR is possible; and (2) the extent to which the State or political subdivision requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR.

The American Trucking Associations, Inc. (ATA) and the National Tank Truck Carriers, Inc. (NTTC) filed an application for an administrative ruling seeking a determination that directives 3-76, 5-63, 6-76, and 7-74 of the New York Fire Department's Bureau of Fire Prevention (BFP) are inconsistent with the HMTA and the HMR. BFP Directives 6-76 and 7-74 create permit systems that govern the use of tank trucks which transport combustible or flammable mixtures within New York City. BFP Directive 3-76 establishes a City permit system for transporting flammable and combustible liquids through the use of open and closed body platform, trucks, while Directive 5-63 creates a permit system for the transportation of compressed gases within the City.

2. The Inconsistency Ruling (IR-22)

On December 2, 1987, the Director, Office of Hazardous Materials Transportation (OHMT) issued Inconsistency Ruling 22 (IR-22), which was published at 52 FR 46574 on December 8, 1987. The Director determined that the City's permitting system for transportation of certain hazardous materials is inconsistent with the HMTA and the HMR and, therefore, preempted.

The Director found that the City created its own independent set of cargo containment, equipment and related requirements which overlap extensive HMR requirements, which are likely to encourage noncompliance with the HMR, and which concern subjects that RSPA has determined are its exclusive province under the HMTA. Furthermore, he found that the City's directives result in serious delays of transportation of hazardous materials.

For these reasons, the Director determined that the City of New York Fire Department's Bureau of Fire Prevention (BFP) Directive 3-76 (except sections 13 and 16), Directive 6-76 (except section 25), Directive 7-74 (except sections 31 and 32 and subsections 2-2 and 2-3) and Directive 5-63 (except section 7) are inconsistent with the HMTA and the HMR and, therefore, preempted under section 112(a) of the HMTA (49 App. U.S.C. 1811(a)). Sections 13 and 16 of BFP Directives 3-76, section 25 of BFP Directive 6-76, sections 31 and 32 of BFP Directive 7-74, and section 7 of BFP Directive 5-63 were found consistent with the HMTA and the HMR. No opinion was rendered concerning subsections 2-2 and 2-3 of BFP Directive 7-74.

3. The Appeal of IR-22

On February 2, 1988, the City filed an appeal of IR-22 with the Research and Special Programs Administration. The City filed a memorandum of law and two extensive affidavits in support of its appeal, which was contained in its letter of January 27, 1988. One affidavit is that of the City's Assistant Corporation Counsel Grace Goodman with exhibits consisting of excerpts from transcripts of depositions and other materials from a related court action in the U.S. District Court for the Eastern District of New York, *National Paint & Coatings, Assn. v. City of New York*, 84 Civ. 4525 (ERK). The other affidavit is that of lawrence Lennon, Director of the Transportation Division of the City's Department of Planning, which originally was submitted in opposition to a motion for summary judgment in that court case.

In its extensive memorandum of law the City contends that IR-22 fails to apply the proper tests for inconsistency, misinterprets the "dual compliance" test, misinterprets the "obstacle" test, wrongly defines Congressional intent, and fails to balance the degree of impediment to national goals against legitimate local safety needs.

In addition, the City argues that IR-22 erred in applying the law to the facts, holding that the City's regulations are an obstacle to Congressional intent, holding that those regulations cause significant delay, overstating the amount of cargo downloading caused by the City's regulations, and holding that they cause

hazardous delays and deter compliance with the HMR. The City concludes that its regulations properly promote safety in a densely populated area.

4. Public Comment

Comments should particularly address the issue of whether the challenged City's permitting system is inconsistent with the HMTA or the regulations issued thereunder under the "obstacle" and "dual compliance" tests. Persons intending to comment should examine the complete appeal documents in the RSPA Dockets Unit and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201–107.211).

Issued in Washington, DC on February 16, 1988.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 88–3841 Filed 2–23–88; 8:45 am]

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federal register

Wednesday
February 24, 1988

Part IV

Environmental Protection Agency

Dichlorvos; Notice of Initiation of Special Review

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/56; FRL-3332-7]

Dichlorvos; Initiation of Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Initiation of Special Review of Pesticide Products Containing Dichlorvos.

SUMMARY: This notice announces that EPA is initiating a Special Review of the pesticide, dichlorvos (2,2-dichlorovinyl dimethyl phosphate). Dichlorvos, also known as DDVP, is an insecticide registered for use in areas where flies, mosquitoes, gnats, cockroaches, fleas and other insect pests may be a problem. Dichlorvos has been classified as a carcinogen based on oncogenic effects in mice and rats. Dichlorvos also causes adverse liver effects in dogs and has been shown to be a potent cholinesterase inhibitor in rats and dogs. EPA has determined that exposure to dichlorvos from the registered uses may pose an adverse oncogenic risk and inadequate margins of safety for cholinesterase inhibition and liver effects to exposed individuals. During the Special Review, EPA will examine the risks and benefits of using dichlorvos and will determine whether such uses should be canceled or otherwise regulated.

DATE: Comments, data, and information to rebut the presumptions in this notice, and other relevant information must be received on or before April 25, 1988.

ADDRESS: Submit three copies of written comments, bearing the docket control number "OPP 30000/56,"

By mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All non-CBI written comments, will be available for public inspection in Room 236 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Joan Warshawsky, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 1006, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-5778).

A Registration Standard describing EPA's detailed assessment of currently available information on dichlorvos and prescribing certain interim risk reduction measures, is available to the public. For a copy of the Registration Standard, other documents in the public docket, or to request indices to the Special Review public docket contact the Information Services Section (703-557-4434).

SUPPLEMENTARY INFORMATION: This notice is organized into the following units: Unit I is a description of the Agency's Special Review process. Unit II sets forth the regulatory history of dichlorvos to date and describes the basis of the Agency's decision to initiate this Special Review. Unit III provides a use profile and solicits benefits information for dichlorvos. Unit IV sets forth the duty of the dichlorvos registrants to submit information on adverse effects. Unit V describes the procedures for submission of public comments to the Agency. Unit VI describes the contents of the public docket for this notice. Unit VII lists the references in support of this action.

I. Background

A. Legal Requirements

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 et seq.). Before a product can be registered it must be shown that it can be used without "unreasonable adverse effects on the environment" [FIFRA section 3(c)(5)], that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" [FIFRA section 2(bb)]. The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard, the Administrator may cancel this registration under section 6 of FIFRA.

The Special Review process provides a mechanism to permit public participation in EPA's deliberations prior to issuance of any Notice of Final Determination setting forth the regulatory action which the Administrator has selected. The Special Review process is described in 40 CFR Part 154, published in the **Federal Register** of November 27, 1985 (50 FR 49015). During the Special Review process the Agency: (1) Announces and describes the basis for the Agency's finding that use of the pesticide meets one or more of the risk criteria set forth in § 154.7; (2) establishes a public docket; (3) solicits comments from the public regarding whether the use of a pesticide product as currently registered or as proposed for registration satisfies any of the risk criteria for initiation of Special Review set forth at 40 CFR 154.7. Comments are also solicited on whether any risks posed by the use of proposed use of the product that satisfy the risk criteria under 40 CFR 154.7 are unreasonable, talking into account the economic, social, and evironmental costs and benefits of the use of the product, and what regulatory action, if any, the Agency should take with respect to the use of the product; (4) solicits comments from the Secretary of Agriculture and the Scientific Advisory Panel if the Administrator proposes to cancel, deny, or change the classification of the registration of a pesticide product which is the subject of a Special Review, or to hold a hearing under FIFRA section 6(b)(2) on whether to take any of those actions; (5) reviews and responds to all significant comments submitted in a timely manner; and (6) makes a final regulatory decision based on the balancing of risks and benefits associated with the pesticide's use.

Issuance of this notice means that potential adverse effects associated with the use of dichlorvos have been identified and will be subject to further examination to determine whether such risks are unreasonable when considered together with the benefits of this insecticide. This Special Review applies to all registrations of dichlorvos, including registrations suspended for failure to satisfy data requirements imposed by the Agency under the authority of FIFRA section 3(c)(2)(B).

B. Preliminary Notification

Registrants of all products containing dichlorvos were notified by letter dated

August 21, 1987, pursuant to 40 CFR 154.21(a), that the Agency was considering initiation of a Special Review on dichlorvos (Ref. 2). The Agency received one response to the notificiation, which is addressed in Unit II of this notice.

II. Determination To Initiate a Special Review

A. Regulatory Background of Dichlorvos

In 1980, the Agency referred dichlorvos to the Rebuttable Presumption Against Registration, or RPAR process. (The Agency now uses the term "Special Review" for the process previously called the RPAR process). The RPAR referral was based on scientific studies which indicated that dichlorvos was mutagenic and might cause cancer, nerve damage, and birth defects in laboratory animals. The Agency reviewed four studies on the oncogenic potential of dichlorvos. The studies showed no positive evidence of oncogenicity; however, the studies were flawed, requiring additional information. The Agency also reviewed mutagenicity data which provided extensive evidence that dichlorvos was mutagenic in bacteria. There was also suggestive evidence that dichlorvos was mutagenic in fungi. However, the results of the mammalian studies were inconclusive. There was no definitive evidence suggesting that dichlorvos induced teratogenic or fetotoxic effects in the absence of maternal toxicity. Similarly, reproductive effects data revealed no definitive evidence suggesting that dichlorvos had any adverse effect on fertility or other reproductive parameters. The available information showed that dichlorvos did not produce organophosphate-type delayed neurotoxicity.

In 1982, the Agency issued a document reporting the results of its evaluation of dichlorvos (47 FR 45075) (Ref. 3). The Agency concluded that the existing information did not support the initiation of the RPAR process for dichlorvos. Equivocal data were present with respect to two toxic effects, carcinogenicity and mutagenicity. However, the Agency concluded that the data base for birth and reproduction defects was adequate. In March 1983, Data Call-in Notices (DCI) were issued pursuant to FIFRA section 3(c)(2)(B) which required dichlorvos registrants to conduct and submit four mutagenicity studies to determine whether products containing dichlorvos cause mutagenic effects and to confirm that dichlorvos does not transport to the germ cells (Ref. 4). The Agency also made the determination in the 1982 document that no additional oncogenicity data would be required of the registrants until the Agency reviewed the results of the dichlorvos bioassay studies being conducted for the National Cancer Institute/National Toxicology Program to evaluate the oncogenic potential of dichlorvos.

B. Initiation of Special Review on Dichlorvos

During the course of the Agency's reassessment of dichlorvos for the development of the Registration Standard, the studies evaluating the oncogenic potential of dichlorvos for the National Cancer Institute/National Toxicology Program (NTP), were completed (Refs. 5 and 6). Reevaluation of chronic and subchronic toxicity studies caused the Agency also to become concerned about potential adverse liver effects and cholinesterase inhibition resulting from exposure to dichlorvos.

Bases on the NTP oncogenicity studies and chronic toxicity studies, in conjunction with exposure assessments of dietary, worker, residential, and pet risks, EPA has determined that all uses of dichlorvos have met the criterion for initiation of Special Review set forth under 40 CFR 154.7(a)(2); specifically, that dichlorvos "[m]ay pose a risk of inducing in humans an oncogenic, heritable genetic, * * *, or chronic or delayed toxic effect * * *." This Special Review applies to all registrations of dichlorvos, including registrations suspended for failure to satisfy data requirements imposed by the Agency under the authority of FIFRA section 3(c)(2)(B).

1. *Toxicology studies.* The Agency has reviewed the completed chronic bioassays conducted for the NTP and has concluded that dichlorvos is a potential human carcinogen (Ref. 7).

a. *Mouse study.* Dichlorvos was administered by gavage to B6C3F1 mice (60/sex/group) 5 days/week for 103 weeks followed by a 1 week observation period. Corn oil was used as the vehicle. Doses for the study were 10 and 20 mg/kg/day for male mice and 20 and 40 mg/kg/day for females bases upon the expected cumulative cholinesterase inhibition from a range finding study. Dosages used for range-finding were 0, 5, 10, 20, 40, 80, and 160 mg/kg/day. All males and 9 of the 10 females administered 160 mg/kg/day and 5 of the 10 males administered 80 mg/kg/day died prior to the termination of the study.

Administration of dichlorvos to female mice was associated with a dose-related trend and statistically significant increase in squamous cell forestomach papillomas and combined squamous cell forestomach papillomas by pairwise comparison at high dose. In male mice, an increase in squamous cell forestomach papillomas was seen which was not significant by pairwise comparison but was associated with a significant dose-related trend.

b. *Rat study.* Dichlorvos was administered, with corn oil as the vehicle, by gavage to F344 rats (60/sex/group) once daily, 5 days/week for 103 weeks. Dosage used were 0, 4, and 8 mg/kg/day. These dosages were selected because in the range finding study using doses of 0, 2, 4, 8, 16, 32, or 64 mg/kg/day, all animals received 32 or 64 mg/kg/day died prior to the end of the study.

Administration of dichlorvos to male rats was associated with a statistically significant increase in pancreatic acinar adenomas and mononuclear cell leukemia by pairwise comparison at both dosage levels which showed a positive dose-related trend in all treated male rats. There was also an increased incidence of lung adenomas in high dose male rats which was significant only for a trend. Female rats showed a statistically significant increase of mammary gland fibroadenoma at the low dose. Plasma cholinesterase values in treated rats were statistically significantly depressed at all but the last testing interval. Red blood cell cholinesterase values were also depressed but not as consistently nor to the same degree as plasma.

c. *Oncogen Classification.* The Agency preliminarily classified dichlorvos as a category B2 oncogen (probable human carcinogen) based upon the results of the NTP bioassays in B6C3F1 mice and Fischer 344 rats. The Agency was in agreement with NTP's conclusions that dichlorvos demonstrated evidence of carcinogenicity in the male rat and in the female mouse.

On September 23, 1987, the Agency's rationale for the classification of dichlorvos as a B2 oncogen was presented to the EPA Scientific Advisory Panel (SAP) for its consideration. The Panel concluded that dichlorvos should be classified as a category C oncogen (possible human carcinogen) (Ref. 8).

In view of SAP's opinion, the Agency will reassess its B2 classification and will resolve the issue of whether dichlorvos should be classified as a B2 or as a C oncogen. Whether dichlorvos is classified as a class B2 oncogen or as a class C oncogen, the Agency has significant concerns about the oncogenic risk potential of this chemical.

d. *Response to preliminary notification.* The Agency received one response to its letter notifying dichlorvos registrants that initiation of Special Review on dichlorvos was being considered. That response, from the Fermenta Animal Health Company, focused primarily on the Agency's reliance on the oncogenicity studies conducted for the NTP (Ref. 9). Fermenta cited a number of findings which it claims have been accepted by the Agency without questions that others have raised, namely: (1) Heavy reliance on historical control values since the contemporary control values tend to confuse the interpretation of results; (2) disregard of previous studies showing no evidence of carcinogenicity after long-term dosing; and (3) the "questionable" procedure of dosing on 5 out of 7 days (pulse dosing) in the NTP study. The commenter also suggested that the Agency review the minutes of the NTP peer review committee "to gain appreciation of the controversy associated with these test." In particular, Fermenta referred to (1) The conclusions of a peer reviewer (Dr. Ashby) that "* * * many conclusions are based on trends, not statistically significance"; and (2) comments by another peer reviewer (Dr. Gallo) that there were "* * * a lot of problems with this study" and that the "* * * methodology may have been flawed." According to the Fermenta commenter, Dr. Gallo also contended that "(t)he effect from a biology point of view, outside of carcinogenicity, are just totally unacceptable."

The Agency does not agree with the conclusions reached by Fermenta. First, the Agency does not agree with the commenter that the concurrent control data confused the interpretation of the mouse or the rat study data. In fact, the Agency relied primarily on the concurrent control data and secondarily on the historical control data in its conclusions. The significant of corn oil-induced pancreatic acinar adenomas in controls in relation to the increased incidence in the dichlorvos treated male rats was also condidered in the Agency's decision. Since treatment with dichlorvos statistically significantly induced the increased incidence of pancreatic tumors in male rats at both dosage levels and also increased their multiplicity, the agency does not believe that corn oil alone is responsible for the observed tumors in the treated animal.

Second, four oncogenicity studies previously conducted on dichlorvos were also reviewed, but each was found to be flawed. However, in one of these studies, the NCI feeding study using B6C3F1 mice, the Agency believes that the esophageal lesions seen are relevant to the forestomach papillomas observed in the NTP corn oil-gavage study in the same strain of mouse.

Third, with regard to the effect of dosing test animals for 5 out of 7 days, the Agency suggests that the oncogenic effect could have been more significant had the animal been treated every day of the week. It is difficult to understand how "pluse dosing" could lead to an overestimation of tumor induction.

Fourth, the Agency acknowledges that the NTP peer reviewers were not unanimous in their interpretation of the study's conclusions; six of seven and six of eight peer reviewers voted in favor of interpreting the results of the studies with the female mice and the male rat, respectively, as *clear* evidence of carcinogenicity. Some reviewers, as well as the Agency were concerned about the high incidence of pancreatic tumors in the controls; however, as discussed above, treatment with dichlorvos statistically significantly induced the incidence of pancreatic tumors in male rats at two dosage levels and also increased their multiplicity.

With regard to the concern expressed by Fermenta that the incidence of the mononuclear cell leukemia in the controls appears unreasonably high when compared to the historical controls, the Agency does not feel that the incidence was unreasonably high. The incidence in the dichlorvos study's control group was 22 percent; the historical control range is 2 to 28 percent. While the incidence in the dichlorvos study is high, the Agency considers this within the historical control range of leukemias in F344 rats.

Finally, the Agency does not agree with the comments attributed by Fermenta to Drs. Ashby and Gallo. The Agency has been unable to identify anywhere in the transcript of the NTP peer review meeting the comment regarding statistical significance attributed to Dr. Ashby. In any event, the conclusions could not have been made on trends rather than statistical significance, since the increase in pancreatic acinar adenomas and leukemias in male rates was significant by the Fisher's Exact test as was the increase in forestomach squamous cell papillomas in the female mice. Moreover, from our reading of the minutes of the NTP peer review meeting, it appears that Dr. Gallo was referring to the results obtained on cholinesterase data, not oncogenicity data, in the three quotes cited by Fermenta. The reference to the unacceptability of the effects from a biological point of view pertained solely to the 24-month data on cholinesterase. The reference to the possibly flawed methodology referred to questions regarding the methodology used for cholinesterase determinations. Last of all, on page 109 of the transcript, Dr. Gallo stated that he had no problem with the conclusions in the report on the oncogenicity of dichlorvos, except in the female rat for which he felt the "some evidence" conclusion was a "little bit strong and that equivocal evidence might be more appropriate * * *." The NTP panel of experts voted in favor of changing the conclusion on the female rat to equivocal.

2. *Mutagenicity studies.* The Agency has again reviewed the available data on the mutagenicity of dichlorvos, including published articles (Refs. 10 thru 17) and data submitted in response to the Agency's 1983 Data Call-In (DCI) Notice (Refs. 18 and 19).

These studies show dichlorvos to be a mutagen in several test systems. The studies give evidence that DDVP is a direct acting gene mutagen in bacteria, fungi, and mammalian cells *in vitro.*

When tested by the conventional assay for gene mutations in *Drosophila* (sex-linked recessive lethals sampled in the second and third generation after treatment), dichlorvos is negative. When *Drosophila* were fed over a period of 18 months at non-lethal doses, second-chromosome lethals were found in populations sampled in the thirtieth generation. In a mammalian cell gene mutation study (mouse lymphoma forward mutation assay), positive results (mutant colonies) were reported, both in the presence and absence of metabolic activation, but less under activation conditions (Ref. 20).

3. *Chronic toxicity.* The Agency is also concerned with the risks of cholinesterase inhibition and liver effects resulting from subchronic and chronic exposure to dichlorvos. The Agency does not have similar concerns for acute, short-term exposure to dichlorvos because poisoning incidence information in the Agency's files indicates poisoning from such exposure is very rare.

Concern for sub-chronic and chronic exposures are based on the results of two studies. In a 2-year rat inhalation study (Ref. 21), a no observable effect level (NOEL) of 0.05 mg/m^3 was observed for cholinesterase inhibition. While this study was considered in the previous RPAR, the Agency only considered it relative to the oncogenicity concern and found it to be too flawed in experimental design and reporting to be of use to provide useful oncogenicity data. The second study is a 2-year dog

feeding study (Ref. 22) with a NOEL of 0.08 mg/kg/day for systemic effects of increased liver weight and hypertrophy (enlargement) of liver cells. This study was not considered in the previous RPAR.

a. *Rat study.* Fifty male and 50 female CFE rats were exposed to 0, 0.05, 0.5, and 4.7 to 5 mg/m^3 of dichlorvos for 2 years. Ten males and 10 females randomly chosen were placed in inhalation chambers each week over a 5-week period. At the termination of the study, all survivors were sacrificed. Cholinesterase activity was significantly decreased in plasma, red blood cells, and brain in the mid and high dose groups. The red blood cell cholinesterase was reduced to 88 percent of control activity in females dosed at 0.5 mg/m^3. Based on cholinesterase inhibition, the NOEL is 0.05 mg/m^3.

b. *Dog study.* Dichlorvos was administered in the diet to beagle dogs at 0.09, 0.32, 3.2, 32, and 250 ppm for 2 years. These doses produced no deaths and no adverse effects on food consumption, body weight, biochemical parameters, brain cholinesterase activity, or terminal body weight. Red blood cell cholinesterase was 113 and 71 percent of male and female controls, respectively. Terminal relative liver weights were significantly increased in males at the same doses, and hypertrophy of liver cells in both sexes was observed. The NOEL is 3.2 ppm (0.08 mg/kg/day) based on the increased liver weights in males at 32 ppm and above, and hypertrophy of liver cells in both sexes at 32 ppm and above.

4. *Dietary exposure and risk assessment.* The estimates of oncogenic risk cited in this notice are upper bound estimates at the 95 percent confidence level, meaning that there is a 95 percent probability that the true risks do not exceed the estimates, and may be lower. These upper bound risk estimates are cited in terms of an order of magnitude.

The Agency's concern about the potential dietary risk to the general public consuming food treated with dichlorvos is founded on the premise that dichlorvos residues may occur in food as a result of use in or on a variety of sites. These include use on greenhouse food crops, food or feed containers, bulk-stored and packaged non-perishable raw agricultural commodities and packaged or bagged non-perishable processed commodities, commercial food processing plants, groceries, eating establishments, livestock (direct animal treatment), swine feed (as a dewormer), and food in homes from resin pest strips.

Published tolerances exist for residues of dichlorvos in or on raw agricultural and processed products and in meat, milk, poultry, and eggs. The dichlorvos dietary exposure analysis indicates that the average consumer in the U.S. population receives an Anticipated Residue Contribution (ARC) of 4.2×10^{-4} mg/kg/day of dichlorvos. Because the Agency lacks sufficient data on actual residue levels at the time of consumption, this estimate was based on the assumption that residues are present at tolerance levels (21 CFR 193.140 and 40 CFR 180.235); on cooking data for small grains (Ref. 23); and on an estimate of percent site treated (Ref. 24). (The ARC was generated by a computer model which was based on the dietary intake of 31,000 people sampled for 3 days.) The Provisional Acceptable Daily Intake (PADI) was calculated to be 8×10^{-4} mg/kg/day based on the 2-year dog feeding study with a NOEL of 0.08 mg/kg/day for the effect of liver weight and hepatic cell hypertrophy. The Uncertainty Factor applied was 100 in calculating the PADI to account for inter and intraspecies biological differences between dogs and humans (NOEL/100=PADI).

The contribution to the diet from meat and milk is assumed to account for more than 50 percent of the estimated dietary risk. The potential dietary risk from exposure to dichlorvos residues was calculated by multiplying the daily estimated exposure to dichlorvos (4.2×10^{-4} mg/kg/day) by the cancer potency factor for dichlorvos, designated as Q_1^* [2.9×10^{-4} (mg/kg/day)$^{-1}$]. This calculation results in an estimated upper bound dietary oncogenic risk of 10^{-4}.

The dietary risk estimate, however, may be overestimated because established tolerance values for food commodities were used in estimating dietary exposure in the absence of actual residue values. The recently issued registration standard requires the submission of residue data for the food uses of dichlorvos. When actual residue data are available for a pesticide, these values are in many cases lower than tolerance values. However, the limited data available for dichlorvos indicate that residues may be approximately the same as tolerance levels or, in some cases (non-perishable stored foods), may exceed tolerance levels.

The dietary risk assessment also may be underestimated. The residue calculations do not take into account the potential contribution of dichlorvos from the chemically related insecticides, naled (1,2-dibromo-2,2-dichloroethyl dimethyl phosphate) and trichlorfon [(dimethyl 2,2,2-trichloro-1-hydroxyethyl) phosphonate] because the Agency has not completed the comprehensive review of the residue data submitted in response to the naled and trichlorfon registration standards. Naled can degrade to dichlorvos in plants, animals, and soil. In ruminants and poultry, naled is debrominated to dichlorvos which further degrades to dichloroacetaldehyde (major pathway) or desmethyl-dichlorvos (minor pathway). Trichlorfon degrades to dichlorvos in soil and alkaline pond water and possibly in plants and animals. During the Special Review process, the Agency will try to estimate the potential dichlorvos dietary contributions resulting from degradation of the pesticides, naled and trichlorfon.

3. *Non-dietary risk and exposure.* Applicators can be exposed to dichlorvos during the application of dichlorvos in workplaces and residences. Workers and residents exposed to treated areas, and residents exposed to resin (pest) strips and pet flea collars are also at risk for oncogenic, liver and cholinesterase depression effects. In addition, pets wearing the dichlorvos flea collars are also exposed to dichlorvos and therefore, are subject to a potential oncogenic risk. Depending on the method of application or use, exposure to dichlorvos can occur by either or both the dermal and inhalation routes.

No data are available regarding the actual dermal absorption of dichlorvos. For purposes of estimating dermal exposure, dermal absorption is calculated to be 75 percent. This assumption is based on the comparison of oral and dermal LD_{50}s in rats (Ref. 25). The Registration Standard requires a dermal absorption study to be submitted to EPA by May 1988. This study will be used to refine the absorption estimate and hazard assessment.

Exposure situations presented are the best available estimates of common use and consider practical protective clothing and equipment. Exposure calculations are based on available dichlorvos data or surrogate studies (Refs. 26 thru 30). Estimates of oncogenic risk, which are in the 10^{-2} to 10^{-7} range, are tabulated in Table A of this unit. Table A also includes estimated Margins of Safety (MOS) for liver effects and cholinesterase inhibition resulting from chronic and subchronic exposure (as defined below), respectively, to dichlorvos. Several estimated MOS are below an acceptable for liver effects (100) and cholinesterase inhibition (10).

In calculating the MOS's for liver effects and cholinesterase inhibition, the

Agency assumed the following: (1) An exposure frequency up through 16 times per year for fog and spray applicators in mushroom houses, green houses, and dairy barns is *acute* exposure; (2) the exposure frequency of twice per week for 27 weeks or 52 times a year in tobacco warehouses and the disinsection of aircraft is *subchronic* exposure; and (3) an annual exposure frequency of 220 times by pest control applicators applying dichlorvos to domestic dwellings, exposure to residents in dwellings or offices sprayed with dichlorvos, and exposure to residents from resin pest strips and from pets wearing dichlorvos flea collars is *chronic* exposure.

The MOS's for chronic exposure were calculated from the 2-year dog study with a NOELL for systemic effects (increased liver weight and liver hypertrophy) of 0.08 mg/kg/day.

$$\text{MOS for chronic exposure} = \frac{\text{dietary NOEL}}{\text{dermal and inhalation exposure}}$$

The MOS for subchronic exposure was calculated from the 2-year rat inhalation study with a NOEL (cholinesterase inhibition) of 0.05 mg/m^3. (Ref. 31)

$$\text{MOS for subchronic exposure} = \frac{\text{inhalation NOEL}}{\text{dermal and inhalation exposure}}$$

TABLE A.—NON-DIETARY EXPOSURE, ONCOGENIC RISK, AND MARGINS OF SAFETY FOR LIVER AND ACETYLCHOLINESTERASE (ACE) EFFECTS

Uses	Notes	Exposure (mg/kg/yr)		Upper bound oncogenic risks	Margin of safety	
		Dermal	Inhal.		Liver	ACE
Occupant exposure to:						
Spray treated home	1	(1)	0.011	10^{-5}	2,857.0	7,250
Resin (pest) strips in homes		(1)	9.60	10^{-2}	3.0	3
Pet flea collar	3	(1)	0.08	10^{-4}	380.0	676
Offices or food handling facilities	4	(1)	0.008	10^{-6}	153.0	390
Disinsection of aircraft	5	(1)	0.19	10^{-4}	(1)	56
Applicator exposure from fogs and sprays in:						
Mushroom houses (hand held fogger)	6	0.763	0.001	10^{-4}	(2)	(2)
Mushrooms houses (coarse spray)	7	26	0.011	10^{-2}	(2)	(2)
	8	6.3	0.011	10^{-3}	(2)	(2)
	9	3.2	0.0004	10^{-3}	(2)	(2)
Greenhouse (hand-held fogger)	10	1.2	0.0004	10^{-4}	(2)	(2)
Dairy barns (spray)	11	2.6	0.004	10^{-3}	(2)	(2)
Application to home (crack and crevice treatment):						
Pest control operator	12	6.6	0.10	10^{-3}	1.0	2
	13	0.52	0.0042	10^{-4}	9.0	17
Resident	14	0.78	0.010	10^{-5}	7.0	18
Application to tobacco warehouse floors (sprinkling):						
Applicator	15	10.4	(3)	10^{-3}	0.5	1
	16	5.4	(3)	10^{-3}	1.0	2
Mixer/loader	17	7×10^{-4}	(3)	10^{-7}	7,600.0	14,500
	18	4×10^{-4}	(3)	10^{-7}	15,000.0	29,000
Warehouse worker	19	(1)	33	10^{-2}	0.5	1
Reentry in tobacco warehouses treated with thermal aerosol:						
Warehouse worker	20	(1)	22	10^{-2}	0.6	2
Pets wearing flea collars:						
Dogs		(3)	[4] 0.053	10^{-2}	2.0	4
Cats		(3)	[4] 0.56	10^{-2}	1.0	4

[1] No data available; [2] Acute exposure. [3] Negligible (less than the level of detection. [4] Mg/Kg/day.

Notes: The following notes are referenced in column two of Table A. The notes define the assumptions used in calculating the oncogenic risks and the margins of safety.

1. A home is sprayed once a week over the resident's lifetime. Estimates are based on dichlorvos data.

2. A 79 kg. resident is exposed to pest strip vapors for 15 hrs/365 days/year for a lifetime. Each day, five hours are spent performing light tasks (respiratory volume = 1.7 m^3/hr) and 10 hours are spent at rest (respiratory volume = 0.44 m^3/hr); daily respiratory volume is 12.9 m^3/day. New resin strips are installed every 90 days. Exposure estimates are based on dichlorvos data.

3. A resident exposed during a lifetime (70 years) to vapors from a pet's flea collar for 9 hours a day: 8 hours is casual exposure and 1 hour is in closer contact with the pet. Estimates are based on dichlorvos data.

4. An office or food handling facility is sprayed once a week and is occupied during the individual's working lifetime (35 years). Estimates are based on dichlorvos data.

5. Aircraft personnel are exposed once per week, 52 times/year. No protective clothing is worn. Estimates are based on dichlorvos data.

6. Dichlorvos is applied 40 min, 16 days/yr. Gloves, waterproof coveralls, and a respirator are worn during application. Estimates are based on surrogate data.

7. Dichlorvos is applied 16 days/yr. Normal work clothes and a respirator are worn during application. Estimates are based on surrogate data.

8. Dichlorvos is applied 16 days/yr. A respirator, impervious coveralls, and boots are worn during application. Estimates are based on surrogate data.

9. Dichlorvos is applied 9 days/yr. Gloves, long sleeved shirt, trousers, and a respirator are worn during application. Estimates are based on surrogate data.

10. Dichlorvos is applied 9 days/yr. Gloves, impervious coveralls, boots, and a respirator are worn during application. Estimates are based on surrogate data.

11. Dichlorvos is sprayed 11 days/yr. Gloves, waterproof clothing, and a respirator are worn during application. Estimates are based on surrogate data.

12. Dichlorvos is applied by a pest control operator once per week for 44 weeks while wearing no protective clothing. Estimates are based on dichlorvos data.

13. Dichlorvos is applied by a pest control operator once per week for 44 weeks while wearing protective clothing, gloves, and a respirator. Estimates are based on dichlorvos data.

14. Dichlorvos is applied by a resident once per week for 44 weeks while wearing no protective clothing. Estimates are based on dichlorvos data.

15. Dichlorvos is applied 52 times per year at 2 treatments per week for 27 weeks/year. The applicator wears chemically resistant gloves, respirator, long sleeved shirt, and long pants. Estimates are based on surrogate data.

16. Dichlorvos is applied 52 times per year at 2 treatments per week for 27 weeks/year. The applicator wears chemically resistant gloves, respirator, impervious coveralls, and boots. Estimates are based on surrogate data.

17. Mixing/loading occurs 52 times per year at 2 times/week for 27 weeks/year. The mixer/loaders wear chemically resistant gloves, respirator, long sleeved shirt, and long pants. Estimates are based on surrogate data.

18. Mixing/loading occurs 52 times per year at 2 times/week for 27 weeks/year. The mixer/loaders wear chemically resistant gloves, respirator, impervious coveralls, and boots. Estimates are based on surrogate data.

19. Dichlorvos is applied 52 times per year at 2 times/week for 27 weeks/year. It is assumed that a worker reenters the treated warehouse 12 hours after each application. It is further assumed that no protective clothing is worn and that after re-entry, light and heavy tasks are performed for equal amounts of time. Estimates are based on dichlorvos data.

20. Dichlorvos is applied twice a week for 27 weeks; no protective clothing is worn. Re-entry occurs the day following treatment. Estimates are based on dichlorvos data.

21. Flea collars are worn 24 hrs/day, 365 days/year over a pet's lifetime. The Q_1^* for dogs is 1.6×10^{-1} $(mg/kg/day)^{-1}$ and for cats the Q_1^* is 9.2×10^{-2} $(mg/kg/day)^{-1}$ (Refs. 32 & 33).

III. Use Profile and Benefits Information

A. Use Profile of Dichlorvos

Approximately 2 million pounds of dichlorvos active ingredient are used annually in the United States. This estimate is based on 1985 data (Ref. 34).

Dichlorvos is an organophosphate insecticide registered for use in areas where flies, mosquitoes, gnats, cockroaches, and other insect pests may be a problem. Agricultural applications represent 60 percent of the total annual U.S. usage. Of this, approximaely 35 percent is used on beef and dairy cattle, swine and livestock buildings; and about 25 percent is used on sheep, poultry, and other livestock, tobacco warehouses, mushroom houses, figs, and greenhouse crops. Approximately 25 percent is used in commercial, institutional and industrial buildings, and on turf and ornamentals. Domestic use in and around homes and on pets accounts for the remaining 15 percent.

B. Benefits Information

The Agency is soliciting the information described below regarding the benefits of dichlorvos and the economic impact of regulatory action on this pesticide. Because of the number of uses for which dichlorvos is registered, the Agency may focus its benefits analysis during the course of this Special Review on the principal sites that account for a high percentage of the total volume of dichlorvos used in the U.S. The Agency, however, encourages the submission of benefits data on all registered agricultural and nonagricultural uses. In the absence of such benefits information for these sites, the Agency may conclude that the benefits are negligible.

The user community, other government agencies, and the interested public are encouraged to submit data to support any benefits claims on all registered uses. Persons who desire to submit benefits information should provide the following kinds of information for each use addressed, along with any other information they believe relevant.

1. *Comparative efficacy reports.* The Agency is requesting all relevant field test results comparing dichlorvos at recommended or reduced application rates or various methods of application or implementation with possible chemical and nonchemical alternatives. Field test data, in order to be useful, should preferably not be over 10 years old and include:

a. In the case of agricultural uses, data relating to yield and quality (using common agricultural practices, plot designs, and statistical analyses) that compare dichlorvos with possible alternatives.

b. Growing conditions and other pertinent factors that have an impact on the results of agricultural uses.

c. In the case of urban and industrial uses, data relating to the results of use of dichlorvos, i.e., efficacy, qualitative benefits, compared with possible alternatives. Include discussion of pertinent factors that impact on results of the use.

d. Data on nontarget organisms (e.g., predators, parasites, pathogens, and other introduced or endemic species) that are affected by dichlorvos and other pesticides or pest management programs being tested (e.g., integrated pest management data.)

e. Information on the development of resistance by target pests to dichlorvos or its alternatives.

f. Information on the pest spectrum controlled by dichlorvos and its alternatives including identification of primary and secondary pests.

g. Data on methods and equipment used for pesticide application.

2. *Pesticide profile information.* The Agency is also requesting additional information concerning pesticide use practices. This information includes the following:

a. Data on pesticide or pest management program characteristics that determine the choice of pesticides or other control strategies including their restrictions, limitations, and benefits in agricultural and industrial/urban and non-agricultural uses.

b. Pest management programs currently used by growers (or other users) and any other research programs which could modify pest management practices within the next several years.

c. For each use site addressed, typical use patterns of dichlorvos and any alternatives (preferably by target pest(s) as may be appropriate to the particular use site) in terms of acres or units, i.e., households treated, number of applications per season, formulations, pounds of active ingredient (quantities expressed by State, region, or site are preferable to national totals), and application intervals or pre-harvest intervals.

d. Actual application rate(s) (individual amount or a range where appropriate) in terms of active ingredient per acre or unit in agricultural or industrial/urban uses.

3. *Economic information.* The Agency is also requesting economic information concerning dichlorvos, including the following:

a. Retail cost of the dichlorvos formulations and alternatives in terms of dollars per application, number of head of livestock or other units. When grower applied, use rates as specified ir crop or system production budgets. Similar cost data for industrial/non-agricultural uses of dichlorvos.

b. Economic profile of current users of dichlorvos and of "downstream" processors or parties potentially affected by price change or supply shifts of the crop or manufactured product or commodity in question.

c. Enterprise or crop budget data (costs and returns) for the typical user.

d. Price elasticity of demand (of raw commodity and at the retail level) for the crop or manufactured product or commodity in question.

e. Information on crop or manufactured product or commodity exports and imports that has a bearing on the regulatory decision.

IV. Duty to Submit Information on Adverse Effects

Registrants are required by section 6(a)(2) of FIFRA to submit any additional information regarding unreasonable adverse effects on man or the environment which comes to their attention at any time. For further information on this requirement consult the Agency's enforcement policy for section 6(a)(2), published in the **Federal Register** of July 12, 1979 (44 FR 40716). The registrants of dichlorvos products must immediately submit published or unpublished information, studies, reports, analyses, or reanalyses regarding adverse effects associated with this insecticide, their impurities, metabolites and degradation products in humans or animal species, and claimed or verified accidents to humans, domestic animals, or wildlife which have not been previously submitted to EPA. These data should be submitted with a cover letter specifically identifying the information as being submitted under section 6(a)(2) of FIFRA. In light of this Special Review and the requirements of FIFRA section 6(a)(2), the registrants must notify EPA of the results of any studies on dichlorvos completed or currently in progress to the extent specified in the section 6(a)(2) enforcement policy cited above. In particular, information on any adverse toxicological effects of dichlorvos, its impurities, metabolites, and degradation products must be submitted immediately.

V. Public Comment Opportunity

All registrants and applicants for registration have been notified by certified mail of the Special Review being initiated on their dichlorvos products. The Agency is providing a 60-day period to comment on this notice. Comments must be submitted by April 25, 1988. The Agency is particularly soliciting comments on the subject listed in Unit III. All comments and information should be submitted in triplicate to the address given in this Notice under **ADDRESS** to facilitate the work of EPA and others interested in inspecting them. The comments and information should bear the identifying notation OPP-30000/56.

During the comment period, interested members of the public or registrants may request a meeting to discuss factual information available to the Agency, to present any factual information, to respond to presentations by other persons, or to discuss what regulatory actions should be taken regarding dichlorvos. Persons interested in arranging such meetings should contact the person listed in this notice under **FOR FURTHER INFORMATION CONTACT.**

VI. Public Docket

The Agency has established a public docket [OPP-30000/56] for the dichlorvos Special Review. This public docket will include: (1) This notice; (2) any other notices pertinent to the Special Review; (3) non-CBI documents and copies of written comments or other materials submitted to the Agency in response to the pre-Special Review registrant notification, this Notice, and any other Notice regarding dichlorvos submitted at any time during the Special Review process by any person outside government; (4) a transcript of all public meetings held by the Agency for the purpose of gathering information on dichlorvos; (5) memoranda describing each meeting held during the Special Review process between Agency personnel and any person outside government; and (6) a current index of materials in the public docket. On a monthly basis, the Agency will distribute a compendium of indices for newly received comments and documents that have been placed in the public docket for this Special Review. This compendium will be distributed by mail to those members of the public who have specifically requested such material for this Special Review, pursuant to 40 CFR 154.15(f)(3).

VII. References

The following list of references includes all documents cited in this notice. These documents are part of the public docket for this Special Review (docket number 30000/56). The Agency will continue to supplement the public docket with additional information as it is received.

The record includes the following information:

1. EPA, Guidance for the Reregistration of Pesticide Products Containing Dichlorvos as the Active Ingredient (September, 1987).

2. EPA, Preliminary Notification letter to dichlorvos registrants (April 21, 1987).

3. EPA, Decision Document on Dichlorvos (September 30, 1982).

4. EPA, Dichlorvos: Combined Data Call In Notice, (March 23, 1983).

5. NTP (National Toxicology Program) Pathology Working Group Report (1986). Dichlorvos Two Year B6C3F1 Mouse Corn Oil Gavage Study (Southern Research Institute, No. 5049, Test 2, NTP No. 00113B). MRID 006019.

6. NTP (National Toxicology Program) Pathology Working Group Report (1986). Two Year Gavage Study of Dichlorvos in F344 Rats (Southern Research Institute, No. 05049). MRID 006017.

7. EPA, Memorandum, Judith Hauswirth to George La Rocca (Sept. 25, 1987) Toxicology Peer Review of DDVP.

8. Comments of the Scientific Advisory Panel (SAP) (Sept. 23, 1987).

9. Shoup, R., Comments to EPA preliminary notification letter (September 29, 1987).

10. Shirasu, U., et al. (1976) Mutagenicity screening of pesticides in the microbial system. Mutation Research 40; 19–30. Also in unpublished submission received May 28, 1980 under 1023–57; submitted by Upjohn Co., Kalamazoo, Mich.; CDL:242523–A. MRID 46435.

11. Bridges, B. (1978) On the detection of volatile liquid mutagens with bacteria: experiments with dichlorvos and epichlorhydrin. Mutation Research 54:367–371. MRID 40303301.

12. Rosenkranz, H. (1973) Preferential effect of dichlorvos (Vapona) on Bacteria deficient in DNA polymerase. Cancer Research 33:458–459. MRID 40304402.

13. Sobels, F., et al. (1979) Absence of a mutagenic effect of dichlorvos in *Drosophila melanogaster*. Mutation Research 67:89–92. MRID 40304403.

Moriya, M., et al. (1978) Effects of cysteine and a liver metabolic activation system on the activities of mutagenic pesticides. Mutation Research 57:259–263. MRID 40303305.

15. Wile, D. (1973) Chemical induction of streptomycin-resistant mutation in *Escherichia coli*: Dose and mutagenic effects of dichlorvos and methyl methanesulfonate. Mutation Research 19:33–41. MRID 40303306.

Hanna, P., et al., (1975) Mutagencity of organophosphorus compounds in bacteria and *Drosophia*. Mutation Research, 28:405–420. MRID 00142663.

17. Mohn, G. (1973) 5-Methyltryptophan resistance mutations in *Escherichia coli* K-12: mutagenic activity of monofunctional alkylating agents including organophosphorus insecticides. Mutations Research 20:7–15. MRID 00146101.

18. D-5455C SDS Biotech Corporation, Report undated. 25 pages. L5178YTK+/−Mouse Lymphoma Forward Mutation Assay with T=169−1.

19. D-5456C SDS Biotech Corporation, Report undated. 19 pages. A Dominant Lethal Assay in Mice with T−169−1.

20. Memorandum, Irving Mauer to Joan Warshawsky (July 20, 1987).

21. Blair, D., K.M. Dix, P.F. Hung, et al. (1974) Two year Inhalation Exposure to Dichlorvos Vapor. Report No. TLGR.0074.

Submitted by Shell Chemical Co., Washington, DC. MRID 0057695 or 0063569.

22. Jolley, W.P., K.L. Stenner, and W. Ushry (1967). "The Effects Exerted Upon Beagle Dogs, During a Period of Two Years, by the Introduction of Vapona R Insecticide into Their Daily Diet." Prepared by Univ. of Cincinnati, Dept. of Environmental Health, Kettering Laboratory. Submitted by Shell Chemical Co., Washington, DC. DCL: 120596–R. MRID 0059398.

23. Shell Chemical Co., Determination of Vapona Insecticide Residues in Rice, Flour, Gravy, and Biscuits following Application of this toxicant: RES–62–10, 1962. (Unpublished study received April 18, 1962). MRID 0042707.

24. EPA, Memorandum, Ed Brandt to Carol Monroe (July 29, 1987).

25. EPA, Memorandum, Bernice Fisher to Joycelyn Stewart, (undated).

26. EPA, Memorandum, David Jaquith to Carol Monroe (August 26, 1987).

27. EPA, Memorandum, David Jaquith to Carol Monroe (August 14, 1987).

28. EPA, Memorandum, David Jaquith to Carol Monroe (August 7, 1987).

29. EPA, Memorandum, Carol Monroe to Joanne Edwards (July 24, 1987).

30. EPA, Memorandum, Carol Monroe to Joan Warshawsky (August 19, 1987).

31. EPA, Memorandum, Joycelyn Stewart to George LaRocca (August 14, 1987).

32. EPA, Memorandum, Bernice Fisher to Carol Monroe (August 11, 1987).

33. EPA, Memorandum, Carol Monroe to Joan Warshawsky (August 18, 1987).

34. Hogue, Joseph E., Preliminary Quantitative Useage Analysis of DDVP (September, 1985).

Dated: February 10, 1988.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88–3905 Filed 2–23–88; 8:45 am]

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federal register

Wednesday
February 24, 1988

Part V

Department of Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education; Final Regulations and Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary publishes regulations governing eligibility and entitlement determinations under section 2 of the Impact Aid program (Pub. L. 81–874). Changes in the general definitions relating to applications for financial assistance under sections 2, 3, and 4 of this program also are made. These regulations are intended to provide guidance to local educational agencies (LEAs) applying for maintenance and operations assistance under Pub. L. 81–874 (the Act). Provisions in these regulations that are changes from current practice will affect the Department's calculation of assistance amounts starting with FY 1988.

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: W. Stanley Kruger, Director, Division of Impact Aid, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6272. Telephone: (202) 732–3637.

SUPPLEMENTARY INFORMATION:

Background

Public Law 81–874, as amended, 20 U.S.C. 236 through 241–1 and 242 through 244, commonly referred to as the Impact Aid maintenance and operations assistance program, authorizes assistance for LEAs that are financially burdened due to a reduced local real property tax base resulting from Federal acquisition of real property, an increased student population associated with federally owned or leased real property, or both. Section 2 of the Act, 20 U.S.C. 237 ("section 2") addresses the first type of burden by authorizing payments to those LEAs that experience financial burdens due to the Federal acquisition of a certain amount of real property since 1938. While these payments are intended to provide compensation to an LEA for a loss in local real property tax revenue resulting from the Federal acquisition of certain real property within the school district, the program is based upon the financial burden (if any) caused by that acquisition, and is not strictly speaking a "payment in lieu of taxes" (PILOT) program.

For an LEA to be eligible for section 2 assistance, the assessed value of federally acquired real property, as of the time it was acquired, must constitute an aggregate of 10 percent or more of the assessed value of all real property in the school district (including the Federal property). In addition, the Secretary must find that (1) the Federal acquisition of real property has placed a substantial and continuing financial burden on the LEA, and (2) the LEA is not being substantially compensated for a loss in real property tax revenue by an increase in revenue resulting from Federal activity with respect to the Federal property.

In order to provide information and guidance regarding the operation of section 2, the Secretary believes that it is desirable to describe in regulations how the Department determines eligibility and entitlement for all LEAs applying for section 2 assistance. The provisions of these final regulations are based upon the eligibility and entitlement requirements in the Act.

In addition to establishing a new Subpart J, which relates specifically to section 2, existing regulatory provisions are amended as follows: In § 222.3, a number of definitions are added, and others are revised; § 222.20 is amended for clarity and to indicate that its provisions apply to section 2; and technical amendments are proposed to §§ 222.17, 222.40, and 222.42. These regulations will have prospective effect only, and will govern all subsequent payments for fiscal years beginning with fiscal year (FY) 1988. In many instances, however, the regulations merely adopt current Departmental policies and procedures. *See* NPRM, 52 FR 16144 (May 1, 1987). Those current policies and procedures will remain in effect during the interim period until the regulations become effective, and thereafter in accordance with the regulations.

Information Contained in the Notice of Proposed Rulemaking

On May 1, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for the Impact Aid maintenance and operations assistance program in the **Federal Register**, 52 FR 16144–16155. Most of the explanatory statements in the NPRM remain relevant. For the sake of brevity, those statements are not being reprinted here.

Readers are referred to the **Federal Register** of May 1, 1987 (52 FR 16144–16155). With four exceptions, all information from the third column of page 16144 through the first full paragraph of the first column of page 16149 is pertinent.

The first exception relates to the discussion regarding the general definition of "Federal property" in the second full paragraph of the first column on page 16145. The second and third sentences of that paragraph, which were incorrectly printed in the NPRM, should read: "Second, off-base military family housing constructed under section 801 of Pub. L. 98–115 (10 U.S.C. 2828), the Military Construction Authorization Act of 1984, generally will not qualify as Federal property. While this property may be tax-exempt in some instances, the tax-exempt status generally will not be due to Federal law, agreement, or policy."

The second exception relates to the discussion regarding § 222.94 in the third sentence of the first full paragraph of the middle column on page 16147. As discussed in the response to comments on § 222.94 in the Appendix to these final regulations, language has been added to the final regulations to clarify that original records of the assessed value of Federal property are required to establish eligibility only for new section 2 applicants and newly acquired Federal property.

The third exception, relating to the discussion concerning § 222.99 in the second sentence of the third full paragraph of the first column on p. 16148, is addressed below under "Significant Changes."

The fourth exception, relating to the discussion concerning § 222.102 in the third sentence of the last paragraph of the third column on page 16148, also is addressed below under "Significant Changes."

Significant Changes

Significant changes in the final regulations from the NPRM are described below. The NPRM noted that examples concerning Subpart J would not be shown in the Code of Federal Regulations. Accordingly, those examples are not included in the final regulations. Except for minor editorial and technical revisions, deletion of the examples, and significant changes described below, there are no other differences between the NPRM and these final regulations.

1. *Section 222.91.* Introductory language is added to clarify that, in

addition to the definitions that apply only to the subpart, many of the general definitions contained in § 222.3 apply to Subpart J.

2. *Section 222.94.* Paragraph (c) states that the Secretary bases the determination of eligibility regarding Federal acquisition of real property in a school district upon original records for new section 2 applicants and newly acquired Federal property.

3. *Section 222.99.* Paragraph (c)(1) no longer provides that, in selecting comparable property, the Secretary will take into consideration the similarity of that property to the Federal property with respect to proximity to other taxed real property that is more highly developed than the comparable property. While the Department believes that this provision is valid and would benefit LEAs, the provision is not being applied as a part of current policy. The preamble to the NPRM, however, did not indicate that this provision would be a change from current policy. Therefore, although not required to do so as a matter of law, the Secretary is deleting the provision from the final regulations and republishing it as a part of the new NPRM (published in this issue of the **Federal Register** upon which further public comment is invited.

Paragraphs (c)(3)(ii)(A) and (B) describe methods used by the Secretary to adjust the assessed value of selected property upward or downward in the two most frequent circumstances in which no taxed real property within the same assessment district as the Federal property currently is substantially similar to the Federal property as it was when acquired by the United States.

4. *Section 222.102.* Paragraph (b)(1) no longer provides that an LEA formed by consolidation of school districts may establish eligibility under section 2 on the basis of a former school district only if that former school district contained some section 2-eligible Federal property at the time of the consolidation. While the Department believes that the provision published in the NPRM has sound legal basis under the statute, it appears that former school districts currently are not required to contain any section 2-eligible Federal property at the time of consolidation. The preamble to the NPRM did not indicate that this provision of paragraph (b)(1) in the proposed regulations was a change from current policy. Therefore, although not required to do so as a matter of law, the Secretary also is deleting this provision from the final regulations and republishing it as a part of the new NPRM (published in this issue of the **Federal Register)** upon which further public comment is invited.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, over one hundred and twenty parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an Appendix to these final regulations.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order (EO) 12291. They are not classified as major because they do not meet the criteria for major regulations established in that order.

Several commenters believe that the proposed regulations should be classified as "major" regulations or rules under EO 12291. However, EO 12291 defines a "major rule" as: "* * * any 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 on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets."

These regulations do not fall within any of the above criteria. Although the regulations may result in decreased entitlements to some LEAs, they do not necessarily result in any increased costs.

Regulatory Flexibility Act

The Secretary has determined that these regulations will not have the type of effect on a sufficient number of small entities that would require analysis under the Regulatory Flexibility Act.

A number of commenters expressed the belief that the regulations would have a significant economic impact on a substantial number of small entities. The primary economic impact of these regulations relates to the section 2 provisions, which affect approximately 270 LEAs. Available data for FY 1986 indicate that only eleven of those LEAs that were small entities had section 2 entitlements comprising more than 5 percent of their total current expenditures for that fiscal year.

List of Subjects in 34 CFR Part 222

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, Grant program—education, Public housing, Reports and recordkeeping requirements.

Dated: January 19, 1988.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operations.)

The Secretary amends Part 222 of Title 34 of the Code of Federal Regulations as follows:

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

1. The authority citation for Part 222 is revised to read as follows:

Authority: 20 U.S.C. 236–241–1 and 242–244, unless otherwise noted.

2. The Table of Contents for Part 222 is amended by revising the heading for § 222.20 in Subpart C and adding a new Subpart J, to read as follows:

* * * * *

Subpart C—Payments

* * * * *

Sec.

222.20 Changes affecting boundaries, classification, control, governing authority, or identity of applicants.

* * * * *

Subpart J—Provisions for Section 2

Sec.

222.90 What are the scope and purpose of these regulations?

222.91 What definitions apply to this subpart?

222.92 What financial data are used to determine eligibility and entitlement under section 2?

222.93 Who is eligible for section 2 assistance?

222.94 What criteria must be met regarding Federal acquisition of real property in a school district?

222.95 What constitutes a substantial and continuing financial burden?

222.96 When is an LEA not substantially compensated from Federal activity?

222.97 What financial assistance is an LEA entitled to under section 2?

222.98 How is an LEA's section 2 maximum entitlement determined?

222.99 How is an estimated current assessed value established for Federal property?

222.100 How is an LEA's section 2 maximum entitlement computed?

222.101 How is an LEA's section 2 need-based entitlement determined?

Sec.

222.102 How are section 2 eligibility and entitlement determined for an LEA formed by consolidation of school districts?

222.103 How are section 2 overpayments recovered?

* * * * *

3. Section 223.3 is amended by removing the alphabetical paragraph designations; placing the existing definitions in alphabetical order; revising the existing definition of "Act"; revising the definition of "Federal property," and adding new definitions for "current expenditure," "current fiscal year of the local educational agency," "fiscally dependent local educational agency," "fiscally independent local educational agency," "local real property tax rate for school (elementary and secondary education current expenditure) purposes," and "real property" in alphabetical order, to read as follows:

§ 222.3 Definitions.

The following definitions apply to this part:

"Act" means Titles I (except section 7) and IV of Pub. L. 874, 81st Congress (20 U.S.C. 236–241–1, 242–244), as amended.

* * * * *

"Current expenditures" means expenditures for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, plant operation and maintenance, fixed charges, and expenditures to cover deficits for food services and student body activities. The term does not include expenditures for community services, capital outlay, debt service, or any expenditures made from funds granted for the purpose of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) (20 U.S.C. 3801–3808, 3871–3876). An expenditure for the replacement of equipment is considered to be either a current expenditure or capital outlay, whichever is in accordance with State accounting guidelines, law, or practice.

(Authority: 20 U.S.C. 244(5))

"Current fiscal year of the local educational agency" means the fiscal year of the local educational agency for which the local educational agency seeks assistance.

(Authority: 20 U.S.C. 237, 238(d)(2)(B))

* * * * *

"Federal property."

(1) The term means the following:

(i) Real property that, because of Federal law, agreement, or policy, is exempt from taxation for elementary or secondary education current expenditure ("school") purposes by a State or political subdivision of a State or the District of Columbia, and—

(A) That the United States owns in fee simple or leases from another party;

(B) That is described in section 403(1)(A) of the Act (20 U.S.C. 244(1)(A)) (Indian lands), even if that real property is used for a low-rent housing project; or

(C) That is low-rent housing (whether or not owned by the United States) which is part of a low-rent housing project assisted under the United States Housing Act of 1937, as described in section 403(1)(C) of the Act (20 U.S.C. 244(1)(C)).

(ii) Real property that is exempt from taxation for school purposes by a State or political subdivision of a State or the District of Columbia, and—

(A) That is low-rent housing (whether or not owned by the United States) which is a part of a low-rent housing project assisted under section 516 of the Housing Act of 1949 (42 U.S.C. 1486) or Part B of Title III of the Economic Opportunity Act of 1964 (42 U.S.C. 2861–2864), as described in section 403(1)(C) of the Act (20 U.S.C. 244(1)(C));

(B) That is described in section 403(1)(D) of the Act (20 U.S.C. 244(1)(D)) (certain Air Force flight training schools); or

(C) That is described in section 403(1)(E) of the Act (20 U.S.C. 244(1)(E)) (tax-exempt real property owned by a foreign government or an international organization).

(iii) Notwithstanding the foregoing provisions of paragraph (1) of this definition, any Federal property described in paragraph (1) that is subject to a non-Federal interest such as an easement, lease, license, permit, or other arrangement, and improvements (except pipelines and utility lines) located on Federal property that is subject to such a non-Federal interest, even if the interest or improvements are subject to taxation for school purposes by a State or political subdivision of a State or the District of Columbia. For the purpose of this paragraph, the term "other arrangement" does not include a non-possessory interest in Federal property, such as a mortgage.

(iv) Ships that are owned by the United States and whose home ports are located upon Federal property described elsewhere in paragraph (1) of this definition.

(v) For one year beyond the end of the fiscal year in which the sale or transfer occurred (or for two years, in the case of real property transferred to the United States Postal Service), any Federal property described in the foregoing parts of paragraph (1) of this definition that is sold or transferred by the United States.

(2) Notwithstanding paragraph (1) of this definition, the term does not include real property under the jurisdiction of the United States Postal Service that is used primarily for the provision of postal service.

(3) For the purpose of determining eligibility and entitlements under section 2 of the Act, notwithstanding paragraph (1) of this definition, the term also does not include the following Federal property:

(i) Except for Indian lands described in section 403(1)(A) of the Act (20 U.S.C. 244(1)(A)), any real property that the United States does not own in fee simple, such as the following—

(A) Real property in which the United States holds an interest under an easement, lease, lease-purchase arrangement, license, permit, or trust;

(B) Low-rent housing property described in section 403(1)(C) of the Act (20 U.S.C. 244(1)(C)) that is not owned in fee simple by the United States;

(C) Real property described in section 403(1)(D) of the Act (20 U.S.C. 244(1)(D)) (certain Air Force flight training schools at State or municipally owned airports);

(D) Real property described in section 403(1)(E) of the Act (20 U.S.C. 244(1)(E)) (tax-exempt real property owned by a foreign government or an international organization); or

(E) After the end of the fiscal year in which the sale or transfer occurred, any Federal property described in the foregoing parts of this definition that is sold or transferred by the United States.

(ii) Any real property with respect to which payments are being made under section 13 of the Tennessee Valley Authority Act of 1933, as amended.

(Authority: 20 U.S.C. 237, 244(1))

* * * * *

"Fiscally dependent local educational agency" means local educational agency that does not have the final authority to determine the amount of revenue to be raised from local sources for school purposes.

(Authority: 20 U.S.C. 237(a), 238(d)(2)(B), 242(b))

"Fiscally independent local educational agency" means a local educational agency that has the final authority to determine the amount of revenue to be raised from local sources for school purposes within limits established by State law.

(Authority: 20 U.S.C. 237(a), 238(d)(2)(B), 242(b))

* * * * *

"Local real property tax rate for school (elementary and secondary education current expenditure) purposes."

(1) The term means the following:

(i) For a fiscally independent LEA, a tax levied on real property within the LEA, if the total proceeds from the tax levy are available to that LEA for current expenditures.

(ii) For a fiscally dependent LEA—

(A) A tax levied by the general government on real property, if the total proceeds from the tax levy on all real property within the LEA are available to that LEA for current expenditures;

(B) That portion of a local real property tax rate designated by the general government for school purposes; or

(C) If no real property tax levied by the general government meets the criteria in paragraphs (1)(ii) (A) or (B) of this definition, an imputed tax rate that the Secretary determines by—

(*1*) Dividing the total local real property tax revenue available to the general government for current expenditures by the total revenue from all local sources available to the general government for current expenditures;

(*2*) Multiplying the figure obtained in paragraph (1)(ii)(C)(*1*) of this definition by the revenue received by the LEA for current expenditures from the general government; and

(*3*) Dividing the figure obtained in paragraph (1)(ii)(C)(*2*) of this definition by the total current actual assessed value of all real property in the district.

(2) In determining the local real property tax rate for school purposes, the Secretary does not include any portion of a tax or revenue that is restricted to or dedicated for any specific purpose other than elementary or secondary education current expenditures.

(Authority: 20 U.S.C. 237(a), 238(d)(2)(B))

* * * * *

"Real property" is defined as follows:

(1) "Real property" means—

(i) Land; and

(ii) Improvements (such as buildings and appurtenances thereto, railroad lines, utility lines, pipelines, and other permanent fixtures), except as provided in paragraph (2) of this definition.

(2) "Real property" does not include—

(i) Improvements that are classified as personal property under State law; or

(ii) Equipment and movable machinery, such as motor vehicles, movable house trailers, farm machinery, rolling railroad stock, and floating dry docks, unless that equipment or movable machinery is classified as real property or subject to local real property taxation under State law.

(3) The definition of "real property" in 34 CFR 74.132 (Administration of [ED] grants) does not apply to this part.

(Authority: 20 U.S.C. 237, 244(1))

* * * * *

4. Section 222.17 is amended by revising paragraph (a) to read as follows:

§ 222.17 Alternative methods for making membership counts.

* * * * *

(a) The applicant may conduct a parent-pupil survey to determine federally connected membership. Information that the applicant shall collect in the survey is described in § 222.3 under the definition of "parent-pupil survey."

* * * * *

5. Section 222.20 is revised to read as follows:

§ 222.20 Changes affecting boundaries, classification, control, governing authority, or identity of applicants.

(a) Any applicant that is a party to an annexation, consolidation, deconsolidation, merger, or other similar action affecting its boundaries, classification, control, governing authority, or identity must provide to the Secretary as soon as practicable—

(1) A description of the character and extent of the change;

(2) The effective date of the change;

(3) Full identification of all predecessor and successor local educational agencies (LEAs);

(4) Full information regarding the disposition of the assets and liabilities of all predecessor LEAs;

(5) Identification of the governing body of all successor LEAs; and

(6) The name and address of each authorized representative officially designated by the governing body of each successor LEA for purposes of Pub. L. 81–874.

(b) If a payment is made under sections 2, 3, or 4 of the Act (hereinafter "sections 2, 3, or 4") to an LEA that, because of a change in boundaries or organization, has ceased to be a legally constituted entity during the regular school term, the LEA may retain that payment if—

(1) An adjustment is made in the entitlement of a successor LEA to account for the payment; or

(2)(i) The payment amount does not exceed the amount the former LEA would have been entitled to receive if the change in boundaries or organization had not taken place; and

(ii) A successor LEA is not an eligible applicant.

(c) Any portion of a payment made under sections 2, 3, or 4 to a former LEA that exceeds the amount allowed by paragraph (b)(2)(i) of this section must be returned to the Secretary.

(d)(1) Except as provided in § 222.21(d), a successor LEA that is eligible for section 3 or 4 assistance may elect to have the Secretary determine its section 3 or 4 entitlement for the entire fiscal year upon either of the following bases:

(i) The entire area within its jurisdiction on the last day of that fiscal year.

(ii) The area within the jurisdiction of one or more of the former LEAs that would have been entitled to receive payment under section 3 or 4 if the change in boundaries or organization had not occurred.

(2) A successor LEA's section 2 eligibility and entitlement are determined in accordance with § 222.102.

(Authority: 20 U.S.C. 237, 238, 239, 242(b))

(Approved by the Office of Management and Budget under control number 1810–0036)

6. The authority citation for § 222.40 is revised to read as follows:

§ 222.40 Maintenance of records.

* * * * *

(Authority: 20 U.S.C. 237, 238, 239, 240, 242(b))

7. The introductory text and authority citation for § 222.42 are revised to read as follows:

§ 222.42 Adjustment for or recovery of overpayment.

Except as otherwise provided in § 222.103, the Secretary adjusts for and recovers overpayments as follows:

* * * * *

(Authority: 20 U.S.C. 237, 240, 242(b), 1226a–1)

8. A new Subpart J is added to read as follows:

Subpart J—Provisions for Section 2

§ 222.90 What are the scope and purpose of these regulations?

The regulations in this subpart implement section 2 of the Act only (hereinafter "section 2"). The program authorized by section 2 provides financial assistance, under certain circumstances, to a local educational agency (LEA) that is financially burdened by the Federal acquisition, after 1938, of real property in the school district.

(Authority: 20 U.S.C. 236, 237)

§ 222.91 What definitions apply to this subpart?

Many of the general definitions contained in § 222.3 apply to this subpart. In addition, the following definitions apply only to this subpart:

"Acquisition" or "acquired by the United States."

(1) The term means—

(i) The receipt or taking by the United States of ownership in fee simple of real property by condemnation, exchange, gift, purchase, transfer, or other arrangement;

(ii) The receipt by the United States of real property as trustee for the benefit of individual Indians or Indian tribes; or

(iii) The imposition by the United States of restrictions on sale, transfer, or exchange of real property held by individual Indians or Indian tribes.

(2) The definitions of "acquisition" in 34 CFR 74.132 (Administration of [ED] grants) and 77.1(c) (Definitions that Apply to Department Regulations) of this Title do not apply to this subpart.

(Authority: 20 U.S.C. 237(a), 244(1))

"Assessed value."

(1) The term means the value that is assigned to real property, for the purpose of generating local real property tax revenues for elementary and secondary education current expenditure ("school") purposes, by a State or local official who is legally authorized to determine that assessed value.

(2) "Assessed value" does not include—

(i) A value assigned to tax-exempt real property;

(ii) A value assigned to real property for the purpose of generating other types of revenues, such as payments in lieu of taxes (PILOTs);

(iii) Fair market value, or a percentage of fair market value, of real property unless that value was actually used to generate local real property tax revenues for school purposes; or

(iv) A value assigned to real property in a condemnation or other court proceeding, or a percentage of that value, unless that value was actually used to generate local real property tax revenues for school purposes.

(Authority: 20 U.S.C. 237(a))

§ 222.92 What financial data are used to determine eligibility and entitlement under section 2?

The Secretary uses final financial data from an LEA's current fiscal year to determine final section 2 eligibility (§§ 222.93–222.96 and § 222.102(b)) and entitlement (§§ 222.97–222.101, and § 222.102(c)).

(Authority: 20 U.S.C. 237)

§ 222.93 Who is eligible for section 2 assistance?

An LEA is eligible for financial assistance under section 2 if the Secretary determines that the LEA meets the requirements of §§ 222.94, 222.95, and 222.96.

(Authority: 20 U.S.C. 237(a) (1), (2), and (3))

§ 222.94 What criteria must be met regarding Federal acquisition of real property in a school district?

(a) For an LEA to be eligible to receive financial assistance under section 2, the United States must own or acquire Federal property, within the school district of the LEA, that meets each of the following criteria:

(1) The United States has acquired the Federal property since 1938.

(2) The Federal property was not acquired by exchange for other Federal property that the United States owned within the school district before 1939.

(3) The Federal property that meets the criteria in paragraphs (a) (1) and (2) of this section has an aggregate assessed value of 10 percent or more of the assessed value of all real property in the school district, based upon the assessed values of the Federal property and of all real property (including that Federal property) on the date or dates of acquisition of the Federal property.

(b) If, during any fiscal year, the United States sells, transfers, is otherwise divested of ownership of, or relinquishes an interest in or restriction on, Federal property upon which an LEA's eligibility is based, the Secretary redetermines the LEA's eligibility for the following fiscal year, based upon the remaining Federal property, in accordance with paragraph (a) of this section.

(c)(1) The Secretary bases the determination of eligibility under paragraph (a) of this section, for a new section 2 applicant or for newly acquired Federal property, only upon—

(i) Original records as of the time(s) of Federal acquisition of real property, prepared by a legally authorized official, documenting the assessed value of that real property; or

(ii) Facsimiles of those records such as microfilm or other reproduced copies.

(2) The Secretary bases the redetermination of an LEA's eligibility under paragraph (b) of this section only upon—

(i) Records described in paragraph (c)(1) of this section; or

(ii) Department records.

(3) The Secretary does not base the determination of an LEA's eligibility under this section upon secondary documentation such as estimates, certifications, or appraisals.

(Authority: 20 U.S.C. 237(a)(1))

§ 222.95 What constitutes a substantial and continuing financial burden?

(a) An LEA is eligible to receive section 2 assistance only if Federal acquisition of property meeting the criteria in § 222.94 places a substantial and continuing financial burden on the LEA.

(b) The Secretary determines whether a substantial and continuing financial burden exists by subtracting from the LEA's total current expenditures all local, State, and Federal revenues—except local real property tax revenue and section 2 payments—available to the LEA for current expenditures during the fiscal year of the LEA for which the LEA is applying for assistance. The resulting figure is the amount of current expenditures for which the LEA needs local revenue. For the purpose of this paragraph—

(1) All Federal assistance received by the LEA for maintenance and operations, except assistance received for the purpose of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA) (20 U.S.C. 3801–3808, 3871–3876), is included as revenue available to the LEA for current expenditures; and

(2) Any carryover (opening) balance on the first day of an LEA's fiscal year, that is equal to or less than the carryover amount allowed by the State without a reduction in the LEA's State aid, is not considered revenue available to the LEA for current expenditures.

(c) The Secretary determines that a substantial and continuing burden exists if the amount obtained in paragraph (b) of this section is greater than zero.

(d) The Secretary determines that a substantial and continuing burden does not exist if—

(1) The amount obtained in paragraph (b) of this section is zero or less; or

(2)(i) The LEA is in a State that has an equalized program of State aid meeting the requirements of section 5(d)(2) of the Act (20 U.S.C. 240(d)(2)); and

(ii) The State, in determining the LEA's eligibility for, or amount of, State aid, takes into consideration payments made to the LEA under section 2.

(Authority: 20 U.S.C. 237(2))

§ 222.96 When is an LEA not substantially compensated from Federal activity?

An LEA is eligible to receive section 2 assistance only if the LEA is not being substantially compensated, by increases in local revenue from Federal activities with respect to real property in the school district meeting the criteria of § 222.94(a) (1) and (2), for the loss of

local revenue resulting from Federal acquisition of real property. The Secretary considers that an LEA is being substantially compensated by increases in local revenue from the carrying on of Federal activities with respect to that Federal property if—

(a) The LEA receives new or increased local revenue that is generated directly from the Federal property or activities in or on that property; and

(b) The local revenue described in paragraph (a) of this section equals or exceeds the amount obtained in § 222.101(b) (the Federal share of the amount of local revenue needed by the LEA for its current expenditures).

(Authority: 20 U.S.C. 237(a)(3))

§ 222.97 What financial assistance is an LEA entitled to under section 2?

Except as otherwise limited by law or the amount of appropriated funds, an LEA that meets the requirements of § 222.93 is entitled to financial assistance under section 2 in an amount equal to the lesser of—

(a) The amount determined under § 222.98 (maximum entitlement); or

(b) The amount determined under § 222.101 (need-based entitlement).

(Authority: 20 U.S.C. 237(a))

§ 222.98 How is an LEA's section 2 maximum entitlement determined?

An LEA's section 2 maximum entitlement is the amount of local revenue that, in the Secretary's judgment, the LEA would have derived and had available for current expenditures from the eligible Federal property if that property had remained on the tax rolls. The Secretary determines that amount as follows:

(a) In accordance with § 222.99, the Secretary first establishes an estimate of what the total assessed value of the Federal property meeting the criteria in § 222.94(a) would be if it were on the tax rolls in the fiscal year for which assistance is sought ("estimated current assessed value"), based on the classification, character, and condition of that property as it was when acquired by the United States. The Secretary does not include in this figure any estimated current assessed value for improvements or other changes made in or on the Federal property after the Federal acquisition.

(b) The Secretary then computes the LEA's section 2 maximum entitlement in accordance with § 222.100.

(Authority: 20 U.S.C. 237(a))

§ 222.99 How is an estimated current assessed value established for Federal property?

(a) The following definitions apply to this section:

"Character" means the nature of the land, whether and to what extent the land has improvements, and how the land and any improvements are being used.

"Classification" means tax classification or category.

"Condition" means the quality of the land and the physical state of any improvements.

(b) The Secretary establishes an estimated current assessed value for Federal property as follows:

(1) The Secretary determines whether there is taxed real property within the same assessment district as the Federal property that is currently comparable to the Federal property as it was when acquired by the United States. In making this determination, the Secretary—

(i) Considers as comparable, and selects, taxed real property within the same assessment district as the Federal property that currently is substantially similar in classification, character, and condition to the Federal property as it was when acquired by the United States; and

(ii) Does not consider all taxed real property within an assessment district or assessment classification as comparable unless every parcel of that taxed real property currently is substantially similar in classification, character, and condition to the Federal property as it was when acquired by the United States.

(2) If the Secretary determines that there is comparable taxed real property within the same assessment district as the Federal property, the Secretary establishes an estimated current assessed value for the Federal property by—

(i) Selecting a number of parcels of that comparable property;

(ii) Computing the average current assessed value per assessment unit of measure (*e.g.*, acre, square foot, linear foot, ect.) for the selected comparable property by dividing the total current assessed value of the parcels by the total number of units in those parcels; and

(iii) Multiplying the average current assessed value per unit for the selected comparable property computed in paragraph (b)(2)(ii) of this section by the number of those units in the Federal property.

(3) Subject to paragraph (b)(4) of this section, if the Secretary determines that there is no comparable taxed real property within the same assessment district as the Federal property, the Secretary establishes an estimated current assessed value for the Federal property as follows:

(i) The Secretary selects a number of parcels of taxed real property within the same assessment district as the Federal property that currently are the next most similar in classification, character, and condition to the Federal property as it was when acquired by the United States.

(ii)(A) If the selected property differs from the Federal property as it was when acquired, in that there are improvements on the selected property but there were none on the Federal property when it was acquired, and the selected property is assessed separately for land and improvements, the Secretary uses the assessed value for the land of the selected property in establishing the estimated current assessed value of the Federal property.

(B) If the selected property differs from the Federal property as it was when acquired in that the selected property is of a higher or lower tax classification (*i.e.*, a tax classification that represents a greater or lesser degree of development, respectively) than that of the Federal property, the Secretary maintains the ratio that existed at the time of Federal acquisition between the total assessed value of real property in the same tax classification as the Federal property and the total assessed value of all real property in the same tax classification as the selected property.

(4) If the Secretary determines that the methods described in paragraph (b)(3) of this section are not applicable, the Secretary uses any such other method as the Secretary determines will reasonably accomplish the objective described in § 222.98(a).

(Authority: 20 U.S.C. 237(a))

§ 222.100 How is an LEA's section 2 maximum entitlement computed?

(a) For the purpose of this section, "unequalized portion" of the local real property tax rate for school purposes means that portion of the local real property tax rate for school purposes that is not considered by the State in determining the amount of State aid an LEA will receive. The Secretary considers the unequalized portion to be the greater of—

(1) The portion of the local real property tax rate for school purposes that exceeds that part of the rate that an LEA must levy to qualify for State aid guarantees; or

(2) The portion of the local real property tax rate for school purposes that exceeds that part of the rate that

will generate for the LEA an amount equal to the State aid guarantee.

(b) The Secretary computes an LEA's maximum entitlement using one of the following methods:

(1) If possible, the Secretary multiplies the total estimated current assessed value obtained in § 222.99 by the unequalized portion of the local real property tax rate for school purposes that is established by the school district in which the Federal property is located for the fiscal year for which assistance is sought.

(2) If, because of the nature of the State funding program, the Secretary is unable to establish the unequalized portion of the local real property tax rate for school purposes in accordance with paragraph (a) of this section, the Secretary computes maximum entitlement by—

(i) Calculating the total State and local funds the LEA would have received from both the Federal and non-Federal property if the Federal property meeting the criteria in § 222.94(a) had remained on the tax rolls and been assessed at the estimated current assessed value determined by the Secretary in accordance with paragraph (a) of this section; and

(ii) Subtracting the total State and local funds actually received by the LEA for current expenditures from the figure obtained in paragraph (b)(2)(i) of this section.

(Authority: 20 U.S.C. 237(a))

§ 222.101 How is an LEA's section 2 need-based entitlement determined?

The Secretary determines an LEA's need-based entitlement by computing the Federal share of the amount of local revenue needed by the LEA for its actual current expenditures. The Secretary computes this amount as follows:

(a) The Secretary divides the total estimated current assessed value (determined in accordance with § 222.99(b)) of Federal property meeting the criteria in § 222.94(a) by the sum of that estimated current assessed value and the actual current assessed value of all other real property within the school district of the applicant. The resulting figure is the approximate proportion of the LEA's local real property tax base that is comprised of Federal property.

(b) The Secretary then multiplies the figure obtained in paragraph (a) of this section by the amount obtained in § 222.95(b) (the amount of current expenditures for which the LEA needs local revenue).

(Authority: 20 U.S.C. 237(a))

§ 222.102 How are section 2 eligibility and entitlement determined for an LEA formed by consolidation of school districts?

(a) *General.* An LEA formed after 1938 by consolidation of two or more former school districts may elect to have the Secretary determine its section 2 eligibility and entitlement upon either of the following bases:

(1) One or more of the former school districts that meet the criteria in paragraph (b)(1) of this section.

(2) The consolidated district as a whole.

(b) *Eligibility.* An LEA described in paragraph (a) of this section is eligible to receive section 2 assistance on the basis of a former school district if—

(1) The former school district upon which eligibility is based—

(i) At the time of consolidation contained some Federal property meeting the criteria in § 222.94(a)(1) (acquired by the United States since 1938) and § 222.94(a)(2) (not acquired by exchange for other Federal property that the United States owned within the school district before 1939); and

(ii) For the year of application, contains within its former boundaries Federal property meeting the criteria in § 222.94(a) (1) and (2), that has an aggregate assessed value of 10 percent or more of the assessed value of all real property (including the Federal property) in the former school district, based upon the assessed values of the Federal property and of all real property (including the Federal property) on the date or dates of acquisition of the Federal property; and

(2) The LEA meets the criteria in §§ 222.95 and 222.96.

(c) *Entitlement.* Except as otherwise limited by law or the amount of appropriated funds, an LEA that meets the eligibility criteria in paragraph (b) of this section is entitled to financial assistance under section 2 in an amount equal to the lessor of the maximum entitlement or the need-based entitlement, which are determined as follows:

(1) The Secretary determines maximum entitlement in accordance with § 222.98, except that the estimated current assessed value for Federal property upon which the maximum entitlement is based includes only the estimated current assessed value for the Federal property described in paragraph (b)(1)(ii) of this section.

(2) The Secretary determines need-based entitlement by—

(i) Dividing the total estimated current assessed value for the Federal property meeting the criteria in paragraph (b)(1)(ii) of this section, that is within a former school district meeting the criteria in paragraph (b)(1) of this section, by the sum of that estimated current assessed value and the actual current assessed value of all other real property within the consolidated LEA; and

(ii) Multiplying the figure obtained in paragraph (c)(2)(i) of this section by the amount obtained in § 222.95(b) (the amount of current expenditures for which the LEA needs local revenue).

(d) If an LEA elects to have its section 2 eligibility and entitlement determined on the basis of one or more former school districts, the LEA shall designate in its application the district or districts it selects.

(Authority: 20 U.S.C. 237(c))

§ 222.103 How are section 2 overpayments recovered?

(a) If a section 2 overpayment results from an error by the Department in computing or recomputing an LEA's need-based entitlement, the Secretary will—upon an LEA's request—arrange for no more than 10 percent of the original section 2 overpayment, with interest, to be repaid or deducted from current payments in any fiscal year.

(Authority: Pub. L. 98–511, sec. 302)

(b) Except as provided in paragraph (a) of this section, adjustments for and recovery of section 2 overpayments are made in accordance with § 222.42.

(Authority: 20 U.S.C. 240, 242(b), 1226a–1)

Note: This Appendix will not be codified in the Code of Federal Regulations.

Appendix—Summary of Comments and Responses to the Notice of Proposed Rulemaking

Part 222—Impact Aid Program

General

Several commenters indicated their support of several aspects of the proposed regulations as published. A summary of other specific comments received on these regulations and the Secretary's responses follows. Major issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Other substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes are not addressed.

Effective date/non-retroactivity

Comments: Many commenters requested that the changes in policies contained in these regulations not be made effective until fiscal year (FY) 1988 or 1989, and some commenters wanted implementation phased in over several

fiscal years. One school district requested that the Department consider a 7-year phase-in of the new rules to give school districts an opportunity to adjust their present millage at a gradual rate.

Commenters objected to implementation for FY 1987, which they felt would be retroactive because the final regulations were proposed to be published after the beginning of school year 1986–87. Most of these commenters were concerned about the fiscal impact of earlier implementation; they stated that school district budgets had been set for over a year, and that they already had committed funds that they anticipated receiving. A number of school districts indicated that they would not be able to replace lost revenue through increased tax levies or other means unless implementation was delayed or phased in. Many commenters were concerned that limited data were available to them regarding the fiscal effects of the regulatory changes on their specific districts, and some requested public hearings prior to implementation.

Discussion: The Department's original intent was to make the new policies, other than those in Subpart J relating to section 2 of Pub. L. 81–874, 20 U.S.C. 237 ("section 2"), effective starting with FY 1987. As indicated in a notice published in the **Federal Register** on June 29, 1987, 52 FR 24181, the Department now has decided not to implement these regulations until FY 1988. The changes are therefore not retroactive; they will have prospective effect only, and will govern all subsequent payments for fiscal years beginning with FY 1988. In many instances, however, these regulations merely adopt current Departmental policies and procedures. *See* NPRM, 52 FR 16144 (May 1, 1987). Those current policies and procedures will remain in effect during the interim period before the regulations become effective, and thereafter in accordance with the regulations.

Any detrimental effects of the new section 2 provisions will not be experienced by most school districts until FY 1989. Because entitlement computations depend upon an applicant's final fiscal data, which generally are not available until after the end of the applicant's current fiscal year, FY 1988 payments will not be received by most school districts until the following fiscal year (FY 1989). This normal lag in receipt of funds will allow school districts time in which to adjust for any anticipated reduction in Federal funds due to changes made by the regulations.

The effects of policy changes in these regulations on payments under section 3 of Pub. L. 81–874, 20 U.S.C. 238 ("section 3") are expected to be minimal for the most part. Small numbers of children are usually associated with the types of section 3 property that will become ineligible under the regulations.

Generally, school districts have, or are able to obtain, data necessary to analyze the effects of the changes made by these regulations. The Department has responded, and will continue to respond, to specific requests for assistance in estimating the effects of the changes. In addition, Department officials have participated in a number of meetings for school districts and other interested parties, in Washington, DC, and elsewhere, at which these regulations and their effects have been a specific subject of discussion.

The Secretary does not believe that public hearings are necessary, because the regulatory comment period provided for these regulations has allowed an adequate forum for the receipt of public opinion. The Department received written comments, many of which were lengthy, from over 120 parties. The comments were from a representative sample of Impact Aid applicants and interested parties nationwide and covered many aspects of the proposed regulations.

Changes: All provisions of the regulations will be implemented starting with FY 1988.

Extension of comment period

Comments: Many commenters requested that the Department extend the 45-day comment period to allow for more thorough analysis of the proposed regulatory changes.

Discussion: On June 12 and 29, 1987, the Department published notices in the **Federal Register** (52 FR 22501 and 24181, respectively) extending the previously published 45-day comment period for an additional 30 days, to July 15, 1987. The Secretary believes that the resulting 75-day comment period provided interested parties sufficient opportunity to analyze and comment on the proposed regulations.

Changes: No additional extension of the comment period is being made.

Hold harmless

Comments: Three commenters requested that a "hold harmless" provision be added to the regulations. One of those commenters believed that school districts that had relied on Department guidance prior to the effective date of the regulations should be held harmless. Another indicated that all school districts presently eligible and receiving Impact Aid funds should be held harmless. The third commenter requested that section 2 districts be held harmless at FY 1984 or 1985 levels until the fiscal impact of the regulations could be reasonably accommodated.

Discussion: The Secretary believes that a hold harmless provision with respect to these regulations is neither necessary nor appropriate. The most significant decrease in entitlements proposed by these regulations relates to section 2. The normal schedule for distribution of section 2 funds will allow school districts time in which to adjust for any anticipated reduction in Federal funds. In addition, providing a "hold harmless" provision with respect to section 2 would continue to compensate school districts doubly from Federal payments and State aid.

Changes: None.

Regulations burdensome

Comment: Several commenters indicated that the regulations impose an administrative burden on school districts by requiring them to determine property ownership and the source of the tax exemption for Federal property. One commenter stated that the regulations were unworkable because school districts could not determine the basis of the tax exemption. Another indicated that the regulations would require a more costly data analysis and application process.

Discussion: Impact Aid applicants have a fundamental responsibility to establish the basis of their eligibility for funds under Pub. L. 81–874 ("the Act"). The Department knows of no instance in which the current tax status of real property is not readily available to an applicant school district from its local tax assessor's office. A number of school districts have advised the Department that they already have been able to verify this information.

Changes: None.

Definitions (§ 222.3)

Comment: One commenter believed that the portions of the general definitions that relate mainly to section 2, *i.e.*, paragraph 3 of the definition of "Federal property" and the "local real property tax" definition, would more appropriately be placed in Subpart J of the regulations until the Department publishes regulations governing section 3(d)(2)(B) of Pub. L. 81–874, 20 U.S.C. 238(d)(2)(B).

Discussion: The Department believes that it would be confusing to applicants to repeat in Subpart J portions of the definition of "Federal property" contained in § 222.3. Because the definition of "local real property tax for school purposes" will apply to both

sections 2 and 3, including subsection 3(d)(2)(B), that definition is more appropriately placed in § 222.3.

Changes: The Secretary has added language to § 222.91 to indicate that, in addition to the definitions in that section, many of the definitions in § 222.3 also apply to Subpart J.

Definitions (§ 222.3—"Federal property," paragraph (1)(i))

Comment: One commenter believed that Congress intended all real property described under section 403(1)(A) through (D) of Pub. L. 81–874, 20 U.S.C. 244(1)(A) through (D) (Indian lands, property sold or transferred, low-rent housing, and Air Force flight training schools, respectively) be eligible, regardless of whether it is tax-exempt. The commenter felt that those categories of real property are listed in the statute as specific exceptions to the general tax-exempt requirement.

Discussion: The Act requires generally that, to be eligible as "Federal property," federally owned or leased real property must not be subject to State or local taxation. The language of the Act is ambiguous, however, with respect to whether each specifically listed category of Federal property is subject to this general tax-exempt requirement. Therefore, it is necessary to refer to the legislative history of the Act (*see, e.g.*, H. Rept. 2287, 81st Cong., 2d Sess. (June 20, 1950); S. Rept. 2753, 84th Cong., 2d Sess. (July 21, 1956); S. Rept. 91–634, 91st Cong., 2d Sess. (January 21, 1970); and S. Rept. 95–856, 95th Cong., 2d Sess. (May 15, 1978)), and to the general purpose of the Impact Aid program. In particular, the purpose of the Impact Aid program is to compensate school districts for financial burdens imposed by the presence of tax-exempt Federal property and children associated with that property. Based upon both the legislative history and the purpose of the program, the Department believes that Congress intended the general tax-exempt requirement to apply to all categories of Federal property, except Federal property described under section 403(1)(B) of the Act, 20 U.S.C. 240(1)(B) (Federal property sold or transferred that remains eligible for one additional fiscal year).

Changes: None.

Comment: Several commenters opposed changing the definition of "Federal property" to require that the tax-exempt status of that property be the result of Federal action, because they believed this interpretation is not supported by the statute or the legislative history. These commenters indicated that the regulations reduce payments, shift the responsibility of funding from the Federal Government to a State or local government level, and are a complete departure from existing practices and policies. One commenter noted that the change inhibits the statutory purpose of compensating for a burden that exists if property is tax-exempt. Two commenters contended that the burden caused by Federal ownership of real property is not changed when the property is transferred to State and local ownership and remains tax-exempt, especially if the property is leased back to the Federal Government under a long-term lease.

Discussion: Congress enacted the Impact Act program to provide compensation if financial burdens are caused by Federal action. *See* section 1 of Pub. L. 81–874, 20 U.S.C. 236. If real property is tax-exempt due to State or local law, the real property tax base of the school district is not reduced because of any Federal action. The regulations do not shift financial responsibility, but rather eliminate Federal payments if State and local governments may tax real property but have not chosen not to do so.

Changes: None.

Comments: Five commenters specifically opposed excluding "low-rent housing" assisted under section 8 of the United States Housing Act of 1937 ("section 8 housing") from "Federal property" status because they thought such an interpretation is not supported by the statute of the legislative history. One district stated that the regulatory change disqualifying low-rent housing property that is tax-exempt because of State or local action would not result in any cost savings to the Federal Government because the funds simply would be redistributed, and that the change was unnecessary to further any Federal purpose.

Some commenters stated that all section 8 housing property should be eligible under the statute, and others indicated that only tax-exempt section 8 housing should be eligible. These commenters believed that section 8 housing should be eligible because of the specific statutory inclusion of low-rent housing projects assisted under the U.S. Housing Act of 1937. The commenters believed that Congress intended to include section 8 housing because of financial burdens placed upon school districts due to increased student enrollments and a lack of tax base associated with the property. In addition, a number of commenters stated that the property should be eligible because of the special educational needs of the students living in the housing.

Discussion: Most section 8 housing is privately-owned, taxed property; however, some section 8 housing is tax-exempt due to State or local law. The Department currently does not make payments based upon children associated with taxed section 8 housing. While the definition of "Federal property" in the Act (section 403(1)(C) of the Act, 20 U.S.C. 240(1)(C)) includes low-rent housing "which is a part of a low-rent housing project assisted under the [U.S.] Housing Act of 1937" as a specific category of eligible property, the legislative history indicates that a major reason for including this type of property was that it is tax-exempt. *See* H. Rept. 91–114, 91st Cong., 1st Sess., 14–15 (1969).

The only change in policy made by the regulations with respect to section 8 housing is to disallow section 8 housing that is tax-exempt, because its tax-exempt status is not imposed by the Federal Government but instead is a matter of State or local choice. The Department is not implementing this change as a cost-saving measure. Rather, the change is made to serve the purpose of the Impact Aid program more effectively, so that compensation is provided to school districts only for financial burdens, including tax revenue burdens, caused by the Federal Government. Because the Federal Government allows section 8 housing to be taxed, the housing does not impose any financial burden—by virtue of Federal law—on a school district's real property tax revenues. Thus, aid that would have been allotted to school districts with section 8 housing will instead be allotted to school districts in which the Federal presence imposes a more direct burden.

Except for special payments for handicapped Indian and military-dependent children, Impact Aid is not intended to provide support specifically for the special educational needs of children connected with Federal property. Congress provides assistance for school districts serving children with special educational needs through other Federal programs, such as Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA), 20 U.S.C. 3801–3808, 3871–3876.

Changes: None.

Comments: Two school districts—one with leased property that is tax-exempt through other than Federal action, and one with section 8 housing that is tax-exempt through other than Federal action—contended that changes in the definition of "Federal property" would result in their districts losing "super-b" funding status.

Discussion: The Department recognizes that a loss of "super-b" status, as a result of the loss of federally-connected students for any reason, may have a financial impact upon a school district. However, the Department believes this change in the definition of "Federal property" is more consistent with the purpose of the Impact Aid program, which is to address financial burdens caused by Federal action.

Changes: None.

Definitions (§222.3—"Federal property," paragraph (3))

Comment: A number of commenters indicated they believe that defining "Federal property" differently for sections 2 and 3 is contrary to the statute. Some of these commenters indicated that the definition for section 2, like the definition for section 3, should include all of the special categories of real property listed in section 403(1)(A) through (E) of the Act, 20 U.S.C. 244(1)(A) through (E). Other commenters believed that the statute does not restrict the definition of "Federal property" for the purpose of section 2 only to federally owned real property.

Discussion: The basis for the difference between the definitions of Federal property for section 2 and section 3 purposes is the clear language of the Act. A section 2 eligibility criterion requires the Secretary to determine "that the United States *owns* Federal property in the school district * * *." (Emphasis added.) *See* section 2(a)(1) of the Act, 20 U.S.C. 237(a)(1). In addition, the legislative history to the original law states: "'Federal property' as used in [section 2] is in general used in the same sense as that in which it is defined in section 9(1) of the bill [section 403(1) of the Act, 20 U.S.C. 244(1)], but with two exceptions. First, *section 2 applies only to Federal property which the United States 'owns,'* thus eliminating tax-exempt property which it leases but does not own * * *." H. Rept. No. 2287, 81st Cong., 2d Sess. 10 (June 20, 1950) (emphasis added).

In contrast, section 3 simply refers to children who, while in attendance at the schools of the applicant local educational agency (LEA), "resided on Federal property" or had "a parent employed on Federal property." *See* section 3(a) and (b) of the Act, 20 U.S.C. 238(a) and (b). For section 3 purposes, the entire definition of Federal property in section 403(1) of the Act, 20 U.S.C. 244(1), applies.

Changes: None.

Definitions (§ 222.3—"fiscally dependent local educational agency" and "fiscally independent local educational agency")

Comments: Two commenters believed that definitions of "fiscally dependent" and "fiscally independent" LEAs are unnecessary.

Discussion: The Department believes that these two types of LEAs must be defined because there are differences in the means used to determine their section 2 eligibility and entitlements.

Changes: None.

Definitions (§222.3—"local real property tax rate for school purposes")

Comment: One commenter believed that if a tax rate is to be used for comparative purposes or a determination of reasonableness, there should be an exception for jurisdictions that are subject to a State-imposed "tax cap."

Discussion: These regulations do not use tax rates for comparison purposes or determinations of reasonableness.

Changes: None.

Subpart J (§§222.91–222.103)

Comments: Many commenters opposed the section 2 changes in Subpart J and requested that they not be implemented. Most did not specify the exact provisions being opposed, but rather, indicated generally that they opposed the changes because they believed that they would alter the program, dramatically reduce payments, and in some cases, result in ineligibility for payment. Some indicated, in general, that they believed that the regulatory changes are contrary to the statute and to the intent of the Impact Aid program.

Commenters indicated that payment reductions primarily would affect poor school districts that they believed have had the most difficulty recovering from the effects of the Federal presence and can least well absorb the loss. In addition, commenters noted that the regulations would shift the responsibility for educating federally-connected students from the Federal to State and local governments.

A number of commenters objected to the regulations in general as giving too much discretion to the Secretary. Some of these commenters believed that the need-based and maximum entitlement determinations (§§ 222.98–101) are arbitrary and capricious. These commenters believed the regulations give the Secretary unrestricted discretion with respect to the interpretation of varying State aid programs, local tax methodologies, local tax assessment practices, and comparable property. Others indicated that proposals for "assessment and payback," at the sole discretion of the Secretary, do not appear to offer the necessary system of checks and balances. A few commenters believed that the regulations are unnecessary because the statute is clear.

Discussion: The "Supplementary Information" portion of the NPRM explained in detail the statutory basis for each regulatory provision, and how the regulations are consistent with legislative history. In summary, section 2 entitlements are intended to provide compensation to LEAs that continue to experience substantial financial burdens as the result of Federal acquisition of real property. Federal compensation is only appropriate under section 2 if federally owned property imposes a substantial burden upon a school district; for example, if the school district's available revenues are reduced. If a State equalizes or guarantees a certain level of an LEA's funding, it in effect compensates the LEA for a portion or all of the financial loss caused by the Federal acquisition of real property. Up to the level of that compensation from the State, the LEA experiences no loss resulting from the Federal acquisition of real property.

While basic inequities may exist within a State with respect to the relative ability of school districts to support public education, it is not the purpose of the Impact Aid program to redress these inequities. The primary responsibility for providing an education for elementary and secondary students has always been that of State and local governments. This responsibility includes the obligation to fund education programs adequately for all elementary and secondary students—including federally-connected students—who reside within their jurisdictions, regardless of whether Federal assistance through the Impact Aid program or other programs is available.

The *statute* requires the Secretary to exercise discretion to determine whether the Federal acquisition of real property has placed a "substantial and continuing financial burden" on an LEA, and to determine the exact amount of that burden for which the Federal Government has a responsibility to pay section 2 funds (need-based entitlement). In addition, the statute gives to the Secretary the discretion to determine the exact amount of the maximum entitlement. These regulations explain how the Department will exercise the discretion that Congress has expressly delegated to the Secretary

to determine the methods to be used in establishing section 2 eligibility and entitlements.

The Department believes that the regulations are necessary to clarify the statute. While a few parties stated that these regulations were not necessary because the statute is clear, far more have indicated over the years that the statute is difficult to understand and have sought clarification from the Department in order to project anticipated amounts of Impact Aid assistance.

Changes: None.

Comments: Three commenters believed that the regulations would create greater bureaucratic and administrative burdens on Department staff because of the necessity for annual reviews regarding tax classifications, rates and levies, State aid formulations, and comparable properties, and that the Department therefore would need to increase its field review and analytic personnel. One of those commenters believed that funds resulting from reduced entitlements due to the regulations would be used for the Department's administration of the program.

Discussion: The Department does not contemplate any additional staffing requirements as a result of these regulations. Impact Aid field review staff currently conduct annual reviews of section 2 districts to verify tax classifications, rates and levies, and comparable properties, as well as other data, before final payments are made. Verification of State aid formulations will not comprise much additional work. Funds appropriated for Pub. L. 81-874 may not be used by the Department for administration of that program, but must be used for entitlements under the statute.

Changes: None.

Subpart J (Section 2) definitions (§ 222.91)

Comment: One commenter indicated that the definition of "acquisition" is too limited and therefore is contrary to the statute, because the statute includes more than owned property.

Discussion: Section 2 requires the Secretary to make determinations regarding the acquisition of real property "that the United States *owns* * * *." Section 2(a)(1) of the Act, 20 U.S.C. 237(a)(1) (emphasis added).

Changes: None.

Section 2 eligibility based upon original records (§ 222.94(c))

Comments: Many commenters believed that this provision would require school districts that had been determined to meet the 10% federally acquired real property criterion (under section 2(a)(1) of the Act, 20 U.S.C. 237(a)(1)) in past years to reestablish annually their eligibility based upon original tax records. These commenters were concerned that original documentation may no longer be available because many local officials do not retain the documents following Federal audit of the records. Two school districts indicated that it is administratively burdensome to search and retrieve the original documents. Two commenters stated that if original records have been lost or destroyed, other reasonably competent proof of assessed values at the time of acquisition should be allowed.

Discussion: If a school district first applies for section 2 assistance, the Department uses original tax assessment records to determine whether the district contains eligible federally acquired property that had an assessed value at the time of acquisition totaling at least 10% of the assessed value of all real property in the school district. Also, if additional Federal property is later acquired in the district, only original tax assessment records for the newly acquired property are reviewed.

In order to improve the Department's data base, field staff currently are reviewing and attempting to collect the tax information upon which the eligibility of all section 2 school districts is based. If the original tax assessment records used to determine a school district's eligibility are no longer available, the Department must assume that the eligibility determination was made based upon proper records. Therefore, such a district's continuing eligibility with respect to meeting the 10% Federal property criteria would not be affected.

Changes: The Secretary has added language to § 222.94(c) clarifying when original records will be required with respect to establishing section 2 eligibility.

No section 2 eligibility if section 5(d)(2) State considers section 2 payments (§ 222.95(d)(2))

Comments: Several commenters believed that it is contradictory to encourage efforts at equalization (through section 5(d)(2) of the Act, 20 U.S.C. 240(d)(2)), and at the same time penalize States for their equalization efforts by not allowing them to take into consideration section 2 payments. These commenters indicated that not considering section 2 funds in State equalization formulas would reduce the degree of equalization that otherwise would be achieved.

Discussion: One of the purposes of these regulations is to reconcile portions of the Act that appear to be in conflict. Currently, the Department permits States that apply and qualify annually under section 5(d)(2) to take section 2 payments into account in the State equalization formulas. However, because computation of the maximum section 2 payment is changed under these regulations so that it is based upon only the "unequalized" portion of the local real property tax rate, the degree of equalization achieved within States should not be affected if section 2 funds are no longer considered in State equalization formulas. In fact, if those payments *were* considered by a section 5(d)(2) State, section 2 school districts would be penalized. State aid to those districts would be reduced as a result of section 2 payments that represent unequalized local real property tax revenues that would have been generated by the Federal property if it were still on the tax rolls. Other, non-section 2 districts are permitted to retain all of their unequalized local real property tax revenues without any similar State-aid reduction.

Changes: None.

Substantial compensation from Federal activity (§ 222.96)

Comment: One commenter stated that Congress specifically rescinded a statutory provision similar to this regulatory provision, and that the Department therefore should not be allowed to reduce a section 2 entitlement associated with direct or indirect activities of the Federal Government within a community.

Discussion: In 1967, Congress rescinded a provision of the Act that had *required* the Department to reduce an LEA's section 2 entitlement by the *amount* of other revenues generated by activities of the Federal Government. However, it left in the Act an *eligibility* requirement that an LEA may not be substantially compensated by increases in revenue from Federal activities on the Federal property. The regulation implements that eligibility requirement, which remains in the Act. The effect of implementing the current eligibility requirement—as opposed to the rescinded entitlement requirement—is that the Department no longer reduces a school district's section 2 entitlement by other revenues the district receives from Federal activities; however, if those revenues are *substantial*, the school district may not be eligible for section 2 assistance.

Changes: None.

Amount of section 2 assistance (§ 222.97)

Comment: One commenter indicated that the section 2 payment should be the amount the Federal property would have generated if it had been retained on the tax rolls and not purchased by the Federal Government. Another indicated that allowing the maximum entitlement to limit the need-based entitlement is in direct conflict with the law.

Discussion: Section 2 assistance is not designed to be a straight payment-in-lieu-of-taxes ("PILOT"). Under the Act, the *most* that a school district may receive under section 2 is the amount the Federal property would have generated for current expenditures of the district (without regard to any improvements or other changes made in or on the Federal property since its acquisition). The Act requires the Department to consider, however, whether the school district *needs* this maximum amount in light of its other revenues and expenditures. *See* section 2(a) of Pub. L. 81–874, 20 U.S.C. 237(a).

Changes: None.

Establishing estimated current assessed value (§ 222.99)

Comment: Several commenters objected to this provision. They believed that establishing an estimated current assessed value for the Federal property based upon the assessed value of properties comparable to the Federal property as it was when acquired is a change from current policy and would not reflect the true impact of the Federal acquisition. Several others objected because they believed that the provision would dramatically reduce the estimated current assessed value of Federal property or make the estimated current assessed value of the property the same as its assessed value at the time of Federal acquisition. A number of commenters objected to this provision because they believed that selecting comparable properties based on the Federal property as it was when acquired is unrealistic and permits arbitrary treatment. One commenter indicated that the regulations do not recognize that Federal property may depreciate surrounding private property and thus create additional burdens.

A number of commenters indicated that the estimated current assessed value of the Federal property should be determined by the local tax officials, or that the assessment practices and conclusions of the local tax assessor should be a primary factor in establishing that estimated current assessed value. One commenter suggested an alternative method based on the average assessed value per acre of all real property contiguous to the Federal property; two others requested that the ratio of the value of the Federal property to the value of all property in the district at the time of acquisition of the Federal property be maintained.

Discussion: The Act requires that an LEA's maximum section 2 entitlement be determined based upon the nature of the Federal property "without regard to any improvements or other changes made in or on such property since such acquisition." Section 2(a) of the Act, 20 U.S.C. 237(a). Thus, the Department bases the estimated current assessed value of the Federal property on the actual current assessed values of properties that are comparable to the Federal property—in character, classification, and condition—as it was at the time of its acquisition. This method of establishing the estimated current assessed value of Federal property is not a change from current policy.

The Department assumes that more highly developed property may have a positive influence on the value of nearby property. Therefore, if Federal property is located near more highly developed property, it would be reasonable to select comparable properties that also are located near that more highly developed property. Although the NPRM contained this requirement, the Department has since determined that it would be a change from current policy. Therefore, although not required to do so by law, the Department has deleted the provision from the final regulations and is republishing it as part of a new NPRM (concurrently with the final regulations) to provide further opportunity for public comment. There is no authority in the statute to provide compensation for the possible depreciation of adjacent property due to the Federal property.

Because the Department bases the estimated current assessed value of the Federal property on the actual current assessed values of comparable properties, the assessment practices and conclusions of the local tax assessor are incorporated into the estimated current assessed value of the Federal property. The Department does not believe that an average per acre value of non-Federal property, or the ratio of Federal to non-Federal property from the time of acquisition of the Federal property, are the best methods of determining the maximum entitlement. Those methods do not reflect as accurately as comparable properties what the LEA would have currently derived from the Federal property had it remained on the tax rolls as it was when acquired.

Changes: None.

Comments: Two commenters felt that it is unreasonable to try to establish improvements that existed many years ago; one noted that tax records do not always reflect improvements that existed at the time the Federal property was acquired. Another believed that it would be virtually impossible to determine the condition of the Federal property at the time of acquisition.

One commenter indicated that there is no rule to limit or guide the selection of comparable property when the tax classification within which the Federal property would belong now did not exist at the time of acquisition. Two others believed that school districts might be treated unequally because States do not establish property tax classifications consistently. One commenter noted that there are no standards or guidelines to indicate how the Secretary would adjust the actual assessed values of the selected property if no currently comparable property exists within the assessment district.

Discussion: The Department assumes that uniform tax assessment practices were used by the local tax assessor at the time of acquisition of the Federal property. In the event that improvements in or on the Federal property at the time of acquisition cannot be determined from the tax records, the Department reviews other assessments within the taxing jurisdiction at the time of acquisition to determine relative property assessment values. Through this review of relative property values, the Department can determine whether the Federal property was in an improved category. If the Department determines that the Federal property was in an improved category, properties with comparable improvements are selected as the basis for the estimated current assessed value of the Federal property. If the Department cannot determine the actual condition of the Federal property at the time of acquisition, it uses relative assessment values form that time to determine the category of properties within which the Federal property was assessed.

The Department assumes that if no applicable tax classification existed at the time of acquisition, the tax classification used is the current tax classification for property of the type the Federal property was at the time of acquisition. For example, if the property was farmland when acquired and there currently is a tax classification for farmland, the Department considers that the tax classification for the Federal property is farmland.

The maximum entitlement under section 2 is based upon what a school district would have derived from Federal property within its boundaries. Therefore, the estimated current assessed value of the Federal property must be based upon the assessment practices within that particular school district. Practices in other districts within the State, or within other States, are irrelevant to this determination.

Changes: The Secretary has added language to § 222.99(c)(3)(ii) describing methods used to determine an estimated current assessed value for the Federal property in several of the more frequent cases in which no comparable property currently exists within a school district.

Computing section 2 maximum entitlement (§ 222.100)

Comments: Commenters indicated that using only the unequalized portion of a school district's local real property tax rate to determine its maximum section 2 entitlement would result in significantly reduced section 2 payments, and in some cases, loss of section 2 eligibility altogether. Commenters noted that the only alternatives for replacing lost section 2 revenues would be to significantly increase tax rates, or to decrease education expenditures and thereby jeopardize the quality of education programs. One school district indicated that it would be unable to levy the unequalized tax rate needed in order to continue receiving section 2 assistance; others noted that no alternative funding source was readily available for school districts in their State.

Many commenters opposed using only the unequalized portion of the local real property tax rate to determine a school district's maximum section 2 entitlement because they believed that this interpretation was contrary to the statute. One commenter stated that it exceeded the Department's authority to base section 2 payments on a formula that yields the least financial aid to school districts.

Several commenters indicated that the full tax rate should be used to determine the maximum entitlement because States might have different equalization formulas for distributing State aid, which the commenters believed would result in inconsistent and inequitable distribution of the Federal funds. Commenters were concerned that it was unfair to apply a uniform rule to all States because of the great variety of State and local taxing and revenue distribution methods. One commenter thought that the maximum should take into consideration the amount available for current expenditures on a per pupil basis, as well as the assessed value of the acquired property on the date of acquisition.

Discussion: The most significant reduction in section 2 entitlements as a result of these regulations is the elimination of that portion of the section 2 payment that has duplicated compensation guaranteed to school districts by the State, *i.e.*, the "equalized" portion of a district's local real property tax rate. To the extent that a loss in real property tax revenue caused by the Federal acquisition of tax-exempt real property has been alleviated by other State or local revenues, there is no federally-imposed burden on a school district. Section 2 payments are appropriately based upon only the unequalized portion of the tax rate, because it is the school district's revenues from that portion of the tax rate that are affected by the Federal acquisition of real property.

In many cases, school districts will be able to limit reductions in their section 2 entitlements. Assuming sufficient section 2 funding and a local real property tax rate that is not yet at the State maximum, a school district can directly increase its section 2 entitlement by increasing its budget and the unequalized portion of its local tax levy.

Changes: None.

Comments: Three commenters stated that the terms "equalized" and "unequalized" were inadequately defined with respect to how they would be applied for each State. Two commenters believed that tax rates should not be imputed for fiscally dependent LEAs because those imputed rates would bear no relationship to the tax rates for fiscally independent LEAs and would fail to account for numerous factors that vary in each locality.

Discussion: The Department believes that general definitions of these terms are all that are required for these regulations. The Department will work with each State to identify the unequalized portions of section 2 applicants' local real property tax rates for each fiscal year.

Imputed local real property tax rates for fiscally dependent LEAs are based upon a mathematical calculation using the same factors—real property tax base and tax revenues—that are used to determine local real property tax rates for fiscally independent LEAs.

[FR Doc. 88-3936 Filed 2-23-88; 8:45 am]

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DEPARTMENT OF EDUCATION

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Impact Aid maintenance and operations program (Pub. L. 81–874). These amendments are needed to implement changes in eligibility and entitlement determinations for local educational agencies (LEAs) that apply for assistance under section 2 of this program.

DATES: Comments concerning these proposed regulations must be received on or before April 25, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to W. Stanley Kruger, Director, Division of Impact Aid, U.S. Department of Education, Room 2117, 400 Maryland Avenue, SW., Washington, DC 20202–6272.

FOR FURTHER INFORMATION CONTACT: W. Stanley Kruger. Telephone: (202) 732–3637.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking (NPRM) is published contemporaneously with new final regulations governing the Impact Aid maintenance and operations assistance program (Pub. L. 81–874, 20 U.S.C. 236 through 241–1 and 242–244). Those final regulations were preceded by an NPRM published in the **Federal Register** on May 1, 1987, 52 FR 16144–16155 ("May 1 NPRM").

The Secretary Establishes an Estimated Current Assessed Value For Federal Property Based Upon Comparable Property That Currently is Similar to the Federal Property with Respect to Proximity to Other Taxed Real Property That is More Highly Developed Than the Comparable Property.

The May 1 NPRM contained a provision in § 222.99(c)(1)(ii) stating that the Secretary considers as comparable, and selects, taxed real property within the same assessment district as the Federal property that currently: (1) Is substantially similar in classification, character, and condition to the Federal property as it was when acquired by the United States; and (2) is similar to the Federal property in proximity to other taxed real property that is more highly developed than the comparable property. The rationale for the second criteria is that the assessed value of real property is sometimes higher if it is closer to more highly developed real property, and that the estimated assessed value of the Federal property should reflect any such increase.

The NPRM did not indicate that this requirement was a change from current policy. However, the Department has since discovered that the requirement would be a change from current policy. Therefore, although not required to do so as a matter of law, the Secretary deleted the provision from the final regulations and is republishing it as a part of this NPRM to provide further opportunity for public comment.

An LEA Formed By the Consolidation of School Districts May Establish Section 2 Eligibility on the Basis of a Former School District Only If That Former District Contained Section 2-eligible Federal Property at the Time of Consolidation.

The May 1 NPRM also contained a provision in § 222.102(b)(1) stating that an LEA, that was formed by the consolidation of school districts, could establish eligibility under section 2 of Pub. L. 81–874, 20 U.S.C. 237 ("section 2") on the basis of a former school district only if that former school district contained some section 2-eligible Federal property at the time of consolidation. The basis for this requirement is the legislative history of the statute, which indicates that one of the purposes for allowing LEAs formed by the consolidation of school districts to qualify for section 2 eligibility and entitlement on the basis of former school districts was to avoid discouraging consolidation. If a former school district had no Federal property before consolidation, little—if any—disincentive is created by requiring the consolidated district to qualify as a whole.

The NPRM did not indicate that this requirement was a change from current policy. However, the Department has since discovered that the requirement would be a change from current policy. Therefore, although not required to do so as a matter of law, the Secretary also deleted this provision from the final regulations and is republishing it as a part of this NPRM to provide further opportunity for public comment.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order (EO) 12291. They are not classified as major because they do not meet the criteria for major regulations established in that order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these proposed regulations are small LEAs applying for Federal funds under section 2 of this program. Few of those LEAs will experience an economic impact due to this provision.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in 2119–A, FOB–6, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of EO 12291 and the Paperwork Reduction Act of 1980 and their overall requirements of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 222

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, Grant program—education, Public housing.

(Catalog of Federal Domestic Assistance No. 84–041, School Assistance in Federally Affected Areas—Maintenance and Operations.)

Dated: January 19, 1988.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Part 222 of Title 34 of the Code of Federal Regulations as follows:

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

1. The authority citation for Part 222 continues to read as follows:

Authority: 20 U.S.C. 236–241–1 and 242–244 unless otherwise noted.

2. Section 222.99 is amended by revising paragraph (c)(1) to read as follows:

§ 222.99 How is an estimated current assessed value established for Federal property?

* * * * *

(c)(1) The Secretary considers as comparable, and selects, taxed real property within the same assessment district as the Federal property that currently—

(i) Is substantially similar in classification, character, and condition to the Federal property as it was when acquired by the United States; and

(ii) Is similar to the Federal property in proximity to other taxed real property that is more highly developed than the comparable property.

* * * * *

3. Section 222.102 is amended by revising paragraph (b)(1) to read as follows:

§ 222.102 How are section 2 eligibility and entitlement determined for an LEA formed by consolidation of school districts?

* * * * *

(b) * * *

(1) The former school district upon which eligibility is based—

(i) At the time of consolidation contained some Federal property meeting the criteria in § 222.94(a)(1) (acquired by the United States since 1938) and § 222.94(a)(2) (not acquired by exchange for other Federal property that the United States owned within the school district before 1939); and

(ii) For the year of application, contains within its former boundaries Federal property meeting the criteria in § 222.94(a) (1) and (2), that has an aggregate assessed value of 10 percent or more of the assessed value of all real property (including the Federal property) in the former school district, based upon the assessed values of the Federal property and of all real property (including the Federal property) on the date or dates of acquisition of the Federal property; and

* * * * *

[FR Doc. 88–3935 Filed 2–23–88; 8:45 am]

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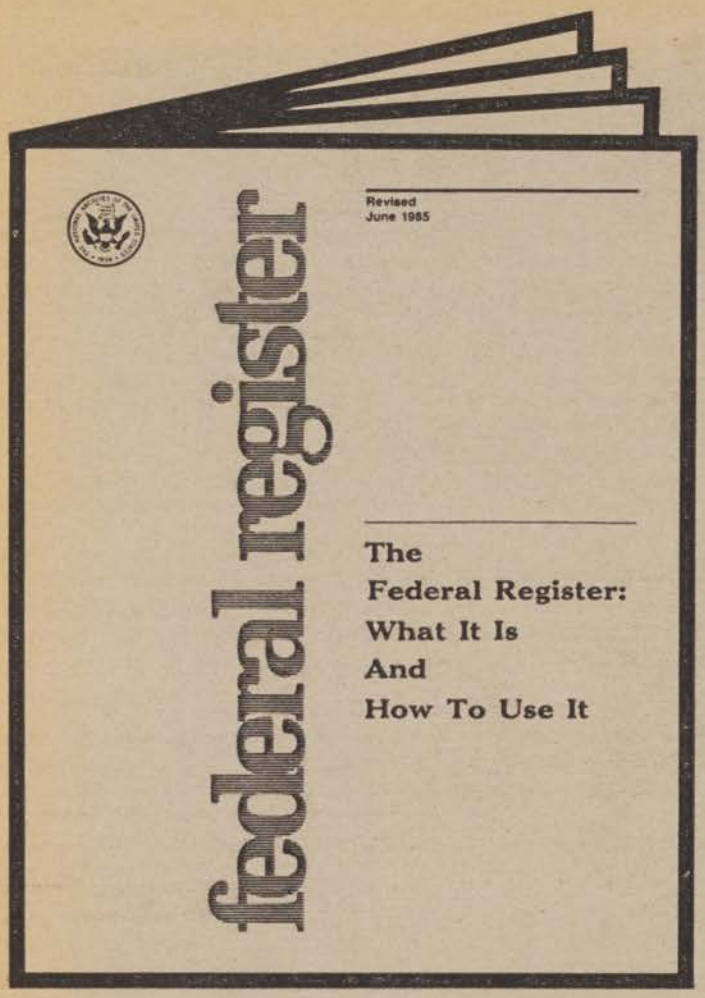
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